



TOPIC: NCCMP COMMENTS ON DOL PROPOSED RULE ON PRUDENCE AND LOYALTY
IN SELECTING PLAN INVESTMENTS AND EXERCISING SHAREHOLDER RIGHTS

EXECUTIVE SUMMARY: ON OCTOBER 14, 2021, THE U.S. DEPARTMENT OF LABOR (“DEPARTMENT”) ISSUED A NOTICE OF PROPOSED RULEMAKING: *PRUDENCE AND LOYALTY IN SELECTING PLAN INVESTMENTS AND EXERCISING SHAREHOLDER RIGHTS* IN THE FEDERAL REGISTER. ON MONDAY, DECEMBER 13, NCCMP FILED COMMENTS IN SUPPORT OF THE PROPOSED RULE.

WITH VERY FEW RESERVATIONS, THE NCCMP SUPPORTS AND APPLAUDS THE APPROACH TAKEN BY THE DEPARTMENT IN ITS NOTICE OF PROPOSED RULEMAKING. UNLIKE THE PREVIOUS RULE RELEASED UNDER THE PRIOR ADMINISTRATION, THE PROPOSED RULE TAKES A BALANCED AND UNIFORM APPROACH TO PLAN INVESTMENT DECISIONS THAT NEITHER MANIFESTS A BIAS AGAINST CERTAIN TYPES OF INVESTMENT CONSIDERATIONS BASED ON HOW THEY ARE LABELED NOR INCORPORATES GROSSLY INACCURATE PRESUMPTIONS AGAINST AN ENTIRE CLASS OF INVESTMENT-RELATED DECISIONS.

WE RECOMMEND THAT THE DEPARTMENT:

- CONSIDER CLARIFICATIONS TO THE CONSIDERATION OF ECONOMIC, SOCIAL AND GOVERNANCE FACTORS TO INCLUDE ADDITIONAL EXAMPLES THAT DEMONSTRATE THE EXPANSIVE NATURE OF MATERIAL FACTORS THAT FIDUCIARIES MAY CONSIDER WHEN MAKING INVESTMENT DECISIONS,
- CONSIDER MODIFICATIONS TO THE TIE BREAKER RULES TO INCLUDE CONTRIBUTIONS AS AN EXAMPLE OF A PERMISSIBLE INVESTMENT CONSIDERATION,
- REVISIT THE DISCLOSURE REQUIREMENTS FOR SELF-DIRECTED DEFINED CONTRIBUTION PLANS IN LIGHT OF EXISTING DISCLOSURE REQUIREMENTS, AND
- CLARIFY THE RULES AROUND PROXY VOTING AND EXERCISE OF SHAREHOLDER RIGHTS TO BE CONSISTENT WITH GENERAL INVESTMENT RULES OF ALLOWING FOR CONSIDERATION OF PERIPHERAL FACTORS AS TIEBREAKERS

PURPOSE: INFORMATIONAL

CATEGORY: REGULATORY

ISSUER: NCCMP

TARGET AUDIENCE: TRUSTEES OF AND PLAN ADVISORS TO MULTIEmployer PENSION PLANS

FOR MORE INFORMATION [NCCMP Comments to Department of Labor on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights](#)

SEND COMMENTS TO: nccmp@nccmp.org

REFERENCE: VOL. XXI, ISSUE 7

We strive to ensure that the information contained in this and every issue of Multi-Elert is correct to the extent information is available. Nevertheless, the NCCMP does not offer legal advice. Plan fiduciaries should rely on their own attorneys and other professional advisors for advice on the meaning and application of any Federal laws or regulations to their plans.

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If you have questions about the NCCMP, or about this or other issues of Multi-Elert, please contact the NCCMP, by phone at (202) 737-5315 or by e-mail at nccmp@nccmp.org.
