

March 2021

## Temporary Non-Enforcement Policy Issued by DOL on Final ESG and Proxy Voting Rules

On March 10, 2021, the Department of Labor (the “Department”) issued a statement announcing a temporary non-enforcement policy on its “Financial Factors in Selecting Plan Investments” rule (the “ESG” rule, published November 13, 2020) and “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights” rule (the “Proxy Voting” rule, published December 16, 2020). The Department’s enforcement policy regarding the ESG rule and the Proxy Voting rule applies to employee benefit plans subject to Title I of the Employee Retirement Income Security Act (ERISA).

The Department indicated that it will not enforce either of these final rules until it publishes further guidance. The Department stated that it intends to revisit the rules, but did not specify timing. It is important to note that this policy relates solely to enforcement by the Department and does not provide ERISA plan fiduciaries with protection from private lawsuits.

### *Executive Order 13990 Cited*

The Department’s statement acknowledged Executive Order 13990, which directs federal agencies to review certain regulations that “are or may be inconsistent with, or present obstacles to, the policies set forth in section 1 of the order.” These policies include “the promotion and protection of public health and the environment and ensuring that agency activities are guided by the best science and protected by processes that ensure the integrity of Federal decision-making.”

Section 2 of Executive Order 13990 provides that “for any such regulatory actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.”

The Department’s statement further identified that questions and comments it received from stakeholders regarding the rules indicated that they “have already had a chilling effect on appropriate integration of ESG factors in investment decisions, including in circumstances that the rules can be read to explicitly allow.”

Voya continues to monitor regulatory developments impacting retirement plans.

### IRS Circular 230 Disclosure

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