DOL Proxy Advisor Guidance Impacts Retirement Plan Fiduciaries

The U.S. Department of Labor (DOL) has issued Technical Release 2026-01, which provides guidance for retirement plan fiduciaries that rely on proxy advisory services. The release addresses two issues:

- **Proxy advisory firms may be functional fiduciaries under the Employee Retirement Income Security Act (ERISA).** When a proxy advisory firm exercises authority or control over shareholder rights tied to ERISA plan assets or provides advice for a fee about how a plan should exercise proxy voting rights, it must meet ERISA's functional fiduciary requirements.
- **State disclosure laws are generally not preempted by ERISA.** State laws requiring proxy advisors to disclose when their recommendations are not aimed at maximizing risk-adjusted returns are typically not preempted. Because ERISA requires fiduciaries to act solely to maximize risk-adjusted financial returns, ERISA plans should never receive such disclosures. As a result, these state laws generally do not conflict with ERISA or create an impermissible connection to ERISA-covered plans.

The DOL emphasizes that **the application of these issues to a particular advisory firm or state law depends on the relevant facts and circumstances**.

Action Items

Retirement plan administrators should review their relationships with proxy advisory firms to determine whether any activities could trigger ERISA fiduciary status and apply appropriate oversight where fiduciary status may be implicated. Contracts should be reviewed and updated as necessary to reflect the actual nature of the relationship, recognizing that written disclaimers will not override the particular facts and circumstances.

Although certain state disclosure laws are generally not preempted by ERISA, fiduciaries should remain aware of evolving state requirements while keeping in mind that ERISA plans should not receive disclosures tied to nonfinancial advice. Finally, fiduciaries should document their processes for selecting and monitoring proxy advisors and for making proxy-related decisions to demonstrate compliance with ERISA's fiduciary standards.

Highlights

- ☑ Proxy advisory firms may be treated as ERISA fiduciaries when they exercise discretion over proxy voting or provide voting advice for a fee to an ERISA-covered plan.
- ☑ ERISA fiduciaries must make proxy-related decisions solely in the financial interests of participants and beneficiaries; state disclosure laws addressing nonfinancial recommendations are generally not preempted and have limited relevance for ERISA plans.
- ☑ Application of Technical Release 2026-01 is fact-specific and will depend on the relevant circumstances.

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