



# DOL issues nonenforcement policy for investment, proxy rules

*By Brian J. Kearney and Margaret Berger  
March 10, 2021*

The Department of Labor (DOL) has announced a nonenforcement policy for two controversial final rules for ERISA plan fiduciaries issued late last year. One rule requires fiduciaries to base investment decisions solely on pecuniary factors. The other requires a fiduciary exercising proxy voting and other shareholder rights to act solely in the economic interest of the plan and its participants. Pending further guidance, DOL will not enforce either rule or otherwise pursue enforcement actions against any plan fiduciary for failure to comply with the rules.

Both rules reflect DOL's concerns about fiduciaries' use of environmental, social and corporate governance (ESG) factors when selecting plan investments and exercising shareholder rights. As many practitioners expected, the Biden administration has included the rules on its list of agency actions under review for consistency with the president's climate change agenda. DOL has since received feedback saying that the rules have had a chilling effect on ESG investing. Some stakeholders also have questioned whether DOL rushed the rules and failed to adequately consider evidence on how ESG considerations can improve investment outcomes. DOL now intends to revisit both rules to address these concerns.

In a press release, DOL says it intends to work with stakeholders "to craft rules that better recognize the important role that environmental, social and governance integration can play in the evaluation and management of plan investments, while continuing to uphold fundamental fiduciary obligations."

## Related resources

### Non-Mercer resources

- [Statement regarding enforcement of final rules on ESG investments and proxy voting by employee benefit plans](#) (DOL, March 10, 2021)

- [Press release](#) (DOL, March 10, 2021)
- [Final rule](#), Fiduciary duties regarding proxy voting and shareholder rights (Federal Register, Dec. 16, 2020)
- [Final rule](#), Financial factors in selecting plan investments (Federal Register, Nov. 13, 2020)

### **Mercer Law & Policy resources**

- [DOL final proxy-voting rule less stringent than proposed](#) (Feb. 22, 2021)
- [DOL finalizes more fiduciary investment guidance](#) (Dec. 22, 2020)
- [DOL finalizes rule on selecting plan investments](#) (Dec. 3, 2020)

### **Other Mercer resources**

- [Responsible investment](#)
- [Mercer's ESG ratings](#)
- [Misperceptions and trends in ESG investing](#) (Nov. 18, 2019)
- [The ABC of ESG](#) (Jan. 29, 2019)

*Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.*