



LEGISLATIVE ALERT

February 16, 2023

Dear Senator:

On behalf of the AFL-CIO, we urge you to oppose the Congressional Review Act joint resolution that has been introduced by Sen. Mike Braun and Rep. Andy Barr to disapprove of the Department of Labor's recently adopted rule "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" (S.J.Res. 8, H.J.Res. 30).

The Department of Labor's rule clarifies that private sector retirement plan fiduciaries may consider environmental, social and governance ("ESG") factors when making plan investments or voting proxies. The rule does not require that retirement plan fiduciaries consider ESG factors, it simply acknowledges the fact that ESG factors may be relevant to investment returns.

Indeed, the consideration of ESG factors helps protect the hard-earned retirement savings of working people. ESG risks are particularly relevant for long-term investors, such as retirement plans, who are investing over the expected lifespans of their participants and beneficiaries. For this reason, ignoring ESG risks to an investment portfolio may be financially imprudent.

Contrary to what some would have you believe, investment professionals' consideration of ESG factors is not limited to environmental risks, such as climate change. Social issues such as respect for workers' rights and governance issues such as having responsible executive compensation can also impact sustainable investment returns.

The rule affirms that proxy votes should be cast in the best interests of plan participants and beneficiaries, thereby giving workers' retirement savings a voice in corporate decision making. The rule also ensures that the default investment for defined contribution plans is the best option available regardless of whether the investment considers ESG factors.

Finally, the rule clarifies when retirement plan fiduciaries may consider benefits other than investment returns. These benefits can include the creation of good jobs, affordable housing, and economic growth for local communities. Such benefits may only be considered as tiebreakers between competing investments that equally serve the financial interests of the plan.

This rule makes clear that any consideration of ESG factors must be consistent with the fiduciary duties of loyalty and care. Retirement plan fiduciaries cannot sacrifice risk-adjusted investment returns under any circumstances. The rule appropriately holds the consideration of ESG factors to the exact same documentation requirements as any other fiduciary decision.

The decision of whether to consider ESG factors should be left to investment professionals, not politicians. Trillions of dollars in assets under management already take ESG factors into consideration when making investment decisions. Congress should not interfere in the free market by seeking to prohibit the consideration of ESG factors.

For these reasons, we strongly urge you to oppose disapproval of the Department of Labor's rule "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights." Congress should not play politics with our pension plans by repealing this commonsense rule.

Sincerely,

Sincerely,

A handwritten signature in black ink, appearing to read "William Samuel". The signature is fluid and cursive, with a prominent initial "W" and a long, sweeping tail.

William Samuel
Director, Government Affairs