

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210
Attention: Proxy Voting and Shareholder Rights NPRM.

Regarding RIN: 1210-AB91

Dear Secretary Scalia,

I am submitting the following comment letter to express my support for the Department of Labor's [recently proposed rule](#) "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights" published in the Federal Register on September 4, 2020. This rule rightly reaffirms the fiduciary obligations that ERISA-backed pension fund managers owe to their beneficiaries and puts forward much needed reforms in a proxy advisory industry that for too long has neglected to serve the best interest of pensioners.

As a former Treasurer of the State of Ohio and Mayor of Cincinnati, I have had firsthand experience overseeing a pension system and I take seriously the responsibility of a fund's management team to provide financial security to the men and women who work hard their entire lives with the hopes to attain a secure retirement. For pension beneficiaries across the country, this proposal by the Department of Labor is a positive step towards ensuring that accountability and fiscal responsibility take precedent over any other considerations.

Rightly so, the proposed rule seeks to address the outsized roles that proxy advisory firms have in investment decisions and examine whether their recommendations are always economically beneficial to pensioners. The proxy system has long been taken advantage of by those without fiduciary responsibilities, preventing sound advice from reaching the nation's pension and investment funds and retail shareholders. There is currently a duopoly in the system, in which two companies, Institutional Shareholder Services (ISS) and Glass Lewis, control the overwhelming majority of the proxy advisory market. The limited number of proxy firms (and employees who work for them) compared to the vast array of institutions seeking their assistance has hindered responsiveness and limited the ability of investors to critically evaluate the advice they receive. Unfortunately, the advice presented by these proxy advisors is often intended to promote political and/or social causes rather than maximizing investment returns for their clients.

Ultimately, this proposal demonstrates that the Department of Labor is aiming to build upon regulatory actions already underway. Last November, SEC Chairman [Jay Clayton remarked](#) noted that there was "concern that [shareholders'] financial investments—including their retirement funds—were being steered by third parties to promote individual agendas, rather than to further their primary goals of being able to have enough money to lessen the fear of 'running out' in retirement or to leave money to their children or grandchildren." In putting forth this regulation, the Department of Labor is taking clear steps to address the concern I have laid out. In fact, this proposal by DOL goes beyond the SEC rule in one way by stating that fiduciaries have an obligation not to vote if the economic benefits associated with particular recommendations cannot be demonstrated.

The proposed rule is a good step in the right direction by the Department of Labor, but more must be done around proxy advisors' role in the process of "automatic" or "robo-voting." Under this process, asset

managers, pension fund managers, and other investors automatically vote the proxy advisors' recommendations without scrutiny. While many major institutional investors do spend considerable resources evaluating proposals from management and shareholders, this is certainly not the case across the board. An overwhelming number of fund managers have outsourced the oversight and decision-making process to proxy advisors.

Such a practice disenfranchises pensioners and should be curbed by the Labor Department. The duopoly of ISS and Glass Lewis wields enormous influence over the direction of publicly traded companies in the United States. Despite their influence, they are, unlike fund managers, under no obligation to uphold a fiduciary duty to the clients they represent, or to provide insight into whether their decisions are made based on the desire to maximize value for shareholders. [Flawed recommendations](#) are prevalent, and transparency into the decision-making process is lacking.

The Department of Labor should take additional steps to clarify and codify stronger regulations on the practice of robo-voting within this rule. Several months ago, the [Securities and Exchange Commission](#) adopted guidelines on the practice of robo-voting which, among other things, require asset managers to take into consideration information released after proxy advisor vote recommendations are made, as well as providing access to company rebuttals of proxy firm recommendations.

The Department of Labor should expand upon these steps in order to ensure that votes on proxy proposals are made in the best interest of fund participants and beneficiaries. Short of banning robo-voting entirely, measures should be implemented which prohibit its use in instances where there is a contested proxy vote recommendation. Under the SEC's guidance, proxy firm clients are allowed access to any company rebuttals of proxy recommendations. If no such rebuttal exists, robo-voting could be used, but if there is contestation, it is incumbent on the fiduciary to take the response into consideration before making a decision. Pension beneficiaries deserve transparency into the processes impacting their money, and the current widespread prevalence of robo-voting is standing in their way.

Pensions should be, and once were, apolitical entities. At the Institute for Pension Fund Integrity, where I sit on the board, we are singularly focused on that objective—getting politics out of pensions and protecting the financial security of America's workforce. I applaud the Department of Labor's efforts to further codify the most basic tenet of fiduciary duty: investment decisions should be governed by considering risk and returns, not the political agenda of a third party.

Respectfully Submitted,

Ken Blackwell
Former Ohio State Treasurer
Former Mayor of Cincinnati
Advisory Board Member, Institute for Pension Fund Integrity