

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210

Dear Secretary Scalia:

Please accept this letter for the docket regarding Rule Number RIN: 1210-AB91, "[Fiduciary Duties Regarding Proxy Voting and Shareholder Rights](#)."

The Department of Labor's proposed rule regarding the role that proxy voting plays in investment decisions is a much needed step toward upholding fiduciary responsibility among ERISA-backed pension fund managers, ensuring that America's retirees receive the stable, generous pensions that they were promised for so long. Pension beneficiaries have little to no control over the investment of their retirement money. As such, fund managers owe it to them to treat their funds with the greatest care, setting returns as the highest priority rather than pushing a political agenda which may not represent the beliefs of the people whose money is being invested.

My experiences working with pension beneficiaries has greatly informed my thinking on this matter. In 1973, I joined the New York City Fire Department after serving in the U.S. Army in Vietnam. I spent 28 years with the department, rising to the rank of captain while concurrently serving as the President of the Uniformed Fire Officers Association and the Vice Chairman of the New York City Fire Pension Fund. In addition to my past positions, I currently sit on the board of the Institute for Pension Fund Integrity (IPFI), where our goal is to remove politics from the management of pension funds.

Throughout these experiences, I've seen first-hand the dedication that our public servants have poured into their professions, accepting reduced pay with the promise of a secure and stable retirement. In recent years, I have also watched as pension fund managers have shirked their fiduciary obligations to beneficiaries, giving priority to outside interests and increasing their reliance on unaccountable proxy advisory firms. While the scope of this proposed regulation is limited to ERISA-backed pension funds, I believe that it serves as an important step toward much-needed reforms across the board.

While proxy advisory firms have repeatedly stated that their role is simply to provide advice and guidance to investors, reality is much different. According to [data](#) released by the American Council for Capital Formation, 175 entities and investors representing over \$5 trillion in assets vote in line with proxy firm recommendations at least 95% of the time. Of these, about half vote in line 99% of the time no matter whether voting with the firms' recommendations are in their fund participants best interests or not.

Proxy advisory firms are not required to adhere to fiduciary duty like ERISA plan fiduciaries. Proxy advisory firms support ESG investment strategies. While fiduciaries are required to maximize returns on investments, ESG has been found to [produce 43.9% less in returns](#) compared to standard index funds over a ten year period.

This rule would go a long way toward minimizing ERISA fiduciaries liability in light of their fiduciary responsibility. Perhaps most prominently, the scope of proxy voting would be narrowed so that fund fiduciaries could cast proxy votes only when they would have an economic impact on the retirement plan. This is an important step toward ensuring that fund managers must solely consider factors affecting the value of a plan's investment.

One area in which this rule could be improved would be to require a more stringent approach to the practice of "robo-voting," the process by which asset managers and other investors automatically vote in line with the recommendations provided to them by proxy advisory firms. While many major institutional investors do spend considerable resources evaluating proposals from management and shareholders, this is certainly not the case overall. An overwhelming number of fund managers have outsourced the oversight and decision-making process to proxy advisors. This practice is why investment managers are voting in-line with proxy recommendations nearly 100% of the time. Proxy advisors provide the recommendations and are allowed to vote those recommendations without client review. This practice disenfranchises pensioners who have entrusted fund managers in the hope that their decision making would come about through careful consideration and analysis, not through outsourcing.

Earlier this year, the Securities and Exchange Commission (SEC) issued guidance on robo-voting which sought to increase transparency into the practice. This guidance is mentioned in the Department's proposal, but if we are to truly take steps to correct the negative aspects of robo-voting, we should go much further. One powerful option could be to place stronger limits on robo-voting in instances where there is a contested proxy firm recommendation. In these cases, in which there is an open rebuttal of a proxy firm recommendation by a client company, fiduciary duty should guide pension fund managers to adequately review their options. If there is no contestation, proxy voting may go forward unimpeded. Ultimately, the goal should be to provide pension beneficiaries with all of the insight they need into how their money is managed, while simultaneously finding avenues for cost-savings when available.

At the end of the day, proxy advisory firms are for-profit entities, and are therefore incentivized to make decisions that will improve their own standing and develop a wide-reaching market for their services amongst clients, not fund participants. This has too often meant the pursuit of certain political priorities, such as ESG, in investment decisions, over which the beneficiaries have little say.

This new rule put forward by the Department of labor is a positive step toward codifying the fiduciary responsibilities held by those we trust with our money. I applaud this motion as a part of a greater effort to maintain pension funds' independence from politics. More can and should

be done to re-focus ERISA fiduciaries back to their original obligation: protecting and growing Americans' retirement.

Respectfully submitted,

Richard Brower