



Big News:

Department of Labor Affirms That Labor Standards, Job Creation, May Be Considered During Investment Process; “All Things Being Equal” Test Unchanged

The DOL recently revoked Bush-era guidance related to fiduciary rules for pension plans related to Economically Targeted Investments, or ETIs, and affirming that investors can consider Environmental, Social and Governance (ESG) factors in their decision making. ***This is big news*** for labor trustees who are interested in efforts to invest pension fund dollars in the “real economy” in ways that may create jobs or economic growth for beneficiaries, including investments in infrastructure or affordable housing.

Economically Targeted Investments (ETIs)

Investments that have additional, place-based economic benefits besides the financial return to the fund. ETIs could include infrastructure investments that create local jobs, like a train line expansion. Such additional benefits are referred to as “collateral” benefits.

Environment, Social, and Governance (ESG)

ESG can encompass many things, but in general they include:

Environmental – resource scarcity, energy efficiency, climate change; ***Social*** – human rights, labor standards, community impacts; ***Governance*** – how companies are run and how they behave in the world.

What does the new DOL Guidance Mean for Trustees? Here are the three main takeaways:

1. Investments must still be prudent and use the “all things being equal” test. The primary way to understand ERISA remains the same – plan fiduciaries must make their investment decisions prudently, and this means making sure that there is a process to determine that any investment is based on the plan’s goal of delivering benefits to beneficiaries. Nothing in the DOL announcement changes that fundamental obligation.

2. ETIs are legitimate vehicles so long as they are prudent investments. The DOL affirms and clarifies that targeting “collateral” benefits, like jobs or housing, is acceptable so long as those investments are financially prudent. *There’s nothing wrong with seeking socially beneficial investments that are financially prudent!* There actually never was, but the new guidance removes any doubt that skeptics may have had. In particular, the new Guidance preamble explicitly states that ETIs are not subject to special scrutiny because they create collateral benefits.

3. Integrating environmental, social, and governance (ESG) information into investment decision-making is an accepted investment practice. This affirmation of ESG is just as newsworthy

as the actual reversion to the 1994 guidance. The DOL acknowledges that ESG considerations, which may include jobs, labor standards and community impacts, are a fundamental part of the investment landscape.

You can read the full text of the Interpretive Bulletin 2015-01 on the [Federal Register](http://www.federalregister.gov).