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 RIN 1210-AB91, "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights."

I write as the former Treasurer of the State of Connecticut where I was the sole fiduciary of the State pension systems, former Assistant Secretary and Chief Financial Officer of the U.S. Department of State, former Under Secretary General of the United Nations where I was also sole fiduciary of the U.N. pension system, and now president of the Institute for Pension Fund Integrity (IPFI), a non-profit organization deeply concerned about the security of pension benefits. The Institute seeks to ensure that the management of our pension funds is based on strict loyalty to fiduciary duty, not to political preference, opinions, or pressure.

While our direct area of interest involves public pensions, we recognize that the Department of Labor often leads the way in public policy regarding all pensions through its authority under ERISA. We applaud the Employee Benefits Security Administration for its proposed rule titled "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights," published in the Federal Register on September 4, 2020. We believe that this rule will go a long way toward bringing positive and much-needed reforms to the role of proxy advisory firms in ERISA-backed pension fund management. We believe, however, that the rule can be improved in several ways to secure its intended effect.

We at IPFI have grave concerns over the outsized role played by proxy advisory firms in the investment decisions of pension fund managers, as well as the degree to which these decisions have veered away from the principal of fiduciary duty and a strict duty of loyalty and care to the beneficiaries from whom, their hard-earned retirement savings have been entrusted. IPFI has also been a strong supporter of reforming the current proxy-advisory system, which we believe is subject to political pressure and personal influence. The two largest proxy advisory companies, Institutional Shareholder Services (ISS) and Glass Lewis, comprise a duopoly in the market and it appears to us their recommendations have moved from a strict duty of loyalty and care to one of making political-based decisions, increasingly under the guise of "ESG" considerations that certainly have an essential role in the board room, but used as a political tool in their recommendations, clearly violate fiduciary duty.

The Securities and Exchange Commission (SEC) this year finalized changes to proxy voting, seeking to reform a broken process, and the Department of Labor should include similar changes to clarify the status of proxy advisors as fiduciaries.

Perhaps one of the most significant aspects of the proposed rule is the fact that plan fiduciaries will no longer have to vote on all proxy matters – specifically, that "*fiduciaries must not vote in circumstances where plan assets would be expended on shareholder engagement activities that do not have an economic impact on the plan, whether by themselves or after the costs of engagement are taken into account*." Beyond the re-emphasis on fiduciary duty inherent in this language, this proposal puts a much-needed focus on the overall costs associated with these proxy decisions. For pension beneficiaries, especially those in smaller plans who may lack the resources to pour into evaluating every proxy firm recommendation, the added convenience and lower costs stemming from this reform cannot be underestimated.

While there are many upsides to the proposed rule, I believe that there are also several aspects that require further action.

First, the proposal notes that plans can only vote on proxy questions if they are able to "prudently determine" whether such votes will have an economic impact on the plan. This is a step in the right direction, but it is unclear what sort of documentation or proof would be needed to demonstrate these benefits. Without strict standards, it is likely that proxy advisory firms will continue to push for recommendations based on ESG-related or other non-pecuniary interests and claim that such proposals will economically benefit the plan with limited evidence and support. More stringent standards, such as those put forward in the Department of Labor's recent rule proposal on ESG investments, would ensure that the fiduciary interests of beneficiaries are preeminent.

Second, regulations on the issue of "automatic" or "robo-voting," a practice which has long allowed for the proxy advisory firm duopoly to pursue a personal agenda with limited scrutiny, are in need of additional stringency. Under this practice, some fund managers have simply accepted the voting recommendations of proxy advisors automatically, blindly moving forward on proxy firms' recommendations without consideration of their overall fiduciary impact on the fund.

This practice does a great disservice to beneficiaries, but unfortunately, this has also become widespread. According to research by Ohio State University Professor Paul Rose, 400 of the top institutional investors – including many pension funds – automatically voted in line with the recommendations of ISS and Glass Lewis at least 99.5% of the time. Once again, there is no obligation for these recommendations to come from a place of fiduciary interest as proxy advisors are not required to adhere to fiduciary duty. This is clearly a shirking of the managerial obligations that fund managers should have toward plan participants and beneficiaries, and by allowing "robo-voting" to become this rampant, pensioners who have entrusted others with the prudent management of their money have become disenfranchised.

In June of this year, the SEC issued guidance on the practice of robo-voting to asset managers, setting a preliminary set of regulations that the Department should seek to build upon. The growth of proxy voting in the industry is understandable given the cost savings that pension plans can accrue as a result, but the desire to implement sound cost-saving measures cannot be upheld if proxy voting is relied upon to determine the course of action on contested issues. In these instances, fiduciaries should end their

reliance on automatic proxy voting in order to ensure that all final decisions are truly in the best interest of beneficiaries.

We hope that the Department can improve on this much-needed rule to provide ERISA-backed pension fund beneficiaries with the transparency, accountability, and loyalty they need and deserve.

Respectfully submitted,

Christopher B. Burnham

President
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Washington, DC