

ESG is Dead – Long Live ESG

Guidance for Pension Fiduciaries

- Trust Fund Purpose: Endowments vs Pension Funds
- Dep't of Labor ESG Merry-Go-Round Requires Fiduciary Resilience
- ESG is an Ambiguous and Now Politicized Term
- ESG Culture War Debate Ignores Fiduciary Duty Fundamentals
 - Prudence is Process Oriented and Forward Looking
 - Prudence is also Dynamic – Are we at an Evolutionary Inflection Point?
 - Duty of Loyalty Includes Impartiality; Balancing the Short and Long Term
 - Loyalty Precludes Serving Third Party Goals – Whether Liberal or Conservative

Pension Fiduciary Catch 22

Navigating the Culture War

Fiduciaries Cannot be Political – They Must Follow ALL Fiduciary Duties

- Confer with Qualified Legal and Investment Advisers
- Get Educated – It's your Duty to Investigate and Understand the Facts
- Show Your Work; “Don't Say ESG” – Describe What, Why and How
 - Link Decisions to Fiduciary Duties, Research and Impact on Plan Participants
- Review Investment Beliefs, Policies, Holdings and Contracts
- Update Stakeholder Communication Plans
 - Be Proactive and Interactive
- Consider a Court Petition for Fiduciary Instruction as a Last Resort
 - Get Protection when Laws are Unconstitutional or Inconsistent with Fiduciary Duties