DOL Scrutinizing RIAs' Use of ESG Investments in Retirement Plans

Observers are puzzled by the timing of the move.

By Bernice Napach | August 13, 2020

Labor Department headquarters in Washington. (Photo: Mike Scarcella/ALM)

The U.S. Labor Department has undertaken a full-court press against environmental, social and governance focused investments in retirement plans.

It has not only proposed a rule that would limit the use of ESG funds in 401(k) plans, but has also sent enforcement letters to RIA firms and plan sponsors asking for detailed information about their use of ESG funds in retirement plans over several years.

Financial Advisor magazine first reported on the enforcement letters to RIA firms, and ThinkAdvisor has confirmed with two sources that firms have received such letters, but their distribution appears to be limited.

The letters from Labor's Employee Benefits Security Administration (EBSA) reportedly ask recipients to provide information about their firms' ESG investment decisions, including their investment and fiduciary policies and procedures, meeting minutes, communications, performance data and names of any staff members with input into those decisions.

Firms were reportedly given two weeks to provide such data covering the past five years.

Labor has not responded to ThinkAdvisor's requests for comment on these letters.

The department sent similar letters in early May to retirement plan sponsors, which was reported by Plan Sponsor Council of America.

A May 5 letter (https://www.napa-net.org/sites/napa-net.org/files/DOL%20ESG%20Enforcement%20Investigations%20-%20Redacted%20Info%20Request.pdf) sent to a plan sponsor requested answers by May 19 to questions about ESG investments dating back to January 2017. The letter asked for extensive information about the plan's investment policies and guidelines, including those concerning the use of ESG factors; plan compliance with previous Labor Department principles related to ESG investments; all documents related to the use or consideration of ESG factors, the names addresses of all persons responsible for making investment decisions that take into account ESG factors and meeting notes or statements related to use of ESG factors in the investment lineup.

Labor is "double tracking" its scrutiny of ESG-focused investments, said Bryan McGannon, director of policy and programs at US SIF: The Forum for Sustainable and Responsible Investment. "The DOL has this authority … but what is surprising is the timing."

McGannon questions why Labor is burdening advisor firms with requests for extensive information about ESG investments while it was simultaneously writing a rule that would restrict considerations of ESG factors in defined contribution plan investments.

(Related: DOL Proposes Limit on ESG Investments in Retirement Plans (https://www.thinkadvisor.com/2020/06/24/dol-proposes-limit-on-esg-investments-in-retirement-plans/))

She expects the DOL's current stance "will have a chilling effect over fiduciaries who want to to consider ESG factors in investments."

Marcia Wagner, founder of The Wagner Law Group, which specializes in labor and employee benefits issues, says she has at least one RIA client who has received the DOL's letter requesting information on ESG investments, but she, too, is baffled by the timing.

The information gathered from these letters could "provide additional support for the proposed ESG regulations," but then why didn't the Labor Department "not first have this information prior to issuing the proposed regulation?" asked Wagner.

The DOL's proposal to limit ESG-focused investments in 401(k) plans was issued in late June. The agency is currently reviewing more than 1,000 public comments it received in response, most of them negative.

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- **The Case for ESG Funds During Volatile Times: Morningstar (https://www.thinkadvisor.com/2020/06/16/the-case-for-esg-funds-during-volatile-times-morningstar/)**
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