

PUBLICATION

Proxy Voting Back in the Spotlight – Practical Steps for Now



Robert R. Gower

On December 11, 2025, President Trump signed Executive Order 14366, *Protecting American Investors from Foreign Owned and Politically-Motivated Proxy Advisors* (the [Executive Order](https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/) (<https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/>)). As described by the White House, the Executive Order is intended to “end the outsized influence of proxy advisors that prioritize radical political agendas over investor returns.” On the same date, a [Fact Sheet](https://www.whitehouse.gov/fact-sheets/2025/12/fact-sheet-president-donald-j-trump-protects-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/) (<https://www.whitehouse.gov/fact-sheets/2025/12/fact-sheet-president-donald-j-trump-protects-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/>), was issued to help frame the intent of the Executive Order, strongly emphasizing an objective of “protecting American investors and retirement savings.”

The relationship between ERISA retirement plans and proxy voting is longstanding. With mutual funds serving as the dominant investment vehicle for ERISA retirement plans, trillions of dollars of proxy voting power is held by such plans, and unless the proxies are passed through to participants, they are generally voted by the plan fiduciaries or fiduciary investment managers. Voting such proxies is considered to be a fiduciary function, and in carrying out their fiduciary responsibilities, fiduciaries commonly seek the advice of third-party proxy advisors.

The Executive Order argues that two large foreign-owned proxy advisors have significant influence and power in shaping the policies and priorities of some of the United States’ largest companies through control of more than 90% of the proxy voting advisory market. The Executive Order takes the position that this level of proxy voting influence and power directly impacts American’s retirement assets, and that the proxy advisors regularly use their power and influence to advance “radically-motivated agendas” (with specific references to diversity, equity and inclusion (“DEI”) and environmental, social and governance (“ESG”) agendas), at the cost of American retirement savings.

While the financial implications of DEI and ESG practices and policies have been the subject of longstanding political debate, the current administration has frequently taken the position that such influences are costly and subvert financial return.^[1] (<https://www.truckerhuss.com/newsletter/benefits-report-december-2025/#footnotes2>). With this position in mind, the Executive Order directs the Securities and Exchange Commission (SEC) to take numerous steps to curb the influence of such influences in the proxy voting process, as follows:

- review and potentially rescind any regulations relating to proxy advisers to the extent they promote diversity, equity and inclusion or environmental, social and governance factors;
- enforce anti-fraud provisions against proxy advisers' voting recommendations believed to contain material misstatements;
- consider requiring proxy advisers to register as investment advisers (and be subject to such rules and regulations);
- consider requirements to increase transparency related to conflicts of interest, particularly with respect to diversity, equity and inclusion or environmental, social and governance motives;
- analyze whether these firms undertake efforts to coordinate group voting among institutional investors; and
- assess whether investment advisers are engaging in a breach of fiduciary duty to the extent they rely on proxy advisers who promote non-pecuniary motives.

To complement the charge to the SEC, the Executive Order also directs the Federal Trade Commission (FTC) to determine whether the power and influence of proxy advisers that engage in promotion of non-pecuniary amounts to engaging in unfair or deceptive practices, including potential violations of federal antitrust laws.

Finally, the Executive Order directs the Secretary of Labor to revise all regulations and guidance regarding the fiduciary status of individuals who manage or *advise* on proxy voting. Specifically, the Executive Order requires the Secretary of Labor to "consider whether these proposed revisions should include amendments to specify that any individual who has a relationship of trust and confidence with the client, including any proxy advisor, and who provides advice for a fee or other compensation . . . with respect to the exercise of the rights appurtenant to shares held by ERISA plans, is an investment advice fiduciary under ERISA."

Ultimately, the objective of the Executive Order is to dissuade proxy advisers from making recommendations based on DEI and ESG initiatives. The utilization of the ERISA fiduciary statutory scheme as a tool for dissuasion has direct and significant impacts on service providers to retirement plans. From a practical perspective, service providers and fiduciaries to ERISA plans should consider the following:

Proxy Advisers. Despite their attenuation, the Executive Order launches a process for the DOL to determine whether proxy advisers should be considered fiduciaries under ERISA for the advice they render with respect to proxies associated with ERISA plan investments. If the DOL concludes proxy advisers should be held to a fiduciary standard, the implications will be significant in that the regulatory landscape involving ERISA's duties of prudence and loyalty will apply to every proxy voting recommendation involving ERISA plan assets made by proxy advisers. This would be a significant shift, likely to increase costs for such advice based on additional scrutiny and risk. It would likely result in proxy voting recommendations that are more readily defensible as pecuniary in nature, shifting many current practices. However, under the current statutory framework defining an ERISA fiduciary, it may prove difficult for the DOL to actually conclude that proxy advisers are fiduciaries given that proxy advisers are not actually exercising discretionary control over plan assets.

Investment Managers. Regardless of whether proxy advisers are ultimately considered fiduciaries, investment managers *are* fiduciaries and therefore should be cognizant of the current Administration's increased scrutiny of how proxy voting policies, particularly those involving DEI and ESG, may influence investment returns. First, managers who vote their own proxies should exercise caution with respect to any actual or perceived DEI or ESG influence in their voting practices. In addition, until further guidance is published by federal regulatory agencies, in order to demonstrate adherence to ERISA's fiduciary duties of loyalty and prudence, investment

managers should pay increased attention to the proxy voting policies of their advisers to ensure such policies are pecuniary in nature, and to the extent they involve any DEI, ESG, or similar motives, obtain clear documentation as to how such policies are pecuniary and do not subvert financial return.

Plan Sponsors. The Executive Order refocuses the attention of plan fiduciaries on the underlying proxy voting process for plan investment holdings that was previously highlighted by *Spence v. American Airlines*. In that case, plaintiffs successfully argued that plan fiduciaries violated their fiduciary duty of loyalty by allowing a 401(k) plan investment manager to apply ESG motives in its proxy voting policies. ([see our prior article *Court Finds American Airlines Liable for Breach of Fiduciary Duty of Loyalty to its 401\(k\) Plans Because it Allowed BlackRock to Pursue ESG Objectives in its Proxy Voting*](https://www.truckerhuss.com/2025/04/ebsa-adds-self-correction-component-to-voluntary-fiduciary-correction-program-update-2/) (<https://www.truckerhuss.com/2025/04/ebsa-adds-self-correction-component-to-voluntary-fiduciary-correction-program-update-2/>)). Though the decision was considered novel, the Executive Order bolsters a focus on whether plan fiduciaries have an obligation to monitor the proxy voting recommendations, policies, and decisions made with respect to plan asset investment holdings. Given the increased attention, at a minimum, plan fiduciaries should work to confirm that their investment managers agree to vote all proxies in accordance with ERISA. Such confirmations should be obtained in writing and retained in Plan records.

If you have questions regarding the impact of the Executive Order, please contact us.

[1]The Trump Administration has issued numerous executive orders intended to curb federal funding for ESG and DEI initiatives (see for example Executive Orders 14151, 14281, 14190 and 14156), and in May 2025 announced it would abandon a regulation that took a more neutral approach to considering ESG factors in selecting investment funds for ERISA retirement plans.