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

Docket: RIN 1210-AB91

Dear Secretary Scalia:

I am writing to express my support for the adoption of the proposed rule concerning the role that proxy advisory firms have played in ERISA-backed pension fund investment decisions. The Department of Labor should be applauded for its efforts to address the improper promotion of non-pecuniary goals in pension plans by fiduciaries, specifically surrounding the increasing prevalence of Environmental, Social, and Governance (ESG) factors in investments.

Through my previous work with the Baltimore County Employees Retirement System as well as the International Association of Fire Fighters (IAFF), I have seen firsthand how many of our public servants, who have already dedicated their lives to benefit our common good, have been forced to confront years of mismanagement and political gamesmanship with their retirement plans. In addition to these experiences, I also currently sit on the board of the Institute for Pension Fund Integrity (IPFI), a nonprofit organization dedicated to removing any political considerations from pensions. While the proposed rule is limited to ERISA-backed pension plans, I believe that this move will go a long way toward re-affirming fiduciary duty across the board.

Public pension funds, already reeling from years of underfunding and mismanagement, now face one of their greatest challenges yet. It is likely that the high levels of job losses and an economic downturn as a result of the pandemic will limit tax revenues and force many fund managers to make tough decisions in the months ahead. Given the severity of the current situation, it is imperative that public officials re-commit to their fiduciary obligations and ensure that public pension investments are freed from any outside political considerations. Pension beneficiaries who have spent their lives paying into these funds deserve maximized returns, not ideological posturing. Investment decisions must be made based on pure financial benefit.

The proposed rule is a significant regulatory effort to curb the abuses inherent in the proxy system. It would be disingenuous to describe proxy advisory firms as operating in a free market - Institutional Shareholder Services Inc. (ISS) and Glass Lewis & Co. currently dominate roughly 97% of the proxy advisory firm market share. IPFI recently published an issue brief on this very problem, which can be read in full here. The proposed rule addresses several shortcomings in the proxy advisory process, such as lack of transparency and vulnerabilities to outside influences. The forthcoming changes will better position institutional investors to prioritize their fiduciary duties while also affording them the option to utilize proxy advisor services only when necessary.

The push for ulterior investment priorities has shown itself through the efforts of some to facilitate a greater inclusion of ESG investment criteria in decision making. This trend has been embraced by the proxy advisory firms in recent years, a move which ultimately sidelines the fiduciary standard of maximized returns with managed risk. If returns from ESG-focused investments were shown to be comparable to more traditional investment strategies, the debate over fiduciary duty in investing would be less pressing. However, there is evidence that such products do not come anywhere close to maximizing returns for beneficiaries. A Pacific Research Institute study showed that ESG funds trail others by 43.9 percent. Furthermore, a recent analysis in Bloomberg demonstrated that the iShares MSCI USA ESG Select Social Index Fund (SUSA), one of the most prominent ESG-focused exchange traded funds on the market, underperformed the S&P 500 index by 37 points over ten years.

Beyond the immediate shortfalls of ESG investments compared to other options, there is yet to be a clear, uniform understanding in the financial sector of how ESG investments are defined and measured. In a recent op-ed in the Wall Street Journal, Burton Malkiel notes that "The problem [with ESG ratings] is that the scores from different providers disagree dramatically. Moreover, ESG ratings tend to be divorced from considerations of how environmental, social and governance performance can influence future financial results. ESG raters can't even agree on how to evaluate these companies when they consider the same attribute such as carbon intensity." While individual investors, endowments, and corporations should be free to pursue whatever investment strategy they see fit based on their needs, the unique nature of pension funds requires that fund managers steer clear of any political agenda. This is especially true when it is not even clear what sort of benefits non-fiduciary investment decisions could provide.

This proposed rule, following up on another recent rule put forward by the Department of Labor on ESG investments in pension funds, would significantly codify the principal of fiduciary responsibility into the consideration of proxy advisory firm recommendations. Perhaps most significant is the guideline that fiduciaries have an obligation not to vote on a proxy recommendation if they cannot demonstrate that the expenses and resources associated with it result in an economic benefit to the plan. For pension beneficiaries who have placed their trust in fiduciaries to make the best investment decisions with their money rather than blindly following the advice of unaccountably proxy firms, this requirement is a much-needed step toward accountability.

The Department of Labor could and should go further than what has been proposed, however. The issue of automatic voting or what some call robo voting is prevalent. A recent study found that entities that use proxy advisory firms vote the proxy advisors recommendation 95% of the time. More than half vote the recommendations 99% of the time. Through this practice, institutional investors aren't even reviewing the recommendations, which disenfranchises fund participants. This past summer, the SEC took action by providing guidance that curbs this practice. The Department of Labor should do the same.

Workers rely on their defined benefit pensions to provide a secure retirement for them and their families. All should be done to help protect and grow these stable sources of retirement funding not erode them for political or social causes.

I encourage the Department of Labor to not just adopt the proposed rule, but strengthen it based on the recommendations I have outlined. American workers and retirees that depend on pensions for their retirement will benefit through such an action.

Best Regards,

Kevin O'Connor