104TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
104–238

RESTRICTIONS ON PROMOTION BY THE GOVERNMENT OF USE BY EMPLOYEE BENEFIT PLANS OF ECONOMICALLY TARGETED INVESTMENTS

SEPTEMBER 1, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. GOODLING, from the Committee on Economic and Educational Opportunities, submitted the following

R E P O R T

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany H.R. 1594]

[Including cost estimate of the Congressional Budget Office]

The Committee on Economic and Educational Opportunities, to whom was referred the bill (H.R. 1594) to place restrictions on the promotion by the Department of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SENSE OF THE CONGRESS.

It is the sense of the Congress that it is inappropriate for the Department of Labor, as the principal enforcer of fiduciary standards in connection with employee pension benefit plans and employee welfare benefit plans (as defined in paragraphs (1) and (2) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1), (2))), to take any action to promote or otherwise encourage economically targeted investments.

99–006

SEC. 2. PROHIBITIONS ON DEPARTMENT OF LABOR REGARDING ECONOMICALLY TARGETED INVESTMENTS.

(a) IN GENERAL.—Interpretive Bulletin 94–1, issued by the Secretary of Labor on June 23, 1994 (59 Fed. Reg. 32606; 29 C.F.R. 2509.94–1), is null and void and shall have no force or effect. The provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) shall be interpreted and enforced without regard to such Interpretive Bulletin.

(b) RESTRICTIONS ON DEPARTMENT OF LABOR REGULATIONS.—The Secretary of Labor may not issue any rule, regulation, or interpretive bulletin which promotes or otherwise encourages economically targeted investments as a specified class of investments.

(c) RESTRICTIONS ON ACTIVITIES OF THE DEPARTMENT OF LABOR.—No officer or employee of the Department of Labor may travel, lecture, or otherwise expend resources available to such Department for the purpose of promoting, directly or indirectly, economically targeted investments.

(d) ECONOMICALLY TARGETED INVESTMENT DEFINED.—For purposes of this section, the term ''economically targeted investment'' has the meaning given such term in Interpretive Bulletin 94–1, as issued by the Secretary of Labor on June 23, 1994 (59 Fed. Reg. 32606; 29 C.F.R. 2509.94–1).

SEC. 3. PROHIBITION ON FEDERAL AGENCIES AGAINST ESTABLISHING OR MAINTAINING ANY CLEARINGHOUSE OR OTHER DATABASE RELATING TO ECONOMICALLY TARGETED INVESTMENTS.

(a) IN GENERAL.—Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131 et seq.) is amended by adding at the end the following new section:

''PROHIBITION ON FEDERAL AGENCIES AGAINST ESTABLISHING OR MAINTAINING ANY CLEARINGHOUSE OR OTHER DATABASE RELATING TO ECONOMICALLY TARGETED INVESTMENTS

''SEC. 516. (a) IN GENERAL.—No agency or instrumentality of the Federal Government may establish or maintain, or contract with (or otherwise provide assistance to) any other party to establish or maintain, any clearinghouse, database, or other listing—

''(1) for the purpose of making available to employee benefit plans information on economically targeted investments,

''(2) for the purpose of encouraging, or providing assistance to, employee benefit plans or any other party related to an employee benefit plan to undertake or evaluate economically targeted investments, or

''(3) for the purpose of identifying economically targeted investments with respect to which such agency or instrumentality will withhold from undertaking enforcement actions relating to employee benefit plans under any otherwise applicable authority of such agency or instrumentality.

''(b) ECONOMICALLY TARGETED INVESTMENT DEFINED.—For purposes of this section, the term 'economically targeted investment' has the meaning given such term in Interpretive Bulletin 94–1, as issued by the Secretary on June 23, 1994 (59 Fed. Reg. 32606; 29 C.F.R. 2509.94–1).''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting at the end of the items relating to part 5 of subtitle B of title I the following new item:

''Sec. 516. Prohibition on Federal agencies against establishing or maintaining any clearinghouse or other database relating to economically targeted investments.''.

SEC. 4. TERMINATION OF CONTRACTS.

The head of each agency and instrumentality of the Government of the United States shall immediately take such actions as are necessary and appropriate to terminate any contract or other arrangement entered into by such agency or instrumentality which is in violation of the requirements of the provisions of this Act or the amendments made thereby.

SEC. 5. EFFECTIVE DATE.

The preceding provisions of this Act (and the amendments made thereby) shall take effect on the date of the enactment of this Act.

EXPLANATION OF AMENDMENTS

The provisions of the substitute are explained in this report.

PROHIBITING THE DEPARTMENT OF LABOR FROM PROMOTING ECONOMICALLY TARGETED INVESTMENTS, NULLIFYING INTERPRETIVE BULLETIN 94–1, AND ABOLISHING THE ETI CLEARINGHOUSE

PURPOSE

The purpose of H.R. 1594 is to prevent the Department of Labor, the guardian of fiduciary standards for the nation's pension plans, or any other federal agency or instrumentality from promoting so-called economically targeted investments by employee benefit plans.

COMMITTEE ACTION

H.R. 1594 was introduced by Representative James Saxton on May 9, 1995. There were 39 original cosponsors, and the bill in its present form has over 100 cosponsors. The Subcommittee on Employer-Employee Relations held a hearing on H.R. 1594 and on the issue of so-called economically targeted investments (ETIs) on June 15, 1995. Testimony was received from: Representative James Saxton, sponsor of H.R. 1594; Olena Berg, the Assistant Secretary of Labor for Pension and Welfare Benefits; David Ball, the Assistant Secretary of Labor for Pension and Welfare Benefits under President Bush; Professor Edward Zelinsky, of the Benjamin Cardozo School of Law of Yeshiva University; Myra Drucker of Xerox Corporation, on behalf of the Financial Executives Institute (FEI), an organization that invests almost $900 billion in pension assets; and Robert Monks, a former Administrator of Pension and Welfare Benefits. In addition, on May 18, 1995, the Joint Economic Committee held a hearing on the issue of ETIs.

On July 13, 1995, the Subcommittee on Employer-Employee Relations approved H.R. 1594, as amended, by a recorded vote of 8–5. On July 20, 1995, the Committee on Economic and Educational Opportunities approved H.R. 1594, as amended (but in substance identical to the version reported by the Subcommittee), by a voice vote, a quorum being present, and by a recorded vote of 23–15 ordered the bill favorably reported.

COMMITTEE STATEMENT AND VIEWS

Statutory background

The Employee Retirement Income Security Act of 1974 (ERISA), imposes duties and responsibilities upon an individual who acts as a fiduciary with respect to an employee benefit plan. Section 404(a)(1) provides that a fiduciary must discharge his duties with respect to the plan "solely in the interest of the participants and beneficiaries and for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan." See also, § 403(c)(1). 29 U.S.C. §§ 1103(c)(1), 1104(a)(1). In addition, section 404(a)(1)(B) requires a plan fiduciary to act with "the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B).

Interpretive bulletin 94–1 creates confusion as to the state of the law and implements subtle but substantive changes to it

On June 23, 1994, the Department of Labor (DOL) issued Interpretive Bulletin 94–1 relating to the application of ERISA to so-called "economically targeted investments" or ETIs. The Bulletin defines ETIs only as "investments that are selected for the economic benefits they create in addition to the investment return to the employee benefit plan." According to the DOL, these collateral economic benefits may include expanded employment opportunities, increased housing availability, improved social service facilities, and modernized infrastructure (see, e.g., June 13, 1995 letter from Assistant Secretary Berg to Chairman Fawell). ETIs are investments made for the "social benefit" they are perceived to generate rather than for the exclusive purpose of providing a financially sound return for pensioners. Thus, they may more accurately be described as politically targeted investments.

The Bulletin states that the ERISA "fiduciary standards applicable to ETI's are no different than the standards applicable to plan investments generally." It holds that a plan that selects an investment which meets the prudential and fiduciary requirements of ERISA sections 403 and 404 (i.e., provides a comparable rate of return with a commensurate degree of risk to alternative investments) will not violate the "exclusive purpose" provision of those sections by also taking into account the economic benefits it creates apart from its investment return.

Despite this innocuous description and the Administration's assertions to the contrary, the Bulletin actually represents a significant shift in the direction of ETI policy. Under previous administrations, a pension fund fiduciary would not be deemed to have violated ERISA by making an investment that incidentally produced some social benefit—as long as the investment was chosen for its economic return and safety. Under the new policy advanced by the DOL, however, a fiduciary may permissibly seek out an investment specifically for the benefits it creates for persons other than the plan's participants and beneficiaries. The Bulletin declares that "engaging in an investment course of action intended to result in the selection of ETIs will not violate" sections 403 and 404 of ERISA. Weeding out those investments inappropriate under ERISA's fiduciary rules may become a secondary task.

By promoting ETIs, the DOL has reversed the direction mandated by the courts that fiduciaries keep an "eye single" on the sole interest of plan participants and beneficiaries. Investments could only "incidentally" result in a benefit to others. By contrast, the DOL is in effect saying to plan fiduciaries: invest in ETIs with an "eye" towards benefiting others, and only later go back and see if any investments violate ERISA's fiduciary rules. Furthermore, since the Bulletin asserts that the fiduciary standards applicable to ETIs are the same as those governing plan investments generally, this apparent weakening of the rules applicable to ETIs potentially calls into question ERISA's general fiduciary rules.

As David Ball, Assistant Secretary of Labor for Pension and Welfare Benefits under President Bush, testified at the Subcommittee's June 15 hearing, "It has been the Department's long-standing position that non-financial factors or incidental benefits cannot be al-

lowed to take precedence over providing retirement income to participants and beneficiaries." The Department, however, has strayed from this position and is putting "inappropriate pressure on investment managers and subject[ing] them to political and social demands" to invest in various ETIs.

Finally, the confusion inherent in the Bulletin has been compounded by the DOL's contradictory and confusing explanations of ETIs and of the effect of the Bulletin. For example, in Secretary Berg's June 13, 1995 letter responding to questions posed by Chairman Fawell, the DOL makes the following inconsistent assertions: "The bulletin defines ETIs in terms of the process by which an investment is chosen rather than treating ETIs as a particular class of investments." (p. 1) "There is no specific process * * * necessary to trigger the 'selection' criteria." (p. 14) "ETIs are defined in terms of the reasons for which they are chosen, not in terms of the nature of the economic benefits they create." (p. 15) Thus, the DOL states that ETIs are defined by their selection process, even though there is no particular selection process that denotes an ETI. Alternatively, ETIs are defined by their motive for selection, even though the Bulletin offers no criteria for so subjective a standard. The Bulletin asserts that it was issued to clear up misperceptions in the investment community and "clarify [the DOL's] position regarding the application of [ERISA's] fiduciary provisions to a decision to invest in an ETI." Unfortunately, all the Bulletin has done is to make the state of the law increasingly confused.

The ETI clearinghouse would promote imprudent investments

In September 1994, the DOL awarded a contract to Hamilton Securities Advisory Services, Inc. to design, develop, and operate a clearinghouse for the collection and distribution of information on ETIs. The clearinghouse is intended to provide information on ETIs around the country and create a database for storing and retrieving this information. It would also provide technical assistance to pension funds and other parties in order to assist the investment community in their evaluation and selection of ETIs. The clearinghouse will cost taxpayers over $1 million—to promote investments the DOL acknowledges will not necessarily meet ERISA's fiduciary or prudential standards.

While the DOL Bulletin requires that plans maintain ERISA's fiduciary and prudential standards, this clearinghouse could become an instrument for strongly encouraging plans to invest in certain "socially beneficial" projects and in selecting which projects are "worthy" of such investment. Moreover, the list of investments that the clearinghouse would produce bearing its imprimatur of approval could and likely would include some imprudent or even prohibited investments with respect to various employee benefit plans—since the DOL imposed no requirement that a project be a prudent investment for a plan before it may be placed on this list.

Assistant Secretary Berg conceded, in a June 13, 1995 letter to Chairman Fawell, that the clearinghouse "is not intended to function as a guarantor of the fiduciary suitability of an investment" that it lists. Thus, both pension managers and the public would inevitably be confused as to whether the investments receiving the

clearinghouse's seal of approval are lawful or violate ERISA's prudential and fiduciary standards.

Moreover, the criteria to be employed by the clearinghouse in determining which investments would be listed have been left to the clearinghouse itself to establish, subject only to the DOL's determination that all contract terms have been met. Thus, not only is there no guarantee of prudence by the clearinghouse, but also no check on its level of politicization.

Many of these problems with the clearinghouse were foreseen by the DOL's Advisory Council on Employee Welfare and Pension Benefit Plans when it issued its November 1993 report on the possibility of an ETI clearinghouse. The report stated (at p. 12):

> [T]here was a belief that the Department, given its enforcement functions under ERISA, would run into at least an appearance of conflict if it was operating a clearinghouse listing ETI transactions. There was also a belief that if a plan had selected an investment listed within the clearinghouse or network, and the DOL subsequently initiated an enforcement action regarding that transaction, the plan might at least raise the argument that the DOL had endorsed the investment notwithstanding any disclaimers to the contrary articulated through the clearinghouse or network.

Additional concerns with the promotion of ETIs

Department officials have been directly promoting ETIs—giving speeches, attending conferences, and making statements at congressional hearings that encourage investment in ETIs. Assistant Secretary Olena Berg has been particularly active in promoting ETIs through her speeches and travel. By promoting ETIs, the DOL has abdicated its role as the nation's "pension watchdog" and chief enforcer of ERISA's fiduciary standards. For the past twenty years, ERISA has protected the financial security of America's retirees. During that time, the DOL has served as the guardian of ERISA's fiduciary and prudential standards. Now, however, the Department has become the promoter of a particular class of investments—political investments—which it conceded in the Interpretive Bulletin "require a longer time to generate significant investment returns," are "less liquid," and require more expertise to evaluate.

The history of such social investing is one of higher risk and lower return. Public pension funds have experimented with such investments and regretted it. A Kansas teachers' retirement plan, for example, invested in underwriting mortgages and lost $65 million. State employees' retirement funds in Connecticut and Missouri similarly lost millions investing in ETIs. Thus, promoting ETIs threatens to place at greater risk the $3.5 trillion in trust in the nation's private pension plans. Moreover, as Professor Edward Zelinsky pointed out in his June 15 testimony, if ETIs are just as sound as other investments, then promoting them through a clearinghouse is superfluous—the market will direct capital to them without the Department's cheerleading.

The clearinghouse and the Bulletin are, at best, unnecessary. But at worst, they could place in jeopardy the pensions of millions

of Americans. Myra Drucker, testifying on behalf of the Financial Executives Institute (FEI), best summed up the situation when she declared at the Subcommittee hearing that the employee benefits community did not find Interpretive Bulletin 94–1 or the ETI clearinghouse either necessary or helpful to understanding its ERISA fiduciary obligations.

The legislative remedy: The Pension Protection Act

The Pension Protection Act (the ''PPA'') seeks to address the ETI issue by revoking the Bulletin and abolishing the clearinghouse. Because of concerns raised by the employee benefits community about its potential unintended consequences, the Subcommittee on Employer-Employee Relations amended the original bill. The Amendment in the Nature of a Substitute offered by Mr. Fawell at the Subcommittee mark-up encompassed technical changes to the bill that clarified and improved upon its basic thrust. The Amendment in the Nature of a Substitute offered by Mr. Goodling and adopted by the Committee is identical to the version reported by the Subcommittee.

The reported bill eliminates the confusion caused by the issuance of the Bulletin and makes clear that the law is simply to remain as it was prior to the DOL's decision to promote ETIs by issuing the Bulletin and establishing the clearinghouse. As amended, the PPA declares (in section 2(a)) Interpretive Bulletin 94–1 to be null and void and states that ERISA shall be interpreted and enforced without regard to the Bulletin.

The reported bill includes a new Sense of the Congress provision (in section 1) which states that it is inappropriate for the DOL, as the principal enforcer of fiduciary standards for ERISA employee benefit plans, to promote or otherwise encourage ETIs. It also (in section 2(b)) prohibits the DOL from issuing any rule, regulation, or interpretive bulletin that promotes or otherwise encourages ETIs and (in section 2(c)) bars the DOL from expending any money to promote ETIs, through travel, lecture, or otherwise. It further (in sections 3 and 4) terminates the clearinghouse contract with Hamilton Securities and bars the DOL and other federal agencies from establishing or maintaining ''any clearinghouse, database, or other listing'' which (1) makes available information to plans on ETIs, (2) provides assistance in developing, promoting, or evaluating ETIs, or (3) identifies investments at ETIs.

The Goodling Amendment in the Nature of a Substitute adopted by the Committee deleted the potentially overly broad language in sections 1 and 2(a) of the original bill. The pension community raised certain concerns with the technical language of these provisions and their (unintended) potential consequences. The original section 2(a) of the bill essentially voided all regulations, interpretive bulletins, advisory opinions, information letters, and other determinations ''reaching the same result as, or a similar result to, the result set forth'' in Interpretive Bulletin 94–1. The original Section 1 could potentially be read to have banned all ETIs and other investments creating collateral benefits. It declared it the sense of Congress that ETIs violate sections 403 and 404 of ERISA because they are made to benefit and to serve the interests of persons other than plan participants and beneficiaries.

The Goodling Amendment replaced these two provisions and added a new section (new section 2(b)) which prohibits the DOL from issuing any rule, regulation, or interpretive bulletin that promotes or otherwise encourages ETIs. These changes were endorsed by the employee benefits community.

These changes were made to the original bill in order to accomplish the following: The revised PPA cannot be interpreted to prohibit investments that may happen to provide collateral benefits, provided they meet ERISA's fiduciary and prudential standards. By invalidating only the Bulletin and not all documents reaching a similar result to the Bulletin (as the original bill did), the PPA does not disturb any other existing precedent which the DOL has developed such as advisory opinions regarding conditions under which exemptions would be allowed to ERISA's prohibited transaction provisions (under ERISA sections 406 and 408). The impact of repealing the Bulletin is also minimalized by the fact that "the Department has not, since the issuance of Interpretive Bulletin 94–1, rendered any opinions, rulings or other advice to plans concerning the application of IB 94–1." (See Secretary Berg's June 13 letter to Chairman Fawell, at p. 16). The PPA also leaves unchanged fiduciaries' ability to obtain individual advisory opinions or prohibited transaction exemptions from the DOL.

SUMMARY

H.R. 1594, as amended, renders Interpretive Bulletin 94–1 null and void, prohibits the DOL from issuing any rule or regulation that promotes or otherwise encourages ETIs, terminates the clearinghouse contract with Hamilton Securities and bars the DOL or any other federal agency from establishing any similar clearinghouse or database, and bars the DOL from expending any money to promote ETIs. The reported bill eliminates the confusion caused by the issuance of the Bulletin and makes clear that the law is simply to remain as it was prior to the DOL's decision to promote ETIs by issuing the Bulletin and establishing the clearinghouse.

SECTION-BY-SECTION ANALYSIS OF H.R. 1594, AS AMENDED

Section 1

In the view of the Committee, the DOL's actions have amounted to an improper effort to promote and encourage investments by employee benefit plans in a specific type of investment, so-called ETIs. It is inappropriate for the DOL to take any action to promote or otherwise encourage any specified type of investment. Therefore, section 1 expresses the Sense of Congress that it is inappropriate for the Department of Labor, as the principal enforcer of fiduciary standards for ERISA employee benefit plans, to take any action to promote or otherwise encourage ETIs.

Section 2

The Bulletin was issued by the DOL as part of its effort to promote and encourage ETIs. Accordingly:

Part (a): Declares Interpretive Bulletin 94–1 to be null and void, and states that ERISA shall be interpreted and enforced without regard to the Bulletin.

Part (b): Prohibits the DOL from issuing any rule, regulation, or interpretive bulletin that promotes or otherwise encourages ETIs.

Part (c): Prohibits any officer or employee of the DOL to travel, lecture, or expend any resources to promote ETIs, either directly or indirectly.

Part (d): Defines an ETI, incorporating the definition employed in Interpretive Bulletin 94–1.

Sections 2 (a) and (b) specifically repeal the Bulletin and bar the DOL from re-issuing it in any other form. These sections, as well as section 1, are not intended to affect any prior pronouncements by the DOL—specifically including prior advisory opinions cited in the Bulletin—but are limited solely to repealing the Bulletin and preventing its reissuance. It does not disturb existing DOL advisory opinions or exemptions regarding prohibited transactions, upon which pension managers have relied in making investment decisions. Therefore, upon enactment of the legislation, the state of the law with respect to investments subject to ERISA's fiduciary responsibility provisions will be as if the Bulletin had never been issued.

In addition, except to the extent that the DOL may not promote or otherwise encourage ETIs as a specified class of investments, the bill is not intended to restrict or otherwise affect DOL's ability to issue rules, regulations, or interpretive bulletins implementing, interpreting, or providing guidance regarding the fiduciary responsibility provisions of ERISA. Nothing in the bill is intended to affect the ability of the DOL to issue advisory opinions, information letters, technical releases, prohibited transaction exemptions, or other pronouncements interpreting and applying ERISA's fiduciary responsibility rules to particular factual situations, or exempting specific transactions from the prohibited transaction provisions of ERISA (pursuant to 29 U.S.C. §§ 1106, 1108).

Section 3

Section 3 amends ERISA (adding a new section 516) to prohibit all federal agencies from establishing or maintaining any clearinghouse, database, or other listing which (1) makes available informaiton to plans on ETIs, (2) provides assistance in promoting, developing, or evaluating ETIs, or (3) identifies investments as ETIs.

Section 4

Section 4 instructs the heads of all federal agencies to immediately take the steps necessary to terminate any contract or other arrangement which is in violation of this bill. This will require the DOL to immediately terminate its September 1994 contract with Hamilton Securities Advisory Services to design, develop, and operate a clearinghouse for the collection and distribution of information on ETIs.

Section 5

Section 5 specifies that the provisions of the bill shall take effect on the date of enactment.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendaitons are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment into law of H.R. 1594 will have no significant inflationary impact on prices and costs in the operation of the national economy. It is the judgment of the Committee that the inflationary impact of this legislation as a component of the federal budget is negligible.

GOVERNMENT REFORM AND OVERSIGHT

With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 1594.

COMMITTEE ESTIMATE

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 1594. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

APPLICATION OF LAW TO LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. This bill prohibits the Department of Labor from promoting economically targeted investments, nullifies Interpretive Bulletin 94–1, and abolishes the ETI clearinghouse; the bill does not prohibit legislative branch employees from receiving the benefits of this legislation.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act requires a statement of whether the provisions of the reported bill include unfunded mandates. This bill prohibits the Department of Labor from promoting economically targeted investments, nullifies Interpretive Bulletin 94–1, and abolishes the ETI clearinghouse, and as such does not contain any unfunded mandates.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 2(l)(3)(B) of rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 2(l)(3)(C) of rule XI of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1594 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 25, 1995.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Economic and Educational Opportunities, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1594, the Pension Protection Act of 1995, as ordered reported by the Committee on Economic and Educational Opportunities on July 20, 1995. CBO estimates that enactment of H.R. 1594 would reduce federal spending by about $500,000 and would have no impact on the budgets of state and local governments. Because enactment of H.R. 1594 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

H.R. 1594 would nullify interpretive bulletin 94–1, issued by the Assistant Secretary of Labor, Pension and Welfare Benefit Administration (PWBA), on June 17, 1994. This bulletin sets forth the view of the Department of Labor that economically targeted investments (ETIs) are appropriate investments for employee benefits plans, so long as "the ETI has an expected rate of return that is commensurate to rates of return of alternative investments with similar risk characteristics that are available to the plan." The bill would prohibit employees of the Department of Labor from spending resources for the purposes of directly or indirectly promoting economically targeted investments. Section 3 would prohibit federal agencies from establishing or maintaining a clearing house or other database relating to these investments. Section 4 would require that agency heads take the steps necessary to terminate any contract that violates the bill.

The Department of Labor has awarded one contract to design and operate a clearinghouse relating to ETIs. Under the terms of the contract, which was awarded in September 1994, the Department of Labor was to make $780,000 available to the contractor. The Department estimates that expenditures to date, including its liability for payment on services not yet billed and potential costs associated with a premature termination of the contract, total $260,000. Therefore, funds remaining after the contract's termination would total $520,000. The PWBA has no discrete funding for ETIs, and CBO cannot estimate how a restriction on spending regarding ETIs would affect outlays in future years.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christina Hawley.

Sincerely,

JUNE E. O'NEILL, *Director.*

ROLLCALL VOTES

Rollcall No. 1 (by Mr. Green): An amendment adding a new section stating that nothing in the bill shall be construed as prohibiting benefit plans from investing in domestic, as opposed to foreign, investments. Defeated by a vote of 15–19.

Member	Aye	No
Chairman Goodling		X
Mr. Petri		X
Mrs. Roukema		X
Mr. Gunderson		X
Mr. Fawell		X
Mr. Ballenger		X
Mr. Barrett		X
Mr. Cunningham		X
Mr. Hoekstra		X
Mr. McKeon		X
Mr. Castle		X
Mrs. Meyers		X
Mr. Johnson		X
Mr. Talent		
Mr. Greenwood		
Mr. Hutchinson		X
Mr. Knollenberg		
Mr. Riggs		X
Mr. Graham		X
Mr. Weldon		X
Mr. Funderburk		
Mr. Souder		
Mr. McIntosh		X
Mr. Norwood		X
Mr. Clay	X	
Mr. Miller		
Mr. Kildee	X	
Mr. Williams	X	
Mr. Martinez	X	
Mr. Owens	X	
Mr. Sawyer	X	
Mr. Payne	X	
Mrs. Mink	X	
Mr. Andrews	X	
Mr. Reed		
Mr. Roemer	X	
Mr. Engel	X	
Mr. Becerra	X	
Mr. Scott	X	
Mr. Green	X	
Ms. Woolsey	X	
Mr. Romero-Barceló		
Mr. Reynolds		
Total	15	19

Rollcall No. 2 (by Mr. Payne): An amendment adding a new section stating that nothing in the bill shall be construed as prohibiting benefit plans from investing in infrastructure improvements. Defeated by a vote of 16–20.

Member	Aye	No
Chairman Goodling	.....	X
Mr. Petri	.....	X
Mrs. Roukema	.....	X
Mr. Gunderson	.....	X
Mr. Fawell	.....	X
Mr. Ballenger	.....	X
Mr. Barrett	.....	X
Mr. Cunningham	.....	X
Mr. Hoekstra	.....	X
Mr. McKeon	.....	X
Mr. Castle	.....	X
Mrs. Meyers	.....	X
Mr. Johnson	.....	X
Mr. Talent	.....	.....
Mr. Greenwood	.....	.....
Mr. Hutchinson	.....	X
Mr. Knollenberg	.....	X
Mr. Riggs	.....	.....
Mr. Graham	.....	X
Mr. Weldon	.....	X
Mr. Funderburk	.....	.....
Mr. Souder	.....	X
Mr. McIntosh	.....	X
Mr. Norwood	.....	X
Mr. Clay	X	.....
Mr. Miller	.....	.....
Mr. Kildee	X	.....
Mr. Williams	X	.....
Mr. Martinez	X	.....
Mr. Owens	X	.....
Mr. Sawyer	X	.....
Mr. Payne	X	.....
Mrs. Mink	X	.....
Mr. Andrews	X	.....
Mr. Reed	X	.....
Mr. Roemer	X	.....
Mr. Engel	X	.....
Mr. Becerra	X	.....
Mr. Scott	X	.....
Mr. Green	X	.....
Ms. Woolsey	X	.....
Mr. Romero-Barceló	.....	.....
Mr. Reynolds	.....	.....
Total	16	20

Rollcall No. 3 (by Mr. Owens): An amendment adding a new section stating that nothing in the bill shall be construed as prohibiting benefit plans from investing in construction or renovation of housing for military families. Defeated by a vote of 16–22.

Member	Aye	No
Chairman Goodling	.....	X
Mr. Petri	.....	X
Mrs. Roukema	.....	X
Mr. Gunderson	.....	X
Mr. Fawell	.....	X
Mr. Ballenger	.....	X
Mr. Barrett	.....	X
Mr. Cunningham	.....	X
Mr. Hoekstra	.....	X
Mr. McKeon	.....	X
Mr. Castle	.....	X
Mrs. Meyers	.....	X

Member	Aye	No
Mr. Johnson	.....	X
Mr. Talent	.....	X
Mr. Greenwood	.....	.....
Mr. Hutchinson	.....	X
Mr. Knollenberg	.....	X
Mr. Riggs	.....	.....
Mr. Graham	.....	X
Mr. Weldon	.....	X
Mr. Funderburk	.....	X
Mr. Souder	.....	X
Mr. McIntosh	.....	X
Mr. Norwood	.....	X
Mr. Clay	X	.....
Mr. Miller	.....	.....
Mr. Kildee	X	.....
Mr. Williams	X	.....
Mr. Martinez	X	.....
Mr. Owens	X	.....
Mr. Sawyer	X	.....
Mr. Payne	X	.....
Mrs. Mink	X	.....
Mr. Andrews	X	.....
Mr. Reed	X	.....
Mr. Roemer	X	.....
Mr. Engel	X	.....
Mr. Becerra	X	.....
Mr. Scott	X	.....
Mr. Green	X	.....
Ms. Woolsey	X	.....
Mr. Romero-Barceló	.....	.....
Mr. Reynolds	.....	.....
Total	16	22

Rollcall No. 4 (by Mr. Martinez): An amendment to Section 1 of the bill deleting the Sense of the Congress provision declaring it inappropriate for the Department of Labor, as the principal enforcer of ERISA fiduciary standards, to promote ETIs, and replacing it with the Statement the Department should remain neutral regarding ETIs. It also would amend those portions of Sections 1, 2(b), 2(c), and 3(a) barring the Department from encouraging or promoting investment in ETIs to read encouraging or discouraging investment in ETIs. Defeated by a vote of 16–22.

Member	Aye	No
Chairman Goodling	.....	X
Mr. Petri	.....	X
Mrs. Roukema	.....	X
Mr. Gunderson	.....	X
Mr. Fawell	.....	X
Mr. Ballenger	.....	X
Mr. Barrett	.....	X
Mr. Cunningham	.....	X
Mr. Hoekstra	.....	X
Mr. McKeon	.....	X
Mr. Castle	.....	X
Mrs. Meyers	.....	.....
Mr. Johnson	.....	X
Mr. Talent	.....	X
Mr. Greenwood	.....	.....
Mr. Hutchinson	.....	X
Mr. Knollenberg	.....	X
Mr. Riggs	.....	X

Member	Aye	No
Mr. Graham	.....	X
Mr. Weldon	.....	X
Mr. Funderburk	.....	X
Mr. Souder	.....	X
Mr. McIntosh	.....	X
Mr. Norwood	.....	X
Mr. Clay	X	.....
Mr. Miller	.....	.....
Mr. Kildee	X	.....
Mr. Williams	X	.....
Mr. Martinez	X	.....
Mr. Owens	X	.....
Mr. Sawyer	X	.....
Mr. Payne	X	.....
Mrs. Mink	X	.....
Mr. Andrews	X	.....
Mr. Reed	X	.....
Mr. Roemer	X	.....
Mr. Engel	X	.....
Mr. Becerra	X	.....
Mr. Scott	X	.....
Mr. Green	X	.....
Ms. Woolsey	X	.....
Mr. Romero-Barceló	.....	.....
Mr. Reynolds	.....	.....
Total	16	22

Rollcall No. 5 (by Mr. Andrews): An amendment adding a new section to the bill amending ERISA to provide for a civil cause of action for plan participants and beneficiaries against a public employee pension plan and for review by a review board of changes in employer contributions to a public employee pension plan. Defeated by a vote of 17–22.

Member	Aye	No
Chairman Goodling	.....	X
Mr. Petri	X	.....
Mrs. Roukema	.....	X
Mr. Gunderson	.....	X
Mr. Fawell	.....	X
Mr. Ballenger	.....	X
Mr. Barrett	.....	X
Mr. Cunningham	.....	X
Mr. Hoekstra	.....	X
Mr. McKeon	.....	X
Mr. Castle	.....	X
Mrs. Meyers	.....	X
Mr. Johnson	.....	X
Mr. Talent	.....	X
Mr. Greenwood	.....	.....
Mr. Hutchinson	.....	X
Mr. Knollenberg	.....	X
Mr. Riggs	.....	X
Mr. Graham	.....	X
Mr. Weldon	.....	X
Mr. Funderburk	.....	X
Mr. Souder	.....	X
Mr. McIntosh	.....	X
Mr. Norwood	.....	X
Mr. Clay	X	.....
Mr. Miller	.....	.....
Mr. Kildee	X	.....
Mr. Williams	X	.....

Member	Aye	No
Mr. Martinez	X	
Mr. Owens	X	
Mr. Sawyer	X	
Mr. Payne	X	
Mrs. Mink	X	
Mr. Andrews	X	
Mr. Reed	X	
Mr. Roemer	X	
Mr. Engel	X	
Mr. Becerra	X	
Mr. Scott	X	
Mr. Green	X	
Ms. Woolsey	X	
Mr. Romero-Barceló		
Mr. Reynolds		
Total	17	22

Rollcall No. 6 (motion by Mr. Petri) to favorably report the bill with an amendment in the nature of a substitute to the House with the recommendation that the bill as amended do pass. Passed by a vote of 23–15.

Member	Aye	No
Chairman Goodling	X	
Mr. Petri	X	
Mrs. Roukema	X	
Mr. Gunderson	X	
Mr. Fawell	X	
Mr. Ballenger	X	
Mr. Barrett	X	
Mr. Cunningham	X	
Mr. Hoekstra	X	
Mr. McKeon	X	
Mr. Castle	X	
Mrs. Meyers	X	
Mr. Johnson	X	
Mr. Talent	X	
Mr. Greenwood		
Mr. Hutchinson	X	
Mr. Knollenberg	X	
Mr. Riggs		
Mr. Graham	X	
Mr. Weldon	X	
Mr. Funderburk	X	
Mr. Souder	X	
Mr. McIntosh	X	
Mr. Norwood	X	
Mr. Clay		X
Mr. Miller		
Mr. Kildee		X
Mr. Williams		X
Mr. Martinez		X
Mr. Owens		X
Mr. Sawyer		X
Mr. Payne		X
Mrs. Mink		X
Mr. Andrews		X
Mr. Reed	X	
Mr. Roemer		X
Mr. Engel		X
Mr. Becerra		X
Mr. Scott		X
Mr. Green		X

Member	Aye	No
Ms. Woolsey		X
Mr. Romero-Barceló		
Mr. Reynolds		
Total	23	15

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

* * * * * * *

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* * * * * * *

PROHIBITION ON FEDERAL AGENCIES AGAINST ESTABLISHING OR MAINTAINING ANY CLEARINGHOUSE OR OTHER DATABASE RELATING TO ECONOMICALLY TARGETED INVESTMENTS

SEC. 516. (a) IN GENERAL.—No agency or instrumentality of the Federal Government may establish or maintain, or contract with (or otherwise provide assistance to) any other party to establish or maintain, any clearinghouse, database, or other listing—

(1) for the purpose of making available to employee benefit plans information on economically targeted investments,

(2) for the purpose of encouraging, or providing assistance to, employee benefit plans or any other party related to an employee benefit plan to undertake or evaluate economically targeted investments, or

(3) for the purpose of identifying economically targeted investments with respect to which such agency or instrumentality will withhold from undertaking enforcement actions relating to employee benefit plans under any otherwise applicable authority of such agency or instrumentality.

(b) ECONOMICALLY TARGETED INVESTMENT DEFINED.—For purposes of this section, the term "economically targeted investment" has the meaning given such term in Interpretive Bulletin 94–1, as issued by the Secretary on June 23, 1994 (59 Fed. Reg. 32606; 29 C.F.R. 2509.94–1).

* * * * * * *

MINORITY VIEWS

I. INTRODUCTION

H.R. 1594 is a solution in search of a problem. It could expose pension funds to frivolous litigation, at great expense to the participants and beneficiaries. And, it may well force pension fund managers to shift their investments overseas, at a significant cost to domestic investment and ultimately perhaps endangering American jobs.

The original version of H.R. 1594, introduced by Representative Jim Saxton (R–NJ), is a cynical, dangerously partisan bill that, if enacted unaltered, would create enormous and completely unnecessary havoc in Federal pension policy. The Fawell substitute marginally improves that deplorable piece of legislation, but remains burdened by much of the same baggage.

Last year, the Department of Labor (DOL) issued Interpretive Bulletin (IB) 94–1, stating that it was permissible for a pension fund to invest in economically targeted investments (ETIs) under very limited conditions. IB 94–1 made it clear that a pension fund could consider ETIs only if the risk-adjusted return was comparable to alternative investments. The pension fund could not invest in ETIs if the return were less or the risk greater than comparable alternatives. There was no mandate to invest in ETIs. This interpretation was consistent with DOL interpretations dating back through the Reagan Administration.

Nevertheless, in an apparent effort to provide cover for their efforts to slash Medicare, some of our Republican colleagues have seized an opportunity to demagogue and accuse the Clinton Administration of an alleged "pension grab". These baseless efforts are a sad departure from the bipartisan consensus that generally has prevailed on pension issues in the past.[1]

H.R. 1594 threatens to cause confusion and chaos in the pension fund community. It would impose burdensome new restrictions on the private sector for no reason and could lead to considerable litigation against pension fund managers who may have chosen investments with apparently forbidden collateral benefits.

There is another serious implication of the Saxton bill. Pension managers increasingly have been investing U.S. fund assets offshore. The percentage of foreign investment by U.S. pension funds

[1] Ironically, this demagoguery is taking place at the very same time the Republicans are slashing the budget of the Department of Labor's Pension and Welfare Benefits Administration (PWBA), the nation's pension watchdog. The PWBA estimates that if the proposed Republican budget cuts go into effect: $100 million or worker's pension money will not be recovered from those who misappropriated it; 20 percent fewer pension criminals will be indicted for embezzlement and other crimes; and 30,000 requests for information and assistance from working families concerned about their health care and pension benefits will go unanswered. This small agency that is vested with the responsibility to oversee $3.5 trillion in pension assets has been characterized as the "most highly leveraged operation of the entire federal government" by the Brookings Institution. The proposed cuts in the PWBA will greatly disarm the agency.

has increased from 3.7% in 1989 to 8% in 1994 to a projected 12.2% in 1999. If H.R. 1594 is enacted, this trend is likely to accelerate, leading to a further loss of American jobs. Pension fund managers faced with two equivalent investments, a domestic investment which creates jobs here, and a foreign investment which creates jobs overseas, will more likely choose the foreign investment. This will be the safe course of action to avoid any implication that the collateral benefits of the investment were even considered.

As Secretary of Labor Robert Reich stated in a July 19 letter to committee Chairman Bill Goodling:

> H.R. 1594 could have a significant adverse impact on America's private sector pension funds, jeopardizing the proven statutory arrangement that governs the investment of over $3 trillion, investments critical to the retirement income security of workers, retirees, and their beneficiaries. For these reasons, the Administration strongly opposes the bill.

II. The Reported Version of H.R. 1594 is the Offspring of a Truly Terrible Bill

A. THE ORIGINAL SAXTON BILL

The original Saxton bill (1) declares it the sense of Congress that ETIs violate the Employee Retirement Income Security Act (ERISA), (2) requires ERISA to be applied without regard to IB 94–1 and all similar interpretations, (3) forbids DOL employees from promoting ETIs, (4) forbids any Federal agency from maintaining an ETI clearinghouse, and (5) requires termination of the existing contract for the ETI clearinghouse.

The original Saxton bill is strongly opposed by the pension fund community, and for good reason. It is a terribly misguided proposal, contaminated by gross misinterpretations and political hysteria.

Since IB 94–1 is consistent with past practice, enactment of the Saxton bill would raise serious questions as to the appropriate fiduciary obligations of pension fund managers. Furthermore, inasmuch as most investments have collateral benefits, and may have been selected partly because of such collateral benefits, a pension fund manager would be exposed to the risk of liability every time an investment failed to perform adequately. This would subject pension plans to the possibility of frivolous and excessive litigation over every investment decision.

Plan managers viewed the Saxton bill as a troublesome solution to a non-problem. In addition to creating the risk of excessive litigation, the bill raised a number of other concerns for pension managers. Certain types of fund investments with obvious collateral benefits, such as Employee Stock Ownership Plans (ESOPs), would be particularly vulnerable to attack. In addition, such routine transactions as loans to plan participants in defined contribution plans would be legally questionable if the Saxton bill passed.

As the Council of Institutional Investors pointed out in a letter to Representative Saxton:

> Unfortunately, we believe that H.R. 1594 may unwittingly create precisely the kinds of encroachments on ERISA's critical investment standards that it is thought to prevent. By creating exactly the kind of political pressure you indicate is inappropriate, the legislation imposes special constraints on some types of investments not politically favored by the supporters of the bill.

Furthermore, the bill potentially puts into question every existing investment in a pension plan portfolio. If the original bill were enacted, pension plans could have to dump many existing holdings at fire sale prices. In addition, as discussed more fully below, the bill (in any form) is likely to encourage pension plans to invest overseas and thus lead to a loss of American jobs.

B. DEMAGOGUERY AND HARDBALL POLITICS DRIVE SAXTON BILL

As indicated, the business community opposed the Saxton bill. Yet, this legislation is apparently being shoved down their throats by a campaign of intimidation by the Republican leadership. In May, Representative Saxton sent a letter (see attached) to a number of corporate chief executives, stating:

> I am writing to express my serious concerns about Economically Targeted Investments, or ETIs, and the campaign currently underway within the Clinton Labor Department to encourage and promote these kinds of risky investments. ETIs are harmful to corporations' pension plans because, to quote the Speaker of the House, "by inserting a non-economic goal in how you invest pension funds, you are by definition lowering the return on the investments, and you're by definition increasing the risk."
>
> In fact, your firm already may have been approached by the Administration or its allies in an orchestrated effort to give the impression that ETIs are permissible under ERISA and to make the investment community "comfortable" with ETIs.
>
> ETIs pose a serious and immediate threat to the fiscal safety and soundness of your pension funds.

The Saxton letter is chock full of false claims. Not only is there no truth to Representative Saxton's absurd charge that the Administration is trying to promote risky investments, but the allegations that ETIs are unduly risky or impose a "threat to . . . fiscal safety" are irresponsible and spurious. ERISA has always provided that, in order to be permissible under the law, ETIs must be prudent investments in terms of risk and return. And, contrary to the remarks attributed to Speaker Gingrich, IB 94–1 reaffirms DOL's position that ETIs are only permissible if they provide the plan with a competitive risk-adjusted rate of return:

> The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives.

With respect to the general performance of ETIs, the General Accounting Office (GAO) recently evaluated the performance of a number of ETIs used by non-Federal public pension plans in a report released in March, "Public Pension Plans—Evaluation of Economically Targeted Investment Programs" (GAO/PEMD–95–13). GAO concluded that "the expected performance of ETI investments other than venture capital . . . was generally similar to the returns of benchmark investments."

While some ETIs perform poorly, it is equally true that investments of all kinds fail from time to time. There have also been notable ETI success stories. The majority report cites examples of "higher risk and lower return" from "social investing" by public pension funds. It is important to note that public pension funds are not subject to the strict fiduciary standards of ERISA and, under the IB, acceptable ETIs, by definition, must have comparable risk-adjusted returns as alternative investments.

In his letter, Representative Saxton also claims, without any support, that "a number of companies and pension investors have felt subtle pressure from the Administration" to invest in ETIs.[2] The letter is full of inflammatory language and baseless allegations such as an alleged Administration plan for "compulsory ETI quotas". The letter also includes unsubstantiated charges that the DOL engaged in "coercive" behavior, "intimidat[ion]", and other "nefarious scheme[s]". The letter even refers to a "Clinton quota wolf".

One of the most egregious falsehoods is the alleged plan of the Clinton Administration to establish "compulsory ETI quotas". It is important to reiterate that IB 94–1 does not mandate ETIs nor does it in any way authorize investments in ETIs at a concessionary rate. In fact, the Clinton Administration is on the record in opposition to mandated ETIs, including in testimony before this Committee and testimony before Vice Chairman Saxton's Joint Economic Committee.

Finally, the letter urges companies to support his legislation, including working within trade associations to generate support. The letter then requests a response as to whether the recipient will support his bill and requests a copy of any correspondence encouraging trade associations to oppose ETIs.[3]

III. IB 94–1 Is Consistent With Past, Bipartisan Practice

A. THE ERISA STANDARDS

The Employee Retirement Income Security Act governs private pension plans. Section 404 of ERISA requires plan fiduciaries to act solely in the interest of the participants and beneficiaries. More specifically, fiduciaries must act for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. Furthermore, plan fiduciaries must act with care, skill, prudence, and diligence, and

[2] Both the Majority's views and Chairman Fawell, in his opening statement at the Subcommittee markup, have quoted David Ball, a former Bush Administration official, as claiming that the Clinton Administration is putting "inappropriate pressure" on pension fund managers to invest in ETIs. Incredibly, no evidence has been proffered exposing such alleged coercion.

[3] In its letter to Representative Saxton, the Council of Institutional Investors wrote that the rhetoric in his letter "smacks of the pension equivalent of McCarthy-era scare tactics".

they must diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Finally, fiduciaries must act in accordance with the documents governing the plan, to the extent consistent with ERISA.

ERISA has been interpreted as requiring fiduciaries to act "with an eye single to the interests of the participants and beneficiaries."[4] At the same time, plan trustees will not violate their duties as fiduciaries by taking action which, after careful and impartial investigation, they reasonably conclude best promotes the interests of plan participants and beneficiaries, simply because the investment incidentally benefits the corporation or themselves.[5] More specifically, DOL has generally interpreted ERISA as not allowing external considerations to influence investment choice unless the proposed investment would be equal or superior to alternative investments.

Dennis Kass, former Assistant Secretary of Labor for Pension and Welfare Benefits, explained the policy in a July 14, 1986 letter to Reed Larson of the National Right to Work Committee:

> We have construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries to unrelated objectives. However, *there is nothing in ERISA which would require that the decision to make an investment be wholly uninfluenced by the desire to achieve such objectives, if the investment, when judged solely on the basis of its economic value to the plan, is equal or superior to alternative investments available.* [Italics added.]

The legislative history of ERISA shows the clear intent of Congress that pension plan managers could consider collateral economic benefits as a factor in making investment decisions. The Conference Committee Report on ERISA included the following discussion in the context of an explanation of ERISA's section 408 exemption procedures:

> [T]he conferees recognize that some individual transactions between a plan and a party-in-interest may provide substantial independent safeguards for the plan participants and beneficiaries and may provide substantial benefit to the community as a whole, so that the transaction should be allowed under a variance. H. Rept. 93–1280, 93rd Cong., 2nd Sess. 310 (1974).

To illustrate, the conferees cited the example of a pension plan sponsored by a Dayton, Ohio employer. The pension managers were considering an investment in a construction project that was part of a larger redevelopment project. The conferees discussed evidence that the investment would be financially sound and urged DOL to approve the investment:

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[4] *Donovan* v. *Bierwirth*, 680 F.2d 263, 271 (2d Cir.), cert. denied, 459 U.S. 1069 (1982).
[5] See Id.

> It is expected that in this situation, because of the substantial safeguards for the plan and its participants and beneficiaries, because of the lack of "tax abuse" aspects, because the transaction became binding before the conferees' decisions were announced, and because of the importance of the project to the entire community of Dayton, Ohio, that the Secretary of the Treasury and Secretary of Labor will grant a variance to the transaction for its whole term. *Id.*

By this direction, the Conferees were clearly indicating the acceptability of considering the collateral economic benefits of an otherwise prudent investment.

B. WHAT EXACTLY IS AN ETI?

IB 94–1 provides as follows: "As used in this interpretive bulletin, an ETI is an investment that is selected for the economic benefit it creates, in addition to the investment return to the employee benefit plan investor. ETIs fall within a wide variety of asset categories including real estate, venture capital and small business investments." Notably, H.R. 1594 incorporates the interpretative bulletin's definition of "ETI" by reference.

In a June 13, 1995 letter to Mr. Fawell, the Department of Labor explained:

> The bulletin defines ETIs in terms of the process by which an investment is chosen rather than treating ETIs as a particular class of investments. ETIs may be debt instruments or equity investments. They may be publicly traded securities or private placements. They may be direct investments in real estate.

Thus, ETIs are not, by definition or by agency interpretation, social or political investments. The allegation that they are is either inaccurate or, at the very least, incomplete and misleading.

C. THE INTERPRETIVE BULLETIN

On June 23, 1994, the DOL published Interpretive Bulletin (IB) 94–1 in the Federal Register. The IB stated that ERISA does not prevent private pension funds from investing plan funds in ETIs, if the ETI has an expected rate of return that is commensurate to rates of return of alternative investments with similar risk characteristics that are available to the plan, and if the ETI is otherwise an appropriate investment for the plan in terms of such factors as diversification and the plan's investment policy.

This interpretation restates and codifies prior DOL opinions, which emphasized that pension plans could consider other economic benefits of an investment only if the risk-adjusted return of a particular investment was comparable to alternatives. And contrary to the assertion in the Majority's views, there is nothing in IB 94–1 that allows fiduciaries to invest in ETIs with one "eye" towards benefiting others, while only later going back, after the fact, to see if the investment violates ERISA's fiduciary rules. Under the IB, the investment could only be lawfully made in the first place if it were consistent with ERISA's standards.

The consistency of IB 94–1 with past DOL practice was confirmed by the testimony of Robert Monks, who served as ERISA Administrator under President Reagan. Mr. Monks testified at the June 15 Subcommittee hearing that:

> I feel that the release issued about a year ago by the Department was a very positive step. The reason . . . is that since President Ford signed this on Labor Day in 1974, we have had President Carter; we have had President Reagan, President Bush, and President Clinton; and it is extremely important . . . that there be assurance of continuity.
>
> And so when you have a release that so painstakingly . . . makes clear that it is a recodification of the practice that has been consistently followed by both parties over a 20-year period of time, I think that is what you need in order to make the investment professionals able to do what they have done terribly well.
>
> So I view it as extremely useful, and I take it as being unambiguous in the sense of not promoting anything, but of being just a plain statement of what each of the people who have the responsibility for administering that statute took to be the law.

D. ETI'S HAVE NEVER BEEN A PARTISAN ISSUE

Until this Congress, ETIs were generally not a partisan issue. Ronald Reagan himself expressed very strong support for ETIs. In 1981 President Reagan said the following about the benefits of investing pension funds in housing:

> This morning we had a group from the construction industry in, and we have—over in the Labor Department—made some definite changes in regulations. Those changes are going to free up the billions and billions of dollars in pension funds for—that they can now be invested in home mortgages. Previous to this, they have not been able to. The total pension money available for investment in this country is over a trillion dollars—will be 3 trillion by 1984—and for the first time, this money will be made available for that kind of investment, which we think should go a long way toward beginning the revival of the housing industry.

In 1990, Jack Kemp, then Secretary of Housing and Urban Development, wrote Elizabeth Dole, then Secretary of Labor, to ask guidance on whether it would be permissible under ERISA to make below market investments in housing. In a letter dated November 23, 1990, Secretary Dole responded that ERISA does not permit an investment that sacrifices market rate returns. However, Secretary Dole went on to comment that DOL had worked with the building and construction trades unions to structure a program that allows investment in housing construction.

More recently, the Bush Administration's ERISA Advisory Council, after months of review, concluded in 1992, with respect to ETIs, that ". . . carefully-selected, skillfully-structured investment portfolios can be created which meet both the targeting objectives

which may be important to a plan's beneficiaries or its sponsor and the plan's fundamental need for a competitive return on investment." The Council recommended that "The Department of Labor should encourage pensions to look beyond publicly-traded, financial instruments and to be creative in making their funds available to non-traditional investments under traditionally-sound financial standards." In addition, the 1993 Council, composed of Bush Administration appointees, specifically recommended that the Labor Department issue an advisory opinion on DOL policy on ETIs.

As Ronald D. Watson, Chief Executive Officer of Custodial Trust Company and Chairman of the Bush Administration ERISA Advisory Council ETI Work Group in 1992, pointed out, in a July 17, 1995 letter to Ranking Member William L. Clay, the "conclusion that *ETIs can have a place in pension portfolios* was reached by a *cautious* and *instinctively conservative* group of advisors under a *Republican* Administration. . . ." [Italics added.]

And yet in another illustration of the extreme partisanship the Republican majority has injected into this issue, it has attacked the ETI Clearinghouse, trying to frame it as an initiative created by the Clinton Administration. At the Subcommittee hearing on June 15, David Ball, a former Bush Administration official, denied that the ERISA Advisory Council appointed by the Bush Administration recommended an ETI clearinghouse.[6] But in November 1992, the Bush Administration's ERISA Advisory Council had specifically recommended that:

> The Department of Labor *should take the initiative in gathering information* about the investment performance and attributes of ETIs and *making it available to the pension community* to aid its investment decisions. (Report of the ERISA Advisory Council, Nov. 1992, p. 30.) [Italics added.]

DOL has contracted with an outside firm, Hamilton Securities Advisory Services, to establish a clearinghouse of information on ETIs.[7] This was entirely consistent with recommendations made by two working groups of The ERISA Advisory Councils, one in 1992 during the Bush Administration and one in 1993 during the Clinton Administration.

The Clearinghouse was supported by the business community. For example, Judy Mares, representing the Committee on Investment of Employee Benefit Assets (CIEBA) of the Financial Executives Institute, testified before the ETI Working Group of the ERISA Advisory Council on September 22, 1993 as follows:

> We do think that the clearinghouse could provide important information—an important information base to facilitate both us, our investment advisors and packagers of

---

[6] Mr. Ball testified at the Subcommittee hearing, "I would like to make it clear right at the beginning of my testimony that at no time in no way have I ever or would I ever endorse economically targeted investments." And yet, in November 1992, at a meeting of the ERISA Advisory Council, Mr. Ball had stated, "all other things being equal, something with a social purpose can be taken into account." *IB 94–1 says nothing more subjective than what Mr. Ball said previously.*

[7] Incidentally, Hamilton's Executive Director is Austin Fitts, a senior housing official in the Bush Administration, and the Deputy Director is Grace Morgan, a former aide to Senator Alfonse D'Amato (R–NY).

securitized products in the evaluation of the investment merits of a variety of investments, which we could construe as economically targeted investments.

IV. The Fawell Substitute—A Negligible Improvement Over the Saxton Bill

A. GENERALLY

The original Saxton bill effectively voided all pasts interpretations that allow the consideration of collateral benefits. The Republican staff of the Committee then negotiated a "compromise" with elements of the pension fund community which that community could accept, albeit reluctantly.

While the Fawell substitute is a modest improvement over the original Saxton bill, it will still bear terrible consequences. By proposing to repeal IB–94–1, it casts grave doubt on the longstanding precedents upon which the interpretive bulletin was based as well as on the pension policy set forth in the interpretive bulletin. Accordingly, the Fawell substitute raises serious doubts about the acceptability of considering collateral benefits in pension fund investment decisions. It runs the risk of exposing pension funds to vexatious litigation, at the expense of their participants and beneficiaries. And it runs the risk of forcing pension funds to invest overseas rather than domestically, to avoid any implication of consideration of collateral benefits.

Mr. Fawell's wishful thinking notwithstanding, the firestorm created by the Fawell substitute cannot be contained to the interpretive bulletin. And no amount of legislative history can preclude the uncertainty and chaos the language of the proposal will engender.

B. THE FAWELL SUBSTITUTE RAISES ITS OWN TROUBLING PROBLEMS

The Republicans have spoken out of both sides of their mouths concerning whether the true intent of H.R. 1594 is to effect neutrality with regard to ETIs. In Chairman Fawell's opening statement before the Subcommittee markup on July 13, he insisted that ETIs are horrible investments, and he even referred to them as "political investments", with "higher risk and lower return". And yet, in other instances, the Republicans insist they harbor no subjective ill views toward ETIs. For example, a subcommittee staffer was quoted in the July 14 BNA Daily Labor Report saying that "our goal is to be neutral on ETIs."

In the interpretive bulletin, DOL emphasized that ETIs were acceptable only to the extent they produce comparable risk-adjusted returns as other investments; consequently acceptable ETIs under the IB 94–1 cannot include "political investments", with "higher risk and lower return."

What, then, could the true purpose of H.R. 1594 possibly be? If the majority genuinely wants to effect neutral government policy on ETIs why did it categorically reject amendments offered by the Democrats that would have written that purpose in stone?

There is abundant evidence of the deep animus of the Republican leadership toward ETIs, evidence found beyond the original introduction of the Saxton bill and this Committee's actions thus far. For instance, the FY 1996 Labor-HHS Appropriations bill (H.R.

2127) prohibits the use of funds by DOL for various ETI-related activities. The purported merit of this starkly partisan abuse of the appropriations process is explained in the accompanying Committee Report:

> The bill . . . prohibits the Department of Labor from taking any steps to promote so-called "economically targeted investments (ETI's)" by private pension funds covered by ERISA. These include such things as investing in low-cost housing, infrastructure improvement, and small business development. . . . Investing in ETI's could jeopardize pension funds. (House Appropriations Committee Report on the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Bill for Fiscal Year 1996 (H. Rept. 104–209) at 24.)

By alleging that ETI investments in such initiatives as low-cost housing, infrastructure investment, and small business development could jeopardize pension funds, the House Republican leadership is hardly interested in making a neutral statement about ETIs.

C. THE PROHIBITION ON PROMOTING ETI'S IS VAGUE AND DANGEROUS MICRO-MANAGEMENT

Chairman Fawell has stated that his substitute permits pension funds "to continue to obtain individual advisory opinions from the Department regarding the legality of specific proposed transactions." Yet, his substitute provides that no officer or employee of the Department of Labor may travel, lecture, or otherwise expend resources available to such Department for the purpose of promoting, directly or indirectly, economically targeted investments.

This standard is vague, overbroad, and nearly unlimited. Just exactly what constitutes "indirect promotion?" How do you determine that someone has a "purpose" to "indirectly promote?"

The standard is so overbroad that it would lead to some absurd results. For instance, recall that in 1981 President Ronald Reagan spoke in support of investing pension funds in housing. H.R. 1594 would prohibit any DOL employee from restating what President Reagan said. In fact, if H.R. 1594 had been the law in 1981, it would have prohibited DOL staff from helping to draft the speech or driving the President to the location where the speech was delivered.

Here is another example of the absurdity: Recall Secretary Kemp's 1990 letter to Labor Secretary Elizabeth Dole, asking for guidance on whether it would be permissible under ERISA to make below market investments in housing. In her response, Secretary Dole commented that the DOL had worked with the building and construction trades unions to structure a program that allows investment in housing construction. If H.R. 1594 had been the law, Secretary Dole's letter would have been construed as promoting ETIs, as would any work the DOL did with the building and construction trades to structure the program. Secretary Dole's letter would have violated the law.

The most ridiculous and perhaps worst consequence of H.R. 1594's prohibition on "promoting" ETIs is that it would effectively

prohibit the DOL from providing advisory opinions or guidance in response to questions regarding ETIs. Any accurate reflection of what ERISA provides with regard to ETIs could be characterized as indirect or perhaps even direct promotion. Although, H.R. 1594 claims to limit its scope to repealing IB 94–1, the ban on ''promotion'' has the effect of repealing all previous interpretations by preventing the DOL from ever repeating or citing them. At the very least, this prohibitive language portends a chilling effect on the decisions of DOL personnel with respect to investments that have any collateral benefits.

D. H.R. 1594 WOULD UNNECESSARILY DIRECT PENSION INVESTMENTS OVERSEAS

Ambiguity about the propriety of considering collateral benefits and the ''chilling effect'' caused by Republican hysteria surrounding ETIs are likely to bring about increased investments of U.S. pension assets overseas. The attached charts graphically illustrate the current trend in that direction. H.R. 1594 would accelerate that trend, and a correlative loss of American jobs would result.

Consider this: If the bill were enacted and a pension fund manager were faced with a choice of two equivalent investments, one in the United States and one abroad, the safe course would be to invest overseas, thus avoiding implications that the manager inappropriately considered the domestic nature of the alternative investment.

Committee Republicans dismissed this very legitimate concern, and rejected an amendment that would have merely clarified that nothing in the bill prohibited domestic investments by pension plans.

V. THE REPUBLICANS REJECTED ALL ATTEMPTS TO ENSURE DOL NEUTRALITY

Democratic members of the Committee offered several amendments at both the subcommittee and full committee in an attempt to clarify the true intent of the bill. Adoption of the amendments would have advanced legislative clarity. The Fawell substitute, as reported, suffers mightily from confusion of purpose. Indeed the greatest beneficiaries of this needless vagueness and ambiguity likely will be the nation's pension lawyers.

A. AMENDMENTS OFFERED AT SUBCOMMITTEE MARKUP ON JULY 13

At the July 13 Subcommittee markup, Democratic members offered amendments to clarify that certain investments would continue to be permissible and to make the legislation truly neutral on ETIs. All of the amendments were rejected by the majority, thus casting further doubt on the effect of the legislation.

The first amendment, offered by Representative Martinez, stated the further Sense of Congress that it is not inappropriate for pension plans to consider the collateral economic benefits of a potential investment, assuming equivalent risk adjusted returns. This is consistent with past interpretations of ERISA. The Republicans complained such an amendment was not necessary and was micromanagement.

The second amendment was a "truth in legislation" amendment offered by Representative Martinez. It stated that further Sense of Congress that, therefore, it is inappropriate for pension plans to select investments because they provide domestic economic benefits. If the first amendment was not consistent with the intent of the bill, then the second amendment must be. Either it is appropriate to consider collateral benefits, or it is not, depending on the intent of the proponents of the bill. While Democratic Members never intended to support this amendment, it was surprising that no Republican Member did either, in light of the vote on the earlier amendment.

The third amendment, offered by Representative Martinez, stated the further Sense of Congress that just as DOL should not encourage ETIs, it should not discourage them either. This amendment would have preserved DOL neutrality, but was rejected.

The fourth amendment, offered by Representative Owens, clarified that nothing in the bill prohibits pension plan investments in programs administered by the Department of Defense intended to encourage the use of private capital for the construction, replacement, or renovation of military housing. The fiscal year 1996 Defense Department authorization bill (H.R. 1530), recently passed by the House, includes a program designed to encourage private investment in the construction of military housing. The Republicans again complained about alleged micro-management.

Similar to the Owens amendment, the fifth amendment, offered by Representative Payne, clarified that nothing in the bill precludes pension plan investments in infrastructure improvements. Again the Republicans cried "micro-management".

B. AMENDMENTS OFFERED AT FULL COMMITTEE MARKUP ON JULY 20

Democratic Members again sought to clarify the intent of the bill at the Full Committee markup on July 20.

An amendment offered by Representative Green was similar in purpose to the Owens and Payne amendments and attempted to clarify that nothing in the bill prohibited domestic (as opposed to foreign) investments by pension plans. This clarifying amendment was also rejected by a party line vote, leading to the conclusion that the Republican Members of the Committee care little whether pension plans invest overseas, rather than domestically and thus care little about the inevitable loss of American jobs.

Representative Martinez offered an amendment to state clearly and unequivocally that DOL should remain neutral on ETIs. The amendment was defeated by another party-line vote.

Representative Sawyer then offered an amendment to condition the effect of the legislation on certification by the Secretary of Labor that adequate funding exists for the PWBA to carry out its tasks during fiscal year 1996, including pension enforcement. This most reasonable amendment was defeated by voice vote. It is simply ironic that the Republicans irresponsibly accuse the Clinton Administration of engaging in a "pension grab" at the same time the Republicans are cutting the budget to enforce the protections of ERISA.

Finally, Representative Andrews offered an amendment related to public employee pension plans, which was also defeated.

VI. CONCLUSION

The Democratic Members of the Committee tried to amend the bill to clarify its true intent, to ensure DOL neutrality, and to ensure that pension funds could continue to invest domestically. Unfortunately, all of our effort were rejected. We regret that Republican members of this committee have allowed themselves to be cowed by transparent demagoguery and bullied into reporting out this politically-driven, intellectually dishonest legislation. If the legislation were innocuous it would be bad enough, but H.R. 1594 is dangerous public policy.

We are dismayed that the Committee's Republican leadership chooses to waste precious time and effort attending to this kind of legislative chicanery when instead the Committee should be focusing on matters far more critical to its jurisdiction, such as consideration of a long overdue increase in the minimum wage.

Attachments: Reich letter, Saxton letter, charts of foreign investment by pension plans.

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, July 19, 1995.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Economic and Educational Opportunities, House of Representatives, Washington, DC.

DEAR CHAIRMAN GOODLING: I understand that the Committee on Economic and Educational Opportunities will shortly be marking up H.R. 1594, as amended. This bill would declare the Department of Labor's Interpretive Bulletin 94–1 null and void, substantially restrict the activities of Department personnel regarding the interpretation of the Employee Retirement Income Security Act of 1974 (ERISA), and prevent the Department's participation in an informational clearinghouse on economically targeted investments (ETIs).

H.R. 1594 could have a significant adverse impact on America's private sector pension funds, jeopardizing the proven statutory arrangement that governs the investment of over $3 trillion, investments critical to the retirement income security of workers, retirees, and their beneficiaries. For these reasons, the Administration strongly opposes the bill.

By repealing Interpretive Bulletin 94–1, the bill would throw into doubt the Department's longstanding legal position on the extent to which pension plan fiduciaries may consider benefits to the local or national economy in selecting plan investments. Under administrations from President Reagan to the present, the Department has consistently maintained that fiduciaries may consider such collateral benefits when choosing among investment opportunities that are equally attractive in terms of the direct financial benefit they would bring to the plan. This position was explicitly articulated by the conferees at the time of ERISA's passage. If H.R. 1594 were enacted, fiduciaries could be exposed to strict liability for investment decisions simply by a showing that they considered such benefits, even though the investments were in every respect prudent. As a result, the bill is likely to interfere with the ability of plan fidu-

ciaries to make investment decisions in the best interests of plan participants and free of unnecessary government interference.

At a minimum, the bill would increase the risk of litigation to fiduciaries, even when they are choosing financial opportunities in which they now commonly invest, such as mortgage loans, participant loans, and ESOPs. The bill's language could also cripple the Department's ability to use its exemption-granting authority, essential to the investment of pension funds in our financial markets, because these exemptions commonly provide collateral benefits. Moreover, by preventing the Department's participation in an ETI clearinghouse—an idea proposed by the business community and endorsed by a bipartisan advisory panel appointed by the Bush Administration—the bill could deny to plan fiduciaries a supply of relevant and timely information, the life blood of productive investing.

Beyond these damaging immediate effects, I am concerned that the contentious debate touched off by H.R. 1594 has the alarming potential to do longlasting damage to the private pension system. Traditionally, Congressional treatment of ERISA issues has been marked by strong bipartisan support for the protection of the employer-sponsored private pension system. This system has flourished in the 20 years since ERISA's enactment because investment decisions have been left in the hands of responsible fiduciaries. Rather than departing from this proven approach, the well-settled rules embodied in ERISA and enforced by the Labor Department should be preserved.

The Office of Management and Budget advises that there is no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Please contact me if I can provide any additional information to assist you in this matter.

Sincerely,

ROBERT B. REICH.

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
Washington, DC, May 24, 1995.

I am writing to express my serious concerns about Economically Targeted Investments, or ETIs, and the campaign currently underway within the Clinton Labor Department to encourage and promote these kinds of risky investments. ETIs are harmful to corporations' pension plans because, to quote the Speaker of the House, "by inserting a non-economic goal in how you invest pension funds, you are by definition lowering the return on the investments, and you're by definition increasing the risk." The Speaker's description of the problem is backed up by the leading experts in pension and trust law.

Unfortunately, the Clinton Labor Department has undertaken an aggressive campaign to encourage and promote ETIs. In fact, your firm already may have been approached by the Administration or its allies in an orchestrated effort to give the impression that ETIs are permissible under ERISA and to make the investment community "comfortable" with ETIs.

ETIs pose a serious and immediate threat to the fiscal safety and soundness of your pension funds. Moreover, it is highly inappropriate for a Department of Labor official to go around the country promoting ETIs.

I have also received indications that a number of companies and pension investors have felt subtle pressure from the Administration during meetings and conversations with Labor Department officials to initiate or expand their ETI activities. I fully appreciate the coercive potential of a seemingly innocuous promotional visit when the promotional pitch is being made by the very federal agency that regulates the firm.

Now I realize that you may not be worried about ETIs because you would never have your company's pension plan become involved with ETIs. You should be worried about the Administration's activities, however, because their ultimate objective is to mandate social investing through compulsory ETI quotas, similar to the lending quotas now imposed on financial institutions by the Clinton Administration. Allowing ETIs to pass muster under ERISA would be a significant step forward along the path of making ETIs permissible. What the Administration seeks to make permissible today, it wishes to make compulsory tomorrow.

Based upon my contacts with the pension fund community, it appears that the Clinton Administration may have been at least partially successful in convincing some companies to initiate or expand their involvement with ETIs. To the extent that companies are allowing themselves to be lured or intimidated into ETI activity, they are exposing themselves and others to an increased financial and legal risk.

I have introduced the Pension Protection Act of 1995 (H.R. 1594) to stop the Clinton pension fund grab. Not only will my bill stop the Clinton Administration from unduly pressuring you into ETIs, it will thwart Clinton's long range objective to gain access to private pension funds through compulsory ETI quotas. It will not arbitrarily limit investments of any category, but it would protect the pension's assets from Secretary Reich's and President Clinton's spending schemes.

You cannot afford to wait until the Clinton quota wolf is at your door. If you do, history records in the cases of employment and lending quotas that you will be left with the Hobbesian Choice between litigation (or some other coercive threat) and signing a "voluntary" consent decree to adopt quotas.

Proof of this threat to you is the Interpretive Bulletin that Secretary Reich issued on July 28, 1994 (IB 94–2) which encourages shareholder activism on the part of pension fund managers. Secretary Reich wants pension funds to vote their shares of stock to influence corporations towards social goals that have nothing to do with the economic performance of the firm. For instance, TIAA–CREF initiated in 1993 a set of corporate governance guidelines calling for quotas of minorities and women on corporate boards. I intend to introduce legislation soon to address this nefarious scheme.

Please write me back indicating whether you support my efforts against ETIs. Then write your own Congressmen and Senators and urge them to pass H.R. 1594 and its Senate companion, S. 774. Fi-

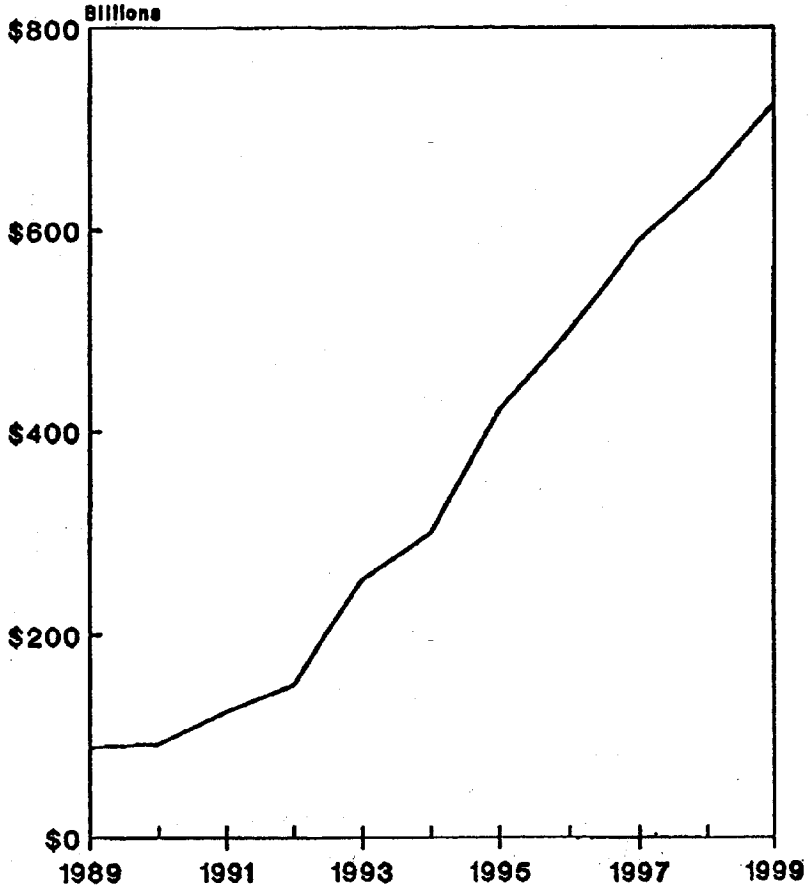
nally, I also urge you to work actively within your trade associations such as CIEBA, APPWP, BRT, and NAM to stop these pension threats. I would appreciate a copy of any correspondence that you send encouraging organizations to oppose ETIs.

Thank you for your assistance in this matter.

Sincerely,

JIM SAXTON, *Vice Chairman.*

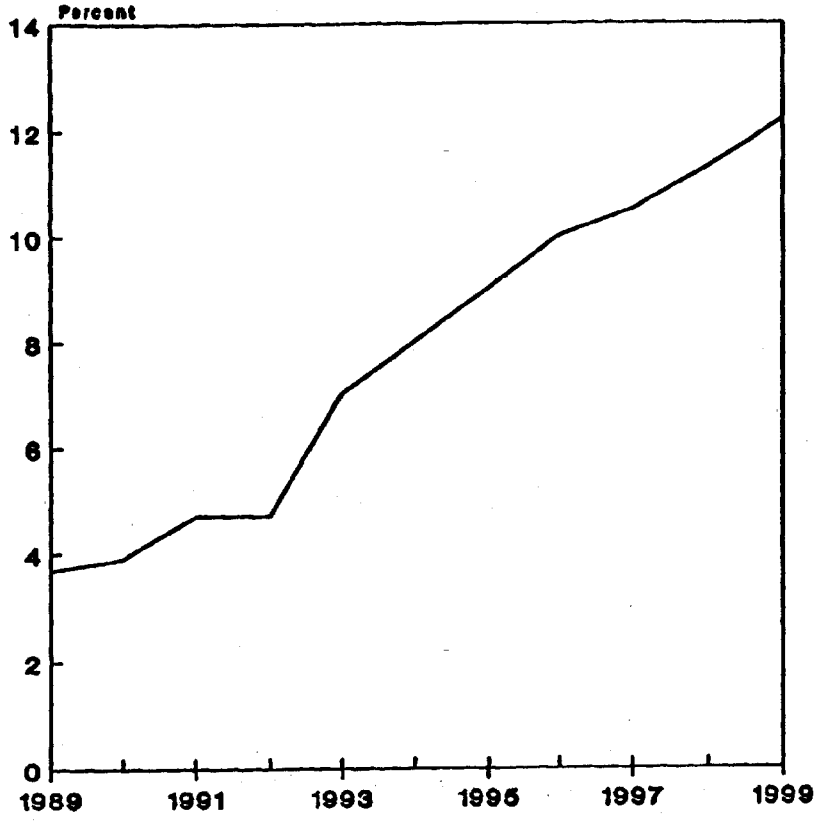
International Investments of Total Pension Assets, 1989-1999



Note: 1995-1999 data are projected.

Source: InterSec Research Corp., Stamford, Conn.

Percent of International Investments of Total Pension Assets, 1989-1999



Note: 1995-1999 data are projected.

Source: InterSec Research Corp., Stamford, Conn.

WILLIAM (BILL) CLAY.
DALE E. KILDEE.
MATTHEW G. MARTINEZ.
GEORGE MILLER.
TOM SAWYER.
MEL REYNOLDS.
ROBERT E. ANDREWS.
CARLOS ROMERO-BARCELÓ.
ELIOT L. ENGEL.
PAT WILLIAMS.
LYNN C. WOOLSEY.
BOBBY SCOTT.
XAVIER BECERRA.
DONALD M. PAYNE.
PATSY T. MINK.
MAJOR R. OWENS.
GENE GREEN.

ADDITIONAL VIEWS BY JAMES C. GREENWOOD

Under the Employee Retirement Income Security Act (ERISA), private pension funds are required to be invested for the exclusive benefit of plan participants and beneficiaries. In June 1994, however, the Department of Labor issued interpretive bulletin 94–1 stating that the ERISA "fiduciary standards applicable to ETIs are no different than the standards applicable to plan investments generally." In other words, according to the DOL, the prudential and fiduciary requirements of ERISA do not violate the exclusive purpose by first taking into account the economic benefits an investment creates apart from the actual investment return. Through my support for H.R. 1594, the Pension Protection Act, I hope to restore the DOL to its proper role as the watchdog of the nation's pension fund. By declaring the bulletin null and void and by prohibiting the DOL from issuing rules, regulations, or from expending money to promote ETIs in any way, H.R. 1594 once again makes the pension participant the principle beneficiary.

During the Committee's consideration of H.R. 1594, I missed several roll call votes because I was unavoidably detained by a meeting with the Speaker of the House on Medicare Reform.

Had I been present for roll call vote number one, Congressman Green's amendment to insert section 5, the Protection of Domestic Investments, I would have voted "No." Had I been present for roll call vote number two, Congressman Payne's amendment to insert section 5, the Protection of Investments in Infrastructure Improvements, I would have voted "No." Had I been present for roll call vote number three, Congressman Owens' amendment to insert section 5, the Protection of Investments Under Defense Programs Providing for Military Family Housing and Ancillary Supporting Facilities, I would have voted "No." Had I been present for roll call vote number four, Congressman Martinez's amendment to the amendment in the nature of a substitute to strike language regarding the discouraging of ETIs, I would have voted "No." Had I been present for roll call vote number five, Congressman Andrews' amendment to ERISA to provide for a civil cause of action for plan participants and beneficiaries against a public employee pension plan, I would have voted "No." Had I been present for roll call vote number six, to Report the bill, I would have voted "Aye." In each instance, I was meeting with the Speaker of the House on Medicare Reform.

If enacted, this important legislation will effectively restore the Department of Labor to its proper role of chief enforcer of ERISA's fiduciary standards. I believe that this nation's $4.8 trillion pension fund deserves the protection and the attention that will be revived by the enactment of H.R. 1594.

I also strongly support H.R. 1114, a bill to amend the Fair Labor Standards Act to allow individuals who are 16 and 17 to load mate-

rials into cardboard balers and compactors. Despite advances in technology, the Department of Labor has failed to update Hazardous Order 12, which prohibits minors from loading balers and compactors. I believe that 16- and 17-year-olds are capable of safely loading cardboard balers and compactors that meet ANSI standards.

During the Committee's consideration of H.R. 1114, I missed several roll call votes due to a simultaneous meeting with constituents in the Capitol.

Had I been present for roll call vote one, Congressman Owens' amendment to the amendment in the nature of a substitute requiring DOL certification, I would have voted "No." Had I been present for roll call vote two, to Report the bill, I would have voted "Aye." In each instance, I was detailed with constituents in the Capitol.

I believe this legislation will enable teenagers to obtain employment experience in the food industry while maintaining a maximum level of safety. If enacted, H.R. 1114 will allow food retailers to hire teenagers without fear of a costly fine or a serious injury.

JAMES GREENWOOD.

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