DOL 'PECUNIARY RULE': WHAT IT MEANS FOR PLAN FIDUCIARIES

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ESG IN RETIREMENT PLANS: NEW REGULATION EFFECTIVE JANUARY 12, 2021

The U.S. Department of Labor's final regulation related to investment selection in retirement plans is also known as the "Pecuniary Rule." True to its nickname, the rule directs retirement plan fiduciaries to evaluate all potential ERISA plan investment options *solely on their financial benefit to participants* ("pecuniary factors").

However, unlike previous DOL rulings, it no longer singles out ESG-related investments for special consideration. Under the new rule, material ESG factors intended to improve returns or reduce risks consistent with the plan's investment goals and objectives are considered prudent and appropriate for ERISA plans. This includes investments used as QDIAs (qualified default investment alternatives).

Additional highlights:

- **The new rule clarifies the ERISA duty of loyalty,** specifying that fiduciaries *may not sacrifice investment return or take on additional investment risk to further non-pecuniary goals*.

- **A factor is considered pecuniary** if a fiduciary determines it would have a material effect on an investment's risk or return, based on the plan's objectives, goals and time frame. DOL suggests that fiduciaries review the prospectus or similar document to understand the role of any non-pecuniary factors.

- **ESG-related investments that seek to improve investment outcomes for participants** are considered prudent for ERISA fiduciaries and can be used in ERISA plans.

- **ESG-related investments may also be considered suitable as a QDIA.** However, plan fiduciaries and their advisors will need to modify their investment review processes to ensure compliance with the new rule.

- **The rule does not prohibit plan investments from possessing any non-pecuniary attributes,** but it does prohibit those factors from being considered by the plan fiduciary in selecting the investment. This is an important point. The core investments on the plan menu must be selected based solely on their pecuniary factors, ignoring any non-pecuniary factors. The only time a non-pecuniary factor can be directly considered is when breaking a tie.

- **The rule, effective 1/12/21, does not apply** to pre-existing investment decisions until the next scheduled plan review. For existing QDIA investments, the rule does not apply until April 2022.

THE BOTTOM LINE

The Pecuniary Final Rule is a significant improvement over the original proposal. It treats all investments the same, focusing on how a fiduciary considers investment factors rather than which type of investment product is being reviewed.

For more information, read the full paper at https://bit.ly/34jHAIl NNTM