

September 27, 2019

## A New Direction for DOL Fiduciary Rulemaking

Yesterday, the U.S. Senate confirmed Eugene Scalia to succeed Alex Acosta as the Secretary of Labor. Scalia was confirmed along party lines on a vote of 53-44. Last week, Scalia told lawmakers that he may have to recuse himself from the work involved in fiduciary rulemaking due to his involvement in litigation pertaining to the 2016 Fiduciary Rule. Scalia stated that he would seek guidance from the Department of Labor's (DOL) designated agency ethics official with respect to his ability to participate in such work. However, if Scalia were to be required to recuse himself, political decisions regarding the final rule would likely fall to Patrick Pizzella, the deputy labor secretary who has been the acting head since Acosta stepped down earlier this year.

As early as this fall, we may see the DOL issue new guidance on rollovers (a significant and uncertain issue in the wake of the Fiduciary Rule's demise) and, in all likelihood, a proposed class exemption applicable to broker-dealers, which, at its heart, could condition relief on adherence to new Regulation Best Interest. We do not anticipate the DOL to reformulate the ways in which one becomes an investment advice fiduciary under ERISA (i.e., expanding the ways in which one becomes a fiduciary).

Finally, we are keeping a close eye on new guidance from the DOL on proxy voting (<https://fiduciarygovernanceblog.com/2019/04/12/what-the-new-executive-order-on-proxy-voting-may-mean-for-fiduciaries/>) over the next few weeks. You may recall that the President issued an Executive Order in April that, in part, required the DOL to examine if new guidance in this area was necessary. The DOL could decline to issue new guidance, since Field Assistance Bulletin 2018-01 addressed proxy voting. We will provide an update as soon as any new guidance on these issues becomes available.

### For more information, please contact:



**George Michael Gerstein**  
*Co-Chair, Fiduciary  
Governance*  
202.507.5157  
ggerstein@stradley.com



**J. Patrick Green**  
*Associate*  
202.507.5151  
jgreen@stradley.com