

DOL PROVIDES UPDATED GUIDANCE TO FIDUCIARIES ON PROXY VOTING OF SHARES

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The Department of Labor (DOL) has issued an updated Interpretative Bulletin providing guidance to investment managers of ERISA plan assets and other ERISA plan fiduciaries discussing the fiduciary responsibility they have with respect to voting of shares held by a plan in proxy matters and compliance with investment policy statements. The DOL was concerned that a previous Interpretative Bulletin (IB 2008-2) had been misunderstood and had caused fiduciaries to not vote shares held by a plan. The DOL's concern was that the prior guidance may have been interpreted to require that ERISA plan fiduciaries prepare a cost benefit analysis and conclude that a vote on a proxy matter was more likely than not to increase the economic value of the plan asset. The new guidance indicates that, other than in certain situations (such as voting on foreign proxy matters), the ERISA fiduciary does not need to perform a cost-benefit analysis and that fiduciaries can make an informed decision without incurring great additional expense. Further, the Interpretative Bulletin indicates that an investment policy may include provisions regarding economically targeted investments and include environmental, social, and governance factors. Under the new guidance, if the ERISA fiduciary believes that considering these factors would likely enhance shareholder value, the fiduciary may take into account these factors in their proxy voting. As always, ERISA plan fiduciaries should review their current policies in light of the updated guidance and take appropriate actions with respect to proxy voting matters: DOL Interpretive Bulletin 2016-1