

## DOL Guidance Clarifies Proxy Advisors May Be Fiduciaries

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**PRACTICES** Employee Benefits and Executive Compensation

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The DOL recently issued Technical Release 2026-01 concerning the exercise of proxy voting and shareholder rights by proxy advisory firms with respect to ERISA plans (the “**Release**”), providing, among other things, that proxy advisory firms are functional fiduciaries for ERISA purposes, and subject to a heightened standard of care, to the extent such firms either (i) exercise authority or control over such shareholder rights, including the voting of proxies, or (ii) provide investment advice for a fee regarding how plans should exercise these rights.

The Release indicates that the DOL has long recognized that voting rights and other shareholder rights attributable to shares under the plan are plan assets subject to ERISA. The Release clarifies “that the management of proxy rights is fiduciary in nature and must be undertaken for the exclusive purpose of maximizing risk-adjusted return on investment,” which deviates from prior DOL guidance issued under the Biden administration regarding the consideration of other factors, including environmental, social, and governance factors.

In addition, the Release addresses state laws which regulate the use of non-financial objectives in securities recommendations or investment advice by financial advisors, including proxy advisory firms, and whether such state laws are preempted by ERISA and therefore not applicable to ERISA plans. The DOL indicates that such state laws are generally not preempted by ERISA, which appears to signal the current administration’s support for such state laws.

The Release is available [here](#). We will continue to monitor developments in this area.