

Benefits Report: September 2026

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Is Your Retirement Plan Working for Your Workforce? Important Considerations for Plan Sponsors and Fiduciaries



T. Katuri Kaye

Plan sponsors and fiduciaries regularly review investment performance, fees, participation and contribution levels, withdrawals, distributions, and other plan metrics. Those reports are an important oversight tool, but they may not by themselves provide the information needed for a complete plan assessment. A retirement plan may be well administered and have strong aggregate participation, and still not be working at an optimum level for all parts of the workforce. A useful question, then, is what do the plan's data and experience reveal about how employees are actually using the plan benefits?

That question has become more relevant as employers manage workforces that differ widely in compensation, tenure, location, job type, and financial circumstances. Some employees are building retirement savings while also paying student loans. Others are supporting children and aging parents at the same time. Still others may be living close enough to the margin that an unexpected expense leads them to reduce plan deferral rates, take a plan loan, or request a hardship distribution. Those pressures can affect different retirement outcomes even when employees are offered the same retirement plan.

For plan sponsors and fiduciaries, differences in participation or savings rates do not, standing alone, indicate a problem with the retirement plan, nor does the Employee Retirement Income Security Act of 1974 ("ERISA") require uniform retirement outcomes. Rather, those differences may provide useful context for evaluating how the retirement plan is functioning across the workforce. The more practical point is that plan sponsors and other plan fiduciaries, acting in their respective capacities, can use information they already receive from recordkeepers, consultants and payroll to evaluate whether longstanding design choices and administrative



practices continue to fit the workforce they have currently. When the data suggests that further review is warranted, they can decide whether the appropriate response is better communication, a change in plan design, different administrative processes—or no change at all.

The “Steps” that follow suggest how plan sponsors and fiduciaries can use information they already have to evaluate how their retirement plan is working, identify areas that merit closer review and decide whether changes to plan design, administration, or governance are appropriate. For some organizations, that review may also highlight the need to clarify who is responsible for fiduciary oversight, service-provider monitoring, and follow-up when plan data suggests additional inquiry may be warranted.

Step 1: Start With the Plan Data Already Regularly Available

Most plan sponsors and fiduciaries do not need a new study to begin this analysis. Typically, they regularly receive participation and utilization reports, demographic summaries, benchmarking, and other useful data from their recordkeepers or consultants. The value in that information lies in identifying which metrics warrant closer attention, because they raise questions.

Consider a retirement plan reporting 90% participation. That is a strong headline number. But one might learn more by examining what the aggregate figure may obscure. Is participation substantially lower among employees in their first two years of service? Are lower-paid employees participating but contributing below the level required to receive the full match? Do employees remain at the automatic-enrollment default for years without increasing their rate? Are loans or hardship withdrawals concentrated in one location or job classification? When employees reduce contributions, do they later resume saving at their prior level?

The scope of an appropriate review will vary depending on the plan type and design, the workforce, and the information reasonably available. Without suggesting that every plan sponsor must analyze every metric, useful information may include:

- participation and opt-out rates;
- average and median deferral rates;
- the percentage of participants contributing enough to receive the full employer match;
- the effect of automatic enrollment and automatic escalation;
- loan and hardship-withdrawal activity;
- patterns by compensation level, tenure, location, or job classification; and
- what happens to participant behavior after a loan, hardship withdrawal, leave, or other interruption in saving.

The purpose is not to treat every difference in participation or utilization as a concern requiring action. Rather, the review can help identify patterns that warrant a closer look in light of plan design and the employer’s objectives for the plan. For example, if an employer views the retirement plan as an important component of its recruitment and retention strategy, consistently low match utilization, or repeated leakage among a meaningful segment of the workforce likely warrants further inquiry. Taken together, this data can help the employer determine what a particular pattern may reflect and what additional questions, if any, should be asked.

Step 2: Evaluate Whether the Plan is Working as Intended



Once the available data provides a clearer picture of how employees are using the retirement plan, the next step is to consider whether particular plan features may be contributing to the patterns reflected in the data. A provision that works well for one workforce may operate differently as compensation levels, tenure, turnover or other workforce characteristics change. Periodic reviews can help assess whether longstanding design choices continue to serve their intended purpose.

Automatic Enrollment. An auto-enrollment feature can materially increase participation, but participation alone may not tell the full story. A default contribution rate may become a participant's long-term savings rate if the participant never affirmatively increases it. An employer that adopted automatic enrollment years ago may therefore want to review the default percentage and assess whether an automatic-escalation feature is warranted.

The Matching Formula May Warrant Review. Employers can devote comparable resources to matching contributions while creating different incentives for employees to save. A formula that requires employees to defer a relatively high percentage of pay to receive the full employer contribution may work as intended for one section of the workforce but result in lower match utilization in another. If a meaningful number of participants consistently contribute below the level required to earn the maximum match, the employer should consider whether the issue relates to plan design, participant communications, both of those factors, or other issues.

Eligibility and Vesting May Warrant Review, As Workforce Patterns Change. Waiting periods, hours requirements and vesting schedules can have different practical effects where turnover is high, employees frequently move between full-time and part-time status, or the workforce has become more mobile. That review may provide an opportunity to consider whether other eligibility and vesting provisions continue to reflect the employer's current plan objectives.

This Step 2 evaluation can assist in determining whether participant behavior may be related to plan design and, if so, whether the issue may be better addressed through a design change, participant communications, or another approach.

Step 3: Understand What May Be Driving Participant Behavior

Patterns in retirement plan data may not be attributable to plan design alone. Participant behavior can also reflect financial circumstances outside the retirement plan. Employees may be balancing retirement savings with student loan payments, caregiving expenses, housing costs, or unexpected financial needs. Those competing demands may be reflected in the plan by lower deferral rates, loans, hardship withdrawals, or interruptions in saving.

Understanding that context can help a plan sponsor or fiduciary evaluate what the data is showing without assuming that a particular pattern reflects a problem with the plan. For example, an increase in loans or hardship withdrawals may warrant a different inquiry than consistently low participation following automatic enrollment. Similarly, employees who reduce contributions after a financial interruption but do not later restore their prior deferral rate may present a different consideration than employees who never enroll in the plan at all.

Employers cannot—and should not be expected to—address every financial challenge employees face through the retirement plan. But where the data identifies a problematic pattern, an employer should consider whether existing plan features or participant communications are sufficient to appropriately address it. Depending on



the circumstances, targeted communications, re-enrollment, the addition of automatic escalation, and/or the inclusion of other optional plan features (such as matching student loan payments, as now authorized under SECURE 2.0) might be appropriate to address the concern.

The relevant question is whether the information available suggests a particular need or opportunity in light of the workforce. As a result, different employers may reasonably reach different conclusions based on the same type of participant behavior.

Step 4: Make the Review a Plan Governance Assessment Opportunity

Identifying patterns in retirement plan data is only part of the process. The next questions are: Who is responsible for the evaluation? In what capacity will decisions be made? What additional information is needed? And who will be responsible for carrying out any resulting action? Those questions bring the analysis squarely into plan governance.

The capacity in which a decision is made matters because the same people may participate in plan decisions that implicate different roles under ERISA. As a general matter, decisions about whether to establish, amend or terminate a plan, and about the level or form of benefits, are settlor functions made on behalf of the employer and are not subject to ERISA's fiduciary standards. By contrast, individuals may be acting in a fiduciary capacity when exercising discretionary authority over plan administration or management of plan assets.

A review that begins with participant data can touch both. For example, the data may lead the plan sponsor to consider changing an automatic-enrollment feature or matching formula, while questions about plan administration, service-provider performance or implementation may require fiduciary attention. Keeping those roles clear is particularly important when the same committee or internal group discusses both types of issues. Retirement plan meeting materials and minutes should accurately reflect the nature of the discussion and the capacity in which decisions are being considered and made.

The governance structure should also make clear who owns each part of the process. Whether or not a plan sponsor has a formal retirement plan committee, there should be a defined approach to fiduciary oversight, service-provider monitoring, plan-design authority, and implementation. A plan sponsor should know, for example, who reviews information from the plan's recordkeeper and other providers, who follows up when the information raises a question, who has authority to approve a plan amendment, and who confirms that an approved change has been implemented correctly by payroll and the recordkeeper.

For plan sponsors with a retirement plan committee, that may mean periodically reviewing the committee's charter and delegations, meeting practices and allocation of responsibilities to confirm that they continue to reflect how decisions are actually being made. For plan sponsors without a formal retirement plan committee, the same exercise may reveal that responsibilities are dispersed among HR, finance, payroll, and senior management or depend too heavily on informal institutional knowledge. A formal retirement plan committee is not necessarily the answer for every organization, but the governance structure should be deliberate, understood, and documented.

Finally, a decision is only as effective as its implementation. A change to eligibility, matching contributions, vesting, automatic features, or another plan provision may implicate the plan document, participant disclosures, payroll administration, recordkeeper programming, and applicable qualification requirements. Responsibilities should be assigned before implementation, and there should be a clear process for confirming that the plan is operating consistently with the decision that was made.



Bringing the Review Together

Maintaining a retirement plan is a significant investment, and periodic review can help determine whether that investment continues to operate as intended for the workforce the employer has today. The objective is not to achieve uniform participant outcomes or to redesign the plan whenever the data reveals a difference. Rather, it is to understand what the available information is showing, consider whether plan design or other factors may be contributing to the patterns observed, and determine deliberately whether any response is appropriate. In many cases, the review may confirm that the existing design and approach remain appropriate.

Where the review raises questions, a sound governance process can help ensure that those questions are evaluated by the appropriate decision-makers, in the appropriate capacity, and with attention to both legal requirements and implementation. Experienced ERISA counsel can help plan sponsors and fiduciaries translate plan data into a thoughtful assessment of whether the plan's design, administration and governance continue to serve the employer's objectives and workforce.

If you would like additional guidance on any of the issues discussed in this article, including plan design, governance, or fiduciary oversight, please contact us.

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



Bryan J. Card

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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Editor: Nicholas J. White, nwhite@truckerhuss.com (<mailto:nwhite@truckerhuss.com>)

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SAN FRANCISCO

135 Main Street, 9th Floor
San Francisco, California 94105-1815

LOS ANGELES

15760 Ventura Blvd, Suite 910
Los Angeles, California 91436-3019

PORTLAND

329 NE Couch St., Suite 200
Portland, Oregon 97232-1332

Tel: (415) 788-3111

Fax: (415) 421-2017

Email: info@truckerhuss.com (<mailto:info@truckerhuss.com>)

Website: www.truckerhuss.com (<https://www.truckerhuss.com>)

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