UNITED STEELWORKERS
USW
UNITY AND STRENGTH FOR WORKERS

John E. Shinn
International Secretary-Treasurer

October 2, 2020

Submitted electronically to www.regulations.gov

Ms. Jeanne Klinefelter Wilson
Acting Assistant Secretary
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Proxy Voting and Shareholder Rights NPRM (RIN 1210-AB91)

Dear Ms. Wilson:

On behalf of the United Steelworkers (USW), I write to express my vehement objections to the U.S. Department of Labor's proposed rule entitled "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights" (RIN 1210-AB91) (the "Proposed Rule"). Instead of enhancing the financial stability of private-sector pension funds, the Proposed Rule would threaten the solvency of those plans and put the retirement security of millions of Americans at risk.

The USW is the largest industrial union in North America, representing 850,000 workers in the metals, rubber, chemicals, paper, oil refining and other industries as well as in the service and public sectors. Thousands of USW members and retirees participate in U.S. private-sector pension funds covered by the Employee Retirement Income Security Act of 1974 (ERISA).

Workers often spend decades contributing to their pensions, which they rely on to carry them through retirement. In turn, ERISA funds make strategic financial investments—and prudently exercise shareholder rights—with the fiduciary duty of generating the highest possible returns for their beneficiaries.

Although the stated purpose of the Proposed Rule is to promote the financial viability of these funds, these radical and unnecessary changes would produce the opposite effect. For example, the Proposed Rule would require that ERISA funds cast proxy votes in accordance with the recommendations of corporate management or conduct an economic analysis before voting. The latter requirement would impose a grave and unreasonable financial burden on the very plans the Proposed Rule purportedly aims to support. In many cases, the cost of the analysis would far surpass the cost of the voting itself.

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Pension funds covered by ERISA already cast proxy votes in accordance with prudent and longstanding Department of Labor (DOL) regulations. The DOL failed to cite any evidence supporting the need for the drastic changes embodied in the Proposed Rule, suggesting its motivation is not to ensure the financial health of ERISA funds but merely to restrict their voting on shareholder proposals concerning corporate governance and social and environmental issues.

The Proposed Rule would upset the delicate balance in corporate governance, reducing shareholder oversight while giving executives more power over business activities that could damage profitability and, ultimately, put the viability of ERISA pension fund investors at risk. While benefiting corporate executives, who do not have a fiduciary duty to pension fund beneficiaries, the Proposed Rule would deprive the funds of the voting rights essential to meeting legal obligations to their members.

Furthermore, the Proposed Rule ignores well-established evidence showing the direct correlation between proxy voting and higher corporate value, which inures to the benefit of ERISA fund members. The adoption of one governance proposal increases shareholder value by 2.8 percent,[1] while giving shareholders a vote on executive pay leads to 5 percent increases in market value as well as enhanced long-term profitability.[2]

Proxy voting on board members affects the competence of a corporation's management, the scope of its ethics and the quality of board oversight,[3] all of which bear on profitability and shareholder returns.[4] In addition, approval of shareholder proposals on issues such as diversity, social responsibility and environmental stewardship position a company for long-term success.

The Proposed Rule would deprive ERISA pension fund investors of the voice they must have to ensure corporations operate responsibly and generate the best possible returns for their beneficiaries. The USW strongly urges the DOL to withdraw the Proposed Rule because of the detrimental impact it would have on corporate accountability and all shareholders, especially those relying on pensions they worked decades to earn.

Finally, I request an extension of the public comment period from 30 days to 120 days on the notice of the proposed rulemaking comment period to allow stakeholders sufficient time and a reasonable opportunity to provide thoughtful input. I also request that the Employee Benefits Security Administration schedule a public hearing on the rulemaking to be conducted virtually due to the COVID-19 pandemic.

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[1] Vicente Cuñat & Mireia Giné & Maria Guadalupe, 2012. "The Vote Is Cast: The Effect of Corporate Governance on Shareholder Value," The Journal of Finance.

[2] Vicente Cuñat & Mireia Giné & Maria Guadalupe, 2016. "Say Pays! Shareholder Voice and Firm Performance," Review of Finance, European Finance Association, vol. 20(5), pages 1799-1834.

[3] Nichol Garzon, 2020. "Disenfranchising Shareholders and Reducing Corporate Accountability: Comments Due on DOL Proposal to Limit Shareholder Voting by October 5, 2020." Glass Lewis. Availably at: https://www.glasslewis.com/disenfranchising-shareholders-and-reducing-corporate-accountability-comments-due-on-dol-proposal-to-limit-shareholder-voting-by-october-5-2020/

[4] See, for example, Ann Lipton, 2020. "I Just Read the Department of Labor's New ERISA Voting Proposals and Boy Are My Fingers Tired (from typing)," LPB Network. Available at https://lawprofessors.typepad.com/business_law/2020/09/i-just-read-the-department-of-labors-new-erisa-voting-proposals-and-boy-are-my-fingers-tired-from-ty.html

Thank you for taking the USW's views into consideration. Please contact Sabrina Liu at sliu@usw.org if you have any questions

Sincerely,

John E. Shinn

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