

Publications

Financial Factors in Selecting Plan Investments Under ERISA

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On November 13, 2020, the Department of Labor (the “Department” or the “DOL”) issued its final regulation entitled *Financial Factors in Selecting Plan Investments* (the “Final Regulation” or the “Final Rule”). The purpose of the Final Regulation was, for the first time, to establish by regulation how fiduciaries of plans or accounts covered by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), can comply with ERISA’s fiduciary duty provisions when making investment decisions or recommendations that take into account economic, social or governance (“ESG”) factors. To that end, the Department promulgated a regulation that requires plan fiduciaries to only consider “pecuniary factors” when making fiduciary investment decisions and fiduciary investment recommendations except in very limited circumstances.

The purpose of this article is to help fiduciary advisers understand how they can comply with the Final Regulation. To that end, we (i) identify the fiduciaries who will be subject to the Final Regulation, (ii) describe the fiduciary standards of conduct applicable to such fiduciaries, (iii) provide an overview of prior DOL guidance on ESG and similar investing principles, (iv) summarize the requirements of the Final Regulation, and (v) discuss the implications for fiduciary advisers.

In the *NSCP Currents* article, “Financial Factors in Selecting Plan Investments under ERISA” Groom’s [David Kaleda](#) and [Anthony Onuoha](#) discuss the DOL Final Rule addressing ERISA compliance with investments that consider ESG factors.

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