November 2015

PENSION ANALYST
COMPLIANCE BULLETIN

Prudential
Bring Your Challenges℠

DOL issues guidance on economically targeted investments

On October 22, the DOL issued Interpretive Bulletin 2015-01 ("IB 2015-01") to provide guidance on fiduciary duties under ERISA as they relate to the investment of plan assets in "Economically Targeted Investments" (ETIs). For these purposes, ETIs are broadly defined as investments that are selected for the economic benefits they create in addition to the return to the employee benefit plan investor. With the issuance of this guidance, the DOL withdrew guidance on this topic from 2008, and reinstated language from 1994. IB 2015-01 is effective on October 26, 2015.

Background and overview

Under ERISA, plan fiduciaries are required to act "solely" in the interest of participants and beneficiaries. Over the years, there has been some confusion regarding the application of this fiduciary standard to the selection of "economically targeted investments" (ETIs) because of the collateral economic or social benefits those investments may further in addition to their investment returns.

In 1994, the DOL issued an Interpretive Bulletin to correct a popular misconception that investments in ETIs are incompatible with ERISA's fiduciary obligations. That guidance clarified that ERISA does not prevent plan fiduciaries from investing in an ETI if the expected rate of return is commensurate to rates of return of other investments and the ETI is otherwise an appropriate investment for the plan. This has been referred to as the "all things being equal" test. Additionally, the DOL has consistently stated that the fiduciary may not use plan assets to promote social, environmental, or other public policy causes at the expense of the financial interests of the plan's participants and beneficiaries. A fiduciary may not accept lower expected returns or take on greater risks in order to secure collateral benefits.

In 2008, the DOL issued an Interpretive Bulletin that stated that plan fiduciaries can engage in socially responsible investing, but suggested that fiduciary consideration of collateral, non-economic factors in selecting plan investments should be rare. This guidance also required plan fiduciaries to clearly document such a selection in a manner that demonstrates compliance with ERISA's rigorous fiduciary standards. Some fiduciaries believe the 2008 guidance sets a higher but unclear standard of compliance for fiduciaries when they are considering these investments.

Interpretive Bulletin 2015-01

On October 22, 2015, the DOL issued Interpretive Bulletin 2015-01, withdrawing the guidance from 2008, and reinstating the language from 1994. The DOL has stated that an important purpose of this recent guidance is to clarify that plan fiduciaries should appropriately consider factors that potentially influence risk and return. Environmental, social, and governance issues may have a direct relationship to the economic value of the plan's investment, and may be proper components of the fiduciary's primary analysis.

Fiduciaries do not need to treat commercially reasonable investments as inherently suspect or in need of special scrutiny because they take into consideration environmental, social, or other such factors. Additionally, no special documentation is required for such investments. Fiduciaries, however, do still need to determine ETIs are prudent, based on the same factors they would apply to any investment.

Next Steps

IB 2015-01 is intended to remove any confusion over the 2008 guidance relating to ERISA-covered plans investing in ETIs. As a result, sponsors of ERISA plans may be more comfortable in including economically targeted and socially responsible investments in their plans. Plan fiduciaries that want to add such an investment to their plan should contact their Prudential representative.

RSMH078