



October 05, 2020

Office of Regulations and Interpretations  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

RE: Proposed Rule on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (RIN 1210-AB91)

On behalf of National Taxpayers Union, the nation's oldest taxpayer advocacy organization, I am pleased to submit the following comments on the Department of Labor's (DOL) proposed amendments to the investment duties regulation under Title I of the Employee Retirement Income Security Act of 1974 (ERISA). NTU applauds DOL for again offering a rule that remains consistent with the original intent of ERISA to ensure the financial protection of investors.

The proposed rule focuses squarely on fiduciary responsibilities of plan sponsors regarding "proxy voting and shareholder rights." The need for this rule is clear: currently many fiduciaries have incorporated Environmental, Social, and Governance (ESG) into their investment portfolio, perhaps sacrificing returns in order to push a political agenda that their clients may or may not support. Under DOL's proposed rule "fiduciaries must not vote in circumstances where plan assets would be expended on shareholder engagement ... that [does] not have an economic impact on the plan." Since ERISA requires investment decisions be based solely on whether they enhance retirement savings, regardless of the fiduciary's personal preferences, we strongly believe this proposed rule is consistent with the purpose of ERISA.

Specifically, the rule ensures that when fiduciaries vote on proxy measures, the rationale for their positions is only based on economic factors and not influenced by other non-financial factors, such as ESG. The fiduciary must also "investigate material facts" that form the basis of a proxy vote, and may not simply follow proxy advisory recommendations "without appropriate supervision and a determination that the service provider's proxy voting guidelines are consistent with the economic interests of the plan and its participants and beneficiaries." To that end, DOL should place specific restrictions on automatic voting in the final rule. With the existence of automatic voting, it is impossible for fiduciaries to investigate the material facts for proxies when the plan managers are allowed to blindly vote without any due diligence.

These clarifications will bring a new level of transparency and accountability to plan fiduciaries who may have relied too heavily on proxy advisors' guidance. These changes will better serve asset managers and the nearly 140 million Americans who rely on private pension funds. For the aforementioned reasons, NTU respectfully submits these comments in support of the Proposed Rule on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (RIN 1210-AB91). NTU is at your service to further assist you in your deliberations and we are thankful for your consideration of our views.

Sincerely,

Thomas Aiello  
Policy and Government Affairs Manager