

DOL Clarifies When Proxy Advisory Firms Are ERISA Fiduciaries: What Plan Fiduciaries Need to Know



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On April 1, 2026, the Department of Labor (DOL) issued Technical Release 2026-01 (the “Technical Release”), providing guidance regarding the application of ERISA’s fiduciary requirements to proxy advisory firms. The Technical Release addresses the fiduciary responsibilities of plan fiduciaries that use proxy advisers, the circumstances under which proxy advisory firms may be treated as ERISA fiduciaries, and the extent to which ERISA preempts state laws regulating proxy advisory services.

The Technical Release follows President Trump’s December 2025 Executive Order directing the DOL to reconsider its guidance regarding the fiduciary status of individuals who manage or advise on proxy voting. As discussed in our prior article, *[Proxy Voting Back in the Spotlight – Practical Steps for Now](https://www.truckerhuss.com/2025/12/proxy-voting-back-in-the-spotlight-practical-steps-for-now/)* (<https://www.truckerhuss.com/2025/12/proxy-voting-back-in-the-spotlight-practical-steps-for-now/>), the Executive Order specifically directed the DOL to consider whether proxy advisers that provide advice for a fee regarding shareholder rights attributable to shares held by ERISA plans should be treated as investment advice fiduciaries.

Background

Proxy Voting. Proxy voting is the process by which shareholders vote on matters presented for approval without attending a shareholder meeting in person. These matters may include the election of directors, executive compensation, mergers and acquisitions, and shareholder proposals. Institutional investors, including retirement plans and investment funds, may hold voting rights associated with the shares they own and often rely on investment managers or proxy advisory firms to assist with exercising those rights.

Proxy Advisory Firms. Proxy advisory firms are third-party service providers that analyze matters submitted for shareholder votes and provide institutional investors with research, voting guidelines, and recommendations regarding how shares should be voted. Depending on the arrangement, they may also assist with the execution of votes or, in some cases, exercise discretion over voting decisions.

In the retirement plan context, proxy advisory firms are often used indirectly through a plan’s investment managers rather than retained directly by the plan sponsor. Investment managers may rely on these firms for proxy research, voting recommendations, or related voting services.



Proxy Voting as a Fiduciary Function. The DOL has historically taken the position that the fiduciary duty to manage plan assets consisting of shares of stock includes the responsibility for shareholder rights associated with those shares, including proxy voting rights. Accordingly, decisions regarding whether and how to vote proxies, as well as the selection and monitoring of persons retained to exercise shareholder rights or provide related research, recommendations, or assistance, are subject to ERISA's fiduciary duties of prudence and loyalty.

While the DOL has consistently treated proxy voting as a fiduciary function, the DOL's approach has varied across administrations regarding the role of environmental, social, and governance (ESG) and other policy considerations in proxy voting. Specifically, while the Department has consistently maintained that fiduciaries may not sacrifice investment returns or increase investment risk to advance collateral objectives, administrations have differed on the issue of whether ESG or similar considerations may be treated as financially relevant to a plan's investments.

The Technical Release

The Technical Release follows Executive Order 14366, issued in December 2025, which directed the DOL to reconsider the fiduciary status of persons who manage or advise on shareholder rights held by ERISA plans, and to assess whether proxy advisers act solely in the financial interests of plan participants. The Executive Order also reflects the current Administration's concern that proxy advisory firms may use their influence over shareholder voting to advance nonfinancial objectives, including ESG and diversity, equity, and inclusion considerations.

Consistent with that directive, the Technical Release focuses specifically on when proxy advisory firms may be treated as ERISA fiduciaries. Rather than creating a new fiduciary framework, the DOL applies ERISA's existing functional fiduciary rules to the services commonly provided by proxy advisory firms.

Proxy Advisory Firms as Functional Fiduciaries under ERISA. The Technical Release clarifies that a proxy advisory firm may become an ERISA fiduciary in two ways: (1) by exercising authority or control over shareholder rights associated with plan assets, or (2) by providing investment advice for a fee.

Authority or Control over Proxy Voting. Under ERISA Section 3(21)(A)(i), a person is a fiduciary to the extent they exercise authority or control over the management or disposition of plan assets. Because shareholder rights associated with shares held as plan assets are treated as plan assets, the DOL states that a proxy advisory firm that exercises authority or control over those rights will be an ERISA fiduciary. This may include circumstances in which the firm exercises discretion over voting policies or determines how proxies attributable to plan assets will be voted.

Investment Advice for a Fee. A proxy advisory firm may also be a fiduciary under ERISA Section 3(21)(A)(ii) if it provides investment advice for a fee. Under the DOL's longstanding five-part test, a person is an investment advice fiduciary only if the person:

1. renders advice as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property;
2. provides the advice on a regular basis;
3. provides the advice pursuant to a mutual agreement, arrangement, or understanding with the plan or a plan fiduciary;



4. provides advice that will serve as a primary basis for investment decisions with respect to plan assets;
and
5. provides advice that is individualized based on the particular needs of the plan.

The Technical Release states that proxy advisory services provided on an ongoing basis, for a fee, pursuant to a mutual agreement, arrangement, or understanding, and based on the particular needs of an ERISA plan will ordinarily satisfy the five-part test, although the ultimate determination depends on the facts and circumstances.

The DOL also cautions that contractual disclaimers are not necessarily determinative. Accordingly, language intended to disclaim fiduciary status or state that the firm's recommendations will not serve as a primary basis for investment decisions may not control if the parties' actual relationship demonstrates otherwise.

State Law Preemption. The Technical Release also addresses whether ERISA preempts state laws requiring proxy advisory firms to disclose when recommendations are based on considerations other than maximizing an investor's risk-adjusted financial return. The DOL takes the position that such laws generally are not preempted merely because they apply to firms that also advise ERISA plans.

The DOL reasons that an ERISA fiduciary may exercise shareholder rights only to advance the plan's financial interests. Accordingly, a proxy advisory firm acting as an ERISA fiduciary generally should not provide the type of nonfinancial recommendation that would trigger the state-law disclosure requirement. On that basis, the DOL concludes that such laws generally are not preempted by ERISA, although the analysis depends on the particular state law at issue.

Practical Considerations for Plan Sponsors

For plan sponsors, the Technical Release primarily reinforces the importance of understanding who is responsible for exercising proxy voting rights and how that responsibility is delegated and monitored. Although the Technical Release focuses in significant part on the fiduciary status of proxy advisory firms, it also has implications for plan fiduciaries. This is because ERISA's duty of prudence requires plan fiduciaries to prudently select and monitor persons who exercise, advise on, or assist with the exercise of shareholder rights. (Regarding the fiduciary duty to monitor those to whom fiduciary responsibilities are delegated, see ERISA section 404(a)(1)(B); 29 C.F.R. Section 2509.75-8 (FR-17); and *Tibble v. Edison International*, 575 U.S. 523, 529–30 (2015).) Plan fiduciaries generally need not review individual proxy votes, but they should maintain a prudent process for overseeing those responsible for exercising proxy voting authority on behalf of the plan.

The extent of a plan fiduciary's review will depend significantly on how the plan invests. Where a plan invests through a registered mutual fund, the plan owns shares of the mutual fund, but the fund itself owns the underlying portfolio securities. Under ERISA's plan asset rules, those underlying securities generally are not treated as plan assets solely because an ERISA plan invests in the fund, and the mutual fund and its investment adviser do not become ERISA fiduciaries solely by reason of that investment. For this reason, the Technical Release generally does not apply to a proxy advisory firm used by the mutual fund manager to vote the fund's underlying portfolio securities. Accordingly, the mutual fund manager, rather than the investing plan or its fiduciaries, generally exercises the voting rights associated with those securities. The plan fiduciary



remains responsible for prudently selecting and monitoring the mutual fund as a plan investment, but ordinarily does not have the same responsibility for monitoring how the fund manager votes proxies on the fund's underlying holdings.

The analysis is different for collective investment trusts (CITs) and separately managed accounts. In a CIT, the participating plans generally have an undivided interest in the trust's underlying assets, while in a separately managed account the securities are held directly for the plan. In both cases, the underlying securities are generally plan assets and the associated proxy voting rights are therefore subject to ERISA's fiduciary requirements. Although voting authority is typically delegated to an investment manager, the appointing fiduciary retains responsibility for prudently selecting and monitoring the fiduciary exercising that authority.

Accordingly, plans using CITs, separately managed accounts, or similar plan asset vehicles address who is responsible for proxy voting, the policies governing those decisions, whether proxy advisory firms are used, and whether the plan's monitoring process appropriately addresses those arrangements. By contrast, the Technical Release may have more limited direct implications for plans invested primarily through registered mutual funds. The Technical Release could still be relevant, however, where the plan itself is entitled to vote its mutual fund shares and relies on a proxy advisory firm in exercising those voting rights. For example, if a mutual fund submits a matter to its own shareholders for approval, such as the election of fund trustees, the plan may be entitled to vote the mutual fund shares it holds and could use a proxy advisory firm to assist with that decision.

For plans with investments that give rise to proxy voting responsibilities, fiduciaries should consider the following practical steps:

- **Confirm Proxy Voting Responsibilities and Governing Terms**. Plan fiduciaries should confirm who is responsible for exercising proxy voting authority and review the applicable policies and agreements to ensure that responsibilities are appropriately allocated and consistent with ERISA's fiduciary requirements.
- **Understand the Role of Proxy Advisory Firms**. Plan fiduciaries should determine whether an investment manager relies on a proxy adviser for research, recommendations, voting services, or discretionary voting authority, and consider whether the adviser's proxy voting guidelines are consistent with ERISA's fiduciary requirements.
- **Document the Review and Monitoring Process**. Plan fiduciaries should document their review, including any representations or confirmations received from investment managers regarding proxy voting practices and compliance with ERISA.

Ultimately, the Technical Release does not require plan fiduciaries to become directly involved in individual proxy voting decisions. Rather, it underscores the importance of maintaining an appropriate fiduciary process for the selection and monitoring of those responsible for exercising shareholder rights on behalf of the plan.

If you have questions regarding the impact of Technical Release 2026-01, please contact us.



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