Job Creators Network Foundation Remarks on Proposed DOL Rule

The Department of Labor's proposed rule chipping away at the firewall that exists between activist investing and retirement plans not only compromises Americans' savings but poses a threat to the small business community. The Job Creators Network Foundation strongly urges the Biden administration to reconsider the proposal and, instead, prioritize the economic security of retirees.

Environmental, social, and governance (ESG) issues should not be a factor for businesses when deciding how to manage 401k plans. The mission of the Employee Benefits Security Administration (EBSA)—which this rule attempts to change—is to safeguard the retirement, health, and other workplace benefits of Americans and their families. Contrary to that goal, this proposal clears the way for retirement accounts to be used as a tool of social engineering, rather than a financial landing pad for the sunset years.

In practice, the shake-up of priorities will compromise 401k returns—leaving retirees more economically vulnerable. We've already seen how ESG investment vehicles can underperform the market. It's not a surprise why. These funds often bet on inefficient technology, avoid so-called 'sin industries' that offer solid returns, or favor board diversity, which has nothing to do with a company's performance.

And as the future of Social Security remains questionable, compromised retirement savings accounts could create a scenario in which retirees need government aid—a financial lifeline that would be funded by taxpayers.

While the proposed rule doesn't clearly *require* the fiduciaries of retirement plans to take ESG factors into account, it's an incremental step in that direction and could create an environment in which companies are pressured into stepping over the line. The slippery slope would weaponize the more than $7 trillion housed in 401k accounts to pick winners and losers based on a framework created by the government. Industries that heat our homes, fuel our cars, or empower individuals to protect their families could be starved of capital.

It's also important to note the proposed rule will likely spawn more government overreach. Aside from baking wokeness into retirement plans, other pet projects can be pursued by future administrations via agency edict, regardless of existing guardrails. It sets a dangerous precedent that can be exploited by the executive branch—whether in Republican or Democrat control.

Beyond lower returns for retirement accounts, a breakdown of free market economics, and encouragement of future government overreach, allowing ESG considerations to taint the management of 401ks will have an outsized impact on the small business community.

Unlike large corporations, small businesses don't have the excess manpower or resources to commit to navigating these ESG waters for a 401k program, a benefit many entrepreneurs already struggle to prop up. In fact, currently, only one-in-four small businesses in the U.S. offer employees a 401k program. Why? Because the owners believe the benefit is too expensive to set up and manage. And the proposed rule will only raise those regulatory and budgetary hurdles.

So, what happens if the Department of Labor greenlights ESG considerations for retirement accounts? In short, small businesses will lose. Because they won't be able to offer the option to employees, they'll be at a competitive disadvantage when it comes to recruiting and retaining talent—a task that's already extremely challenging amid the tight labor market.

Separately, Mainstreet could become the target of protest given their inability to sufficiently weave-in ESG considerations into their investment portfolio.

For these reasons, the Job Creators Network Foundation urges the Department of Labor to scrap the rule. If it moves forward, we will look at our options, including litigation.

Sincerely,

Alfredo Ortiz
Chief Executive Officer
Job Creators Network Foundation