FACT SHEET

Notice of Proposed Rulemaking on Loyalty and the Exclusive Purpose Rule in Selecting Plan Investments and Exercising Shareholder Rights

November 2026

On November 23, 2026, the U.S. Department of Labor (Department) released a proposed rule under the Employee Retirement Income Security Act of 1974 (ERISA) to clarify the fiduciary duty of loyalty under ERISA and to affirm that ERISA's duty of loyalty requires fiduciaries to act with the exclusive purpose of ensuring retirement security and providing promised benefits to plan participants and their beneficiaries.

Background

- ERISA establishes minimum standards that govern the operation of private-sector employee benefit plans, including fiduciary responsibility rules. ERISA's duties of prudence and loyalty in section 404(a)(1)(A) and (B) require, in part, that plan fiduciaries act prudently and solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries.
- The Department's Investment Duties regulation at 29 CFR 2550.404a-1 was originally adopted in 1979 to provide guidance on ERISA's fiduciary duty of prudence under ERISA section 404(a)(1)(B) with respect to investments and investment courses of action.
- After adoption of the Investment Duties regulation, the Department provided sub-regulatory guidance on the application of ERISA's duties of prudence and loyalty indicating that, under a "tiebreaker" test, ERISA fiduciaries could make investment decisions that reflect environmental, social, and governance (ESG) considerations, and choose economically targeted investments selected, in part, for benefits apart from the investment return. Sub-regulatory guidance also recognized that the fiduciary act of managing employee benefit plan assets includes the management of shareholder rights connected to shares of stock (such as proxy voting), and that management of those rights, as well as shareholder engagement activities, is subject to ERISA's duties of prudence and loyalty.
- In 2020, the Department published two final rules (2020 final rules) that amended the Investment Duties regulation. The Department's objective was to address perceived confusion about its sub-regulatory guidance with respect to ESG considerations, shareholder rights, and proxy voting.

- On December 1, 2022, the Department published a final rule again amending the Investment Duties regulation (2022 final rule).[1] The 2022 final rule kept in place the longstanding principles that the duties of prudence and loyalty require ERISA plan fiduciaries to focus on relevant risk-return factors and not subordinate the interests of participants and beneficiaries to objectives unrelated to the provision of benefits under the plan such as by sacrificing investment returns or taking on additional investment risks. It also retained the core principle that when a plan's assets include shares of stock, the fiduciary duty to manage plan assets includes the management of shareholder rights related to those shares, such as the right to vote proxies.
- The 2022 final rule, however, effectively rescinded or modified certain amendments that were adopted by the 2020 final rules, including the following:
    - Removed certain "pecuniary/non-pecuniary" terminology and added language providing that a fiduciary's determination with respect to an investment or investment course of action must be based on factors that the fiduciary reasonably determines are relevant to a risk and return analysis, and also added that such factors may include the economic effects of climate change and other ESG factors on the particular investment or investment course of action.
    - Removed a rule that applied to adding an investment as a "qualified default investment alternative" if it included, considered or indicated use of one or more non-pecuniary objective.
    - Amended the "tiebreaker" test by modifying the standard for finding a tie.
    - Added a provision stating that fiduciaries do not violate their duty of loyalty solely because they take participants' preferences into account when constructing a menu of prudent investment options for participant-directed individual account plans.
    - Eliminated a statement that the fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right.
    - Eliminated specific requirements on maintaining records on proxy voting activities and monitoring obligations when using investment managers or proxy advisory firms.
- Litigation challenged the 2022 final rule, but the rule was ultimately upheld.

Executive Order 14366

On December 11, 2025, President Trump issued Executive Order E.O. 14366, *Protecting American Investors from Foreign-Owned and Politically Motivated Proxy Advisors*.[2] EO 14366 instructed the Secretary of Labor, consistent with the Administrative Procedure Act, to take steps 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 plans

[1] 87 FR 73822 (Dec. 1, 2022).
[2] 90 FR 58503 (Dec. 16, 2025).

covered under ERISA, including proxy votes and corporate engagement, consistent with the policy of the order. It also directed the Secretary of Labor to strengthen ERISA fiduciary rules and increase fiduciaries' transparency regarding their use of proxy advisors, ensuring proxy advisors and plan managers act solely in the financial interest of American workers and retirees.[3]

Overview of Notice of Proposed Rulemaking

Upon review of the 2022 final rule and in response to Executive Order 14366, the Department believes that 2022 final rule should be amended to strengthen the security of the retirement benefits of American workers.

- The proposal would add language to reflect a fiduciary's affirmative duty of loyalty under ERISA. It would require a fiduciary to discharge its duties with respect to the plan with the exclusive purpose of maximizing the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan. The Department believes the proposed language better reflects the statute than the 2022 final rule's articulation of the duty of loyalty, and is more protective of the interests of plan participants and beneficiaries.
- The proposal would rescind the 2022 final rule's tiebreaker test and participant preference provision. The Department has concerns about the consistency of these provisions with ERISA's duty of loyalty, their susceptibility to abuse, and their potential use by fiduciaries as pretext as they use plan assets to pursue personal preferences or objectives unrelated to financial benefits under the plan.
- The proposal would remove language from the 2022 final rule which states that "[r]isk and return factors may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action." The Department proposes to remove this language because it may be misconstrued as suggesting that these factors (climate change and other environmental, social, or governance factors) are likely to be risk and return factors in any number of significant cases. The Department's intent is to restore neutrality and remove any perceived governmental approval of or preference for these factors absent economic merit.
- The proposal would amend the proxy voting provisions of the 2022 final rule to restore the statement that the fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right, and to add language to reflect the Department's sub-regulatory guidance indicating that decisions relating to shareholder engagement, like proxy voting and any right accompanying share ownership, are subject to ERISA's fiduciary responsibility provisions and the regulation.

Public Comment Period

The comment period runs for 60 days after publication in the Federal Register, and the proposal includes instructions on submitting comments through www.regulations.gov. The Department

[3] EO 14366, section 4.

invites comments from interested persons on all facets of the proposed amendments to 29 CFR 2550.404a-1.

Contact Information

For questions about this final rule, please contact EBSA's Office of Regulations and Interpretations at 202-693-8500.