



## LEGAL UPDATES

# The “Deregulatory Initiative” Executive Order: Impact on Employee Benefit Plans

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A February 19 Executive Order, titled [“Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative.”](#) is aimed at directing the “Administration to focus the executive branch’s limited enforcement resources on regulations squarely authorized by constitutional Federal statutes, and to commence the deconstruction of the overbearing and burdensome administrative state.” It calls for executive agencies to review all regulations within their jurisdiction and to identify for modification or rescission the following classes of regulations:

1. “unconstitutional regulations and regulations that raise serious constitutional difficulties, such as exceeding the scope of the power vested in the Federal Government by the Constitution;
2. regulations that are based on unlawful delegations of legislative power;
3. regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition;
4. regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority;
5. regulations that impose significant costs upon private parties that are not outweighed by public benefits;
6. regulations that harm the national interest by significantly and unjustifiably impeding technological innovation, infrastructure development, disaster response, inflation reduction, research and development, economic development, energy production, land use, and foreign policy objectives; and
7. regulations that impose undue burdens on small business and impede private enterprise and entrepreneurship.”

## Related People

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## What Does Deregulation Mean for Benefit Plans?

- Employee benefit plans are highly regulated by federal executive agencies including Departments of Labor, Health and Human Services, and Treasury.
- Deregulation is not always helpful for benefit plans. ERISA, the Code, and the Public Health Services Act all impose a number of requirements and prohibitions on plans. Regulations can be extremely helpful in understanding and implementing those requirements while avoiding the prohibitions.
- In some instances, deregulation can be helpful when the regulations are more policy-based, a departure from prior practices, and/or not widely supported by research or studies. These regulations may impose burdensome benefit costs or limit existing services.
- Determining which regulations are helpful and which are not won't always be easy. Any regulation that has recently been the subject of litigation is likely a candidate for review under the Deregulatory Initiative Executive Order. Here are a few examples that may be up for consideration.

## Employee Benefit Regulatory Efforts

### Environmental, Social or Governance Investing

When investments take into account environmental, social or governance factors, they are referred to as ESG investments. For decades, changes in administration have resulted in various formulations of the duties of prudence and loyalty to ESG investments. This included differing approaches by the Trump and Biden administrations. A final regulation was issued under Biden's administration that differed from that proposed by Trump's administration. This regulation was once again upheld in a Texas court against a challenge brought by 26 Attorneys General as recently as February 2025. Given the prior Trump administration's focus on "pecuniary factors" as the being "the best reading of the underlying statutory authority," it seems likely that the current regulation may be deemed out of compliance with the Deregulatory Initiative Executive Order and ripe for rescinding or modification.

### Cryptocurrency

The Biden administration issued compliance guidance regarding cryptocurrency in defined contribution plans, like 401(k) plans. The guidance has been perceived as having a chilling effect on access to cryptocurrency as an investment option. This approach may be revisited under a new Trump administration that generally has a more pro-cryptocurrency attitude.

### ESOPs

Employee Stock Ownership Plans (ESOPs) have been waiting since 1988 for regulations regarding the determination of "adequate consideration" when valuing a company for sale to an ESOP. Congress addressed the issue by directing the Department of Labor to develop "acceptable standards and procedures to establish good faith fair market value for shares of a business to be acquired by an employee stock ownership plan." Although a proposed regulation entitled "Worker Ownership, Readiness, and Knowledge" was released late in the Biden administration, it was not formally published in the Federal Register and was subsequently pulled from publication. If the proposal is published, a public comment period must be offered and then such comments must be addressed in a final rulemaking.



All of these steps take time, and finalizing a regulation may not be high priority for a de-regulatory administration. Currently, the lack of clear guidance has resulted in litigation or governmental enforcement against ESOP companies, discouraging the use of ESOPs. Losing inertia on the regulation may leave ESOP valuation providers and businesses that wish to use ESOPs as a business transition strategy during the “silver tsunami” (impending retirements of baby boomers) in limbo.

## Fiduciary Investment Advice

2024 changes to the definition of fiduciary investment advice have been stayed by a Texas court and are being appealed to the Fifth Circuit. These changes are likely to be shelved as a vigorous defense of rules is unlikely to continue by the new administration, which has already sought additional time to consider its position post administration transition. The fact that the regulation, which defines when a financial professional becomes a fiduciary by reason of providing investment recommendations, has been caught up in litigation may be unappealing to a new administration trying to pursue its own priorities.

In the prior Trump administration, the defense of another revised fiduciary definition was halted after the agency lost at the Fifth Circuit in 2018. A similar fate may await the stayed regulation, which expands the definition of fiduciary investment advice to cover additional interactions with individual retirement savers. Again, the Deregulatory Initiative Executive Order asks for review of regulations that “impose significant costs upon private parties that are not outweighed by public benefits” and “impose undue burdens on small business and impede private enterprise and entrepreneurship” – both things the fiduciary definition has been accused of doing in the current lawsuit.

## Mental Health Substance Use Disorder Parity

A recent case brought in early 2025 challenges 2024 regulations under the Mental Health Parity and Addiction Equity Act. The regulation has been challenged because plaintiffs view the regulation as the departments having transformed the Act from a prohibition on disparate treatment of mental health/substance use disorder benefits to a prohibition on disparate impacts. The plaintiffs’ allegations regarding the regulation read like the Deregulatory Initiative Executive Order, including allegations that it exceeds the departments’ statutory authority by imposing a benefits mandate that the statute expressly forbids (i.e., “regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition”), and it arbitrarily outsources the definition of “core treatment” to third parties (i.e., “unlawful delegation of legislative power”).

If you have questions about the potential impact of this recent Executive Order on your employee benefits plan, please contact [Allie Itami](#) or your regular Lathrop GPM attorney.