



February 7, 2023

Dear Member of Congress,

On behalf of millions of activists across the country, Americans for Prosperity supports Representative Barr's resolution of disapproval nullifying the Department of Labor's (DOL) final rule "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" under the Congressional Review Act. In order to protect Americans' retirement savings, we urge you to cosponsor this important resolution and support its final passage on the House floor.

The rule, finalized last November, undermines statutory obligations under the Employee Retirement Income Security Act of 1974 (ERISA) which requires plan fiduciaries to act solely in the interest of plan beneficiaries. In effect, the final rule shirks these obligations and puts retirees' retirement savings at risk by encouraging fiduciaries of private retirement plans to consider non-pecuniary factors like environmental, social, and governance (ESG) goals above maximizing returns on investment.

By making risk-return analysis subjective, the rule jeopardizes the retirement savings that millions of Americans rely on. One study found that "Global ESG funds have underperformed the broader market in the past five years, returning an average of 6.3% per year, compared with 8.9% for broader funds."¹ Moreover, a survey conducted by the FINRA Investor Education Foundation with NORC of the University of Chicago indicates that just 24 percent of retail investors could define ESG investing, and only 9 percent claimed to have ESG-related investments.² And even though most Americans remain unaware of ESG or what it means, the final rule will encourage fiduciaries to pursue political or social goals in exchange for lower returns on investment.

ERISA covers an enormous amount of private benefit plans across the United States, highlighting the outsized influence plan fiduciaries have in allocating capital throughout the economy. Recent data shows that ERISA covers 747,000 retirement plans, 2.5 million health plans, and 673,000 welfare benefit plans. Additionally, the plans cover 152 million Americans and the covered pension plans hold \$12 trillion in assets.³ Millions of retirees may unknowingly have their savings sacrificed by fund managers concerned more with advancing a political or social agenda than ensuring hard-working Americans have enough money for retirement.

President Biden's final DOL rule casts aside the Trump Administration's commonsense 2020 final rule "Financial Factors in Selecting Plan Investments", which required fiduciaries to select plan investments "based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action."⁴

¹ <https://www.bloomberg.com/news/articles/2022-06-18/esg-funds-are-losing-less-in-the-market-slump-so-far#xj4y7vzkg>

² <https://www.barrons.com/articles/esg-meaning-sustainable-investing-study-51649719876>

³ <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/ebsa-monetary-results.pdf>

⁴ <https://www.federalregister.gov/documents/2020/11/13/2020-24515/financial-factors-in-selecting-plan-investments>

On January 26, 2023, 25 Republican attorneys general filed a lawsuit to block the DOL's final rule, stating that it "undermines key protections for retirement savings of 152 million workers" and "oversteps the Department's statutory authority under the Employment Retirement Income Security Act of 1974."⁵

Financial outcomes, not policy preferences, should guide investment decisions on behalf of beneficiaries. If ESG investments were in the best interest of beneficiaries, the existing obligations would be sufficient. However, the DOL's final rule seeks to impose a political and social agenda through a top-down approach.

Americans for Prosperity urges all Representatives to co-sponsor Representative Barr's resolution of disapproval and vote yes during floor consideration.

Sincerely,
Brent Gardner
Chief Government Affairs Officer

⁵ https://www.texasattorneygeneral.gov/sites/default/files/images/press/2023.01.26_1%20Complaint.pdf