



October 5, 2020

Submitted electronically

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

Re: Fiduciary Duties Regarding Proxy Voting and Shareholder Rights (RIN 1210-AB91)

Dear Acting Assistant Secretary Wilson:

I write on behalf of the Committee on Investment of Employee Benefit Assets (CIEBA) with respect to the regulation proposed by the Department of Labor (DOL) related to fiduciary duties with respect to proxy voting and the exercise of shareholder rights (Proposed Rule) under the Employee Retirement Income Security Act of 1974, as amended (ERISA).

CIEBA appreciates the DOL's efforts to clarify and coordinate prior guidance on this important issue. Specifically, we applaud the DOL for its effort to help plan's reduce compliance burdens and plan expenses by giving fiduciaries the option to refrain from using plan assets to research and vote on matters that are not expected to have an economic impact on the plan. In this regard, we support the DOL's proposal to permit, but not require, plans to adopt and rely upon written proxy voting policies, which may include specific parameters reasonably designed to serve the plan's economic interest.

Background on CIEBA – CIEBA represents many of the nation's most experienced investment fiduciaries.

CIEBA represents more than 110 of the country's largest pension funds and defined contribution plans. Our Members manage more than \$2 trillion of defined benefit and defined contribution assets on behalf of more than 17 million plan participants and beneficiaries.

CIEBA represents the interests of chief investment officer fiduciaries, virtually all of whom have decades of experience in serving as investment fiduciaries for many of the country's largest and most sophisticated private retirement savings pension and 401(k) plans. Since 1985, CIEBA has provided a nationally recognized forum and voice for corporate plan fiduciaries on investment and fiduciary issues.

We have provided below comments related to: (1) written proxy voting policies and the associated frequency of review of the policy, (2) DOL's proposed "permitted practices," which may be enumerated in a written proxy voting policy, (3) the monitoring of proxy voting decisions by delegated Investment Managers and advisory firms, and (4) our Members' current views on the duty to vote all proxies. These comments are informed by responses to a proprietary survey (CIEBA Survey) of the CIEBA Membership regarding their current proxy voting views, policies, and practices.¹

1. Written Proxy Voting Policies – Frequency of Review. CIEBA appreciates the DOL's efforts to provide guidelines for written proxy voting policies for Plans that adopt such policies. We are also supportive of the fact that the Proposed Rule permits, but does not mandate, that all plans have written proxy voting policies, given that there are some plans for which the cost of developing and maintaining the policies may outweigh any benefits. That is particularly true if the standards for evaluating proxy voting decisions are already clearly established in a regulation, such as the Proposed Rule.

CIEBA also encourages DOL not to mandate a specific frequency with which fiduciaries must review proxy voting policies. The preamble to the Proposed Rule states that it is industry practice to review proxy voting policies every two years, but the CIEBA Survey responses indicate that none of the respondents review their proxy voting policies every two years. Approximately 43% of respondents review their proxy policies more frequently than every two years, and 43% review their policies less frequently than every two years. Given those results, CIEBA believes DOL should not prescribe a particular review cycle and that such a decision should be governed by ERISA's general fiduciary prudence standards.

2. Permitted Practices. CIEBA supports codifying in a regulation that ERISA plan fiduciaries may adopt "permitted practices" to make proxy voting decisions more efficient. Many fiduciaries have already adopted such policies, and it is helpful for DOL to clarify that the practice is permissible and that fiduciaries may rely on such permitted practices. That said, CIEBA members have differing views on the particular permitted practices included in the Proposed Rule.

To the extent DOL retains a list of permitted practices in any final rule, we ask that: (i) it be a non-exclusive list, so fiduciaries can adopt alternative permitted practices, and (ii) DOL clearly state that fiduciaries adopting one or more permitted practices are deemed to satisfy their obligations under ERISA. Under the Proposed Rule, the scope of the relief being afforded is unclear, particularly given the language in the preamble stating that a plan fiduciary may be required to reject a permitted practice where, for example, a vote is necessary to establish a quorum. To ensure that the permitted practices achieve DOL's goals (*e.g.*, reducing compliance burdens and the associated costs), it is important that DOL make clear that fiduciaries not be required to conduct an analysis of each proxy to determine whether a fiduciary needs to deviate from the permitted practice.

3. Monitoring Obligation. CIEBA members routinely delegate the primary proxy voting responsibility to third-party fiduciaries, while recognizing that the delegating fiduciary retains residual responsibility for prudently selecting and monitoring the delegated third-party fiduciary. Approximately 92% of the respondents to the Survey indicated that they have formally delegated proxy voting

¹ The Survey was conducted over a one-week period ending on September 23, 2020. 45 CIEBA members responded to the survey. Not all respondents responded to each question.

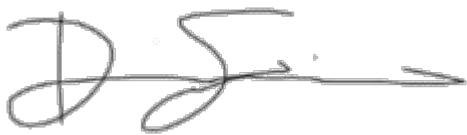
responsibilities to another named fiduciary (*e.g.*, an Investment Manager), and approximately 42% of respondents engage a proxy advisory firm (directly or indirectly) to help with voting some or all proxies. This practice is beneficial because it helps ensure that proxy voting decisions are made efficiently and by those with the most relevant information.

It is important that any final rule on proxy voting continue to allow fiduciaries to delegate proxy voting responsibilities and not impose new or overly burdensome monitoring obligations. In that regard, we are concerned that the preamble to the Proposed Rule could be interpreted as requiring fiduciaries to monitor each proxy vote by an Investment Manager or advisory firm. That could be read to essentially create a higher, more intrusive monitoring obligation for proxy votes, in contrast to other fiduciary activities, which would contravene one of DOL's stated benefits of the Proposed Rule to better enable fiduciaries to conserve plan assets by having clear direction and permitted practices to refrain from researching and voting on each proxy proposal. We ask that DOL clarify that fiduciaries are not required to monitor every proxy vote or second-guess other fiduciaries' specific proxy voting decisions, unless the fiduciary knows or should know the designated fiduciary is violating ERISA with their proxy voting procedures.

4. CIEBA Members' Current Views on Duty to Vote All Proxies. CIEBA appreciates and supports the DOL's clarification in the preamble to the Proposed Rule that there is no fiduciary mandate under ERISA to always vote proxies in all cases. In this regard, the CIEBA Survey asked CIEBA Members whether they believe "it is a responsibility of a fiduciary to vote ALL proxies, even if not economically significant," and the result was a mix of views on this issue. It is unclear whether these mixed views are based, in whole or in part, on prior DOL guidance, so the DOL clarification on this legal point is a very helpful clarification.

CIEBA appreciates the opportunity to comment on the Proposed Rule. Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Simmons", with a long horizontal flourish extending to the right.

Dennis Simmons
Executive Director