December 29, 2025

DOL Declines to Defend Fiduciary Investment Advice Rule, But May Target Proxy Advisors

by R. Sterling Perkinson , Sanyam D. Parikh , Andrew T. Mills

---

On November 28, 2025, the Fifth Circuit Court of Appeals granted the U.S. Department of Labor's (DOL) motion to withdraw its defense of the Biden administration's Retirement Security Rule (the "2024 Fiduciary Rule"). This Rule, finalized in April 2024, sought to expand the definition of "fiduciary" investment advice for retirement investors. The DOL's decision to withdraw followed an initial 60-day abeyance and several subsequent extensions granted by the Fifth Circuit. During this period, the Trump administration's DOL considered whether to appeal two district court decisions—one from the Northern District of Texas and one from the Eastern District of Texas—that had stayed the effective date of the 2024 Fiduciary Rule.

Previously, the Fifth Circuit struck down a 2016 version of the fiduciary rule (the "2016 Fiduciary Rule"), which had similarly aimed to broaden the definition of fiduciary investment advice for retirement investors. The 2024 Fiduciary Rule was designed to address the Fifth Circuit's concerns with the earlier rule and to be more narrowly tailored. For additional background on the history of the Fiduciary Rule and related Prohibited Transaction Exemptions (PTEs), please refer to our prior Blog Post and Legal Alert.

Current Status

With the DOL's decision to withdraw its appeals in *American Council of Life Insurers v. DOL* and *Federation of Americans for Consumer Choice Inc. et al. v. DOL et al*, the DOL's long-standing efforts—spanning four presidential administrations and more than a decade—to modernize its rules for determining when a person qualifies as an investment advice fiduciary appear to have come to a halt. As a result, the industry returns to reliance on the DOL's five-part test (originally established in 1975), as modified by the Deseret Letter (2005) and PTE 2020-02, to determine fiduciary status for investment advice. This development has significant implications under ERISA, since the determination of fiduciary status is central to ERISA's regulatory framework, affecting compliance obligations and potential liability for plan sponsors, service providers, and investment advisors.

Potential Future Developments

Despite the DOL's withdrawal of its defense of the 2024 Fiduciary Rule, subsequent executive action signals possible further regulatory activity. On December 11, 2025, President Trump issued an Executive Order titled "Protecting American Investors From Foreign-Owned and Politically-Motivated Proxy Advisors." This order instructs the Secretary of Labor to "revise all regulations and guidance regarding the fiduciary status of individuals who manage, or, like proxy advisors, advise those who manage, the rights appurtenant to shares held" by ERISA-covered plans. Specifically, the Executive Order directs the DOL to consider whether its fiduciary rule should be revised to explicitly include proxy advisors within the definition of investment advice fiduciaries under ERISA plans. The Executive Order also directs the DOL to take appropriate actions to enhance the transparency of proxy voting practices and policies, particularly as they relate to "diversity, equity and inclusion" and "environmental, social, and governance" factors.

Under the current legal landscape—following the Fifth Circuit's decision to strike down the 2024 Fiduciary Rule—it may be unclear whether proxy advisors meet the criteria set forth in the DOL's five-part test for investment advice fiduciaries. Proxy advisors who provide recommendations and analysis to shareholders (including ERISA plan fiduciaries) regarding how to vote proxies on corporate matters may not fit neatly within the traditional fiduciary framework. However, the Executive Order directs the DOL to consider whether proxy advisors to ERISA plans should be ERISA fiduciaries because of their "relationship of trust and confidence" with their clients.

If the DOL acts in accordance with the Executive Order to issue new guidance or amend existing regulations to modernize the 1975 five-part test, to bring proxy advisors within the scope of ERISA fiduciary regulation, it may have broad implications for proxy advisors, plan fiduciaries, and service providers. For example, the Executive Order suggests that additional disclosure requirements regarding proxy voting policies may be necessary to enhance transparency.

Accordingly, while the DOL's withdrawal of its defense of the 2024 Fiduciary Rule signals its end, the broader question of whether the five-part test should be updated remains on the regulatory agenda.