



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

February 27, 2023  
(House Rules)

## STATEMENT OF ADMINISTRATION POLICY

**H.J. Res. 30 – Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Labor relating to “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights.”**

(Rep. Barr, R-KY, and 83 cosponsors)

The Administration strongly opposes H.J. Res. 30, a resolution that would disapprove of the rule finalized by the Department of Labor (DOL) relating to “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights.” Since day one, the Biden-Harris Administration has been unapologetic in fighting for America’s workers and ensuring our economy works for America’s working people. America’s workers built this country – and this Administration owes it to them to ensure that fiduciaries have the fullest set of available tools to protect their life savings and pensions.

On December 1, 2022, DOL issued a final rule on “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights.” This rule clarifies that retirement plan fiduciaries may consider climate change and other environmental, social, and governance factors in selecting retirement investments and exercising shareholder rights, when those factors are relevant to the risk and return analysis. The rule reflects what successful marketplace investors already know – there is an extensive body of evidence that environmental, social, and governance factors can have material impacts on certain markets, industries, and companies. Such factors also can be a deciding factor among investments that equally serve the financial interests of the plan over the appropriate time horizon and that put the interests of the plan participants and their beneficiaries first and the federal government should not restrict that choice for plan managers. DOL issued the final rule after receiving extensive feedback from the public that revealed that the previous Administration’s rules in this area created problematic impediments for plan fiduciaries seeking to act in the best interests of America’s workers when making investment decisions.

In 2020, the previous Administration issued a rule that had a chilling effect on retirement investment advisers otherwise inclined to consider environmental, social, or governance (ESG) factors when making investment decisions, even if the advisor determined that these factors were material to investment decisions. That rule stepped between workers and the investment advisers that they have trusted to protect their hard-earning life savings. The 2020 rule effectively stopped plan managers from considering all factors relevant to investment decisions that should be designed to protect the hard-earned savings they were charged to manage.

The 2022 Biden-Harris Administration rule makes clear that ERISA fiduciaries can consider factors such as corporate accountability and transparency, climate, and liability risks if they find them relevant to the analysis of an investment's risk and return, in the same way that they would prudently consider other relevant factors.

To be clear, the 2022 rule is not a mandate – it does not require any fiduciary to make investment decisions based solely on ESG factors. The rule simply makes sure that retirement plan fiduciaries must engage in a risk and return analysis of their investment decisions and recognizes that these factors can be relevant to that analysis. If DOL were to revert to the 2020 rule, the federal government would be interfering with the market in a manner that stands in the way of retirement plan fiduciaries' ability to protect these hard-earned retirement savings and pensions and unnecessarily limit the options available to retirement plan participants and investors.

As it has for nearly 50 years, federal law demands that investment decisions made by retirement plan investors are based solely on plan beneficiaries' financial benefits in their retirement income. The Biden-Harris Administration rule reflects feedback from approximately 900 written comments and more than 20,000 petition signatures during the 60-day comment period from a variety of parties, including plan sponsors and other plan fiduciaries, individual plan participants and beneficiaries, labor organizations, financial services companies, academics, elected government officials, trade and industry associations, and others, both supporting and opposing the proposed rule.

The President will continue to deliver for America's workers. If the President were presented with H.J. Res. 30, he would veto it.

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