# INVESTING FOR THE FUTURE: HONORING ERISA'S PROMISE TO PARTICIPANTS

## HEARING

BEFORE THE

## SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

OF THE

## COMMITTEE ON EDUCATION AND WORKFORCE
## U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINETEENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, APRIL 30, 2025

**Serial No. 119–9**

Printed for the use of the Committee on Education and Workforce

Available via: *edworkforce.house.gov* or *www.govinfo.gov*

U.S. GOVERNMENT PUBLISHING OFFICE
61–523 PDF WASHINGTON : 2025

COMMITTEE ON EDUCATION AND WORKFORCE

TIM WALBERG, Michigan, *Chairman*

JOE WILSON, South Carolina
VIRGINIA FOXX, North Carolina
GLENN THOMPSON, Pennsylvania
GLENN GROTHMAN, Wisconsin
ELISE M. STEFANIK, New York
RICK W. ALLEN, Georgia
JAMES COMER, Kentucky
BURGESS OWENS, Utah
LISA C. McCLAIN, Michigan
MARY E. MILLER, Illinois
JULIA LETLOW, Louisiana
KEVIN KILEY, California
MICHAEL A. RULLI, Ohio
JAMES C. MOYLAN, Guam
ROBERT F. ONDER, Jr., Missouri
RYAN MACKENZIE, Pennsylvania
MICHAEL BAUMGARTNER, Washington
MARK HARRIS, North Carolina
MARK B. MESSMER, Indiana
RANDY FINE, Florida

ROBERT C. "BOBBY" SCOTT, Virginia,
*Ranking Member*
JOE COURTNEY, Connecticut
FREDERICA S. WILSON, Florida
SUZANNE BONAMICI, Oregon
MARK TAKANO, California
ALMA S. ADAMS, North Carolina
MARK DESAULNIER, California
DONALD NORCROSS, New Jersey
LUCY McBATH, Georgia
JAHANA HAYES, Connecticut
ILHAN OMAR, Minnesota
HALEY M. STEVENS, Michigan
GREG CASAR, Texas
SUMMER L. LEE, Pennsylvania
JOHN W. MANNION, New York
VACANCY

R.J. Laukitis, *Staff Director*
Véronique Pluviose, *Minority Staff Director*

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

RICK ALLEN, Georgia, *Chairman*

ROBERT F. ONDER, Jr., Missouri
JOE WILSON, South Carolina
VIRGINIA FOXX, North Carolina
JAMES COMER, Kentucky
BURGESS OWENS, Utah
LISA C. McCLAIN, Michigan
MICHAEL A. RULLI, Ohio
RYAN MACKENZIE, Pennsylvania
MICHAEL BAUMGARTNER, Washington
RANDY FINE, Florida

Mark DeSaulnier, California,
*Ranking Member*
JOE COURTNEY, Connecticut
DONALD NORCROSS, New Jersey
LUCY McBATH, Georgia
JAHANA HAYES, Connecticut
GREG CASAR, Texas
SUMMER L. LEE, Pennsylvania
JOHN W. MANNION, New York
MARK TAKANO, California

# C O N T E N T S

# INVESTING FOR THE FUTURE: HONORING ERISA'S PROMISE TO PARTICIPANTS

**Wednesday, April 30, 2025**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS,
COMMITTEE ON EDUCATION AND WORKFORCE,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:17 a.m., in Room 2175, Rayburn House Office Building, Hon. Rick Allen (Chairman of the Subcommittee) presiding.

Present: Representatives Allen, Foxx, Rulli, Mackenzie, Fine, Walberg, DeSaulnier, Courtney, Hayes, Lee, Mannion, Takano, and Scott.

Staff present: Vlad Cerga, Director of Information Technology; Libby Kearns, Press Assistant; Katerina Kerska, Legislative Assistant; Trey Kovacs, Director of Workforce Policy; Campbell Ladd, Clerk; R.J. Laukitis, Staff Director; John Martin, Deputy Director of Workforce Policy/Counsel; Audra McGeorge, Communications Director; Daniel Nadel, Legislative Assistant; Ethan Pann, Deputy Press Secretary and Digital Director; Kane Riddell, Staff Assistant; Carl Rifino, Intern; Sara Robertson, Press Secretary; Ann Vogel, Director of Operations; Ali Watson, Director of Member Services; Joe Wheeler, Professional Staff Member; James Whittaker, General Counsel; Jeanne Wilson, Retirement Counsel; Ellie Berenson, Minority Press Assistant; Ilana Brunner, Minority General Counsel; Ni'Aisha Banks, Minority Staff Assistant; Dylan Dunson, Minority Intern; Daniel Foster, Minority Senior Health and Labor Counsel; Jo Howard, Minority Grad Intern; Amanda Lee, Minority Grad Intern; Dhrtvan Sherman, Minority Research Assistant; Raiyana Malone, Minority Press Secretary; Kevin McDermott, Minority Director of Labor Policy; Véronique Pluviose, Minority Staff Director; Banyon Vassar, Minority Director of IT.

Chairman ALLEN. The Subcommittee on Health, Employment, Labor and Pensions will now come to order. I note that a quorum is present. Without objection, the Chair is authorized to call a recess at any time. Today's hearing is about protecting the retirement savings of American workers from the previous administration's attempt to water down ERISA's cornerstone fiduciary principle, and investments were made in the financial interest of workers and retirees.

During President Trump's first administration, the Department of Labor finalized rules with clear guidelines on investing and proxy voting, but the Biden-Harris administration revoked those protective rules and replaced them with weak rules that threaten the retirement savings of all Americans.

As justification for revoking the Trump administration rules, the Biden-Harris DOL was misleading. Some would say they outright lied. At that time, DOL said it's rule was needed to clear up any uncertainty surrounding whether a fiduciary under ERISA may consider ESG and other factors in making investment and proxy voting decisions under the Trump Rule standard.

The Biden-Harris administration repeatedly cited concerns and confusion raised in secret, unnamed stakeholders regarding whether climate change and other ESG factors may be treated as monetary factors under the Trump Rule. The misleading justifications the Biden-Harris DOL gave for revoking the Trump Rule ranged from cherry picking history to outright misstating the facts.

DOL's real aim was to cast doubt on the Trump Rule to bolster credibility for its own abrupt break with ERISA's core fiduciary duties. By creating an overly broad tie breaker rule, the Biden-Harris administration allowed retiree's savings to be used to finance the latest pet policy goals of the left.

In fact, the previous administration stated in the preamble to the proposed rule for many years the Department's nonregulatory guidance would recognize that, under the appropriate circumstances, ERISA fiduciaries can make investment decisions that reflect climate change and other ESG considerations, including climate related risk and choose economically targeted investments selected in part for benefits apart from their investment return.

This statement is so far from ERISA's duty of loyalty and the Supreme Court's expressed statement of ERISA's duty of loyalty, it calls for immediate action to protect the retirement savings of American workers. Americans invest to secure their future, not to fund the Green New Deal or leftist pet projects.

Fiduciaries governed by ERISA should not be allowed to make investments they know will not pay dividends. A fiduciary's most important responsibility is to make investments that are in the financial interest of workers and retirees. The mission of DOL's Employee Benefit Security Administration is to ensure the retirement, health, and other workplace benefits of American workers and their families.

Instead of upholding this mission, the Biden-Harris administration DOL deliberately confused investing for the purpose of providing benefits with attempting to invest to advance partisan social and political goals.

Congress reacted swiftly. Within the first 3 months of 2023, the House and Senate passed a congressional Review Act Resolution to nullify the Biden-Harris administration's ESG and Proxy Voting Rule.

However, when the CRA Resolution reached President Biden's desk, he vetoed it. In the last week I introduced the Protecting Prudent Investment of Retirement Savings Act, which seeks to codify those who manage other people's retirement savings under ERISA must prioritize maximizing returns for a secure retirement, rather than political or social impact using risky ESG factors.

Americans hard earned retirement savings should never be jeopardized by politically motivated mismanagement. Unfortunately, the Biden-Harris administration made this possible with an overreaching rule that allows fiduciaries to aggressively invest retiree's money in the ESG funds, which often charge steeper fees, carry higher risk, and have lower returns.

The Protecting Prudent Investment of Retirement Savings Act would codify the retirement plan sponsors that is making investment decisions solely based on financial returns, ensuring American's hard-earned savings are invested sensibly.

I look forward to discussing this legislation and other efforts to protect ERISA plan savings for retirement. With that, I yield to the Ranking Member for an opening statement.

[The statement of Chairman Allen follows:]

COMMITTEE ON EDUCATION & WORKFORCE CHAIRMAN TIM WALBERG

COMMITTEE STATEMENT

Opening Statement of Rep. Rick Allen (R-GA), Chairman
Subcommittee on Health, Employment, Labor, and Pensions
Investing for the Future: Honoring ERISA's Promise to Participants
April 30, 2025

(As prepared for delivery)

Today's hearing is about protecting the retirement savings of American workers from the previous administration's attempt to water down ERISA's cornerstone fiduciary principle that investments are made in the financial interests of workers and retirees. During President Trump's first administration, the Department of Labor (DOL) finalized rules with clear guidelines on investing and proxy voting. But the Biden-Harris administration revoked those protective rules and replaced them with weak rules that threatened the retirement savings of Americans.

As justification for revoking the Trump administration's rules, the Biden-Harris DOL was misleading. Some would say they outright lied. At that time, DOL said its rule was needed to clear up "any uncertainty surrounding whether a fiduciary under ERISA may consider ESG and other factors in making investment and proxy voting decisions" under the Trump rule's standard. The Biden-Harris administration repeatedly cited concerns and "confusion" raised in secret by unnamed stakeholders regarding "whether climate change and other ESG factors may be treated as monetary factors" under the Trump rule.

The misleading justifications the Biden-Harris DOL gave for revoking the Trump rule ranged from cherry picking history to outright misstating the facts. DOL's real aim was to cast doubt on the Trump rules to bolster credibility for its own abrupt break with ERISA's core fiduciary duties. By creating an overly broad tie-breaker rule, the Biden-Harris administration allowed retirees' savings to be used to finance the latest pet policy goals of the left. In fact, the previous administration stated in the preamble to the proposed rule: "For many years, the Department's non-regulatory guidance has recognized that, under the appropriate circumstances, ERISA fiduciaries can make investment decisions that reflect climate change and other ESG considerations, including climate-related risk, and choose economically targeted investments selected, in part for benefits apart from their investment return." This statement is so far from ERISA's duty of loyalty and the Supreme Court's express statement of ERISA's duty of loyalty that it calls for immediate action to protect the retirement savings of American workers. Americans invest to secure their future, not to fund the Green New Deal or Leftist pet projects. Fiduciaries governed by ERISA should not be allowed to make investments they know will not pay off. A fiduciary's most important responsibility is to make investments that are in the financial interests of workers and retirees.

The mission of DOL's Employee Benefits Security Administration is to ensure the retirement, health, and other workplace benefits of America's workers and their families. Instead of upholding this mission, the Biden-Harris administration's DOL deliberately confused investing for the purpose of providing benefits with attempting to invest to advance partisan social and political goals.

Congress reacted swiftly. Within the first three months of 2023, the House and the Senate passed a Congressional Review Act resolution to nullify the Biden-Harris administration's ESG and proxy voting rule. However, when the CRA resolution reached President Biden's desk, he vetoed it.

And last week, I introduced the Protecting Prudent Investment of Retirement Savings Act, which seeks to codify that those who manage other people's retirement savings under ERISA must prioritize maximizing returns for a secure retirement rather than political or social impact using risky ESG factors.

Americans' hard-earned retirement savings should never be jeopardized by politically-motivated mismanagement. Unfortunately, the Biden-Harris administration made this possible with an overreaching rule that allows fiduciaries to aggressively invest retirees' money in ESG funds—which often charge steeper fees, carry higher risk, and have lower returns. The Protecting Prudent Investment of Retirement Savings Act would codify that retirement plan sponsors must make investment decisions solely based on financial returns—ensuring Americans' hard-earned savings are invested sensibly.

I look forward to discussing this legislation and other efforts to protect ERISA plan participants saving for their retirement.

Mr. DESAULNIER. Thank you, Mr. Chairman, and I want to thank the witnesses before the hearing, or the start of the hearing. Today's hearing is expected to focus on what is called the Environmental, Social, Governance, or ESG factors when making investments for retirement plans covered by ERISA.

Let us be clear about what ESG factors are. If a company is exposed to certain risks such as sea level rise because of climate change, child labor violations, or a record of poor corporate governance or mistreating workers, its stock could suffer over time.

Retirement plan professionals must consider a long-term horizon when making investment decisions, as workers often contribute for decades before drawing down on what they save.

It should be considered a best practice for retirement plan professionals to appropriately weigh ESG factors appropriately. That premise should not be controversial, or at least Committee Democrats do not think it should be. It is prudent in the words of a former Republican President, "Prudence."

There is no Biden-era mandate for retirement plans to invest in ESG funds. Let me repeat that. There is no mandate for retirement plans to invest in ESG funds. In fact, the Biden-era ESG Rule does not change the fiduciary standard to which professionals making investment decisions for retirement plans are bound.

The rule has been upheld twice by a Federal District Court, most recently in February. In his opinion, the Judge who was nominated by President Trump, wrote that the Biden-era rule, "Does not violate ERISA's text because it never permits fiduciaries to deviate from exclusively achieving financial benefits for the beneficiaries alone."

To be clear, consideration of ESG factors is entirely consistent with making a profit. BlackRock, which is the world's largest asset manager, has stated that its, "Investment conviction is that incorporating sustainable related factors, which are often characterized and grouped into ESG categories into investment decisions can provide better risk adjusted returns to investors over the long term," from BlackRock.

Last Congress the Committee considered two bills that would codify two rules from the first Trump administration that would establish needless barriers for the consideration of the ESG related investments in proxy voting. These bills were premised on the Republicans' mistaken view that they know best when it comes to ESG investing.

Committee Democrats opposed these bills because we trust the professionals who are legally bound to make prudent decisions on behalf of retirement plan participants. Mr. Chairman, we just returned from a 2-week district work period, and I held several town hall meetings in the district I represent, a district that is the fifth wealthiest by household income in the United States.

When I held several town halls with these constituents, people are concerned with the harm that's the Trump administration has been causing over the past 100 days, including to their investment portfolio.

President Trump's reckless tariffs have spurred chaos in the financial markets. The Wall Street Journal reported that the Dow Jones has had its worst April performance since 1932. We remember what happened in 1932, which obviously matters for workers participating in ERISA covered retirement plans.

JPMorgan Chase's CEO, Jamie Dimon, warned in his annual shareholder letter that tariffs will likely increase inflation, and cause many to consider greater probability of a recession. The Trump administration is also cutting thousands of jobs at the Social Security Administration and reducing access to phone service.

This is anticipated to hurt the Agency's ability to serve the public and recipients of social security that they paid into, and that could amount to a backdoor cut as benefits delayed are often benefits denied. Meanwhile, Republicans in Congress still apparent on cutting Medicaid to help pay for the massive tax cuts for the rich.

According to UC Berkeley Labor Center, California, could expect to see 10 to 20 billion fewer Federal dollars per year to Medi-Cal, our state's Medicaid program. The Labor Center estimates a loss of this magnitude could threaten healthcare for many of the nearly 15 million Californians currently enrolled in Medi-Cal, and it could lead to as many as 217,000 job losses in the healthcare sector among other industries.

Combined efforts of these policies will be devastating for retirees and low-income Americans. We can do better. I believe retirement security is fundamentally aligned with worker's wages. The more people earn, the easier it is for them to plan and save for retirement.

It is incredibly hard for workers to do much on their own for retirement, when according to the Federal Reserve many would struggle to come up with the money to finance an unexpected $400 expense, such as a car repair or a medical bill.

At a minimum, we must support policies that increase worker's wages and strengthen their ability to organize and collectively bargain. The data is clear that unionized workers have greater access to retirement plans and higher participation rates than our non-unionized counterparts, but we should not stop there.

We must strengthen and protect Social Security. We also must address inequities and discriminatory barriers in the labor market. I hope we have a productive conversation this morning and focus on meaningful solutions for workers and retirement plan participants. I yield back.

[The statement of Ranking Member DeSaulnier follows:]

ED & WORKFORCE DEMOCRATS

# OPENING STATEMENT

House Committee on Education and Workforce
Ranking Member Robert C. "Bobby" Scott

**Opening Statement of Ranking Member Mark DeSaulnier (CA-10)**
Subcommittee on Health, Employment, Labor, and Pensions
*Investing for the Future: Honoring ERISA's Promise to Participants*
Tuesday, April 30, 2025 | 10:15 a.m.

---

Thank you, Mr. Chairman, and I want to thank the witness before the start of the hearing.

Today's hearing is expected to focus on what's called environmental, social, and governance – or ESG – factors when making investments in retirement plans covered by ERISA.

Let's be clear about what ESG factors are.

If a company is exposed to certain risks – such as sea level rise because of climate change, child labor violations, a record of poor corporate governance or mistreating workers – its stock could suffer over time. Retirement plan professionals must consider a long-term horizon when making investment decisions, as workers often contribute for decades before drawing down on what they save.

It should be considered a best practice for retirement plan professionals to appropriately weigh ESG factors appropriately.

And that premise should not be controversial – or at least Committee Democrats don't think it should be, it's prudent in words of a former republican president. Prudence.

There is no Biden-era mandate for retirement plans to invest in ESG funds. Let me repeat that there is no mandate for retirement plans to invest in ESG Funds. In fact, the Biden-era ESG rule does not change the fiduciary standard to which professionals making investment decisions for retirement plans are bound. The rule has been upheld twice by a federal district court, most recently in February. In his opinion, the judge, who was nominated by President Trump, wrote that the Biden-era rule – quote – "does not violate ERISA's text because it never permits fiduciaries to deviate from exclusively achieving financial benefits for the beneficiaries alone." Close quote.

And – to be clear – consideration of ESG factors is entirely consistent with making a profit. BlackRock, which is the world's largest asset manager, has stated that its – quote – "investment conviction is that incorporating sustainability-related factors – which are often characterized and grouped into ESG categories – into investment decisions can provide better risk-adjusted returns to investors over the long-term." Close quote from BlackRock.

Last Congress, this Committee considered two bills that would codify two rules from the first Trump Administration that would establish needless barriers for the consideration of ESG-related investments and proxy voting. These bills were premised on the Republicans' mistaken view that they know best when it comes to ESG investing.

Committee Democrats opposed these bills because we trust the professionals who are legally bound to make prudent decisions on behalf of retirement plan participants.

Mr. Chairman, we just returned from a two-week district work period – and I held several town hall meetings in the district I represent. A district that is the 5th wealthiest household income in the unite states. When I held serval town halls with these constituents. People are concerned with the harm that the Trump Administration has been causing over the past 100 days including their investment portfolio.

President Trump's reckless tariffs have spurred chaos in the financial markets. *The Wall Street Journal* reported that the Dow Jones is headed for its worst April performance since 1932 – which obviously matters for workers participating in ERISA-covered retirement plans. And JPMorgan Chase's CEO, Jamie Dimon, warned in his annual shareholder letter that the tariffs will likely increase inflation and cause many to consider a greater probability of a recession.

The Trump Administration is also cutting thousands of jobs at the Social Security Administration and reducing access to phone service. This is anticipated to hurt the agency's ability to serve the public and recipient of social security who they paid into – and could amount to a backdoor cut, as benefits delayed are often benefits denied.

Meanwhile, Republicans in Congress still appear intent on cutting Medicaid to help pay for their massive tax cuts for the rich. According to the U.C. Berkley, California could expect to see $10-$20 billion fewer federal dollars per year to Medi-Cal, our state's Medicaid program. The Labor Center estimates that a loss of this magnitude could threaten health care for many of the nearly 15 million Californians currently enrolled in Medi-Cal; and it could lead to as many as 217,000 job losses in the health care sector, among other industries.

The combined effects of these policies will be devastating for retirees and low-income Americans. We can do better.

I believe retirement security is fundamentally aligned with workers' wages. The more people earn, the easier it is for them to plan and save for retirement. It is incredibly hard for workers to do much on their own for retirement when, according to the Federal Reserve, many would struggle to come up with the money to finance an unexpected $400 expense, such as a car repair or medical bill.

At a minimum, we must support policies that increase workers' wages and strengthen their ability to organize and collectively bargain. The data is clear that unionized workers have greater access to retirement plans and higher participation rates than their non-unionized counterparts. But we shouldn't stop there. We must strengthen and protect Social Security. We also must address inequities and discriminatory barriers in the labor market.

I hope we have a productive conversation this morning and focus on meaningful solutions for workers and retirement plan participants.

I yield back.



Chairman ALLEN. I thank the gentleman for yielding. Pursuant to Committee Rule 8-C, all members who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5 p.m., 14 days after this hearing.

Without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material noted during the hearing to be submitted for the official hearing record.

I will now turn to the introduction of our four distinguished witnesses. Our first witness is Professor Max M. Schanzenbach, the

Seigle Family Professor of Law at the Northwestern University Pritzker School of Law in Chicago, Illinois.

Our second witness is Mr. Charles Crain, the Managing Vice President for Policy for the National Association of Manufacturers in Washington, DC. Our third witness is Mr. Brandon Rees, the Deputy Director, Corporations and Capital Markets for the American Federation of Labor and Congress of Industrial Organizations, AFL–CIO.

Our last witness is Mr. Ike Brannon, the President for Capitol Policy Analytics, based here in Washington, DC. We thank the witnesses for being here today, and we look forward to your testimony. Pursuant to Committee Rules, I would ask that you each limit your oral presentation to a 3-minute summary of your written statement.

The clock will count down from 3 minutes, as Committee members have many questions for you, and we would like to spend as much time as possible on those questions. Pursuant to Committee Rule 8D, and Committee practice, however, we will not cutoff your testimony until you reach the 5-minute mark. I would also like to remind the witnesses to be aware of their responsibility to provide accurate information to the Subcommittee.

I will first recognize Professor Schanzenbach for your testimony.

**STATEMENT OF PROFESSOR MAX M. SCHANZENBACH, SEIGLE FAMILY PROFESSOR OF LAW, NORTHWESTERN UNIVERSITY PRITZKER SCHOOL OF LAW, CHICAGO, ILLINOIS**

Mr. SCHANZENBACH. Good morning. Thank you for the opportunity to appear before you today. I am Max Schanzenbach, Seigle Family Professor of Law at Northwestern University. ESG investing under ERISA and trust law has been a focus of my research for several years.

I have developed a healthy and informed respect for the regulatory framework of ERISA, which provides working Americans access to our deep and efficient capital markets, while protecting retirement savings for the imposition of fiduciary obligations.

In my opinion, the Protecting Prudent Investment of Retirement Savings Act makes three important contributions to existing law, and I will spend a minute on each one. First, this legislation rightly clarifies that all investing strategies must be justified only based on financial or pecuniary benefit, which puts ESG investing on an equal footing with any other active investing strategy.

There is a strange belief out there that ESG is magic, that somehow so-called ESG factors can be used to do good and improve risk and return without tradeoff, and that this will continue forever.

That idea is contrary to long-standing financial theory, and experience in capital markets, yet this belief has misled many people, even some sophisticated actors, into believing that somehow fiduciary obligations are different under ESG investing. They are not.

At the same time nothing in the legislation discourages risk and return ESG investing, investing for financial return based on ESG factors. Few would argue that mass toxic environmental torts, and other legal and regulatory risks are financially unimportant.

Second, the bill continues to allow for the so-called tie breaker, a rare case in which nonpecuniary factors may be considered when two investments are otherwise financially equal. The bill requires enhanced documentation and provides greater clarity of language than present regulations.

Enhanced documentation ensures that an ERISA fiduciary is loyal, always acting for the exclusive purpose of providing pecuniary benefits under the plan, a cornerstone of ERISA. Enhanced documentation also ensures that the tie breaker is credibly established and regularly assessed. This is the standard of care or prudence, another cornerstone fiduciary obligation under ERISA.

The event of a tie between investment alternatives is unlikely, and it is even less likely that such a tie will continue to persist as economic conditions change. Given the rarity of tie breakers, placing the burden of proof on the fiduciary to establish one makes complete sense, and is a standard approach in fiduciary law.

In addition, the bill clarifies essential language regarding a tie breaker, defining a tie between investment alternatives to be when pecuniary factors were not sufficient to choose between them, and requiring the choice to be consistent with the interests of the beneficiaries.

The current regulation states that the two investments, by contrast, must equally serve, “the financial interests of the plan.” The problem with this language is that the plan does not have financial interests. Its beneficiaries do. They must be benefited by the investment choice.

While I believe that a Court should read, “financial interests of the plan to mean its beneficiaries,” I am unsure of whether a Court will. Third, the legislation protects workers in qualified default investment alternatives, or QDIAs, by a simple prohibition against including any fund as a QDIA that considers non-pecuniary factors.

The QDIA is where workers retirement funds are placed when the worker does not specify an investment when investing in defined contribution plans. In many, if not most plans, this is a majority of defined contribution savers. This protective rule is justified for two reasons.

First, workers who default into a plan may be there because they have not put thought into their investment choices. As such, they are more likely than not, unaware of the social factors being used in a fund, and they may well disagree with them.

Second, some investors may rely on the default option on the belief that the defaults are wisely chosen to provide diversification and appropriate risk and return. I thank the Subcommittee for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Mr. Schanzenbach follows:]

**Testimony of Professor Max Schanzenbach**
**Subcommittee on Health, Employment, Labor, and Pensions**
**"Investing for the Future: Honoring ERISA's Promise to Investors"**
**Wednesday, April 30, 2025, 10:15 a.m.**

Chairman Allen, Ranking Member DeSaulnier, and members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the issues surrounding investing for non-pecuniary reasons and proposed legislation amending the Employee Retirement Income Security Act of 1974 (ERISA). I am Max Schanzenbach, Seigle Family Professor of Law at Northwestern University. I joined Northwestern as an assistant professor of law in 2003 after finishing a clerkship on the Sixth Circuit Court of Appeals and was promoted to full professor in 2006. In 2015, I was named the Seigle Family Professor of Law at Northwestern University. From 2011 to 2016, I was the co-editor-in-chief of the *American Law and Economics Review*. I have recently joined the American College of Trusts and Estates Counsel as an academic fellow.

In my opinion, the *Protecting Prudent Investment of Retirement Savings Act* clarifies critical fiduciary obligations under ERISA while enacting sensible, measured reforms. My testimony and conclusions reflect opinions I have developed over my career based on my research of fiduciary investment law and policy. Broadly speaking, my research is in the law-and-economics tradition. I make use of economic theory and statistical methods to assess the real-world effects of law and legal institutions. Fiduciary investment has been a core part of my academic research. In particular, in "Reconciling Fiduciary Duty and Social Conscience," published in *Stanford Law Review* (2020), coauthor Robert Sitkoff and I argue that ESG investing is permitted for fiduciaries under the same conditions as any other active investing strategy, and ESG investing for risk and return is neither favored nor disfavored under traditional trust law. In that work, we also defend on policy grounds ERISA's prohibition of the consideration of non-pecuniary factors as both sound policy and consistent with Supreme Court precedent. The *Protecting Prudent Investment of Retirement Savings Act* is consistent with these principles.

*The Purpose of ERISA*

In the course of my research, I have developed a profound respect for the regulatory framework of ERISA. ERISA provides working Americans with tax-favored retirement savings and access to America's deep and efficient capital markets. Presently, ERISA plans, both retirement and welfare, hold an estimated $14 trillion in assets. This is a tremendous pool of savings for investment and is essential to our nation's prosperity. But those retirement savings must be protected to maintain worker confidence and to ensure the best possible retirement. To this end, ERISA requires investment managers to abide by the fiduciary obligations of loyalty and care.

*ERISA's Guardrails: Fiduciary Obligation*

The ERISA retirement savings framework has generally worked to the great advantage of American workers in part because of the fiduciary obligations imposed on those who have discretionary authority or control over the plan assets. In the now-dominant defined contribution plans, workers are free to choose their own investments within a menu of mutual funds curated by the investment fiduciary. The investment fiduciary does not bear liability for a participant's selection of investments from that menu if it has offered a menu of investment options chosen and monitored consistent with fiduciary obligations of prudence and loyalty.

**Testimony of Professor Max Schanzenbach**
**Subcommittee on Health, Employment, Labor, and Pensions**
**"Investing for the Future: Honoring ERISA's Promise to Investors"**
**Wednesday, April 30, 2025, 10:15 a.m.**

Thus, workers saving for retirement can rest on some assurance that the investment options have been prudently and loyally chosen, while retaining the freedom to choose within a curated investment menu. In addition, investment fiduciaries may offer a "brokerage window" investment option that allows plan participants the opportunity to access additional mutual funds or individual investments outside the plan menu.

Although ERISA preserves freedom of choice for plan participants, the fiduciary duties of loyalty and prudence imposed by ERISA are important guardrails. This framework keeps ERISA plan sponsors laser-focused on providing beneficiaries with diversification and proper risk and return. A plan fiduciary's duty of loyalty precludes considering outside interests. ERISA's duty of prudence is of equal importance. For example, significant litigation has arisen over fees charged under ERISA plans. Some employers were lax in their obligations of ongoing monitoring and allowed mutual fund share classes to be offered even though participants could have had the identical fund with lower fees. In doing so, they were not disloyal, but imprudent. Liability ensued, and recent evidence is that costs are decreasing in ERISA plans.

Another important safeguard is the advent of Qualified Default Investment Alternatives (QDIA). A QDIA is a default retirement investment for employees who do not exercise their power of choice. Most investment fiduciaries, consistent with DOL regulations concerning QDIAs and fiduciary obligations, have chosen to offer low-cost target-date retirement funds that automatically adjust the risk of the portfolio as retirement draws near. These low-cost, highly diversified funds are widely regarded as having improved the retirement savings of millions of Americans. QDIAs are particularly important because employers are allowed to automatically enroll employees into retirement plans. The great majority of these auto-enrolled employees do not actively choose investments and so wind up in the QDIA.

*ESG Investing, Non-Pecuniary Factors, and ERISA*

ERISA's fiduciary guardrails have been tested by the advent of so-called ESG investing. Socially responsible investing has long been with us. Prior to the 1990s, proponents of socially responsible investment largely appealed to doing good—they spoke to investors' ethical, moral, and social responsibilities to others. Providing collateral social benefits to third parties is not consistent with the duty of loyalty under ERISA, and avoiding financially sound investments is not consistent with the duty of prudence. For these reasons, socially responsible investing was widely regarded as forbidden under ERISA.

However, beginning in the late 1990s/early 2000s, proponents of social investing rebranded it in two ways. First, they recast the movement as "ESG" investing by adding governance metrics (the "G" in "ESG"). The quality of a corporation's governance is an uncontroversial factor in assessing investment opportunities, thus lending credence to claims that ESG investing could improve portfolio performance. Second, proponents of ESG, pointing to a raft of empirical studies, claimed that environmental and social considerations could also improve portfolio performance. Instead of avoiding the fossil fuel industry for environmental benefits, for example, ESG proponents argued that reduced exposure to fossil fuels would improve returns because the associated litigation and regulatory risks of that sector are underestimated by the market. Thus, ESG investing evolved from social investing into an active investment strategy that purported to seek profit. This rebranding has muddled the goal of ESG investing. Is it to improve financial performance or achieve a social benefit?

During this same period, the Department of Labor issued several subregulatory guidances and later, regulatory guidances, on the use of non-pecuniary factors under ERISA, often focusing on whether the use of non-pecuniary factors as a "tiebreaker" was permissible. Some of this guidance lacked clarity or was misconstrued as reversing earlier guidance. Agency rulemaking in 2020 and 2022 further exacerbated this problem. The 2020 Trump Rule was misconstrued as opposing sound financial evaluation of ESG factors in investing, while the 2022 Biden Administration rule was understood to endorse impact investing or investing for collateral benefits. In truth, both rules reiterated the basic premise that ERISA required investing for financial reasons only. But the issue was clouded in two ways. The original proposals, which were changed following the notice-and-comment period, critiqued (Trump Rule) or endorsed (Biden Rule) ESG investing. The final rules were more circumspect but still elicited some confusion. For example, the regulatory text of the final Biden Rule refers only once to ESG investing, and states that ESG factors "may" be "relevant to a risk and return analysis," depending "on the individual facts and circumstances." Of course, this statement is true for all investment factors, ESG or otherwise, so one wonders why pointing it out was necessary in the first place.

A legitimate source of concern is the Biden and Trump Rule's dueling approaches to the tie breaker. The Trump Rule requires a plan fiduciary to document that two investments are financially indistinguishable before invoking the tiebreaker rule for collateral benefit. This essentially places the burden of proof on the fiduciary, which is appropriate given the rarity of an actual tie and the mixed motives a fiduciary may have in asserting it. The Biden Rule, on the other hand, allows a fiduciary to consider collateral benefits when choosing among or between investment alternatives that "equally serve the financial interests of the plan over the appropriate time horizon." There are two problems with the Biden Rule's language. First, the plan does not have financial interests. Its beneficiaries do. The beneficiaries must be benefited by the investment choices. Considering ERISA's language and Supreme Court precedent, courts should read the phrase "financial interests of the plan" to mean its beneficiaries, but I am unsure they will. The second concern is the use of the phrase "appropriate time horizon." The long-run financial success of ESG factors is often pointed to by ESG advocates, and this language may be a nod to that view. However, time-horizon is not a reasonable concept as applied to a readily marketable individual security. If the security's future value is not reflected in its current price, the security is a buy or sell opportunity whether the underpricing is from near-term or long-term factors (appropriately discounted to present value). Moreover, plan beneficiaries have very different time horizons, ranging from young workers to the currently retired. Not everyone is in pursuit of "long-term" value. Holding investments for current retirees that may not show their true value for decades is not a sound strategy.

*The Proposed Legislation*

**Testimony of Professor Max Schanzenbach**
**Subcommittee on Health, Employment, Labor, and Pensions**
**"Investing for the Future: Honoring ERISA's Promise to Investors"**
**Wednesday, April 30, 2025, 10:15 a.m.**

I believe that the *Protecting Prudent Investment of Retirement Savings Act* improves ERISA regulations by providing needed clarity regarding the use of non-financial factors in ERISA investments while adopting modest reforms that strengthen ERISA's fiduciary guardrails.

First, the proposed legislation rightly clarifies that an investment strategy must be done only for financial purposes. Without naming ESG investing, it puts ESG investing on an equal footing with other active investing strategies. The muddled motives behind ESG-investing have evolved into a strange belief that ESG is magic—that somehow so-called ESG factors can be used to do good and improve risk and return, without tradeoff, and that this will continue forever. That notion is contrary to long-standing financial theory and experience in capital markets. In addition, some of the Department of Labor's back-and-forth rulemaking and guidances misled many people, even some sophisticated actors, into believing that somehow fiduciary obligations are different under ESG investing. They are not. At the same time, nothing in the legislation discourages "risk and return" ESG investing. Few would argue that mass toxic environmental torts, and other legal and regulatory risks, are always immaterial. Active investors may consider such risks.

Second, the proposed legislation continues to allow for the so-called tiebreaker, but under a standard of enhanced documentation. The enhanced documentation requirement ensures that not only loyalty is adhered to but that the costs and benefits of such an investment are regularly assessed—this is the standard of care or prudence. Under such documentation requirements, a fiduciary would have to explain why a tie was present. Doing so will be challenging in liquid financial markets. In such a case, there are arguably no ties. If two investments have the same risk and return attributes, a fiduciary should purchase both and achieve greater diversification. Given the rarity of tiebreakers, placing the burden of proof on the fiduciary to establish one makes complete sense and is a standard approach in the law. In addition, the *Protecting Prudent Investment of Retirement Savings Act* clarifies essential language regarding a tiebreaker.

In the case of a sponsor choosing mutual funds to offer in a plan menu, tiebreakers are somewhat more complicated. One concern is that a fiduciary could claim they did not want to offer too many funds, funds may have very similar risk and return attributes, and thus the fiduciary has invoked the tiebreaker rule to choose funds with social impact because those funds are the financial equivalent of other alternatives. Could an ERISA fiduciary secretly consider non-pecuniary factors, while claiming risk and return as a pretext? Likewise, could it assert a tiebreaker where one really does not exist? Such opportunities depend on the scope of the tie-breaker rule but will be restricted by this legislation. Under enhanced documentation, a fiduciary cannot continue indefinitely with a persistently underperforming ESG (or any other) mutual fund because the fund would not continue to be financially indistinguishable.

Funds that avoid industries or sectors will be very hard to justify. Consider, for example, a so-called screened ESG fund that avoids fossil fuels. Perhaps an ERISA plan sponsor could reasonably argue, at the beginning, that such a fund offered similar risks and returns to other funds because the fossil fuel sector is weak. That ERISA plan sponsor would have to document

**Testimony of Professor Max Schanzenbach**
**Subcommittee on Health, Employment, Labor, and Pensions**
**"Investing for the Future: Honoring ERISA's Promise to Investors"**
**Wednesday, April 30, 2025, 10:15 a.m.**

those reasons—and absolute avoidance of a whole sector runs strongly against modern financial practice and diversification. But more importantly, the sponsor would have to continue to assess the special risks of a fund that imposed such a screen. It is highly unlikely that any sector will offer subpar returns forever—and when that changes fiduciaries will have to drop the fund or face liability.

Third, the legislation prohibits the employer's QDIA from considering non-pecuniary factors. Given the legislation's authorization of a tiebreaker, barring explicitly any non-pecuniary fund from use as a QDIA is a reasonable protective feature for several reasons:

- The QDIA is where investors are placed when they do not specify an investment in the defined contribution plans. As such, they would likely be unaware that the fund relies on non-pecuniary factors and may well disagree with them.
- The "default" investors may be operating on the assumption that the defaults are wisely chosen to provide diversification and appropriate risk and return. Prohibiting funds that rely on non-pecuniary factors protects that reliance.
- There is a lack of clarity around QDIAs and non-pecuniary factors. A Labor Department rule promulgated in the first Trump Administration forbade any fund relying on non-pecuniary factors to be used as a QDIA. The DOL under the Biden administration deleted this prohibition.
- Assuming, absent this legislation, that an ERISA plan sponsor could choose a fund that relies on non-pecuniary factors as a QDIA, well-advised plan sponsors would not do so. QDIAs comprise a large share of savings and their mismanagement would represent an outsized liability, and the use of non-pecuniary fund would increase litigation risk. Not all plan sponsors are sophisticated and well-advised, however, and they rely on investment committees which can make mistakes. A protective rule guards employers as well as workers.

Finally, I strongly recommend to the Subcommittee the *Protecting Prudent Investment of Retirement Savings Act*'s requirement that plan participants using the brokerage window be warned that they are leaving a plan menu chosen under fiduciary obligation. Indeed, brokerage window participants will likely pay the highest fee share class for a mutual fund purchased through the brokerage window. In addition, if they purchase individual securities through the window, they will likely lose some of the benefits of diversification they could obtain in the plan.

Again, I thank the Subcommittee for the opportunity to testify.

Chairman ALLEN. I now recognize Mr. Crain for your testimony.

## STATEMENT OF MR. CHARLES CRAIN, MANAGING VICE PRESIDENT OF POLICY, NATIONAL ASSOCIATION OF MANUFACTURERS, WASHINGTON, D.C.

Mr. CRAIN. Thank you, Mr. Chairman, Ranking Member DeSaulnier, and members of the Subcommittee. My name is Charles Crain, and Im the Managing Vice President of Policy at the National Association of Manufacturers. More than 85 percent of manufacturing workers are eligible to participate in a workplace retirement plan.

These Americans have probably never heard of a proxy advisory firm, and they likely would be shocked to hear that their pension or 401K plan assets could be used in a way that could undermine their own retirement security. Publicly traded manufacturers though, have long understood the risk that proxy advisory firms pose to everyday Americans retirement security.

Public companies, after all, are the targets of proxy firm's one size fits all governance standards. Manufacturers have to counter proxy firms' errors, their outside influence, their political agendas, and manufacturers are intimately familiar with proxy firm's conflicts of interest, such as when companies have to pay ISS for consulting services in order to avoid a negative ISS recommendation.

Manufacturers, of course, also face pressure from ESG activists who pursue political and social agendas at the expense of the business and its shareholders. Whether companies push back or fall in line, these market actors' outside influence is, at best, a distraction for more productive uses of time and capital.

At worst, it is a real threat to business growth and shareholder returns, which ultimately undermine the risks of beneficiary's retirement security. In the ERISA context, the institutions that are hiring proxy firms are in many cases doing so to help them vote the shares held by the ERISA plan.

Similarly, institutions that are voting in favor of ESG shares or proposals or pursuing ESG investments, may be managing ERISA plan assets. To put it simply, using plan assets to pursue non-financial ESG goals, or blindly outsourcing the voting power that comes with those plan assets to unregulated and conflicted proxy firms represents a significant threat to a fiduciary's obligations under ERISA.

That is why manufacturers support appropriate guardrails to ensure that ERISA fiduciaries are acting in plan participants best interests when making investment and voting decisions. The DOL, during the first Trump administration, finalized rules to do just that. One rule required fiduciaries to make investing decisions based solely on pecuniary factors.

Another required appropriate due diligence when it comes to ERISA plans proxy voting, and use of proxy advisory firms. Unfortunately, as this has been discussed, the Biden administration largely rescinded both of those rules. Just last Chairman Allen introduced legislation to codify the reforms from the first Trump administration.

This bill is crucial because the sole duty of ERISA fiduciaries is to provide long-term returns that support manufacturing workers and their families in their retirement years. Now is the time for Congress and the DOL to stand up for these workers and ensure that ERISA plans are operating in their participant's best interest.

[The prepared statement of Mr. Crain follows:]

NATIONAL ASSOCIATION OF Manufacturers

*Testimony of*

**Charles Crain**
**Managing Vice President, Policy**
**National Association of Manufacturers**

*Before the*

**U.S. House of Representatives**
**Committee on Education and Workforce**
**Subcommittee on Health, Employment, Labor, and Pensions**

*Hearing on*

**"Investing for the Future: Honoring ERISA's Promise to Participants"**

**April 30, 2025**

Good morning Chairman Allen, Ranking Member DeSaulnier, and members of the Subcommittee on Health, Employment, Labor, and Pensions. My name is Charles Crain, and I am the Managing Vice President of Policy at the National Association of Manufacturers.

On behalf of the NAM's 14,000 members and the 13 million people who make things in America, I appreciate the opportunity to testify before you today on ensuring that participants and beneficiaries of retirement plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA") receive their full pension benefits without having their savings jeopardized by intermediaries with political or social agendas.

Approximately 85% of manufacturing workers have access to a workplace retirement plan through their employer.[1] These employees depend on sound investment decisions made on their behalf for a secure retirement.

For years, the NAM has advocated for fiduciary responsibility in managing ERISA-regulated retirement plans, emphasizing that investment decisions should prioritize financial returns over non-financial considerations. Pension plan participants and beneficiaries should be able to trust that their long-term savings will be protected so that they can enjoy a stable and secure retirement. Retirement savings should not be influenced by environmental, social, and governance ("ESG") factors unless they have a direct financial impact on plan performance, nor should decisions impacting retirement security be outsourced to unaccountable actors, such as proxy advisory firms, that lack fiduciary obligations to plan participants and beneficiaries.

The sole duty of ERISA plan managers making investment decisions on pensioners' behalf is to provide long-term returns that will support workers and their families in their retirement years. In this fiduciary context, investing based on ESG factors raises significant concerns—and carries the risk that hard-working Americans could see their retirement funds diverted in service of a plan manager's social or political goals. While individual investors are free to choose funds that match their ESG

[1] *National Compensation Survey: Employee Benefits*. Bureau of Labor Statistics, March 2024. *Available at* https://www.bls.gov/ebs/publications/employee-benefits-in-the-united-states-march-2024.htm.

values, ERISA fiduciaries should not select investments based on non-pecuniary ESG factors when plan participants' retirement savings are at stake.

ERISA fiduciaries' obligations to plan participants and beneficiaries extend to decisions about proxy voting as well. ERISA plan managers must remain diligent in exercising the voting rights appurtenant to the shares of stock the plan holds, acting for the "exclusive purpose" of "securing economic benefits for plan participants and beneficiaries."[2] These responsibilities include appropriate oversight of proxy advisory firms and other service providers hired to assist with proxy voting—an important requirement given proxy firms' conflicts of interest and ESG agendas.

During the first Trump Administration, the Department of Labor ("DOL") adopted two rules, which the NAM strongly supported, to address the growing trend of ESG investing by ERISA fiduciaries and their overreliance on proxy firms and other service providers. These regulations—a November 2020 rule on Financial Factors in Selecting Plan Investments[3] and a December 2020 rule on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights[4]—provided clarity to ERISA fiduciaries on how to appropriately incorporate ESG factors into their investment decisions and outlined the due diligence required of fiduciaries when exercising proxy voting rights, including when relying on third-party service providers like proxy firms. The rules' protections were designed to ensure that ERISA fiduciaries continue to act in the best interests of the millions of beneficiaries who depend on workplace retirement plans for a secure retirement.

In our comments on the 2020 rules, the NAM said that the financial factors rule would "ensure that non-pecuniary ESG factors do not put manufacturing workers' retirement savings at risk"[5] and that the proxy voting rule would "ensure that manufacturing workers depending on their pensions for a secure retirement are protected when their plan managers are considering proxy votes."[6]

The NAM continues to support these important goals, and manufacturers were disappointed when the DOL during the Biden Administration rescinded several critical protections from the 2020 rules.[7] Congress now has the opportunity to support the retirement security of millions of Americans who depend on ERISA-regulated plans by instituting appropriate guardrails for ERISA plan managers when it comes to investment choices and proxy voting.

**I. ERISA plans should not subordinate financial returns to achieve ESG goals.**

As the Trump Administration's financial factors rule noted in 2020, "ESG investing raises heightened concerns under ERISA."[8] Many ESG-focused funds have a stated goal of subordinating investor return or increasing investor risk for the purpose of achieving political or social objectives. These

[2] *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights*, 85 Fed. Reg. 55219 (4 September 2020). RIN 1210-AB91, *available at* https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19472.pdf.

[3] *Financial Factors in Selecting Plan Investments*, 85 Fed. Reg. 72846 (13 November 2020). RIN 1210-AB95, *available at* https://www.govinfo.gov/content/pkg/FR-2020-11-13/pdf/2020-24515.pdf.

[4] *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights*, 85 Fed. Reg. 81658 (16 December 2020). RIN 1210-AB91, *available at* https://www.govinfo.gov/content/pkg/FR-2020-12-16/pdf/2020-27465.pdf.

[5] NAM Comments on RIN 1210-AB95 (30 July 2020), *available at* https://documents.nam.org/tax/namesgcomments.pdf.

[6] NAM Comments on RIN 1210-AB91 (5 October 2020), *available at* https://documents.nam.org/tax/namdolproxycomments.pdf.

[7] *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, 87 Fed. Reg. 73822 (1 December 2022). RIN 1210-AC03, *available at* https://www.govinfo.gov/content/pkg/FR-2022-12-01/pdf/2022-25783.pdf.

[8] 2020 Financial Factors Rule, supra note 3, at 72848.

funds also often assess higher management fees. ERISA requires that fiduciaries, on the other hand, act with a "single-minded focus" on beneficiaries' long-term best interests.[9] These two priorities—pursuing a social or political agenda (often at higher cost) versus bolstering retirement security—are in many instances orthogonally opposed to one another, as evinced by many ESG funds' disclosures highlighting the potential for reduced returns, increased risks, and heightened fees in service of social goals.

Moreover, the social or political values in question are those of the plan manager rather than the views of any particular plan participant, or the participants as a whole. ESG investing decisions in the ERISA context involve the prioritization of plan managers' political goals over the views of plan participants that may or may not hold the same values, as well as the subordination of the participants' retirement savings in service of political pursuits. As such, ERISA fiduciaries should forgo ESG considerations that are not material to the investment in question (or, in fact, any immaterial considerations), when contemplating investment decisions. Instead, fiduciaries should conduct an analysis "focused solely on economic considerations that have a material effect on the risk and return of an investment."[10]

The 2020 rule finalized during President Trump's first term confirmed that "ERISA fiduciaries must evaluate investments and investment courses of action based solely on pecuniary factors," which the rule defines as "financial considerations that have a material effect on the risk and/or return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and funding policy."[11] This standard protects ERISA plan participants and beneficiaries by ensuring that their retirement security—and any pecuniary factors that might impact it—guide the investment decisions made by the plan.

Unfortunately, the Biden Administration rescinded critical portions of the Trump Administration's rule in 2022, including the pecuniary factors standard. In addition to removing the language around pecuniary factors, the Biden rule added language telling fiduciaries that risk and return factors relevant to an investment choice "may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action."[12] While it is undoubtedly true that certain climate or ESG factors may be material to a given investment, inserting climate- and ESG-specific language directly into the text of the rule defining ERISA fiduciaries' obligations to plan participants and beneficiaries—especially in place of the previous language that focused fiduciaries on pecuniary factors that influence a plan's financial returns—raised significant concerns.

In our December 2021 comment letter in response to the Biden Administration's proposed rescission, the NAM opposed the DOL's departure from the Trump Administration's focus on pecuniary factors, expressing our concern that the change would "prioritize ESG investing strategies over the retirement security of pension plan participants and beneficiaries."[13]

Under ERISA, fiduciaries must act solely based on participants' and beneficiaries' long-term best interests. Although, as noted, protecting these long-term best interests may well include consideration of ESG factors, many ESG-focused funds prioritize social or political objectives over

---

[9] *Ibid.*

[10] *Ibid.*

[11] *Id.* at 72581.

[12] 2022 Rescission Rule, *supra* note 7, at 73827.

[13] NAM Comments on RIN 1210-AC03 (13 December 2021), *available at* https://documents.nam.org/tax/nam_dol_esg_proxy_comments.pdf.

investor returns. In such instances, using ERISA plan investments to pursue an ESG fund's social goals increases costs to plan participants and puts their retirement security at risk.

Fortunately, the new leadership at the DOL is considering rescinding the Biden Administration's rescission rule.[14] Manufacturers strongly support efforts by Congress and by the DOL to ensure that ERISA fiduciaries' investment choices are based solely on pecuniary factors that help bolster retirement security for manufacturing workers across the country.

**II. Proxy advisory firms have significant conflicts of interest and make voting recommendations based on their own normative views about public company governance. ERISA plans should not outsource proxy voting decisions to these firms without appropriate oversight.**

Proxy advisory firms set corporate governance standards for publicly traded companies, and they provide voting recommendations based on those standards to institutional investors—including managers of ERISA plans—who vote at public companies' annual meetings. Proxy firms have substantive beliefs and normative agendas about how public companies should be run. In other words, they are not disinterested third parties; rather, they seek to guide corporate behavior to align with their own interests. Further, proxy firms do not have a fiduciary duty to ERISA plan participants and beneficiaries, so they are free to exert their outsized influence as they see fit. They do so by recommending that ERISA plans and other institutional investors vote in accordance with their pre-set, one-size-fits-all voting guidelines.

Proxy firm "recommendations" are no mere suggestions, however. Rather, fiduciaries managing ERISA plans—who *do* have a fiduciary duty to the plan participants whose retirement security they are charged with protecting—often vote in lockstep with the proxy firms' recommendations, and in many cases the proxy firms actually cast votes on institutions' behalf via their automated "robo-voting" services.

This gives ISS and Glass Lewis—the two major proxy firms, which together control over 97% of the U.S. proxy advice market—tremendous influence. The firms have historically exercised their influence on traditional corporate governance matters. ISS, for instance, can affect support for a dissident slate of board nominees by 73% and support for an uncontested director by 18%.[15] In recent years, however, proxy firms have increasingly adopted prescriptive policies and provided recommendations on a wide range of environmental and social topics, which may or may not be relevant to an individual company's growth and the value it creates for shareholders. Studies have shown that proxy firms are overwhelmingly supportive of activists' ESG proposals; for example, ISS recommended in favor of nearly 80% of environmental and social proposals during the 2023 proxy season.[16] A 2022 NAM survey found that that nearly 78% of publicly traded manufacturers were concerned that this increased pressure on ESG topics from proxy firms and other third parties will "increase costs for public companies, divert management and board time and resources, and endanger long-term value creation."[17]

---

[14] *See, e.g.,* "DOL Reconsidering Biden-Era ESG Considerations Rule," *Plan Adviser* (24 April 2025), *available at* https://www.planadviser.com/dol-reconsidering-biden-era-esg-considerations-rule/.

[15] Larcker, David F., Brian Tayan and James R. Copland, *The Big Thumb on the Scale: An Overview of the Proxy Advisory Industry* (14 June 2018). Harvard Law School Forum on Corporate Governance. *Available at* https://corpgov.law.harvard.edu/2018/06/14/the-big-thumb-on-the-scale-an-overview-of-the-proxy-advisory-industry/.

[16] *Voting Matters 2023* (11 January 2024). ShareAction. *Available at* https://cdn2.assets-servd.host/shareaction-api/production/resources/reports/ShareAction_Voting-Matters_2023_2024-06-25-145106_jwpq.pdf.

[17] NAM Manufacturers' Outlook Survey, Fourth Quarter 2022 (4 January 2023). *Available at* https://www.nam.org/wp-content/uploads/2023/01/Manufacturers_Fourth_Quarter_Outlook_Survey_December_2022.pdf.

Beyond their prescriptive agendas, both major proxy firms also exhibit glaring conflicts of interest. ISS operates a corporate consulting service that helps public companies design their equity plans and compensation practices in order to obtain positive recommendations from ISS's institutional voting team. ISS deliberately keeps some aspects of its guidelines on equity plans and executive compensation opaque so that companies have little choice but to subscribe to ISS's consulting service if they want to ensure positive recommendations. Illustrating this obvious conflict, ISS's consulting service has been known to point to negative recommendations and/or shareholder votes against a board-endorsed position (often driven by a negative recommendation) on a previous year's proxy ballot as evidence that its services are needed. Glass Lewis, meanwhile, offers a stewardship service that provides engagement advice to activists who are trying to influence corporate practices via shareholder proposals and other campaigns, which Glass Lewis's institutional research team will later provide recommendations on.

During the first Trump Administration, the DOL's proxy voting rule prohibited an ERISA fiduciary from "following the recommendations of a proxy advisory firm or other service provider without a determination that such firm or service provider's proxy voting guidelines are consistent with the fiduciary's obligations."[18] The rule also required fiduciaries to exercise "prudence and diligence in the selection and monitoring" of proxy firms and other service providers.[19] These important reforms underscored ERISA plan managers' fiduciary obligations and ultimately were designed to protect participants and beneficiaries from proxy firms' conflicts and one-size-fits-all governance agendas, which could impact their retirement security if not properly overseen. At the time, the NAM said that the rule was "a welcome acknowledgement of [proxy] firms' outsized influence on proxy vote decisions and of fiduciaries' obligation to oversee and account for them."[20]

The rule also made clear that ERISA fiduciaries have obligations to act in the best interests of plan participants and beneficiaries in all aspects of proxy voting, not just with respect to proxy firms. Throughout their exercise of shareholder voting rights, the rule requires fiduciaries to: A.) act solely for the economic benefit of the plan, B.) consider any costs involved, C.) not subordinate the interests of the plan to non-pecuniary goals, D.) evaluate the material facts that form the basis for any particular proxy vote, E.) maintain records on proxy voting activities, and F.) as mentioned, exercise appropriate due diligence in selecting and monitoring proxy advisory firms or other proxy service providers. These steps are a crucial framework to ensure that everyday Americans' retirement security is protected when ERISA fiduciaries are casting proxy votes on their behalf.

Additionally, the rule made clear that fiduciaries are not required to vote every proxy—but rather are required to subject decisions about *whether* to vote to the same due diligence as decisions about *how* to vote. This clarification was crucial because, by limiting the number of proxy votes that ERISA fiduciaries felt obligated to cast, it both reduced the costs of exercising shareholder voting authority and made it less likely that ERISA plans would need to rely on proxy firms.

Unfortunately, the Biden Administration's 2022 rescission rule weakened key aspects of the 2020 proxy voting rule, including with respect to fiduciaries' obligations to monitor the activities of proxy advisory firms. It also completely eliminated the clarification that ERISA fiduciaries are not required to vote every proxy and rescinded two safe harbors that would have allowed plans to reduce costs by responsibly abstaining from certain votes that are unlikely to have an impact on the value of an investment or on the outcome of the vote. Taken together, these changes have the effect of empowering proxy firms at the expense of ERISA beneficiaries and plan participants.

---

[18] 2020 Proxy Voting Rule, *supra* note 2, at 81695.

[19] *Id.* at 81694.

[20] NAM Comments on RIN 1210-AB91, *supra* note 6, at 1.

For many ERISA plans, the costs of voting each year on hundreds (or, in some cases, thousands) of proxy ballot items at the plan's portfolio companies (especially on shareholder resolutions that seek to advance narrow social or political objectives that are not material to a specific company) far outweigh the direct economic benefits to the plan and its participants and beneficiaries. Very few ERISA fiduciaries have the in-house expertise or staff resources to analyze such a wide range of ballot topics, so requiring them to cast every possible vote is effectively a requirement that they hire a proxy advisory firm. In other words, by mandating that ERISA plans to resume voting on every proxy ballot item, the DOL's 2022 rescission rule essentially forced ERISA fiduciaries to outsource their voting responsibilities, which further entrenches the significant influence of proxy firms.

As noted, the DOL in the early days of President Trump's second term has already made clear that it is reviewing the 2022 Biden rescission rule. Manufacturers continue to support efforts by Congress and the DOL to ensure that ERISA fiduciaries are acting in plan participants' best interests when casting proxy votes, and are exercising appropriate oversight of proxy firms. Policymakers must take these important steps to avoid risks to American workers' retirement savings.

### III. Manufacturers support the Protecting Prudent Investment of Retirement Savings Act.

The NAM strongly supports the Protecting Prudent Investment of Retirement Savings Act, sponsored by Chairman Allen, which would codify the DOL's carefully crafted 2020 rules on financial factors and proxy voting. The bill would provide much-needed clarity to ERISA plan managers about the prudent consideration of ESG factors in investing decisions and their obligations with respect to proxy voting. The shifting regulatory views at the DOL on these ERISA investing rules over the past decade has caused significant confusion for plan managers while undermining the soundness of American workers' retirement plans. Chairman Allen's bill would both put an end to this uncertainty and make clear that ERISA plan participants' retirement security must be prioritized over any political or social agendas.

In particular, manufacturers welcome the bill's directive that ERISA fiduciaries select investments "based solely on pecuniary factors." This requirement will, as the bill notes, ensure that fiduciaries do not "subordinate the interests of the participants and beneficiaries" in their plan, nor "sacrifice investment return or take on additional investment risk" as a result of non-pecuniary investing criteria or goals.

Manufacturers also support the bill's provision that fiduciaries must act "prudently and solely in the interests" of plan participants and beneficiaries when voting proxies or exercising other shareholder rights. This overarching requirement will ensure that Americans' retirement security guides fiduciaries' proxy voting decisions, including whether to vote, how to vote, and how to choose and monitor service providers like proxy firms. Manufacturers also welcome the clarification that an ERISA fiduciary is not required to vote on every ballot item, as well as the safe harbors that will empower fiduciaries to focus time and resources on only those ballot items that are most relevant to the plan's financial performance. Similarly, manufacturers support the list of factors outlined in the bill (economic interest, costs, and material facts) that a plan fiduciary would be required to consider when deciding whether or how to vote or to exercise another shareholder right.

Given manufacturers' long-standing concerns about the pervasive influence and the business practices of the major proxy advisory firms, the NAM strongly supports the bill's requirements that ERISA fiduciaries "exercise prudence and diligence in the selection and monitoring" of these firms and "prudently monitor" the firm's proxy voting activities in order to ensure that they are acting "prudently and solely in the interests of plan participants and beneficiaries." In complying with these requirements, we believe that most ERISA fiduciaries would best serve their plan participants and beneficiaries by: A.) taking a far more selective approach to proxy voting, allowing the plan to abstain (or not vote at all) on immaterial ballot items; B.) generally voting in line with the recommendations of a company's independent board of directors (which has its own fiduciary duties to shareholders), unless the plan fiduciary has material concerns about the company that the board or management team have failed to address; and C.) refraining from using the "robo-voting" services offered by proxy firms if a vote is contested or otherwise non-routine.

* * * *

On behalf of the NAM and the 13 million people who make things in America, I appreciate the opportunity to testify before the Subcommittee today. The NAM stands ready to work with Congress to ensure that the millions of manufacturing employees who participate in workplace retirement plans will have a secure retirement.



Chairman ALLEN. Thank you, Mr. Crain. Next, I recognize Mr. Rees for your testimony.

## STATEMENT OF MR. BRANDON REES, DEPUTY DIRECTOR, AFL–CIO, WASHINGTON, DC

Mr. REES. Chair Allen, Ranking Member DeSaulnier, thank you for the opportunity today to testify on behalf of the AFL–CIO and our 15 million union members. In recent years, we have seen a politicization of retirement plan investment decisions, but this is not coming from fiduciaries, rather, certain politicians have sought to turn the investment decisions of retirement plan fiduciaries into a culture war issue.

Specifically, these political attacks seek to limit the freedom of retirement plan fiduciaries to make investments and devote proxies by considering environmental, social and governance, or ESG risks.

While prudent experts may reasonably disagree over the importance of ESG risk to investment returns, these differing views are an inherent part of our capital markets, where investors trade securities based on their differing investment views, time horizons and risk tolerances.

The Protecting Prudent Investment of Retirement Savings Act is the latest example of this misguided effort to prohibit ESG investing. If enacted, this bill will restore the first Trump administration's flawed attempt by the Department of Labor to distinguish between so-called pecuniary and nonpecuniary factors when making investments.

These previous rules were impermissibly vague because there is no universally accepted definition of what is a pecuniary versus a non-pecuniary consideration. This distinction is the financial equivalent of debating how many angels can dance on the head of a pin.

This misguided bill also effectively disenfranchises retirement plans from voting proxies. Since the Reagan administration, retirement plan fiduciaries have been encouraged by the Department of Labor to manage proxy votes as a plan asset, subject to ERISA's fiduciary duties.

The Chairman's bill reverses this Reagan-era ERISA interpretation by imposing an unworkable prohibition on casting proxy votes that promote so-called nonpecuniary benefits and requiring a burdensome economic cost benefit analysis before voting. As a result, ERISA fiduciaries will be coerced into abstaining from voting, thereby silencing the ownership voice of retirement plan participants and beneficiaries in our capital markets.

We also note that the bill's proposed restrictions on proxy voting by private sector retirement plans is patently unconstitutional. Proxy voting is a form of free speech, and imposing a burdensome requirement on proxy voting regarding ESG issues is a clear First Amendment violation. Given that proxy votes are valuable assets, compelling retirement plans to give them up is a taking without just compensation under the Fifth Amendment.

Congress should not be playing politics with workers retirement savings. Legislative proposals to restrict the freedom of private sector retirement plans to invest in vote proxies have more in common with a totalitarian command economy than a free market system. We urge Congress to address the genuine retirement security issues that we face in our Nation, rather than paranoid delusions about so-called woke ESG investing by retirement plan fiduciaries. Thank you.

[The prepared statement of Mr. Reese follows:]

**TESTIMONY OF BRANDON J. REES**
**DEPUTY DIRECTOR OF CORPORATIONS AND CAPITAL MARKETS**

**AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS**

**UNITED STATES HOUSE OF REPRESENTATIVES**
**COMMITTEE ON EDUCATION AND WORKFORCE**
**HEALTH, EMPLOYMENT, LABOR AND PENSIONS SUBCOMMITTEE**

**"INVESTING FOR THE FUTURE: HONORING ERISA'S PROMISE TO PARTICIPANTS"**

**APRIL 30, 2025**

Chair Allen, Ranking Member DeSaulnier, and members of the Health, Employment, Labor and Pensions Subcommittee, my name is Brandon Rees and I am the Deputy Director of Corporations and Capital Markets for the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"). Thank you for the opportunity to testify today on the importance of the Employee Retirement Income Security Act ("ERISA") for protecting the retirement savings of working people. [1]

The AFL-CIO is a voluntary federation of 63 national and international labor unions that represent more than 15 million working people. We have one overarching goal: a better life for working people which includes a financially secure retirement. For most working people who are fortunate enough to have a defined benefit pension plan and/or a defined contribution retirement savings plan (such as a 401(k) plan), our retirement savings are our largest financial asset. These retirement savings are our deferred wages that have been set aside for the purpose of providing for a dignified retirement after a lifetime of work.

ERISA was enacted in 1974 after the shutdown of a Studebaker Corporation automobile factory in South Bend, Indiana led to the termination of its pension plan for its hourly workers. This important legislation sets standards for the management of private sector retirement plans and other employee benefit plans by fiduciaries. Under ERISA, a fiduciary is a person who has authority or control over the management or disposition of plan assets. Boards of trustees, plan administrators, investment consultants, asset managers and other service providers are all ERISA fiduciaries who are subject to ERISA's fiduciary duty requirements.

Among its many requirements, ERISA provides the legal framework that guides the investment decision-making of private sector retirement plan fiduciaries. Under ERISA, these fiduciaries have a legal obligation to act solely in the interest of plan participants and beneficiaries for the exclusive purpose of providing benefits and defraying plan expenses (also

---

[1] At the end of 2022, U.S. retirement plans and individual savings accounts held nearly $38 trillion in assets, including over $26 trillion in employer-sponsored retirement plans. John Topoleski, John Gorman, and Elizabeth Myers, "U.S. Retirement Assets: Data in Brief," Congressional Research Service, September 20, 2023, *available at* https://crsreports.congress.gov/product/pdf/R/R47699.

known at the duty of loyalty). ERISA fiduciaries must also act with care, skill, prudence, and diligence (commonly referred to as the duty of prudence); they must diversify plan investments; and they must follow plan documents.[2]

Notably, ERISA governs the process for making investment decisions and does not generally mandate or prohibit specific types of investments.[3] Such investment mandates were common in state trust law prior to the development of modern portfolio theory in the 1950s. Historically, trustees were required to select investments from a "legal list" of approved investments that were deemed prudent under the law.[4] In contrast, modern portfolio theory asserts that prudence should be evaluated not by individual investments but by the soundness of the portfolio as a whole.[5]

In recent years, we have seen the politicization of retirement plan investment decisions. But this politicization is not coming from fiduciaries. Rather, certain politicians have sought to turn the investment decisions of retirement plan fiduciaries into a culture war issue. Specifically, these political attacks seek to limit the freedom of retirement plan fiduciaries to consider environmental, social and governance ("ESG") risks when making investment and proxy voting decisions.[6] In effect, these politicians want to return to the "legal list" era when the government controlled the investment decisions of fiduciaries.

**ERISA Fiduciaries May Properly Consider ESG When Making Investments**

ERISA requires that retirement plan fiduciaries act with the care, skill, prudence, and diligence under the circumstances that a prudent expert would use. While prudent experts may reasonably disagree over the importance of ESG risks to investment returns, these differing views are an inherent part of our capital markets where investors trade securities based on their differing investment views, time horizons, and risk tolerances. But for most expert financial professionals acting in a fiduciary capacity for ERISA plans, the consideration of ESG factors is an established best practice.

The data is clear that ESG is here to stay despite the wishful thinking of certain politicians who would like to control the investment decisions of private sector retirement plans. According to the CFA Institute, 85 percent of chartered financial analysts take ESG factors into consideration.[7] US SIF estimates that 79 percent of US assets under management are covered by

---

[2] 29 U.S. Code § 1104 - Fiduciary Duties.

[3] With the notable exception that ERISA prohibits certain transactions posing a conflict of interest between fiduciaries and retirement plans. 29 U.S. Code § 1106 – Prohibited Transactions.

[4] "Legal Lists in Trust Investment," *Yale Law Journal*, vol. 49, no. 5, 1940, pp. 891-907.

[5] *See* Harry Markowitz, "Portfolio Selection," *The Journal of Finance*, vol. 7, no. 1, 1952, pp. 77–91.

[6] *See, e.g.*, Republican state financial officers' letter to Acting SEC Chair Mark Uyeda and Acting Labor Secretary Vince Micone, January 28, 2025, *available at* https://static.foxbusiness.com/foxbusiness.com/content/uploads/2025/01/final_sfof-letter-to-sec-and-dol.pdf.

[7] "Future of Sustainability in Investment Management: From Ideas to Reality," CFA Institute, 2020, *available at* https://www.cfainstitute.org/sites/default/files/-/media/documents/survey/future-of-sustainability.pdf.

a stewardship policy.[8] A survey by the Capital Group found that 90 percent of institutional investors consider ESG factors.[9] And over 5,300 institutional investors, representing $128 trillion in assets under management, have signed the UN Principles for Responsible Investment.[10]

Numerous academic studies have demonstrated that ESG factors are material information for investors and that their consideration contributes to financial performance.[11] According to an academic review of over 2,000 academic papers, only 10 percent of the reviewed studies found a negative relationship between ESG and corporate financial performance, and the large majority of the reviewed studies reported positive findings. The authors conclude that "the business case for ESG investing is empirically well founded. Investing in ESG pays financially."[12] In other words, to ignore ESG is the financial equivalent of sticking your head in the sand.

**The Department of Labor's Current ESG Rule Should Be Preserved**

In light of the materiality of ESG factors to investors, the AFL-CIO strongly supported adoption of the U.S. Department of Labor's 2022 regulation titled "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," which is commonly referred to as the Department of Labor's ESG rule.[13] This rule clarifies that retirement plan fiduciaries may consider, but are not required to consider, ESG factors just as they would consider any other investment factor.[14] This ESG rule was recently upheld for a second time by the U.S. District Court of the Northern District of Texas.[15]

The 2022 ESG rule reversed two Department of Labor regulations that hastily were adopted at the end of the first Trump Administration titled "Financial Factors in Selecting Plan

---

[8] "US Sustainable Investing Trends 2024/2025," US SIF Foundation, December 18, 2024, *available at* https://www.ussif.org/research/trends-reports/us-sustainable-investing-trends-2024-2025-executive-summary.

[9] "Perspectives From Global Investors: ESG Global Study — Fourth edition (2024)," Capital Group, 2024, https://www.capitalgroup.com/content/dam/cgc/tenants/eacg/esg/global-study/esg-global-study-2024-en-ei.pdf.

[10] "Principles for Responsible Investment Annual Report 2024," Principles for Responsible Investment, 2024, https://www.unpri.org/download?ac=21536.

[11] "Empirical Research on ESG Factors and Engaged Ownership," Council of Institutional Investors, June 2022, *available at* https://www.cii.org/files/publications/June%202022%20update%20bibliography%20final.pdf; "Top Academic Resources on Responsible Investment," Principles for Responsible Investment, *available at* https://www.unpri.org/research/top-academic-resources-on-responsible-investment/4417.article.

[12] Gunnar Friede, Timo Busch, and Alexander Bassen, "ESG and Financial Performance: Aggregated Evidence from More than 2000 Empirical Studies," *Journal of Sustainable Finance & Investment*, vol. 5, no. 4, 2015, pp. 210-233, *available at* https://ssrn.com/abstract=2699610.

[13] Letter from the AFL-CIO to the Employee Benefits Security Administration, Department of Labor, December 12, 2021, *available at* https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AC03/00767.pdf.

[14] "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," Employee Benefits Security Administration, Department of Labor, 87 FR 73822, December 1, 2022, *available at* https://www.federalregister.gov/documents/2022/12/01/2022-25783/prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights.

[15] *State of Utah v. Micone*, No. 2:23-CV-016-Z, (N.D. Tex. February 14, 2025).

Investments"[16] and "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights."[17] The AFL-CIO strongly opposed these regulations because they introduced confusing new language by attempting to distinguish between "pecuniary" and "non-pecuniary" factors. [18] There is no universally accepted definition of what is a pecuniary vs. a non-pecuniary consideration. This vague language is nowhere to be found in the text of ERISA and would have a chilling effect on financially beneficial investments.

Enforcement of such a rule would require probing into the minds of retirement plan fiduciaries like the "Thought Police" in George Orwell's dystopian novel *Nineteen Eighty-Four*. Such a requirement would impose an undue regulatory burden on retirement plan fiduciaries who would be forced to document their thinking over such a nebulous distinction, and thereby increase plan expenses to the detriment of retirement plan participants and beneficiaries. Moreover, there is simply no need for such a requirement given that the Department of Labor did not identify any specific examples where ERISA had been violated by the consideration of so-called non-pecuniary issues.

Furthermore, prohibiting the consideration of non-pecuniary factors is not warranted because plan fiduciaries can prudently take into consideration non-pecuniary factors and still make investment decisions that meet all of ERISA's fiduciary requirements. For example, in 2020, President Trump's Secretary of Labor Eugene Scalia ordered the Federal Retirement Thrift Investment Board to reverse its decision to invest the International Stock Index Investment Fund into a market index that includes Chinese equities.[19] Although the Thrift Savings Plan is not formally subject to ERISA, Secretary Scalia presumably had no intention of subordinating the investment interests of federal workers to the non-pecuniary goal of promoting national security.

The consideration of so-called non-pecuniary factors is already well regulated by the Department of Labor's longstanding collateral benefits rule interpretation. Starting in the Reagan Administration, the Department of Labor has recognized that retirement plan fiduciaries may consider the collateral benefits that result from their investment decisions such as good job creation, affordable housing, and economic growth for local communities.[20] Under this "all

---

[16] "Financial Factors in Selecting Plan Investments," Employee Benefits Security Administration, Department of Labor, 85 FR 72846, November 13, 2020, *available at* https://www.federalregister.gov/documents/2020/11/13/2020-24515/financial-factors-in-selecting-plan-investments.

[17] "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights," Employee Benefits Security Administration, Department of Labor, 85 FR 81658, December 16, 2020, *available at* https://www.federalregister.gov/documents/2020/12/16/2020-27465/fiduciary-duties-regarding-proxy-voting-and-shareholder-rights.

[18] Letter from the AFL-CIO to the Employee Benefits Security Administration, Department of Labor, July 30, 2020, *available at* https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00637.pdf; letter from the AFL-CIO to the Employee Benefits Security Administration, Department of Labor, October 5, 2020, *available at* https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB91/00259.pdf.

[19] Letter from Eugene Scalia, Secretary, Department of Labor to Michael Kennedy, Chairman of the Federal Retirement Thrift Investment Board (May 11, 2020), available at https://www.scribd.com/document/461056623/2020-05-11-Scalia-Letter-to-FRTIB.

[20] On June 23, 1994, the Department of Labor issued Interpretive Bulletin 94-1 (59 FR 32606) that cited various examples of informational letters concerning a fiduciary's ability to consider the collateral effects of investors

things being equal" or tiebreaker standard, ERISA plans may consider collateral benefits so long as the competing investment courses of action equally serve the financial interests of the plan over the appropriate time horizon.

The Department of Labor's 2022 ESG rule also properly lifted the previous regulation's prohibition on selecting ESG investments as the qualified default investment alternative for defined contribution plans. We support allowing retirement plans to select the best investment options for plan participants regardless of whether the investment reflects a consideration of ESG factors. Moreover, as noted by the Department of Labor, offering ESG-related investment options in defined contribution plans may increase the eagerness of plan participants to save for retirement.

**ERISA Fiduciaries May Properly Consider ESG When Voting Proxies**

The Department of Labor's ESG rule also regulates proxy voting and the exercise of shareholder rights by private sector retirement plans. Since the Reagan Administration, the Department of Labor has taken the view that ERISA's fiduciary duties of loyalty and prudence apply to proxy voting by retirement and employee benefit plans.[21] ERISA's fiduciary duties apply to the voting of proxies and the exercise of shareholder rights by plan fiduciaries because the right to vote at shareholder meetings is a valuable plan asset. Voting proxies in the best interests of plan participants and beneficiaries enhances shareholder value by helping to hold boards of directors and CEOs accountable.

The 2022 ESG rule requires that proxy voting and the exercise of shareholder rights comply with the same fiduciary standards as any other investment decision under ERISA. Pension plans may refrain from proxy voting if the costs of voting exceed the potential benefit, for example if proxy voting materials are not available in English. But they are not required to conduct an economic analysis before casting each individual vote, as such a requirement would be more costly than simply deciding how to vote. And the ESG rule correctly requires that proxy voting and the exercise of shareholder rights be held to the same documentation standards as any other investment decision.

Retirement plans will be harmed as investors if their fiduciaries stop voting proxies because state corporate laws presume that shareholders take an active role in the governance of

including to Mr. George Cox, dated Jan. 16, 1981; to Mr. Theodore Groom, dated Jan. 16, 1981; to The Trustees of the Twin City Carpenters and Joiners Pension Plan, dated May 19, 1981; to Mr. William Chadwick, dated July 21, 1982; to Mr. Daniel O'Sullivan, dated Aug. 2, 1982; to Mr. Ralph Katz, dated Mar. 15, 1982; to Mr. William Ecklund, dated Dec. 18, 1985, and Jan. 16, 1986; to Mr. Reed Larson, dated July 14, 1986; to Mr. James Ray, dated July 8, 1988; to the Honorable Jack Kemp, dated Nov. 23, 1990; and to Mr. Stuart Cohen, dated May 14, 1993.

[21] Letter from the Department of Labor to Mr. Helmuth Fandl, Chairman of the Retirement Board of Avon Products, Inc., February 23, 1988, 198 WL 897696 ("In general, the fiduciary act of managing plan assets which are shares of corporate stock would include the voting of proxies appurtenant to those shares of stock."). The Department of Labor subsequently restated this view in 1994 (Interpretive Bulletin 94-2, 59 FR 38863, July 29, 1994); in 2008 (Interpretive Bulletin 2008-02, 73 FR 61731, October 17, 2008); in 2016 (Interpretative Bulletin 2016-01, 81 FR 95879, December 29, 2016); and in 2018 (Field Assistance Bulletin 2018-01, April 23, 2018, *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-01).

companies by voting at shareholder meetings.[22] Without shareholder votes, corporate directors could not be elected and other corporate decisions and actions could not be approved. And because an ERISA fiduciary's decision not to vote effectively cedes voting power to other shareholders, it should be permitted only on a case-by-case basis – not pursuant to a general safe harbor to refrain from voting.

Finally, the ESG rule permits retirement plans to hold boards of directors and CEOs accountable on ESG issues by exercising their shareholder rights to submit shareholder proposals for a vote at company annual meetings. Since it was first adopted in 1942, the Securities and Exchange Commission's shareholder proposal rule (Rule 14a-8) has been an integral part of our nation's shareholder democracy.[23] The submission of shareholder proposals is the most cost-efficient way for investors to elevate their concerns to boards of directors, corporate management, and their fellow shareholders.[24]

Shareholder proposals are not generally binding on companies, but they have successfully promoted the voluntary adoption of a variety of best practices.[25] Examples of ESG best practices that have been widely adopted include environmental sustainability disclosures, respect for human rights, and the appointment of independent board chairs.[26] Academic studies have found that shareholder proposals create long-term value by holding corporate management accountable and helping to reduce agency costs that stem from the separation of ownership and control in public companies.[27]

Perhaps not surprisingly, corporate CEOs do not like the idea that shareholders vote independently of corporate management's proxy voting recommendations. The Business Roundtable, a trade association of big business CEOs, has recently called for censoring shareholder proposals on ESG topics and imposing burdensome new regulations on proxy voting advisory firms.[28] These attacks on the SEC's shareholder proposal rule and proxy voting by

---

[22] *See, e.g.,* Delaware General Corporation Law, § 211 - § 233.

[23] 17 CFR 240.14a-8; *see also* 7 FR 10655 (Dec. 22, 1942).

[24] "Shareholder Proposals: An Essential Investor Right," Interfaith Center on Corporate Responsibility, Shareholder Rights Group, and US SIF, 2025, *available at* https://www.shareholderrightsgroup.com/ 2025/02/shareholder-proposals-essential.html;

[25] Letter from the Council of Institutional Investors to the Securities and Exchange Commission, January 30, 2020, *available at* https://www.sec.gov/comments/s7-23-19/s72319-6729684-207400.pdf; Letter from the AFL-CIO to the Securities and Exchange Commission, February 3, 2020, *available at* https://www.sec.gov/comments/s7-23-19/s72319-6744323-207881.pdf.

[26] "The Business Case for the Current SEC Shareholder Proposal Process," CERES, USSIF and the Interfaith Center on Corporate Responsibility, April 2017, *available at* https://shift.tools/iframe/1394.

[27] Andrew Prevost, et.al., "Labor Unions as Shareholder Activists: Champions or Detractors?" *Financial Review*, vol. 47, no. 2, May 2012, pp. 219-421; Luc Renneboog and Peter Szilagyi, "The Role of Shareholder Proposals in Corporate Governance," *Journal of Corporate Finance*, vol. 17, no. 1, February 2011, pp. 167-188. Lucian Bebchuk, "The Case for Increasing Shareholder Power," *Harvard Law Review*, vol. 118, no. 3, January 2005, pp. 833-914, Matthew Denes, et. al., "Thirty Years of Shareholder Activism: A Survey of Empirical Research," *Journal of Corporate Finance*, vol. 44, June 2017, pp. 405-424.

[28] "The Need for Bold Proxy Process Reforms," Business Roundtable, April 2025, *available at* https://www.businessroundtable.org/the-need-for-bold-proxy-process-reforms.

institutional investors seek to insulate corporate CEOs from accountability to their shareholders including retirement plans.

**Anti-ESG Legislative Proposals Will Jeopardize Retirement Income Security**

Congress should not be playing politics with our nation's retirement plans. We view the recent attacks on ESG, shareholder proposals, and proxy voting advisors to be nothing more than a blatant power grab by wealthy corporate CEOs. Moreover, legislation to limit the ability of private sector retirement plans to consider ESG factors, file shareholder proposals at the companies that they own, or vote proxies has more in common with a totalitarian command economy than a free market system. Fiduciaries should not be subject to government overreach telling them what they can and cannot invest in, or whether they will be allowed to exercise ownership rights of retirement plans to vote proxies.

For the above reasons, we strongly oppose H.R. 5339, the *Roll back ESG To Increase Retirement Earnings (RETIRE) Act*, that was introduced during the 118th U.S. Congress (2023-2024). This bill seeks to codify the first Trump Administration's flawed rules that attempted to distinguish between pecuniary and non-pecuniary benefits. Such a distinction is unworkable because all investments inherently include pecuniary and non-pecuniary features. For example, an investment in a company provides capital to grow that company's operations that will benefit the company's employees. Does this investment provide pecuniary or non-pecuniary benefits? Distinguishing between pecuniary and non-pecuniary benefits is analogous to debating how many angels can dance on the head of a pin.

We also strongly oppose H.R. 1996, the *Retirement Proxy Protection Act*, that seeks to disenfranchise retirement plans from voting proxies. It does this by imposing an unworkable prohibition on casting proxy votes that promote non-pecuniary benefits (whatever that is supposed to mean), requiring a burdensome economic cost benefit analysis before voting, and creating a safe harbor that proxy votes need not be cast when the assets under management invested in a company are below 5 percent of the retirement plan's portfolio. Given the duty to diversify investments and the new burdens imposed on proxy voting, this safe harbor would coerce retirement plans to stop voting proxies altogether. If adopted, this bill will effectively silence the ownership voice of retirement plan participants and beneficiaries.

Finally, we note that H.R. 1996's proposed restrictions on proxy voting by retirement plans is unconstitutional under the First and Fifth Amendments of the U.S. Constitution. Proxy voting is a form of speech, and coercing retirement plan fiduciaries to refrain from proxy voting will be subject to heightened judicial scrutiny. The First Amendment is particularly implicated when proxy voting on shareholder proposals that address controversial ESG issues.[29] And given the Department of Labor's long-standing recognition that proxy votes are valuable assets,

---

[29] *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.").

compelling retirement plans to give them up entirely is a taking without just compensation under the Fifth Amendment.[30]

**Conclusion: Congress Needs to Address the Real Retirement Security Crisis**

We urge Congress to address the genuine retirement security issues that we face in our nation rather than focus on paranoid delusions about so-called "woke" ESG investing by retirement plan fiduciaries. As the AFL-CIO's Executive Council has stated:

> *Pension plans represent the deferred wages of working people and must be invested with prudence and loyalty to provide retirement benefits. The proper stewardship of retirement savings requires the freedom to consider all relevant investment considerations, including ESG risks. Laws and regulations that restrict the ability of retirement plan trustees and asset managers to consider ESG risks directly contradict their fiduciary duties. Fiduciaries, not politicians, should make these judgments.*[31]

Millions of working Americans are unprepared for retirement because of our patchwork retirement system which, with the decline of traditional defined benefit pensions, requires workers to go it on their own through defined contribution retirement savings plans such as 401(k) plans.[32] Defined contribution plans shift the burden of saving for retirement, investment risk, and longevity risk of outliving one's retirement savings onto individual workers.[33] Moreover, the tax code provides the bulk of retirement savings incentives to the highest earners who are the most able and likely to save without any incentives.[34] As a result of all these factors, approximately half of all Americans do not have a retirement plan account at all.[35]

For these workers, Social Security is the only retirement benefit they can count on. And yet under President Trump and Elon Musk's Department of Government Efficiency, the Social Security Administration's ranks have been decimated by the indiscriminate mass firings of

---

[30] *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 127 (1978) ("a state statute that substantially furthers important public policies may so frustrate distinct investment-backed expectations as to amount to a 'taking.'").

[31] "Pension Plans Need the Freedom to Consider Environmental, Social and Governance Risks and Responsible Workforce Management Principles," AFL-CIO, July 18, 2023, *available at* https://aflcio.org/about/leadership/statements/pension-plans-need-freedom-consider-environmental-social-and-governance.

[32] Monique Morrissey, "The State of American Retirement: How 401(k)s Have Failed Most American Workers," Economic Policy Institute, March 3, 2016, *available at* https://www.epi.org/publication/retirement-in-america/.

[33] William Fornia and Dan Doonan, "A Better Bang for the Buck 3.0: Post-Retirement Experience Drives the Pension Cost Advantage," National Institute on Retirement Security, January 2022, *available at* https://www.nirsonline.org/reports/betterbang3/.

[34] Jean Ross, "Tax Breaks for Retirement Savings Do Not Help the Workers Who Need Them Most," Center for American Progress, May 20, 2022, *available at* https://www.americanprogress.org/article/tax-breaks-for-retirement-savings-do-not-help-the-workers-who-need-them-most/.

[35] Maria Hoffman, Mark Klee and Briana Sullivan, "New Data Reveal Inequality in Retirement Account Ownership," U.S. Census Bureau, August 31, 2022, *available at* https://www.census.gov/library/stories/2022/08/who-has-retirement-accounts.html.

federal workers and closures of Social Security offices.[36] Across the country, Social Security eligible retirees are standing in long lines at depleted field offices thanks to callous staffing cuts made at the direction of Elon Musk. Once the world's richest man before Tesla's stock price crashed, Musk has called Social Security "the biggest Ponzi scheme of all time."

Congress must assert its Article I Constitutional authority over the federal budget to put our dedicated public servants back to work and protect Social Security. Social Security is our nation's nearly universal, albeit too modest, retirement plan. Social Security's long-term funding needs can be addressed without benefit cuts; the AFL-CIO opposes cuts of any kind, including increasing the retirement age, altering the benefit formula, or reducing cost-of-living adjustments.[37] Instead, Congress must strengthen Social Security by eliminating the cap on taxable income for high earners and expand benefits to provide a secure retirement with dignity for all Social Security recipients.[38]

Thank you for the opportunity to share our views on these important issues.

[36] Ken Thomas, "Hours in Line, Cut-Off Calls: Accessing Social Security in the Era of DOGE," Wall Street Journal, April 6, 2025, *available at* https://www.wsj.com/politics/policy/social-security-pressure-09ca5446.

[37] "Convention Resolution 13: Retirement Income Security for All," AFL-CIO, June 13, 2022, *available at* https://aflcio.org/resolutions/resolution13.

[38] Josh Bivens and Elise Gould, "A Record Share of Earnings Was Not Subject to Social Security Taxes in 2021," Economic Policy Institute, January 17, 2023, *available at* https://www.epi.org/blog/a-record-share-of-earnings-was-not-subject-to-social-security-taxes-in-2021-inequalitys-undermining-of-social-security-has-accelerated/.

Chairman ALLEN. Last, I recognize Mr. Brannon for your testimony.

**STATEMENT OF MR. IKE BRANNON, PRESIDENT, CAPITOL POLICY ANALYTICS, WASHINGTON, D.C.**

Mr. BRANNON. Mr. Chairman, Ranking Member, thank you very much for the invitation to be here. The last time I testified in this room my daughter threw up on my tie right before I came here, and I had to borrow the tie of one of the staffers here, so R.J. if you are watching, I will bring your tie back.

I just want to emphasize the records that will be submitted for the record that I just wanted to say two things about ESG investing in general, based on some research I did with Robert Jennings, a former colleague of mine, when I was a Professor at Indiana University.

You know, the first point is, look, everybody who is making their own investment decisions has every right to consider whatever factors they want in making their decision, but I do think it is problematic when fiduciaries start taking into account things that might not be pertinent to long-term economic growth, and I think that is what has been going on with ESG.

The first point I would like to make is that the research suggests that the idea that there is no loss from ESG investing is, I believe, mistaken. The first point is that if you look at the typical ESG fund, the management fee is significantly higher than it is for the typical index fund. You know, the beauty, as all of this in this room probably have money in TSB, the beauty of TSB is that its management fees are close to zero.

The typical ESG fund has, according to Morningstar, has a management fee of about .1 percent higher than other funds. The analysis I did with Professor Jennings suggested that it is probably closer to one quarter percentage point. The second thing to think about in terms of the problem with ESG investing is that not only does it have a higher management fee because decisions have to be made about what stocks are and are not included into a fund.

Instead of in the next fund, where you automatically go with the market index, when you have to regularly make decisions about what does and does not belong based on long-term decisions of these companies. The other problem is that as you—and this is almost a physics rule, the more you narrow a portfolio necessarily, the higher the risk, and the lower return you are going to get, right?

This is a point that Matt Levine has made all the time, a former columnist for Bloomberg News. If you are leaving out entire sectors of the economy, you are going to be missing something of what is going on. Then the last point I would like to make is people think, well one tenth of a percentage point, or one quarter of a percentage point does not seem like a very big deal, but you know, thanks to the miracle of compound interest over the 30 or 40 year career of a worker, that is actually quite big.

A friend of mine, Jason Fuhrman, who was head of the Council of Economic Advisors for the Obama administration put out a study in 2016 looking at the Fiduciary Rule where he observed that if you talk about a quarter point reduction in the rate of return, you are talking about a reduction in total retirement wealth upon retirement of about 10 to 12 percent.

I think the excuse that these things might be quite small is no excuse to pursue this, thank you.

[The prepared statement of Mr. Brannon follows:]

**HELP Subcommittee Hearing**
**"Investing for the Future: Honoring ERISA's Promise to Investors"**
**Wednesday, April 30, 2025, 10:15 a.m.**

**Testimony of Ike Brannon, Ph.D.**
**Senior Fellow, Jack Kemp Foundation**

My name is Ike Brannon. I am an economist and a senior fellow at the Jack Kemp Foundation as well as president of Capital Policy Analytics, a consulting firm in Washington DC. I am also a former staff economist for the House Energy and Commerce Committee.

Over the last decade there has been a marked increase in the number of investment funds that purport to offer the chance for people to invest their money into funds that invest only in the stock of companies that their investment managers have determined comport with social and environmental standards and also hew to good corporate governance standards, or what we commonly refer to as ESG. In some cases, the emphasis of these funds is to produce an impact for some social or environmental cause.

There is nothing inherently wrong with people choosing to put their own savings in such a fund. When it comes to tax-advantaged retirement savings, however, the tax deferral amounts to a government subsidy at the expense of taxpayers and this tax deferral is for one purpose – to subsidize a secure retirement. Over the last few years some retirement fund managers have tried to expand ESG funds to encourage more people to put their assets in them, such as by making ESG part of a default option for new participants in a group retirement plan. Some elected officials have taken steps to abet these efforts.

These fund managers have touted what seemed to be an unbeatable deal to investors: By investing their retirement savings in funds that eschew problematic companies or industries--such as those that mine coal or critical minerals, or produce oil, or that have refused to join other companies in adopting a progressive agenda via their board of directors--they can do just as well or even better than the index funds that attempt to track the performance of the broader market.

However, the evidence clearly shows that ESG funds tend to lag the broader market, and the long-term ramifications of accepting even a small reduction in the returns to one's retirement savings are significant. There are two reasons that ESG funds lag the typical stock market index fund: The first is called negative screening or exclusionary investing. Negative screening is an investment strategy that constrains a portfolio to leave out a sizable class of stocks with the result that it will be less likely to match the performance of the stock market as a whole. This is especially true if we were to eliminate gas and oil producing companies from a portfolio. Since these stocks tend to be less volatile and pay a significant and predictable dividend--even when demand has been declining and supply is growing, as is the case today--it means that removing such low-volatility stocks results in a more volatile portfolio without an increase in returns. That is, they're accepting more risk without more reward.

The second problem is that the management fees for such investment vehicles tend to be higher than index funds, since there need to be conscious choices made as to what, precisely, should belong in the fund. There is no commonly accepted metric for determining what companies' stock merits inclusion in an ESG fund, and different companies have different approaches: For instance, Bloomberg columnist Matt Levine has noted that while some ESG funds completely eschew oil and gas stocks, others will include those that they determine have made a determined effort to limit carbon emissions and other negative environmental impacts.

Because there is no standard criterion, companies must invest time and effort in determining which companies merit inclusion in their ESG fund, and revisit the portfolio on a regular basis to determine which companies may need to be taken out of its ESG fund and which new companies should be added.

As a result, the management fees of ESG funds are higher than index funds, even if they are passively managed. A Morningstar report suggests that ESG funds have a fee about .1 percent higher than non-ESG stock index funds. My own analysis of the offerings of the five biggest management companies found the difference to be .15 percent. There are also non-passive ESG funds with higher management fees.

Small differences in returns can have a big impact over the long run, thanks to the miracle of compound interest. A 2015 study by the Obama Administration's Council of Economic Advisors, authored by Jason Furman, a well-respected economist and a friend, noted that a one quarter percentage point reduction in net earnings for someone who makes regular contributions into their retirement account over their entire career will reduce the size of their assets by nearly ten percent at retirement.

An investor who is concerned about the environment, or about broader social justice issues or the corporate governance matters at a particular firm, has the means and ability to express himself if he or she so chooses to do, whether it be by donating money to charities that engage in such issues, voting for politicians who espouse such perspectives, or consciously investing some of his wealth in such a way so that it furthers his non-pecuniary goals. But doing it on his behalf, and insisting that he benefits from that, is simply disingenuous and represents an act done for the pecuniary and non-pecuniary interests of the fund manager, contradicting his fiduciary responsibilities. The government should not acquiesce in such behavior.

Chairman ALLEN. Thank you. Thank you, Mr. Brannon. Under Committee Rule 9, we will now question witnesses under the 5-minute rule. I will recognize myself for 5 minutes.

Mr. Crain, in July 2020—in a July 2020 letter to the Department of Labor, the National Association of Manufacturers wrote that many ESG focused funds have a stated goal of subordinating investor return or increasing investor risk for the purpose of achieving political and social objectives.

Why isn't the only appropriate objective for an ERISA retirement plan ensuring that the participants have a sound and secure retirement?

Mr. CRAIN. For manufacturing workers who are depending on an ERISA plan, whether it is a defined benefit or defined contribution plan, they need that plan, and their families need that plan to be there for them when they retire.

If you are an ERISA fiduciary, and you are making decisions on behalf of that plan, whether it is what investments to choose, how to vote the proxies, or whether to rely on a proxy firm, you need to be making those decisions in the best interests of those plan participants, so that the plan savings, the plan's assets are there for them when they retire. That is absolutely the bedrock of ERISA.

Chairman ALLEN. You mentioned, my bill, the Protecting Prudent Investment Retirement Savings Act, what protections does that bill provide?

Mr. CRAIN. Your bill would require that ERISA plan managers make decisions based on plan participants best interests, both by investing based only on pecuniary factors, which are those that are relevant to the long-term performance of those assets, and ensuring that those fiduciaries are undertaking appropriate due diligence when it comes to both proxy voting and potential use of service providers like proxy firms.

Both of those steps will be critically important to protecting ERISA beneficiaries' retirement security.

Chairman ALLEN. Professor Schanzenbach, the term pecuniary comes from a unanimous Supreme Court decision that outlines the duty of loyalty. That decision states that ERISA's requirement to act for the exclusive purpose of providing benefits means financial benefits, such as retirement income.

Can you explain why pecuniary is the right term to govern a fiduciary's investment decision?

Mr. SCHANZENBACH. Yes. I think an important part of the statute of the proposed bill provides a definition of what a pecuniary factor is, and it ties it back to risk and return, right? It focuses the fiduciary's attention, which should be laser focused on risk and return, and it cabins off anything that is not affecting risk and return.

It is hard enough to make investment decisions and build a plan menu and monitor the plan menu and pushing the fiduciary to say we are only going to focus on financial factors is, I think, sound policy. It is also most consistent with prevailing understandings of ERISA in the law right now.

Chairman ALLEN. Yes, and it is common sense as well.

Mr. SCHANZENBACH. I do not disagree.

Chairman ALLEN. Professor, some ERISA defined contribution plans allow participants to direct their investments from a menu of investment options. Is this menu constructed and maintained by ERISA plan fiduciaries, and if so, how is it constructed and maintained?

Mr. SCHANZENBACH. The—I do not think ERISA specifies an exact process, but I can probably give you an answer from sort of what best practices are at the moment. When you are creating a defined contribution plan, typically the employer appoints an investment committee, who are ERISA fiduciaries, they may be employees of the firm.

Then they often retain an investment advisor to advise them on the construction of the plan. It is not just constructing the plan that's important, it is the ongoing monitoring too. If you are offering a mutual fund that has been offering sub-par returns, you have a fiduciary obligation to remove it.

If you find a product that is similar or equal, but has a lower fee structure, you may have an obligation to put that into the plan and, so, creating a structure where there is typically quarterly meetings and a professional investment advisor, is how that is executed.

Chairman ALLEN. If a participant instead chooses to make his investment selections through a brokerage window, why should that participant be informed that the plan's investment experts have not selected the investments in the brokerage window as being appropriate for a retirement savings portfolio?

Mr. SCHANZENBACH. Right. I think that is an important part of this legislation that I do not think has been spoken to yet. There is something called a brokerage window, which allows plan participants to—and it depends on the scope of the window. You can broaden it to individual stocks, or you can keep it limited to just classic, mutual funds.

It allows a participant to go outside the plan menu that has been constructed by this investment committee with the advice of the investment advisor, and then they are sort of on their own. It is no longer a curated plan, and so, the bill as I understand it, continues to allow people to do that, but it puts what I would call like a consumer warning label on their decision to do so.

I think one important part of that label is that it warns them that they may pay higher fees. I mean one advantage of these plans is that, you know, you may have a lot of money in an individual mutual fund because of all the participants choosing, and you get a lower fee as a result. You get a volume discount essentially.

When you go outside, you are probably paying essentially a retail fee. One of the—and I can say this anecdotally, there is evidence that people sometimes use this window, and they kind of pick something very similar, or maybe even identical to what is in the plan, but they just pay a higher fee.

At least giving them that warning that they are leaving something that has been curated under fiduciary obligations, and that has probably a lower fee structure is I think helpful.

Chairman ALLEN. Okay. Great. Well, I yield back. I am out of time, and I am going to call on Mr. Courtney for questions.

Mr. COURTNEY. Thank you, Mr., Chairman, and thank you to the witnesses for being here today. I must say there is something kind of surreal about this hearing today. There definitely is a lot of concern out there by our constituents, in terms of their retirement security, but what they are concerned about is watching this economy get lit on fire by the reckless policies of this administration.

We are seeing it unfold in real time as we are sitting here right now. This morning's GDP numbers came out for the first quarter. For the first time in 3 years, our economy contracted. If you look again at the stock market, you can look on your phone right now, I mean every indicator, S&P, Nasdaq, S&P Dow are all down.

What is really disturbing is that the yield on bonds is going up, I mean, which is not normal in terms of what happens when equities go down. Investors usually shift to U.S. paper, to U.S. bonds, but unfortunately, we are seeing a really disturbing trend of where investors are actually moving away from U.S. paper, or U.S. bonds, and the job numbers that came out this morning from ADP, the private labor market trackers, shows that in the month of April 62,000 job increased, really one of the lowest numbers since the end of the pandemic.

This is all sort of happening right now. We all know why. It is because of the reckless tariff policies that have been put into place. One of Mr. Crain's members from Connecticut, Stanley Black and Decker this morning announced that they are raising the price of the iconic "Made in America" tools.

The headquarters is in my colleague's district in New Britian, Connecticut, by high single digits because of tariffs. okay. This problem is not slowing down, it is not just a passing phase, it is actually gaining momentum.

To quote Mr. Crain, "Congress should stand up for workers." What we should do is claim our Article I powers to basically control tariff policy and grab the steering wheel away from the executive branch.

This is happening today in the Senate. They are taking up a measure to use under the Emergency Powers Law that the President cited, to take back Congress's authority under tariffs. Speaker Johnson and the Republican majority in the House should join that effort, in terms of again, protecting the retirement savings of our constituents.

Like Mr. DeSaulnier, when I was home, and I am sure the rest of my colleagues, they heard a lot about what is happening to people's 401K plans, you know, burning up because of policy, not because of external factors, not because of economic, you know, catastrophes, but because of policy decisions that are being made in Washington.

The attack on Social Security is just another layer of insecurity that is being added here. Mr. Rees, on that point, I mean through, you know, World Wars, through recessions, through the crash in 2009, through the pandemic, the one pillar for retirement security in this country has actually been the Social Security system.

When we talk about again, your constituents, and working families in general, I mean this attack in terms of hollowing out the infrastructure of the Social Security, which DOGE has been conducting, and having Elon Musk calling it a Ponzi scheme, and something that he wants to "eliminate," which he said on Fox News.

Can you talk about what that means to working families in this country, in terms of retirement security?

Mr. REES. Thank you for the question, Congressman. You are absolutely right that this is going to be devastating for the retirement security of working people. The Social Security Administration's staffing levels at the lowest level currently, prior to these cuts that we have seen in 50 years.

We have got working people who are applying for Social Security benefits across this country queuing up in line trying to get their hard earned benefits because of these reckless cuts that Elon Musk and DOGE have been making, all for the purpose of saving money to fund President Trump's tax cuts for rich billionaires like Elon Musk. That is unacceptable, and we need to stop it.

I thank you for calling for Congress to assert its Article I powers to take back authority from President Trump to restore these jobs and restore our public sector employees.

Mr. COURTNEY. Thank you. Again, I have a lot of respect for the Chairman. This is a legitimate issue that we can debate, but honestly, it is like fiddling while Rome burns, in terms of what the real threats to retirement security is. I yield back.

Chairman ALLEN. I thank the gentleman. I now recognize the gentleman from Florida, Mr. Fine.

Mr. FINE. Well, thank you. Thanks for putting me at the front of the line. I am not sure what I did to deserve that. It is my first opportunity to ask questions and thank you all for being here. My perspective on this notion is that, you know, the stock markets you invest in the long haul.

Before I was a politician, that is certainly what I did. I was reasonably good at making money, not so good at politics. While I understand the concerns about tariffs, I think the President is trying to fundamentally reorder how economics work. Apparently, tariffs are a great idea when other countries do them, they are just a terrible idea when we choose to respond.

I am still trying to figure that one out. I want to focus on the subject matter here of ESG, and Mr. Rees, you talked a lot about politicization and paranoid delusions. I want to make sure that I do not have any of those. My father is someone who is a public employee, he was a professor for many years. He benefited from owning these funds.

It is what drives his retirement, and fortunately he benefits now. He is 76 years old, but as he went through his career and those funds were invested on his behalf, do you think there are any times when an investment manager should make a decision on how to invest those funds that is driven by anything other than what would maximize the returns that he would get when he needs those funds, or should financial returns be the sole criteria that a financial manager should use to be making those financial decisions?

Mr. REES. Congressman, it has been clear since ERISA was passed in 1974 that the primary duty of fiduciaries is to maximize risk adjusted investment returns in order to protect the retirement security of plan participants and beneficiaries. They may also consider collateral benefits under the all things being equal test, that was previously referenced in the Professor's testimony.

Mr. FINE. You said primary duty. What would their secondary duties be? That implies if there is a primary duty, there are other duties that they have other than making sure that my father gets the maximum return when it was time for him to retire.

What are those secondary duties that they have that they should be spending their time on, other than making sure that my father and other public employees like him get as much money as they can? What are those secondary duties that they should have?

Mr. REES. Well, ERISA establishes fiduciary duties for retirement plan fiduciaries, which is the duty of loyalty, the duty of prudence, the duty to diversify portfolio assets, and the duty to follow plan documents.

Mr. FINE. Yes, well diversity of investments will be part of maximizing return. If you put all your eggs in one basket, I think you are taking a pretty big risk. Can you think of any examples ever—so, if I am an investment manager, I just want to make sure I understand. I do not want paranoid delusions.

Can you think of any example ever? An investment manager sits down, and he has got those funds, and his job is to maximize that for the benefit of those workers who are doing their jobs, and hoping that when they get to 65, or whenever it is they have those funds, should they ever think about anything other than maximizing the return that they are making, you know, some feel good social, environmental benefits that may or may not be good things, or not.

Should they ever say, you know what, I could maximize. I can make a little bit more money for the people who are depending on us. I am not going to do that because of these environmental or social, or you would agree they should never think about environmental or social issues if that would take away from the maximization of the return that they would get on that investment?

Mr. REES. Well, ESG issues are often relevant to financial considerations, and I will give you a real-life example. Tesla's stock price peaked after President Trump's election last November, however, since Elon Musk has gotten involved in politics, Tesla's customers have been appalled.

They have been appalled by his alleged Nazi salute at Inauguration Day. They have been appalled by his involvement in the Department of Government Efficiency. As a result, Tesla's earnings fell by 71 percent in the first quarter of this year.

Its stock price fell by 36 percent in the first quarter, so I ask you, Congressman, how should a retirement plan fiduciary weigh the controversial political activities of Elon Musk?

Mr. FINE. Great question. I actually am a three-time owner of a Tesla. It is the car that I drive. I bought them when apparently it was not cool for conservatives to own Tesla's, apparently now it is. My colleagues in the Florida legislature gave me a hard time back then about doing it.

I actually was there in the arena when Elon Musk made the arm movement that so many Democrat politicians seem to make all the time, and no one seems to be bothered by that. I would note that as a Jewish member of the legislature, I find the notion that it was a Nazi salute to be quite offensive.

That aside, if the investment manager believes that Elon Musk's activities are going to have a deleterious effect on the stock performance, then that would be a reason for them not to invest, but it would not be because of economic, it would not be because of environmental or social reasons, it would be of those things.

I will wrap up with this. I see my time wrapping up. It is your position that investment managers should always be investing always in order to maximize performance. There is never a reason when they should not?

Mr. REES. Absolutely.

Mr. FINE. Okay. Thank you.

Chairman ALLEN. The gentleman's time has expired. I recognize now the gentleman from California, Mr. Takano.

Mr. TAKANO. Thank you, Mr. Chairman. Thank you to the witnesses for being here. Mr. Rees, why is considering environmental, social and governmental factors, or otherwise ESG, important when making long-term investment decisions? Turn your mic.

Mr. REES. Thank you. ESG factors are financially relevant to financial performance, and it would be the equivalent of sticking your head in the sand to ignore environmental, social and governance risks when making investment decisions.

Mr. TAKANO. A majority of fiduciaries agree with you. Recent surveys found that 90 percent of institutional investors, 85 percent of chartered financial analysts, take environmental, social and governmental, or ESG factors into account when making investment decisions.

Mr. Rees, what are the risks of ignoring the ESG factors when making long-term investment decisions?

Mr. REES. Well, ERISA requires that fiduciaries act as a prudent expert would act under similar circumstances, and as you noted, prudent experts in our capital markets consider ESG risks all the time because they are financially material to investment returns.

Mr. TAKANO. Thank you. In recent years there has been a heightened politicization of retirement plan investment decisions. It has been the subject of several Committee hearings and markups, and multiple Court cases. Let me reiterate, the current Biden Rule, which has stood up to multiple Court challenges, merely permits ESG factors to be considered when making investment decisions.

Nothing in the current rule obligates ESG investing. Mr. Rees, is this politicization of ESG factors coming from fiduciaries?

Mr. REES. No.

Mr. TAKANO. It is not. Attacks on "woke" have gone beyond merely banning books or asserting curriculum control. Now, it seems to me that politicians are reaching into American's retirement accounts and investment portfolios to make sure that no one is investing their money in a manner which does not align with a certain ideology.

I would like to use my remaining time to talk about some factors that are having real time impacts on retirees' investments. President Trump's policies have resulted in the highest market volatility since the COVID pandemic. A week and a half ago, the Wall Street Journal suggested that the Dow Jones Industrial Average was headed for its worst April performance since 1932.

Mr. Rees, what impact has the stock market volatility had on the retirement investments and pension plans of your constituency?

Mr. REES. Well, it has been devastating. President Trump's Liberation Day announcement of reciprocal tariffs erased six trillion dollars in market capitalization from the stock market. It threw the bond market into a tailspin.

Mr. TAKANO. Let us be clear, who is your constituency?

Mr. REES. I represent the AFL–CIO. We support tariffs, but not how President Trump is implementing them on an ad hoc and arbitrary basis that is undermining investor confidence in the United States.

Mr. TAKANO. They are members of labor unions, they are working men and women. Thank you. Yesterday republicans on this Committee advanced their budget reconciliation proposal that makes pathways out of student debt far less successful. Last week, the republicans on the Energy and Commerce Committee are expected to gut Medicaid.

Will these republican budget reconciliation measures improve outcomes for retirees?

Mr. REES. No. It will be devastating.

Mr. TAKANO. Let me close by underscoring this. Retirees are facing immediate, dire consequences to their financial health because of the policies of this administration, yet we are spending our committee time restricting fiduciaries from using the decisionmaking tools at their disposal, simply because the majority here might not agree with them.

I want to ask all Americans would you like more politicians involved in your financial planning? Should the members of this Committee be making the decisions for you, or would you prefer to trust the experts? I yield back, Mr. Chairman.

Chairman ALLEN. I thank the gentleman, and I now recognize the gentlelady from Connecticut, Ms. Hayes.

Mrs. HAYES. Thank you. Everybody deserves to retire with dignity, and we have had several hearings, so I welcome the opportunity to continue to do that. Individuals and their trusted advisors should be free to make investment decisions that best reflect their values and offer them the highest return on investment.

Environmental, social and governance factors, or ESGs, can encompass a wide range of risks and opportunities in an investment portfolio. Workers may not want their savings to go toward a company that is polluting the environment, diverting resources from struggling neighborhoods, or violating labor laws.

In 2020, the Trump administration issued a rule which limited the consideration of ESG factors in retirement plans governed by the Employee Retirement Income Security Act, or ERISA.

In 2022, the rule, in my opinion, was correctly reversed by the Biden administration, ensuring that fiduciaries can focus on all relevant factors when making investment decisions for their clients. Trump administration and Republicans on this Committee are pursuing many culture wars that offer investors that do not offer investors real choices when deciding how their savings will be used for retirement.

Mr. Rees, in your testimony you said enforcement of the Trump Rule would impose undue regulatory burdens on retirement plan fiduciaries. Can you discuss how ESG related factors are sometimes necessary considerations for retirement investors, and can you elaborate a little on how enforcement of the 2020 ESG Rule would be costly for investors?

Mr. REES. Thank you for the question, Congresswoman. ERISA, since it was enacted, it has regulated the investment process for fiduciaries in making investment determinations. It has not dictated the investment decisions, or prohibited, or required specific types of investments.

That has been true in our capital markets since the 1950's, since modern portfolio theory was developed. Prior to modern portfolio theory, investors and fiduciaries were required to invest in a legal list, which permitted investments. There was government control over fiduciary decisionmaking.

Now, that was not in the best interest of plan participants and retirees because the prudence of a portfolio should be evaluated as a whole and not based on the individual investment securities. ESG risks are real, and they do have a material impact on investment returns.

Be that climate change, respect for human rights, or corporate governance issues like excessive executive compensation.

Mrs. HAYES. Exactly, and I think that how investments are made matters. Tesla is a perfect example. I heard my colleague say it is no longer cool to drive a Tesla. I think people still appreciate lower emissions, or electric vehicles, or being environmentally conscious, but it matters how we do that.

It matters how companies operate, and how they engage with communities, so the product is not what is at—that people are at odds with, it is the company that people are at odds with. In 2023, there were over 143,000 Social Security beneficiaries in my district, including more than 14,000 disabled workers, and 7,000 children.

The administration, with many of the cuts led by Elon Musk and DOGE, has laid off 7,000 workers within the Social Security Administration, and is closing field offices across the country. How have these cuts and lay-offs under this administration impacted the millions who rely on programs administered by the Social Security Administration?

What can we do to increase retirement benefits for American workers?

Mr. REES. Half of all working Americans in the United States do not have access to a retirement plan through their employer. They do not have an individual retirement account. For these workers, they depend 100 percent on Social Security for their retirement security after a lifetime of hard work.

Cutting the Social Security Administration is effectively a benefit cut by frustrating the ability of working people to receive their hard-earned social security benefits. The fact that these cuts are being made for the sole purpose of tax cuts for rich billionaires like Elon Musk, is simply unconscionable.

Mrs. HAYES. Thank you. Again, how these things are being done matters because what I am hearing at home is the unpredictability and the uncertainty. People are asking questions that are not being answered, and that is quite frankly, scaring the American people. With that, I yield back.

Mr. WALBERG [presiding]. I thank the gentlelady, and I recognize myself for 5 minutes for questioning, and thanks to the panel for being here. Professor Schanzenbach, Congress enacted ERISA to protect the benefits of American workers.

Under ERISA, as you know, investment fiduciaries have a duty to invest exclusively for the purpose of providing benefits and defraying reasonable expenses under the plan.

Why is this duty so important in protecting retirement benefits?

Mr. SCHANZENBACH. The fiduciary duties are pushing the investment committee, the people that have discretion to invest ERISA assets, to focus laser like on risk and return. Without that, there is less guidance for these fiduciaries, and they may choose to follow policy preferences of their own without consideration of the benefits for the workers.

Mr. WALBERG. Could you discuss whether it would violate ERISA's cornerstone duty of loyalty for an investment professional to be motivated to produce a benefit, or a third party, or to be motivated by his or her own sense of ethics when investing someone else's retirement benefits?

Mr. SCHANZENBACH. Right. I think I can answer this by a pretty simple example. We all understand the duty of loyalty means that a fiduciary cannot reach into the retirement pot and take out $50 for himself, nor can he reach in and take out $50 and give it to a favorite charity, okay?

We understand that that is self-dealing, that is a violation of fiduciary obligation. It is no different if the fiduciary impairs the investment returns so as to produce that same benefit for third parties. It is all a breach of the duty of loyalty and has been widely understood to be such in trust investment law for generations.

Mr. WALBERG. Yes, a point to ponder and to remember, yes. Thank you. Mr. Crain, the Protecting Prudent Investment of Retirement Savings Act would caution investment fiduciaries against considering so-called ESG factors, unless these factors have a financial impact on plan performance.

Please, if you would, explain the importance of retirement plan participants being able to trust that their long-term savings will be protected over any other considerations so that they can enjoy a stable sense of retirement.

Mr. CRAIN. More than 85 percent of manufacturing workers are eligible to participate in a workplace retirement plan. These are, as the Subcommittee knows, defined benefit, defined contribution plans governed by ERISA. Their sole goal in participating in those retirement plans is that those assets, those benefits, will be there for them when they retire.

It is absolutely crucial that the folks who are managing those plans are doing so in a way to maximize the retirement savings, the retirement security, of the participants. In this context what that means is making investment decisions based solely on pecuniary factors that are designed to maximize that retirement security.

Mr. WALBERG. Okay. Thank you. Mr. Brannon, you wrote in a comment letter that, and I quote, "Because of the miracle of compound interest," my dad talked about that, "even small gains in returns can't over three or four decades that a person saves for retirement, produce significant gains in wealth."

What are your views on whether investment professionals managing retirement savings should be chosen based exclusively on the qualifications to manage these investments?

Mr. BRANNON. Let me talk about this in a context about the Pension Protection Act, which was passed in 2006, when I was a staff economist on the Senate Finance Committee. One of the things we struggled with was what the default investment was going to be at the time.

I am not sure we got it right, but one of the things that everybody on both sides clearly wanted is to make sure that those were passive investments because everyone understands that if you have an index fund, or something that is not actively managed, that is when you get the lowest fees.

I think everybody understood at the time that allowing something to be actively managed, and most ESG funds kind of fall into that category, that is going to cost you something because you are going to have to pay a management fee.

You know, it is a study I cited by Jason Fuhrman, that even very small, even a .25 percentage point difference in rates of return can, over a lifetime, diminish the amount of savings by—final savings by as much as 10 percent.

Mr. WALBURG. Significant impact, so.

Mr. BRANNON. Yes.

Mr. WALBURG. Yes. Well, thank you. I now recognize—I recognize the Ranking Member of the Full Committee, Mr. Scott from Virginia.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman. Mr. Brannon, you have talked about the average fees and returns. Do some ESG funds charge lower fees than some non-ESG funds?

Mr. BRANNON. Yes. In general, ESG fees charge more than the typical index fund.

Mr. SCOTT. On average, are there some ESG funds that charge less than some non-ESG funds?

Mr. BRANNON. To my knowledge there are no—so, if you look at TSP, which probably most of us participate in, if you have an index fund at TSP it charges almost nothing. In fact, I think it is now——

Mr. SCOTT. You found one low fund. There are no non-ESG funds that charge more than any ESG funds?

Mr. BRANNON. Sure. There are probably—there are some ESG funds that charge less than some actively managed funds.

Mr. SCOTT. Okay. Do some ESG funds have higher historic returns than some non-ESG funds?

Mr. BRANNON. Yes.

Mr. SCOTT. Then why should the lower fee, higher return ESG funds be excluded from plans where the higher fee, lower returns be included?

Mr. BRANNON. This gets back to the point I was talking about with Chairman Walberg, is that if people are not making active retirement decisions, and probably the majority of people who enter into a retirement fund are not making an active decision, right?

You are making some kind of default. You want that default to be in something that is safe and is going to get the highest, long-term rate of return, and that is where passively managed funds enter in general.

Mr. SCOTT. You could have a higher fee actively managed non-ESG fund as the default?

Mr. BRANNON. It is possible, but that is not what pensions——

Mr. SCOTT. It would be legal. If some do not want ESG factors to be considered at all, if you are investing in a real eState development, should it be illegal to consider environmental factors, such as whether or not the development will be under water in 20 years because of environmental factors?

Mr. BRANNON. I think that can be done, and is done, without having to resort to the metrics in an ESG fund.

Mr. SCOTT. Well, you have to consider environmental factors. Mr. Rees, are there studies about returns and fees on ESG funds that you are aware of?

Mr. REES. Yes, Congressman.

Mr. SCOTT. Can you tell us the results of some of those studies?

Mr. REES. Yes, so in my written testimony I cite a study that reviewed over 2,000 academic papers, and it found that only 10 percent found a negative relationship between ESG and corporate financial performance. A majority of those studies reviewed found positive findings.

If I may respond to Mr. Brannon's testimony, it is misleading to compare actively managed ESG funds to index funds. I would point out that the selection of index funds is, and also effect, it can also take into consideration ESG metrics.

I would point you to President Trump's Secretary of Labor, Eugene Scalia, decision in 2020 when he ordered the Federal Retirement Thrift Savings Investment Board to reverse his decision to invest in an international stock index that included Chinese equities.

In taking this action, presumably the Secretary did not intend to subordinate the interest of Federal workers to the non-pecuniary goal of national security. Now, does Congress want to prohibit private sector retirement plans from making a similar decision?

Mr. SCOTT. Can you discuss some of the high fee private equity investments of cryptocurrency investments that have higher fees than ESG funds?

Mr. REES. Yes. It is deeply ironic that Republicans would seek to prohibit actively managed ESG funds in retirement plans and 401K plans at the exact same time that they are pushing for expensive, risky, private equity investments to be permitted in 401K plans.

It is hypocritical, and it is not good retirement security policy.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. WALBERG. I thank the gentleman, and I personally want to wish you a happy birthday, and many more.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. WALBERG. I now recognize the Chairman Emeritus of this Committee, as well as the Chair of the Rules Committee, Ms. Foxx.

Mrs. FOXX. Thank you, Mr. Chairman, and happy birthday Bobby. Thank you. I want to thank our witnesses for being here today too. Mr. Crain, why were ERISA fiduciaries allowed to delegate such critical decisions, such as Board selection and policy decisions to proxy advisory firms that are not bound by ERISA's duties of prudence and loyalty, and may instead promote politically motivated ESG goals?

Mr. CRAIN. Thank you for that question. I think it goes straight to the heart of the first Trump administration's DOL Rule, and Chairman Allen's legislation. Proxy advisory firms are conflicted; they are under regulated.

They have specific agendas that they utilize their voting power to achieve, and it absolutely undermines ERISA fiduciaries obligations if they are blindly outsourcing their voting decisions to those proxy advisory firms.

Mrs. FOXX. Thank you. What transparency exists around the criteria proxy advisory firms use to make voting recommendations, and how do we know these criteria prioritize fiduciary duty over ideological preferences?

Mr. CRAIN. Frankly, there is very little, if any at all, transparency around how proxy advisory firms determine their standards for public companies, and then how they make their voting recommendations. In fact, the easiest way to find out is to pay them a consulting fee if you are a public company, which illustrates the clear conflicts of interest that they have.

Mrs. FOXX. Thank you. Professor Schanzenbach, given the potential for lower returns from ESG investments, should fiduciaries be required to explain to participants the long-term financial consequences of these choices on their retirement savings?

Mr. SCHANZENBACH. Well, I think I would have to distinguish between whether they are using ESG factors to improve risk and return, in which case they just have to continue to monitor those chosen funds, or that chosen investment to make sure it is fulfilling that promise. If it stops, it needs to drop the investment.

If it is a non-pecuniary factor that is being used, I think it is just basically prohibited under the duty of loyalty, and then the only knife edge point is the question of this tie breaker, which the bill still permits, so I hope that is responsive.

Mrs. FOXX. If participants in ERISA plans are unwilling to invest in ESG options, should they have the right to opt out of these investments entirely, or are they effectively being forced into supporting politically driven agendas with their retirement savings?

Mr. SCHANZENBACH. Well, I think that is one of the protective features of the duties of loyalty and care under ERISA. You can think of the duty of loyalty as a process, sorry, as a motive test. The fiduciary has to be offering this option, or making the investment because it thinks it is in the best financial—best pecuniary interests of the beneficiary.

Then the care issue arises as a process test, and they follow a reasoned process, and have a reasoned explanation for why they chose to offer that particular investment. Even if they think for example, initially, that it is a tie, and they can satisfy with the additional documentation, that it was in fact a tie, which is I think something of a unicorn.

Assuming that they do that, they have to continue to monitor that investment over time, and given that financial factors, you know, the economy changes so rapidly, it is unlikely to be a tie indefinitely, and so then they would have to follow a process to remove it from the investment options, or divest from the investment when they make that conclusion.

Mrs. FOXX. Thank you. Mr. Brannon, is it not misleading for participants to be funneled into ESG investments through brokerage windows without clear warnings that these choices are not overseen by fiduciaries, and may harm their retirement savings?

Mr. BRANNON. I would say that any time people are not making an active decision, and the money is just being put into some kind of default, they should be made aware of what their investments are going into, and the risk entailed, and whether or not they are going into funds that might have a lower rate of return.

Mrs. FOXX. Thank you. Thank you, Mr. Chairman, I yield back.

Mr. WALBERG. I thank the gentlelady. Now, I recognize the gentleman from New York, Mr. Mannion.

Mr. MANNION. Thank you, Mr. Chairman. Today's hearing is fundamentally about choice, about whether fiduciaries charged with maximizing retirement security under ERISA can consider all relevant information when making investment decisions.

Environmental, social and governance factors are not ideological preferences. They are additional datapoints that can impact the company's long-term performance.

I want to make one thing clear. Nobody here is suggesting a mandate to prioritize ESG information over financial returns. Simply permitting ESG considerations under ERISA is by no means pushing an agenda, but arbitrarily restricting it is.

When we are talking about long-term investments, of course, fiduciaries should be able to factor in things like climate risks and unfair labor practices.

Frankly, the fact that we are having this hearing stems from misconceptions, if not outright misrepresentations. Meanwhile, the administration has spent the first 100 days actively weakening retirement security, undermining faith in Social Security and Medicare, sowing doubt in those very systems, while imposing erratic tariff policies that have sent 401K balances tumbling.

If we are serious about protecting America's retirement, we should start by holding the administration accountable. Mr. Rees, could you please elaborate on how that accountability can and should occur, including as it relates to congressional oversight?

Mr. REES. Yes, Congressman. It is vitally important that Congress assert its Article I powers over the Federal budget to restore funding for the Social Security Administration, and rehiring our dedicated public servants, whose jobs are to ensure that working people receive the Social Security benefits that they have earned through a lifetime of hard work.

Mr. MANNION. Thank you. What do you make of these continued discussions around ESG, considering the much larger issues that we are currently facing as a country related to personal financial security, retirement planning, and our economy in general?

Mr. REES. It is a distraction meant to distract us from what is really happening, which is tax cuts for billionaires, and cuts to the services that working people depend on in government.

Mr. MANNION. Thank you so much. I yield back, Chairman.

Mr. WALBERG. I thank the gentleman. I recognize the gentlelady from Pennsylvania, Ms. Lee.

Ms. LEE. Thank you, Mr. Chairman. Proxy voting in shareholder meetings is an issue of economic freedom and worker's access. I do not usually often take that stance, but in this particular instance it is undeniably true.

Prohibiting proxy voting in ERISA plans is a way of shutting the boardroom doors to low-and middle-income Americans, and marginalized folks, and locking these workers out of a fair opportunity for financial freedom.

Shareholder meetings are of course where companies make the big decisions, like whether to make a large acquisition, or who should be on the company's board of directors, executive compensation schedules, and other significant changes in corporate operations or policies.

These decisions impact a company's bottom line, and if you own a share, or a portion of a share of a company's stock, that decision impacts your bottom line too. That is also true if you are a stock shareholder through your work's retirement plan, whether that be a 401K, qualified union pension plan, or another ERISA covered plan.

Most working-class Americans who invest in stocks do so through a retirement plan. If you have an employer-sponsored retirement plan, that plan is managed on your behalf, so historically the person that manages your employer or union sponsored retirement plan, has been able to attend these critical shareholder meetings, and vote on behalf of, and in the best interest of the shareholders they represent.

This gives workers, working folks, a seat at the table to ensure that their retirement money is protective. Mr. Rees, could you please provide examples of instances when proxy voting benefits participants and beneficiaries? Yes.

Mr. REES. Thank you, Congresswoman. You are absolutely right that proxy voting is vital to protecting the retirement security of working families, and that is because CEOs do not always get it right.

Ms. LEE. Really.

Mr. REES. My counterpart, Mr. Crain, represents the National Association of Manufacturers. As far as CEOs are concerned, every time shareholders vote against the management, the recommendations of corporate management, that is an error or a wrong vote or was advised by a conflicted proxy voting advisor.

It is just unacceptable that the Chairman's bill would silence those working people's voices in the capital markets, through their retirement plan by imposing burdensome red tape prior to voting.

This bill requires fiduciaries to do an economic cost benefit analysis prior to casting proxy votes. It is far cheaper and simpler to just decide how you are going to vote. I do not understand why the majority wants to disenfranchise private sector retirement plans. It is unconstitutional, and it is going to hurt the retirement security of working people as you described.

Ms. LEE. Proxy voting clearly benefits plan participants and beneficiaries, and as some of my colleagues have shown today, that considering ESG corporate environments, social and governance practices does too. When we talk about whether a company should reinvest the 20-million-dollar profit into a business, or the CEO's salary, that impacts workers retirement money.

Mr. Rees, in your testimony you discuss how proxy voting is really an issue of freedom. Congressional Republicans seemingly want to put their thumb on the scale and limit the freedom of retirement plan fiduciaries to consider ESG factors when making investment and proxy voting decisions.

Would you please elaborate on that? Tell us about the history of investment mandates.

Mr. REES. Yes. The freedom for retirement plans to vote proxies is an inherent part of our free market system in which private actors decide how corporations are run. Investors, including workers' retirement plans, make those decisions, not the government, and not politicians.

Our State corporate laws assume that shareholders will be voting proxies. If you do not vote proxies, if shareholders did not vote proxies, directors would not be elected, executive compensation plans would not be approved, mergers and corporate transactions could not be approved, and shareholders would be deprived from voting on environmental, social, and corporate governance shareholder proposals.

That would hurt the retirement security of working people, and it has more in common with the totalitarian command economy, where the government controls how investors make investments and cast proxy votes, than it does with the free market system.

This rule that fiduciaries need to be voting proxies consistent with the interest of retirement plan participants and beneficiaries, not in the interest of corporate CEOs, as represented by the National Association of Manufacturers, was adopted by Ronald Reagan's Department of Labor.

Ronald Reagan, who defended the free market system, and yet today the majority in this Congress seeks to silence those private sector retirement plan votes, and their freedom to invest.

Ms. LEE. Well, and I will let us end on that note because time does fly, but I thank you so much for your testimony today, and I yield back.

Mr. WALBERG. I thank the gentlelady. I now recognize the Ranking Member of this Subcommittee, Mr. DeSaulnier from California.

Mr. DESAULNIER. Thank you, Mr. Chairman. Mr. Rees, I have mentioned in my opening comments about the analysis that you see that the cuts to Medicaid based on what CBO, and I will add in a previous hearing of this Subcommittee, the Chairman and I got into a little disagreement about what the budget, and what will actually happen and is happening in Energy and Commerce right now.

The cuts to Medicaid that I quoted also from the Kaiser Family Foundation analysis of the effect on worker's benefits, and specifically healthcare. 65 percent of people who receive Medicaid of working age are working full-time, another 20 percent work part-time. Of the remaining 15 percent, almost 10 percent are caregivers for family members.

What does that kind of cut in addition as we are talking about, protecting benefits and real information, how does that have downstream effects, and lose 220,000 jobs in California, according to the analysis by the University of California.

What is the downstream effect on the cuts to Medicaid if E&C does not identify how they will protect that as some of my colleagues have promised that they will?

Mr. REES. Thank you for the question, Congressman. As a Berkeley alumni, let me first say Go Bears. Over 70 million working people in the United States are enrolled in Medicaid. Cutting this vital program will leave millions uninsured.

Being uninsured means foregoing preventative health, and increasing medical debts, which is the leading cause of personal bankruptcy in the United States.

Moreover, these cuts will push healthcare costs from the uninsured onto health and welfare plans in the form of increased hospital costs from uncompensated care. Nearly one-fifth of all hospital revenue comes from Medicaid, and the loss of this revenue will be passed on to insured patients.

It is simply unconscionable in my view that these cuts will be made just to pay for tax cuts for billionaires.

Mr. DESAULNIER. To followup on that, these people are working, so for adding required paperwork and bureaucracy for them to prove that they are working to get Medicaid. I remember in California when I was Chair of the Labor Committee, we got in a disagreement with the Schwarzenegger administration where they were saying there is so much fraud in support system basic needs.

The LAO came back and said you are spending more money on preventing fraud than we have identified in fraud. This seems like a similar situation where the majority is suggesting all this paperwork and bureaucracy to prove that you are working, when we already know they are working in order for them to continue to get Medicaid.

Mr. REES. That is right, Congressman. It is essentially an effort to deprive working people of access to health insurance, and that is going to hurt not just working people, it is going to hurt our economy as whole, as our working age population is less healthy being deprived from preventative care, and also creating tremendous economic uncertainty for working families who are faced by crushing medical debt.

Mr. DESAULNIER. That is on top of the hearings we have had in this Committee about the erosion of employer/employee healthcare plans, where the number of denials on usually accepted claims has gone way up in the last 5 years. Let us talk a little bit about Social Security.

If we cut Social Security staff, the people who are at working age who are supplementing, and we know this has grown in this country, older Americans have to work, so how does that affect, if you cannot get through to Social Security, the retirement system, and people who are working but are eligible for Social Security?

Mr. REES. Well, it is a benefit cut. It is a cut. If you are unable to get your promised Social Security benefits because Elon Musk's DOGE has cut the Social Security Administration employment, that is going to affect our economy as a whole. It is also going to affect the retirement security of working people.

More than half of working people in this country do not have a retirement plan. They do not have an individual retirement account. They depend exclusively on Social Security in order to provide for secure retirement after a lifetime of hard work.

For us to be talking about cutting the Social Security Administration, as is currently happening under President Trump, is going to create a deep hole for working people, who are being deprived from their hard-earned Social Security benefits.

Mr. DESAULNIER. We were talking about information right now, so people can get a reasonable expression of analysis, whether it is by the right or the left about investments. Jamie Dimon, as I mentioned, said that this administration's policy on tariffs will increase inflation, is more likely to add a recession. Can you briefly comment on that?

Mr. REES. Yes. President Trump's Liberation Day tariff announcement, it effectively liberated 6 trillion dollars in stock market valuation, including from millions of working people's retirement accounts.

Mr. DESAULNIER. Thank you. I yield back.

Chairman ALLEN. Okay. Thank you, again, to all of our witnesses for their testimony. I believe we have wrapped up questioning now, and I will ask the Ranking Member, do you have a closing statement?

Mr. DESAULNIER. I do, Mr. Chairman. I want to thank the witnesses again, and just say there should be nothing controversial about ensuring retirement plan fiduciaries are permitted to consider ESG factors, just like they appropriately weigh the other risks and benefits for investments.

At a minimum, Congress should not put its thumb on the scale, and disenfranchise retirement plan fiduciaries from considering ESG factors, or voting proxies. They are not. House republicans are bound by law to make prudent investments for plan participants.

Mr. Chairman, I ask unanimous consent to enter into the record the following items, a report by the Shareholder Rights Group entitled Shareholder Proposals, An Essential Investor Right.

Chairman ALLEN. Without objection.

[The information of Mr. DeSaulnier follows:]

## Shareholder Proposals:

# An Essential Investor Right


INTERFAITH CENTER ON CORPORATE RESPONSIBILITY

Shareholder Rights Group

US/SIF
US Sustainable Investment Forum

# Acknowledgments

**February 2025**

This report was written by Cynthia Simon (Policy Director) and Sanford Lewis (Director and General Counsel) of the Shareholder Rights Group.

We would like to thank Rick Alexander (The Shareholder Commons), Brittany Blanchard Goad (Ceres), Mike Garland (Office of the Comptroller, New York City), Greg Hershman (PRI), Susana McDermott and Tim Smith (Interfaith Center on Corporate Responsibility), Bryan McGannon (US SIF), Tejal Patel (SOC Investment Group), Brandon Rees (AFL/CIO) and Natalia Renta (Americans for Financial Reform Education Fund) for their careful review and valuable feedback. All errors are the authors'.

## About

INTERFAITH CENTER ON CORPORATE RESPONSIBILITY

The Interfaith Center on Corporate Responsibility (ICCR) is a broad coalition of more than 300 institutional investors collectively representing over $4 trillion in invested capital. ICCR members, a cross-section of faith-based investors, asset managers, pension funds, foundations, and other long-term institutional investors, have over 50 years of experience engaging with companies on environmental, social, and governance ("ESG") issues that are critical to long-term value creation. ICCR members engage hundreds of corporations annually in an effort to foster greater corporate accountability. Visit our website www.iccr.org and follow us on LinkedIn, Bsky and X.

Shareholder Rights Group

The Shareholder Rights Group is an association of investors formed to defend the shareowner's right to engage with public companies on governance, corporate accountability and long-term value creation. Visit our website at www.shareholderrightsgroup.com.

US/SIF
US Sustainable Investment Forum

US SIF works to ensure that the US capital markets play an active role in driving investments toward more sustainable and equitable outcomes. The US SIF and its members are the leading voices of sustainable investment. We aim to create a level playing field in Capital Markets which includes increased transparency and disclosure across the industry. US SIF's 200+ Members represent trillions in assets under management. The Membership includes actors across the entire capital markets value chain—including asset owners, financial advisors, asset managers, institutional investors, community investment institutions and data & service providers. Visit our website at www.ussif.org.

# Table of Contents

# Foreword

Long-standing safeguards in our capital markets are at risk. The shareholder proposal process is a critical tool for investors to guard investment value from material risks and to protect the American public from corporate misconduct and egregious behavior. In 2025, legislative, regulatory and judicial assaults threaten these rights.

This report is intended to set the record straight and to defend this essential investor right.

# Executive Summary

**Investors' right to file shareholder proposals has contributed to the success of the US capital markets.**

The shareholder's right to place proposals on the proxy, and the freedom to express a collective voice by voting on such proposals, are part of the social and legal compact between investors and companies that maintains the trust needed for capitalism to thrive. This trust has resulted in the US becoming the largest and most envied capital market in the world.

Shareholder proposals are largely non-binding. Non-binding proposals give companies the flexibility to address shareholder concerns without displacing the traditional role of the board of directors to oversee the operations of the company.

**Shareholder proposals are one of the few opportunities that ordinary American investors have to influence policies at the companies that they own.**

**Environmental and social shareholder proposals protect the American public by promoting accountability for corporate mismanagement and egregious behavior.**

Environmental and social shareholder proposals play a pivotal role in surfacing key issues facing companies that boards—the representatives of shareholders—may not be aware of, or may be trying to ignore or even conceal. Shareholder proposals have enabled investors to take actions benefitting the American public across a range of topics and industries, including on excessive drug pricing by pharmaceutical companies, improvements in online child safety by tech companies, greater board oversight of opioid manufacturers, distributors and pharmacies, enhanced attention to worker health and safety and greater accountability for the potentially toxic effects of corporate products on consumers and drinking water.

**The SEC's no action process represents a structured, time-tested process to guide company decisions by allowing the SEC to indicate in advance whether it concurs with company decisions to eliminate proposals from the proxies. Without the no action process, companies would lack SEC guidance regarding decisions to eliminate proposals, and investors would only have recourse to file suit against companies that choose to block proposals in federal court, a lengthy and costly alternative for both parties.**

**Shareholder proposals are largely non-binding. Non-binding proposals give companies the flexibility to address shareholder concerns without displacing the traditional role of the board of directors to oversee the operations of the company.**

**Environmental and social shareholder proposals address financially relevant investment risks.**

Under SEC Rule 14a-8, shareholder proposals must address issues that are relevant to a company. Certain issues like climate change and human capital management, which also happen to be currently debated in the social and political arena, are nonetheless highly relevant to the financial future of many companies. A recent study by the National Bureau of Economic Research estimates that climate change costs the world 12% in gross domestic product losses for every 1°C of warming, and that the macroeconomic damages from climate change are six times larger than previously thought due to the impact of extreme weather.[1] Concerning human capital management, a growing body of research shows that the workforce is a critical source of competitive advantage and fundamental resilience for companies.[2]

Investors are the most knowledgeable parties to determine investment risk in the form of legal, regulatory, operational and ethical risks to a company's value. Informed investors filing shareholder proposals are often the first movers on addressing a range of risks relevant to their investments, long before such risks are addressed by government regulations. One of many examples of this are the shareholder proposals concerning predatory subprime lending long before the banking crisis of 2007-2008.

Issues relating to corporate governance, potential lawsuits, supply chain disruptions from extreme weather, regulation, higher labor costs from human capital mismangement and ethical scandals that could negatively impact an individual company's profitability or the larger economic system that all shareholder returns depend—issues far from being considered "picayune"—on have all been topics of shareholder proposals. All shareholders benefit from the increase in disclosures gained from shareholder proposals.

**Environmental and social shareholder proposals address financially relevant risks at companies and protect the American public by promoting accountability for corporate misconduct and egregious behavior.**

**Many corporate governance policies that today are viewed widely as best practice were initially driven by the shareholder proposals of small individual "Main Street" investors—not large institutions—and then expanded to common adoption by markets.**

Going back to the 1940's, a small, dedicated group of individual investors have played a leading role in the filing of governance-related shareholder proposals that received high levels of investor support and drove many reforms covering a range of governance topics. These reforms have enhanced capital markets by strengthening the ability of boards to oversee shareholder interests and by addressing power imbalances between investors and company boards and management, proof that many constructive ideas have come from smaller individual investors.

**Raising ownership filing thresholds threatens the demonstrated positive impact of small investors on company governance and management.**

**Shareholders with a wide array of investment strategies and perspectives have the freedom and rights embodied in the shareholder proposal process to make recommendations to management, and to have those recommendations considered by fellow shareholders. *In recent years, conservative investors have increased the number of proposals that they have filed, including over 100 such proposals in the 2024 proxy season.***

**Shareholder proposals and the SEC's no action process are the most efficient and cost-effective means for companies to understand specific investor concerns.**

The ability to file shareholder proposals has the benefit of efficiently focusing investor attention on a material risk to the company that could impact its reputation, value creation or longer-term competitiveness. Without the right to place proposals concerning specific topics of concern on the proxy statement, investors would only have the option to vote against certain directors or the entire board—a simple yay or nay with no specifics.

The SEC's no action process represents a structured, time-tested process to guide company decisions by allowing the SEC to indicate in advance whether it concurs with company decisions to eliminate proposals from the proxies. Without the no action process, companies would lack SEC guidance regarding decisions to eliminate proposals, and investors would only have recourse to file suit against companies that choose to block proposals in federal court, a lengthy and costly alternative for both parties.

**Shareholder proposals address issues relevant to companies that are neither trivial nor "picayune." Risks of potential lawsuits against the company, operational disruptions from droughts, floods and fires, and of ethical scandals that shake consumer or investor confidence—these are typical issues in shareholder proposals and raise material concerns for investors.**

# Introduction: Shareholder proposals and the freedom to invest

Large, publicly traded companies play a dominant role in the U.S. economy: pharmaceutical companies influence the medicines available in our pharmacies and their cost, health insurers influence which treatments will be affordable to patients, and tech companies influence the degree to which consumers are subject to surveillance or privacy in their use of email and social media.

**Shareholder proposals are one of the few opportunities that investors, including individual Americans saving for retirement or other needs, have to allow them to influence major policies at the companies that they own. Critics are working to take even this limited right away through actions such as:**

- **Legislation passed by the House of Representatives in the 118th Congress giving companies sole discretion as to whether to exclude investor proposals from the proxy statement**
- **A lawsuit brought by Exxon against its own shareholders to stop them from proposing a climate vote at a shareholder meeting**
- **New staff interpretations of longstanding SEC regulation Rule 14a-8 making it harder for investors to ask for other investors to vote for proposals addressing material risks to the sustainable value of companies.**
- **A letter written by 18 state attorneys general insinuating that major asset managers and banks were violating fiduciary duties and other legal obligations simply by considering climate and other social issues when voting proxies on behalf of clients.**
- **A speech from an SEC Commissioner arguing for new rules that will disenfranchise smaller investors from accessing the shareholder proposal process.**

The free market, and the relationship between investors and issuers, is grounded in investors' rights as company owners to elect directors as well as file shareholder proposals. The job of boards is to oversee the executives who are day-to-day managing the company. The rights to vote upon directors, as well as to present focused issues through shareholder proposals, are part of the bundle of rights investors possess and value as company owners. The unfettered exercise of these rights reinforces the relationship of trust needed for capitalism to thrive.

**Without the right to make proposals, corporate management can more easily ignore the voice of small shareholders, pension funds, and other investors.**

Shareholder proposals address issues relevant to companies that are neither trivial nor "picayune." Risks of potential lawsuits against the company, operational disruptions from droughts, floods and fires, and of ethical scandals that shake consumer or investor confidence—these are typical issues in shareholder proposals and raise material concerns for investors. This private ordering process can allow good ideas to proliferate in the market, advancing best practices and reducing the pressure for government regulation or for more confrontational or costly approaches by shareholders, such as voting against the board, or litigation.

**The only cost associated with the shareholder proposal rule is for the company to publish a proposal limited to no more than 500 words in the proxy. All other costs related to the shareholder proposal process are at the discretion of management. Management's prudent attention and engagement to the important issues surfaced by proposals is more likely to be a net benefit to the company than a cost.**

Shareholder proposals indicate to a company the material concerns of its investor base. Corporate disclosure and decision-making are driven by the concept of materiality. Information is 'material' "if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote, or to buy or sell a stock, or would view it as significantly altering the 'total mix' of information made available."[3] The level of investor support demonstrates for the company, board and management what the "reasonable investor" would view as material information for disclosure and action.

**Shareholders—as owners of a company—have a legal right to offer proposals to appear on the corporate proxy statement to be voted upon at a company's annual shareholders meeting.**

**Shareholder proposals are part of the social and legal compact between investors and companies that builds the trust needed for capitalism to thrive. They enable dialogue between shareholders and their companies to bring improvements in disclosure and risk management that all investors benefit from.**

Without the right to make proposals, corporate management can more easily ignore the voice of small shareholders, pension funds, and other investors. Many corporate governance policies that today are viewed widely as best practice were initially driven by the shareholder proposals of smaller individual "Main Street" investors—not large institutionss— and then expanded to common adoption by markets, companies and investors.

In this report, we provide information on the origins of the shareholder proposal process as an investor right, its regulation and functioning, its role in corporate accountability, and the benefits to capital markets, companies and investors.

# What is a shareholder proposal?

Shareholder proposals are a crucial tool for investors to engage with their companies. Engagement covers a host of strategies investors use to obtain additional information and influence the policies and practices of their portfolio companies on governance and sustainable value creation.

Shareholders—as owners of a company—have a legal right to offer proposals to appear on the corporate proxy statement to be voted upon at a company's annual shareholders meeting. Corporations are required to hold these annual meetings in order for shareholders to vote on matters related to the corporation such as auditor ratification, election of directors, and executive compensation. The Securities and Exchange Commission (SEC) requires public companies to file an announcement ahead of the annual meeting including its items of business called the proxy statement.[4] SEC Rule 14a-8 allows shareholders to submit statements of up to 500 words ("shareholder proposals") to be included in the company's proxy statement.

The proxy statement is therefore the vehicle by which investors are informed of proposals by other investors. Without the ability to file shareholder proposals, investors seeking better disclosure on neglected issues could be forced to vote against directors or the entire board, which would be highly inefficient and costly to all concerned.

SEC Rule 14a-8 defines a shareholder proposal as a specific request from the shareholder - a "recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders." The SEC states that the proposal "should state as clearly as possible the course of action" that the shareholder believes the company should follow.[5]

Some shareholder proposals seek changes in governance infrastructure, for example, requesting that the CEO and the board chair be separate people to increase the independence of the board and its ability to oversee the company on behalf of shareholders. Or they might request a change in voting standards to allow proposals to be passed by a vote of a simple majority rather than a larger voting threshold of supermajority, thus creating a better balance of power between the company and its investors.

Other proposals may address environmental or social challenges facing the company—issues that may also be the subject of a wider social or political debate, but which nonetheless have a potential financial impact on the company or the larger economy on which returns depend.

For example, a proposal may request the disclosure of the company's assessment of its operations, policies and practices designed to mitigate environmental, regulatory or liability risks associated with its mining operations. In another instance, a proposal may request that a company report as to its timeline and plan for how it expects to transition to meet its stated objective of net zero greenhouse gas emissions. Or a proposal may request disclosure concerning the risk of supply chain disruption due to unrest in regions facing civil conflict, or the impact of increases in employment turnover costs from failure to pay a living wage. Some of these proposals might be described as "social or political proposals," but they must nonetheless be relevant to the company's business according to SEC rules and comply with more than a dozen strict SEC rules for acceptable proposals and filings.[6]

Most shareholder proposals are non-binding. Non-binding proposals give companies the flexibility to address shareholder concerns without displacing the traditional role of the board of directors to oversee the operations of the company.

**Some commentators have expressed the view that shareholder proposals place too high a cost on management. However, the process generates the benefit of allowing an efficient referendum on a single topic, thereby improving the company's understanding of all of its investors' views on a specific issue or concern. When viewed in light of this advantage, the shareholder proposal process is cost-effective for companies.**

# Who files shareholder proposals and why

### An essential engagement tool

Shareholder proposals are a crucial tool for investors to engage with their companies. Engagement covers a host of strategies investors use to obtain additional information and influence the policies and practices of their portfolio companies on governance and sustainable value creation.

Multiple studies suggest shareholder engagement increases company returns. Studies have found engagement to deliver substantial benefits for investors by lowering downside risk exposures, with each $10,000 spent on engagement expected to increase firm value by approximately one-third of one basis point.[7] One study found that firms targeted for shareholder engagement on ESG issues outperformed their peers by 7.5% in the following year.[8] Studies have also found that shareholder proposals create long-term value by providing input on management decisions, holding corporate management accountable, and addressing governance considerations in public companies.[9]

Investor engagement typically begins with dialogue in the form of a letter or request to meet with the company concerning a specific topic or topics of material concern to the investors. If the company is unresponsive, a shareholder proposal may be filed by investors as a means of encouraging broader investor support by inviting votes by other shareholders. In many cases, with a proposal filed that would lead to a shareholder vote, the companies and proponents reach an agreement to address the concerns raised by the proposal in some manner to avert the need for the proposal to go to a vote. Companies often consider and implement investors' recommendations because they see the value in the proposals, demonstrating that the shareholder process is effective in facilitating changes that are beneficial both to the company and share value. Over the last 10 years, an average of 40% of the shareholder proposals filed with companies each year have been subsequently withdrawn after the company agreed to address the proponents' concerns.[10]

**Shareholder proposals have helped investors make their companies more lucrative, resilient, and responsive to key governance, social and environmental challenges.**

Engagement is especially important for long-term, diversified investors, whose financial returns rely upon a healthy, resilient economy over the coming decades. Retirement savers and other investors—who are known as "universal owners" because they may own shares in the entire market (typically through broad market indexed investments)—are examples of these types of investors. These investors are exposed to broader economic risks that threaten the entire economy, such as the accelerating crisis in homeowners' insurance due to climate change,[11] or the systemic challenges in the healthcare system.[12] Engagement and shareholder proposals are an effective means of addressing these concerns by alerting directors and other shareholders that the pursuit of short-term gains that come at the expense of large swaths of the population may not be in the best interest of the average shareholder.

**Since the 1940's, a small dedicated group of individual investors have played a leading role in driving many corporate governance reforms through shareholder proposals, made possible by regulatory ownership requirements reasonable for the smaller investor.**

Normally, the engagement described in the preceding paragraphs requires minimal investor disclosure. However, on February 13, 2025, the SEC issued a new Compliance and Disclosure Interpretation, Question 103.12, which clarified that an individual or group of shareholders who hold in excess of 5% of a company's voting shares and who are conditioning favorable voting support for board members on addressing environmental, or social, or governance related shortcomings could trigger a requirement for complex 13D filing requirements rather than the shorter form 13G.[13] The additional filing requirements of 13D impose substantial additional costs in cases where a large shareholder is undertaking efforts with the purpose or effect of changing or influencing control of the issuer.

To the extent that an investor, asset manager or group of shareholders hold in excess of 5% of a company's voting shares and have identified environmental, social or governance shortcomings on which they seek to engage a company, the February 2025 13G guidance may have the result of encouraging these investors to use shareholder proposal voting or filing in their engagements. Since most shareholder proposals are framed as advisory requests, they do not attempt to alter control and could potentially communicate concerns to companies without the risk of triggering more onerous disclosure.

**Proposals that win significant support elevate shareholder concerns issues facing companies that boards—the representatives of shareholders—may not be aware of, or may be trying to ignore or even conceal.**

### Governance proposals and the role of individual investors

Governance engagements seek to ensure that a well-functioning board can effectively oversee the interests of shareholders. For example, proposals to increase the independence of the audit or risk committee have the potential to reduce accounting fraud risk. Likewise, engagements to increase the holding period of equity-based pay reduce management incentives to manipulate short-term earnings.

Governance shareholder proposals can also increase investors' ability to engage with companies. It has been shown that it is more costly for investors to engage with companies with entrenched managers.[14] The entrenchment of management is principally measured and affected by the corporate governance infrastructure including whether the company has characteristics such as:

- Staggered boards
- Limits to shareholder by-law amendments

- Supermajority requirements for mergers
- Supermajority requirements for charter amendments
- Poison pills
- Golden parachutes[15]

Shareholder proposals that improve corporate governance structures on these aspects are frequently part of an overall strategy by investors to provide a better balance of power between investors and a company's management and board.[16]

Since the 1940s, a small, dedicated group of individual investors including John[17] and Lewis[18] Gilbert, Wilma Soss,[19] Evelyn Davis,[20] William[21] and Kenneth[22] Steiner, Emil Rossi,[23] John Chevedden[24] and James McRitchie[25] have played a leading role in the filing of governance-related shareholder proposals that have received high levels of investor support and driven many reforms covering a range of governance topics, including eliminating staggered director terms, reducing supermajority voting thresholds, requiring an independent board chair, eliminating dual class voting, requiring shareholder approval of bylaw amendments, requiring majority voting in uncontested director elections, and proxy access for shareholder director candidates.[26] The governance-related proposals of individual investors attracted, on average, 47.8% shareholder support between 2005 and 2018, and accounted for a large portion of the passed proposals, an indication that these proposals were receiving widespread support from larger investors.[27] Many of these issues were also adopted by major investors in their proxy voting guidelines and corporate engagements, by market exchanges, and by companies—compelling evidence that constructive ideas have come from these smaller individual investors.

Some examples of corporate governance policies that today are viewed widely as best practice and that were initially driven by shareholder proposals and then expanded to common adoption by companies and markets, include:

- **Independent Directors and Board Recruitment:** Shareholder proposals have encouraged norms such as independent directors constituting a majority of the board, independent board leadership, transparency of board recruitment and qualifications, and annual elections for all directors. For example, in 2013, shareholders submitted approximately 70 proposals requesting the adoption of a policy requiring that the company's board chair be an independent director.[28]

- **Electing Directors by Majority Vote:** Shareholder proposals have encouraged electing directors by majority vote, rather than by plurality—a radical idea a decade ago when shareholders pressed for it in proposals, and now the norm at 90% of large-cap U.S. companies.[29] In 2011, Apple was one of 58 companies the California Public Employees Retirement System urged to adopt majority rather than plurality voting, which more evenly balances power between the company and its investors.[30] The proposal had majority support from shareholders at Apple and many other companies.[31]

- **"Say-on-pay" vote requirements:** now mandated by the Dodd-Frank Act—also resulted from shareholder proposals. The Say-on-Pay vote asks investors to vote on the compensation of the top executives of the company—the CEO, the Chief Financial Officer, and at least three other most highly compensated executives ("named executive officers").[32]

**In a recent report analyzing shareholder proposal voting trends over the last decade, proxy advisor ISS notes: "Investors show little to no interest in proposals that advocate a political viewpoint without demonstrable economic relevance".**

**A proposal that just asks a company to take a purely political position would be rejected by the SEC under the ordinary business rule.**

### Evidence of sustainable value raised in environmental and social proposals

Shareholder proposals frequently address risks due to environmental issues that can be highly costly to companies and their investors when they ultimately materialize in the near- or long-term. Consider that the shareholder value of BP plummeted by 55% after the explosion of the Deepwater Horizon oil rig, from $59.48 per share on April 19, 2010 to $27 per share on June 25, 2010.[33] Climate change-induced changes in severe weather such as drought and flooding, as well as regulatory responses and constraints in various markets worldwide, has been documented to threaten substantial financial risks to the banking,[34] mining,[35] industrials,[36] transportation,[37] agriculture[38] and real estate sectors.[39] Bringing greater transparency to the management of such risks has been the subject of shareholder proposals in these sectors.

Corporations also face risk related to social issues such as disruption of the business or supply chains due to human rights abuses[40] workforce health and safety scandals,[41] or failures to protect the online safety of children.[42] The growth in environmental and social shareholder proposals over the last several years also reflects concern that certain issues threaten the economy as a whole and large swathes of investment portfolios.

**Informed investors are often early movers on addressing risks that ultimately prove to be quite material, and even existential, to their investments. As an example, proposals filed by members of the Interfaith Center on Corporate Responsibility ICCR) against predatory lending in the early 2000s at AIG and other companies.[43] At the time, these proposals might have been characterized as *merely addressing social risks* yet they foreshadowed the banking crisis driven by such predatory practices that proved to be very expensive for AIG and the other companies, and for society in the housing crisis and bank bailouts that followed.[44]**

Shareholder proposals also mirror public sentiment. A recent study of companies in the Russell 3000 Index found that negative public sentiment about a firm on both financial and broad sustainable investing aspects are significantly related to the number of shareholder-sponsored proposals, with the impact of news sources being slightly stronger than social media in affecting the number of shareholder proposals. The study also found a strong association between the number of shareholder proposals on the ballot and director turnover and forced turnover of CEOs at the firm, finding one additional shareholder proposal is associated with a 10.9% increase in director turnover and a 24.8% increase in forced CEO turnover, both to the mean. The study not only found association between these factors; it also was able to demonstrate causal evidence that negative sentiment around corporate practices that are not sustainable leads to increased shareholder dissent.[45]

### Barriers to proposal filing

Among other requirements, the right to file a shareholder proposal under Rule 14a-8 is conditioned on the investor having a number of shares held continuously for a sufficient amount of time. In 2020, the SEC established the current tiered approach for filers. Shareholders who held $2,000 worth of shares for at least three years are permitted to file proposals, but larger holdings are required for those with a shorter duration of holding of the shares - $25,000 for three years and $15,000 for two years. The theory regarding these duration requirements is that the shareholders who have held the shares for three years are likely to continue to retain the shares and therefore bear the benefits or burdens of the proposal as a fellow long-

**Shareholders cannot simply make any proposal they want. They must meet a number of hurdles to ensure that the proposal is relevant to the company and to other shareholders.**

**Policies regarding the amount of compensation paid to employees are generally ordinary business, but proposals that challenge excessive compensation of the CEO or of directors are appropriate. A pharmaceutical company's prices for its products are ordinary business, but company policies exploiting a pandemic to exploit vulnerable consumers may be seen to transcend ordinary business.**

term shareholder.[46] Nonetheless, these requirements must also be set to ensure that smaller individual investors—not only large institutions—have the ability to file proposals, especially given the role that smaller retail investors have played in initiating important governance changes that large institutional investors overwhelmingly support at annual meetings.

The ownership threshold is only one of several barriers to the filing of shareholder proposals. A number of other requirements make it more costly and time-consuming for a proponent to file a proposal. These include carefully framing the proposal's request so that it does not micromanage the company, is not improper under state law or other federal laws, is not focused on a personal grievance, nor substantially implemented by the company. All told, the requirements for paperwork and proposal drafting present a very significant and time-consuming hurdle. It means that there is a high barrier, especially for new filers.

**Ordinary business**

A basic principle of SEC Rule 14a-8 is that a proposal should not supplant or attempt to control the day-to-day decision-making of the corporation, referred to as "ordinary business." The company's officers are hired to manage the company under the oversight of the board of directors. The board is accountable as an elected representative of the shareholders. As such, the management and board have important day to day discretion in running the company—who to hire, how much to pay them, what kind of products or services the corporation should offer and many other ordinary business matters that it takes to run a business.

While a focus on ordinary business is not appropriate for a shareholder proposal, the courts and the SEC have made a notable exception when shareholder proposals address important policy issues for a company on *which it is appropriate for shareholders to weigh in*, often referred to as the "social policy" exception. Such proposals are described as *transcending* ordinary business.

For instance, while the day-to-day lending practices of a bank are ordinary business, when there is evidence that the bank is engaging in predatory policies and practices, shareholders are able to file a proposal asking the company to disclose more about this issue and its current policies. Similarly, policies regarding the amount of compensation paid to employees are generally ordinary business, but proposals coming from shareholders that challenge excessive compensation of the CEO or of directors are appropriate. A pharmaceutical company's prices for its products are ordinary business, but company policies exploiting a pandemic to exploit vulnerable consumers may be seen to transcend ordinary business. Day to day legal compliance on environmental regulations is ordinary business, but significant pollution incidents or catastrophes that a company may be liable for may be an appropriate topic for a shareholder proposal because it transcends ordinary business.

An important related limitation is for proposals not to *micromanage*. Even if the topic transcends ordinary business, proponents must not be so *granular in their request* to the company that they attempt to micromanage the business. The discretion of the board and management is protected in this process. That is why many proposals often ask the board or management to disclose more about their policies and practices, and proposals seeking action are typically advisory rather than a mandatory order.

**Specialization to meet barriers to proposal filing**

As a result of the substantial technical barriers to entry for proposals and proponents, the proposal rules have led to specialization of some investors and advisors with the expertise and capacity to file proposals successfully. On average, roughly 10 entities lead more than half of the proposals filed in a proxy season. The top 10 filers during 2024 included individuals, faith-based and socially responsible asset managers, unions, two large public pension funds and a service provider enabling foundations to participate in engagement and the filing of shareholder proposals.[47] These filers represent far more than 10 investing institutions or individuals—they represent a range of beneficiaries and investors for whom the shareholder proposal process is a significant tool.

Using their experience of filing proposals year after year, these entities and individuals hone an expertise developing proposals that can navigate the challenges associated with compliance with SEC Rule 14a-8. This expertise benefits both companies and investors by limiting the number of excludable proposals that are filed, saving considerable time that would be spent crafting and addressing proposals that ultimately would not be included on the ballot. This streamlining allows shareholders to focus on using their vote to indicate which proposals they believe raise important issues that should be addressed by management.

**Whether or not a proposal receives majority support, when a significant number of shareholders signifies through their vote that the company needs to bring additional attention to an issue, the shareholder proposal process can be an important prompt to productive action by the company. For instance, research by Morningstar shows that in 2024, 19.5% of the environmental and social proposals voted on in 2024 (excluding anti-ESG proposals) received 30% or more support from independent shareholders. 31.8% of environmental and social proposals voted on in 2024 (excluding anti-ESG proposals) received 20% or more support, according to data from the Sustainable Investments Institute.**

**A letter from Attorneys General from 16 states and the District of Columbia noted that State or federal laws that interfere with the ability to assess ESG may, in fact, interfere with financial institutions' ability to make sound investment decisions on behalf of hard-working Americans.**

### Fiduciary duty and shareholder proposals

The concept of fiduciary duty is pivotal to many investors' and investment institutions' decisions regarding filing or voting upon shareholder proposals. Fiduciary duties include a duty of care, loyalty, good faith, confidentiality, prudence, and disclosure. As an example, registered investment advisors (RIAs) have a fiduciary duty to act in the best interests of their clients when providing financial advice and financial planning.[48] In certain instances, following the advice of clients, the RIA may find it necessary to engage with particular companies, to vote proxies consistent with client interests and preferences, and in some instances, to file proposals.

Also relevant to the shareholder proposal process is the monitoring of the fiduciary responsibilities of corporate directors. Directors have a duty to manage corporate assets in the best interest of the corporation and shareholders.[49] Often, shareholder proposals seek to clarify the extent of board oversight of a consequential issue for the company.

As another example, the 1974 Employee Retirement Income Security Act (ERISA), which covers corporate and union pension plans but also serves as a guidepost for the practices of state and local pension plans, requires, among other things, that fund fiduciaries act solely in the interests of plan participants and beneficiaries (duty of loyalty) and that a fiduciary act with the care, skill, and diligence of a prudent man under similar circumstances (duty of prudence).[50]

Currently, a range of opinions has emerged regarding the incorporation of ESG factors by fiduciaries. The organization PRI (Principles of Responsible Investment) states that "empirical and academic evidence demonstrates that incorporating ESG issues is a source of investment value" and that consideration of "ESG factors is consistent with legal responsibilities to evaluate potential risk and reward in assessing the merits of an investment." Further, PRI states that a fiduciary's duty of loyalty and prudence often necessitate the incorporation of environmental, social and governance issues into investment analysis and decision-making processes, consistent with their investment time horizons.[51] Similarly, a letter from Attorneys General from 16 states and the District of Columbia noted that State or federal laws that interfere with the ability to assess ESG may, in fact, interfere with financial institutions' ability to make sound investment decisions on behalf of hard-working American pension beneficiaries.[52]

Some state laws require state entities to consider environmental, social, and governance factors in investing and contracting decisions. They may also lead the state pension funds to demand that portfolio companies disclose climate-related metrics and risks, and/or disclosures that report diversity metrics. Some laws prohibit state entities from making new investments in certain industries that are considered to have high ESG risk factors and require divestment from existing investments in such industries.[53]

In contrast, other state laws go in the opposite direction and seek to prohibit the consideration of environmental, social and governance factors by public pension funds, state and local authorities, and their investment managers; prohibit public entities from disqualifying applicants from a public contract, based on ESG factors; restrict the ability of public entities to do business with companies that are thought to "boycott" or "discriminate" against certain industries that are considered to have high ESG risk factors (e.g., fossil fuel or firearms); or prohibit public entities from considering ESG scores during business and contracting decisions.[54]

**Shareholder proposals protect against the risk of corporate mismanagement by promoting accountability for management misconduct and egregious behavior that harms the American public and jeopardizes a company's reputation or finances.**

### Interpreting voting results

The votes on individual proposals by all shareholders are useful guidance to companies in expressing the perspectives of investors.[55]

The fact that some large institutional investors or asset managers do not support a particular shareholder proposal may significantly affect whether a proposal attains a majority vote, but it should not be interpreted as necessarily implying that the underlying issue is unimportant to investors. For example, the largest asset managers have exceptional access to company engagement,[56] but these engagements are not transparent. These asset managers may be engaging with companies on the very topics in a proposal and receiving assurances that management plans to address the requests in the proposal, so they decide not to vote in favor. As stated by asset manager T. Rowe Price, "We believe that the reputation of T. Rowe Price affords us excellent access to the leaders of the companies in which we invest. Where appropriate, we use that access to address matters of concern in the oversight of environmental risks or social matters. In many cases, this obviates the need to support shareholder resolutions in these areas."[57]

**Whether or not they receive a majority vote, shareholder proposals are an essential vehicle to allow substantial groups of investors to voice concerns on issues they view as important. Voting outcomes demonstrate a practical assessment of whether a significant number of the company's own shareholders view an issue as significant and therefore are an important tool for informing the corporation's materiality decision-making.**

# How shareholder proposals promote corporate accountability

Shareholder proposals are a tool for investors to flag egregious mismanagement or misconduct that harms the American public and jeopardizes the company's reputation or finances. Sometimes these excesses allow companies to benefit in the short-term, but at the expense of long-term returns. A shareholder proposal can communicate investors' interest in preserving investment value both at the individual company and, for certain retirement savers, at the level of the national economy, which is critical to their typically diversified portfolios.

### Child online safety

**Social media companies have been linked to numerous child safety problems including a mental health crisis for young people, age verification failures, cyberbullying, self-harm and child sexual exploitation, and grooming and trafficking. Since 2016, a group of now more than 60 investors from multiple countries have engaged with tech companies concerning child online safety, collaborating with online safety experts, law enforcement, and policy makers such as the Senate Judiciary committee to prompt tech companies to remove harmful content and implement stronger protections. Shareholder proposals during 2022 and 2023 at Apple, Alphabet and Meta Platforms (Facebook) played a significant role in this investor engagement to improve child safety online.[58]**

### Drug Pricing

Polling has found that nearly 30% of Americans say they haven't taken their medication as prescribed due to high drug prices and research estimates that more than 1.1 million Medicare patients alone could die over the next decade because they cannot afford to pay for their prescribed medications.[59]

For decades, members of the Interfaith Center on Corporate Responsibility (ICCR) have pressed drug companies for greater disclosures on pricing structures as a way to promote greater access to medicines, including asking companies to disclose the rates of year-to-year price increases of their top-selling branded prescription drugs and to disclose the rationale and criteria used for these price increases.[60] Excessive drug company executive pay packages are a major contributing factor to prescription drug costs.[61] Since the 1990s, shareholders have used shareholder proposals to urge companies such as Warner-Lambert, Eli Lilly, Bristol-Myers Squibb and Celgene Corporation selling high-priced pharmaceuticals to reduce executive compensation and take other actions to bring prices down to benefit consumers and prevent excessively high prices.[62] Investors have also expressed concern about pharmaceutical companies' governance structures and their boards' ability to proactively mitigate risk related to high drug prices, such as the risks from unsustainable business models that rely on price increases for growth, or strategies to extend patents without any meaningful new science.[63]

Patent practices of pharmaceutical companies are also a corporate tool to artificially maintain high drug prices at the expense of consumers.[64] In 2022, a shareholder proposal filed at Gilead Sciences asked for an evaluation of how the company's patenting policies that extend exclusive rights and prevent generic competitors impact patient access and cause higher consumer drug prices. The proposal earned 39.6% voting support from investors. Similar proposals were also filed at nine other pharmaceutical companies, including proposals at Bristol Myers Squibb and Amgen that were withdrawn due to productive dialogue, and proposals that were voted on and received significant investor support at Pfizer (30.2% vote FOR) and at AbbVie (29.5% vote FOR).[65]

### Subprime lending

**Prior to the banking crisis of 2007-2008, shareholders of banks had attempted to elevate attention to the risks of predatory lending through shareholder proposals. Predatory lending in the subprime market was of growing concern to some investors as it became clear that borrowers were unable to repay these loans and were losing their homes.[66] In 2004, shareholders submitted a proposal at American International Group (AIG) requesting that the Board conduct a review to study ways of linking executive compensation to successfully addressing predatory lending practices.[67] Although the proposal only received 2.8% voting support,[68] it is a remarkable example of the prescience of shareholders as to material risks to their companies. In 2007, AIG was the world's largest insurance company with some $850 billion in assets and 76 million customers worldwide (30 million in the US alone).[69] By September 2008, it was on the brink of collapse. Over the course of the financial crisis, AIG received a total of $182 billion in government bailout funds.[70]**

### COVID Vaccines

During the COVID pandemic, pharmaceutical companies received tens of billions of US and global public funding to accelerate medical breakthroughs to respond to the pandemic. Amid press reports of "pandemic profiteering", shareholders called for financial prudence and a commitment to the public good.

Investor members of ICCR were part of a group of 59 investors representing US$2.5 trillion in assets under management who sent letters to 17 pharmaceutical companies strongly urging financial prudence and a commitment to strategies to ensure widespread access to treatments and vaccines for COVID-19, including affordable pricing and the sharing of technology to scale-up manufacturing. The letters urged the companies to show restraint in terms of pricing, tax avoidance, stock option awards, etc., and to demonstrate a willingness to share their intellectual property to ensure the necessary scale-up, manufacturing and mass distribution at prices low enough to ensure equitable access.[71]

**Excessive drug company executive pay packages are a major contributing factor to prescription drug costs.[72] Since the 1990s, shareholders have used shareholder proposals to urge companies such as Warner-Lambert, Eli Lilly, Bristol-Myers Squibb and Celgene Corporation selling high-priced pharmaceuticals to reduce executive compensation and take other actions to bring prices down to benefit consumers and prevent price gouging.[73]**

### Artificial Intelligence

Labor strikes in the entertainment industry in 2023 demonstrated that intellectual property infringement by artificial intelligence (AI) can have a material financial impact on a company's operations. The growing public distrust in the indiscriminate use of AI and increased government regulation were also deemed to pose material financial and reputational risks to tech and media companies. Shareholder proposals during the 2024 proxy season filed at Netflix and Apple requesting greater clarity on the use of AI and its board oversight, and the ethical principles guiding AI use, received 43% and 37.5% of shareowner votes, respectively, thus indicating widespread investor concern on the issue.[74]

Investors have also focused on the financial and legal risks of ineffective content moderation at large social media platforms as serious threats to society. With Meta and Alphabet now deploying Generative Artificial Intelligence (gAI) tools, investors were concerned that critical human rights and democratic processes could be further compromised. Proposals filed on managing gAI-related risks received 16.7% of votes from all shares at Meta (53.6% of non-insider votes) and 17.6% support at Alphabet (82.4% of independent investor votes).[75]

**Patent practices of pharmaceutical companies are also a corporate tool to artificially maintain high drug prices at the expense of consumers.[76] In 2022, a shareholder proposal filed at Gilead Sciences asked for an evaluation of how the company's patenting policies that extend exclusive rights and prevent generic competitors impact patient access and cause higher consumer drug prices.**

### Opioids crisis

According to the CDC, opioids were involved in nearly 75,000 overdose deaths in 2023,[77] a crisis that continues to ravage communities across the country. The sale and distribution of opioid medications carries significant legal and reputational risks for companies with long-term and systemic societal and economic impacts.

The Investors for Opioid and Pharmaceutical Accountability (IOPA) was a diverse coalition of global institutional investors with 67 members representing over $4.2T in AUM that was established from 2017-2023 to engage opioid manufacturers, distributors and retail pharmacies. IOPA members filed more than a hundred shareholder proposals and took on the most important governance reforms within major pharmaceutical companies to better manage societal and enterprise risks. Central to the IOPA's strategy was to involve the board in opioid risk management by asking independent directors to investigate and report on how the board is assessing and managing legal, financial and reputational risks related to its opioid business. Fourteen of these companies agreed to conduct board-level risk assessments of opioid-related business practices including governance, compliance, compensation, and political lobbying, and to report these findings publicly. Two companies created a board-level committee dedicated to opioid oversight.[78]

### Rail safety

Shareholder engagement on railroad safety has been an important force in pushing rail transport corporations to prioritize long-term risk management and community well-being. Following the financial and human costs of disasters like the East Palestine derailment to the local community and surrounding states,[79] the rail industry was resistant to safety measures, blocking regulations such as two-person crew requirements.[80] In response, in 2024, investors filed shareholder proposals at major rail companies such as CSX[81] and Union Pacific[82] aimed at creating safety-focused board oversight of reforms to prevent derailments, protect workers, and safeguard communities. This underscores the importance of shareholder advocacy to hold companies accountable for ethical behavior, address material financial and reputational risks, and preserve shareholder value.

### Workplace health and safety

**Amazon has been in the news concerning its unsafe working conditions, including rates of safety incidents far above those of its competitors such as Walmart and Costco.[83] State labor regulators have alleged working at Amazon exposes employees to increased risk of ergonomic injury and musculoskeletal disorders as they awkwardly bend and twist to move goods through the warehouse.[84] According to a December 2024 report of the Senate Committee on Health, Education, Labor, and Pensions, at least two internal Amazon studies found a link between how quickly its warehouse workers perform tasks and workplace injuries, but the company rejected many safety recommendations out of concern the proposed changes might reduce productivity.[85] Shareholder resolutions at Amazon in 2022[86], 2023[87] and 2024[88] focused on this potentially harmful conduct, asking the company to report on worker health and safety and the treatment of its warehouse workers.**

### Toxic products

Johnson & Johnson knew its baby powder contained asbestos, an undisputed carcinogen, at least as early as the 1970s,[89] yet allegedly misled consumers into believing its talc products, which it sold for more than a century before stopping, were safe. The misconduct led to a class action lawsuit, tens of thousands of individual lawsuits and an investigation by 42 US states and Washington, D.C. into its marketing of baby powder and other talc-based products.[90] Some of the lawsuits included accusations that Johnson & Johnson marketed baby powder to Black and overweight women despite knowing about possible asbestos contamination for decades.[91] While the company stopped the sale of baby powder products in the United States and Canada in 2020, the product was still on the market for many consumers worldwide by 2022, when investors filed a shareholder proposal asking the company to report on the public health risks from continued worldwide sales of its talc products.[92]

### Toxic chemicals in water

Poly and perfluoroalkyl substances (PFOA and PFAS) are a class of chemicals that has been under scrutiny and has been linked to hormone disruptions, liver and kidney disease, and cancer in addition to other human health harms.[93] In 2023, Mount Sinai researchers concluded that higher blood concentrations of certain PFAS were associated with a significant reduction in the likelihood of pregnancy and live births. Other studies have shown that certain PFAS can disrupt reproductive hormones and delay puberty and have been linked with increased risks for polycystic ovary syndrome and endometriosis.[94]

In 2023, Sisters of St. Francis of Philadelphia filed a proposal at Essential Utilities, requesting that the company report on PFAS levels at all Essential water sources along with the potential public health and/or environmental impacts of toxic materials in the water it provides to the public. The proponents withdrew the proposal after the company agreed to make public test results for its wells and water systems and to report the results to its one million customers.[95]

# Appendix: Shareholder proposal regulation

## Origins

During the United States' first century, corporations had small numbers of investors and were largely controlled by shareholders through deliberations and voting that took place at in-person shareholder meetings. As the US economy grew, and corporations had to bring in large amounts of capital from thousands of investors, shareholder meetings went from in-person affairs to being conducted by proxy, and management solicited blanket voting authority based on little or no information. Ownership and control were largely divorced, and corporate abuse of the proxy, which frustrated the free exercise of the voting rights of stockholders, was rampant. Section 14 of the Securities Exchange Act of 1934 addressed this concern by authorizing the SEC to regulate proxy solicitation.[96]

The SEC adopted the predecessor to SEC Rule 14a-8 in 1942, recognizing that shareholders need notice of proposals to be made by fellow shareholders.[97] One court explained that, "the rationale underlying this development was the Commission's belief that the corporate practice of circulating proxy materials which failed to make reference to the fact that a shareholder intended to present a proposal at the annual meeting rendered the solicitation inherently misleading."[98] SEC Staff reiterated this purpose, explaining that "[t]he Senate Banking and Currency Committee recognized the need to provide not only for disclosure of matters management planned to present, but also for shareholders to be given 'reasonable opportunity to present their own proposals and views to fellow security holders."[99]

Thus, SEC Rule 14a-8 advances the overall Securities Exchange Act's goal of shareholder democracy—a central purpose of the 1934 Act in reaction to weakening shareholder control and increasingly concentration of corporate power in professional managers. Shareholder democracy stands for the principle that in return for access to the securities exchanges, the law provides that corporations would incur a corresponding duty to provide shareholders with fair suffrage. Referring to 14a-8, one recent decision noted that "[t]he Commission enshrined this edict in its regulations, believing that "fair corporate suffrage" required that all shareholders receive notice of such matters when their proxies are solicited."[100]

## SEC Rule 14a-8

SEC Rule 14a-8 provides a framework for allowing a public company shareholder to request that a proposal be included in the company's proxy statement, to be voted upon by all shareholders at a company's shareholder meeting. Shareholders cannot simply make any proposal they want. They must meet several hurdles to ensure that the proposal is relevant to the company and to other shareholders, and that the proposal is meaningful and is not outside the scope of normal shareholder interest (i.e. "ordinary business"). These limits protect the rule from abuse so that shareholders are able to vote on meaningful proposals.

These rules, developed over more than half a century, allow the company to exclude proposals on one of thirteen different bases: improper under state law, violation of law, violation of proxy rules, personal grievance/special interest, economic relevance, absence of power/authority, ordinary business, director elections, conflict with company's proposal, substantial implementation, duplication, resubmissions, and specific amount of dividends.[101]

The table on the next page sets for the thirteen bases which companies may rely on in excluding proposals from the proxy statement under Rule 14a-8.

| Issue | Language of the Rule and the SEC |
|---|---|
| **Specificity**<br>*Assessing whether the proposal requests specific action from the company* | 14a-8(a): The proposal "should state as clearly as possible the course of action you believe the company should follow"<br>14a-8(i)(3) with 14a-9: Excludes a proposal that is misleading as vague or indefinite |
| **Violation of Law**<br>*Assessing whether the proposal would cause a violation of law by the company* | 14a-8(i)(2): Excludes a proposal if it would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject |
| **Violation of Proxy Rules**<br>*Assessing whether the proposal is contrary to SEC proxy rules* | 14a-8(i)(3): Excludes a proposal if the proposal or its supporting statement is contrary to any SEC proxy rules, including the rule which prohibits materially false or misleading statements in proxy soliciting materials |
| **Personal Grievance or Special Interest**<br>*Assessing whether the proposal relates to edress of a personal grievance or to an interest not shared by other shareholders* | 14a-8(i)(4): Excludes a proposal if it relates to the redress of a personal claim or grievance against the company or any person, or if it is designed to benefit the proponent or further a personal interest not shared by other shareholders |
| **Relevance**<br>*Assessing the significance of the proposal to the company* | 14a-8(i)(5): Excludes a proposal if it is not economically relevant (at least 5% of net earnings and gross sales) or not otherwise significantly related to the company's business |
| **Absence of Power/Authority**<br>*Assessing the company's power or authority to implement the proposal* | 14a-8(i)(6): Excludes a proposal if the company would lack the power or authority to implement the proposal |
| **Management Functions**<br>*Assessing the relationship of the proposal to a company's day-to-day activities* | 14a-8(i)(7): Excludes a proposal dealing with a matter relating to the company's ordinary business operations |
| **Director Elections**<br>*Assessing the proposal's impact on director elections* | 14a-8(i)(8): Excludes a proposal if it would interfere with a director's or nominee's ability to stand for or continue board service, questions the competence, business judgment or character of a nominee or director, seeks to include a specific person in the proxy statement for board election, or otherwise impact the outcome of the upcoming director elections. |
| **Conflict**<br>*Assessing whether the proposal conflicts with a company proposal* | 14a-8(i)(9): Excludes a proposal if it directly conflicts with a company's proposal at the same meeting |
| **Implementation**<br>*Assessing existing company activities against the proposal* | 14a-8(i)(10): Excludes a proposal if it is substantially implemented by existing company actions |
| **Duplication**<br>*Assessing similarity to proposals already received by the company* | 14a-8 (i)(11): Excludes a proposal if it duplicates a proposal submitted by the company or another proponent |
| **Resubmission**<br>*Assessing the objective of the proposal against similar proposals from prior years* | 14a-8(i)(12): Excludes a proposal addressing substantially the same subject matter as a proposal previously included in the proxy during the last 5 years if during the previous 3 years the proposal failed to receive at least 5% support if voted on once, 15% support if voted on twice, or 25% support if voted on 3 times |
| **Dividends**<br>*Assessing whether the proposal relates to dividends* | 14a-8(i)(13): Excludes a proposal if it relates to specific amounts of cash or stock dividends |
| **Holdings**<br>*Assessing the amount and period of shareholdings against required minimums* | 14a-8(b): Excludes a proposal if the proponent has not held a market value of votable shares of at least $25,000 for 1 year, $15,000 for 2 years or $2,000 for 3 years |

### The no action process

In order to help companies decide whether a proposal passes these tests, the SEC has developed a process to allow companies to ask the SEC in advance whether a proposal must be included in the meeting materials. The "no action" process is an informal review process through which the SEC staff advises companies and their investors on whether the SEC staff would likely recommend enforcement action if a company fails to include a submitted shareholder proposal on its annual proxy statement. The staff grants the company's request if it finds some basis to agree with the company's arguments that the proposal is excludable under one of the elements of SEC Rule 14a-8. It denies the request if it is unable to concur with the company's arguments.

SEC Rule 14a8 is intended to exclude trivial, irrelevant and inappropriate shareholder proposals, thus minimizing the burden on companies. The no action process is a structured, time-tested process that adds an additional layer of objective scrutiny to company decisions regarding whether to include or exclude proposals, which serves to protect investors' interests. If an investor disagrees with the no action decision by the SEC, the investor can submit a letter in opposition, but it does not have legal recourse against the SEC. Without Rule 14a-8 and the no action process, an investor only has the option to sue the company under federal law if it disagrees with a company's decision to not place a proposal on the proxy, which would add delays, and significant costs for both parties.

The SEC staff periodically recalibrates its interpretation of the rules of the no action process to reflect current issues of concern to investors and companies. For example, in 2021, the SEC staff issued an interpretive bulletin, Staff Legal Bulletin 14L, which clarified ordinary business and micromanagement rules in a manner that allowed some environmental and social proposals to reach the proxy which might not have qualified in a prior interpretation. Following market response and criticisms, the staff once again tightened up its interpretations of micromanagement and excluded many proposals on social and environmental issues that had previously been allowed. From November 1, 2023 to May 1, 2024 the SEC staff supported company requests for exclusion of proposals roughly 68% of the time, similar to the average exclusion rate during the first Trump administration, from 2017-2020, which was 69%.[102] In the 2025 proxy season to date, the staff has again tightened its interpretation of the micromanagement rule, excluding, for example, proposals on lobbying disclosure that had previously been permissible since at least 2011.[103]

On February 12, 2025, the SEC staff also signified that it is taking a more restrictive posture on proposals that request specific forms of disclosure or actions by companies. SLB 14M issued on that day revoked SLB 14L and altered staff interpretations of the micromanagement, ordinary business and relevance exclusions.[104] The new interpretation is anticipated to lead to an increase in the exclusion of environmental and social proposals, and fewer such proposals appearing on proxy statements.

Of particular note in SLB 14M is a shift in interpretation of micromanagement from SLB 14L's focus on the interest and capacities of shareholders to understand and vote on an advisory proposal on the issue, and toward an evaluation as to whether the proposal seeks a specific method, strategy or outcome that the staff views as more appropriately determined by the board or management. In addition, SLB 14M applies to all proposals currently in the no action process (i.e., retroactively), which some shareholders have objected to.[105]

### Significant judicial developments

#### Exxon

In January 2024, Exxon sued two investors who filed a shareholder proposal for the 2024 annual meeting asking the company to go beyond current plans to further accelerate the pace of emission reductions in the medium-term for its greenhouse gas emissions across Scope 1, 2, and 3, and to summarize new plans, targets, and timetables. The suit was ultimately dismissed by the US District Court in Fort Worth Texas as moot after the proponents agreed to withdraw and not re-file the proposal.[106]

Exxon asserted in the lawsuit that the proponents' efforts to encourage the company to transform itself into a clean energy company violated the resubmission and ordinary business rules. Until the Exxon lawsuit, the focus of lawyers and clients under Rule 14a-8 has been principally ensuring that a proposal would comply with current SEC interpretations of the 14a-8 exclusions. In the event of a difference of opinion between investors and issuers, the routine course of action is for the company to file a no action request with the SEC staff, with resolution of the disagreement by SEC staff. Filing a lawsuit against its own shareholders and seeking resolution of the issue in a court that is less familiar with the rules was a dramatic and harsh deviation from routine practice, though it was within the company's rights to do so.

Exxon's CEO, Darren Woods, also asserted that the proposals filed by the proponents represented inappropriate use of the shareholder proposal process as out of line with what "real" investors in the company would seek.[107] Yet according to a 2024 survey conducted by FT Longitude of investment firm chief investment officers worldwide, including in the US[108], less than one percent of respondents believe that oil exploration and production will offer the best returns over the next 10 years. Instead, a full 62% of the investors currently believe that the best returns over the next 10 years will come from renewables including wind and solar. The vast majority of the respondents believe that their institution will have stopped investing in oil exploration and production by 2035. Based on this survey, it is reasonable to expect that Exxon's shareholders may believe oil and gas development is at risk due to the economic transition required by climate change and that their investee companies will need to shift their business models to survive.

**Kroger**

In May 2023, the National Association of Manufacturers (NAM) successfully filed a motion with the US Court of Appeals in the Fifth District to intervene in a case brought by the National Center for Public Policy Research (NCPPR) against the SEC, challenging a shareholder resolution no action determination The no action determination involved a shareholder proposal filed by NCPRR with The Kroger Co. regarding the omission of consideration of "viewpoint" and "ideology" from its equal employment opportunity policy. Kroger sought to exclude the proposal as "ordinary business" under Rule 14a-8(i)(7). The NAM motion opened a broader challenge to the SEC's authority to provide guidance regarding whether shareholder resolutions could be allowed on a company's proxy for a vote, claiming that this process violates principles of corporate First Amendment rights enshrined in the Citizens United ruling. NAM pursued the case even as Kroger, the target of the NCPPR resolution, mooted the case by allowing the resolution on the proxy. A three-judge panel of the Fifth Circuit dismissed the case for lack of jurisdiction.[109] As of this publication, an appeal is pending.

## Significant legislative developments

**House**

On September 18, 2024, the US House of Representatives passed H.R. 4790, the *Prioritizing Economic Growth Over Woke Policies Act*.[110] The legislation is an umbrella bill incorporating a number of other bills that, among other things, significantly increase the ability of companies to exclude shareholder proposals from the proxy statement, including:

- amending the Securities Exchange Act of 1934 to prohibit the SEC from compelling an issuer to include in the proxy statement any shareholder proposal or any discussion related to a shareholder proposal. The bill also expressly states the SEC may not preempt state regulation of proxy materials or shareholder proposals. (Section 2002)
- increasing requirements for resubmission of proposals to require 10% voting support for a first-year proposal, 20% for a second year proposal and 40% for third year proposal, compared to current requirements of 5% voting support the first year, 15% for the second year and 25% for the third year. (Section 3101)

- allowing companies to exclude shareholder proposals where the company already has policies, practices, or procedures that compare favorably with the guidelines of the proposal and address the proposal's underlying concerns. (Section 3201)
- allowing companies to exclude any proposal relating to environmental, social or political issues from proxy or consent solicitation material. (Section 3301)
- allowing companies to exclude a shareholder proposal under Rule 14a-8(i) without regard to whether the proposal relates to a significant social policy issue. (Section 3401)
- requiring the SEC to conduct a "wasteful and unnecessary" study every 5 years on shareholder proposals, proxy advisory firms, and the proxy process, covering a variety of topics, including the purported costs incurred by the shareholder proposal process and the "risk that shareholder proposals may contribute to the balkanization of the US economy over time." (Section 3501)
- providing that an institutional investor may not outsource voting decisions to any person other than an investment adviser or a broker or dealer that is registered with the Commission and has a fiduciary or best interest duty to the institutional investor. (Section 3901)

**Senate**

On September 23, 2024, S. 5139, the *Empowering Main Street in America Act of 2024*, was introduced. Among other things, the bill would allow a company to exclude a shareholder proposal from its proxy statement without regard to whether that shareholder proposal relates to a significant policy issue. (Section 305)

# Endnotes


1 Bilal, Adrien and Kanzig, Diego R. The Macroeconomic Impact of Climate Change: Global vs. Local Temperature. National Bureau of Economic Research Working Paper 32450. May 2024, Revised November 2024.

2 Schroders and CalPERS. Human Capital Management/ Research summary: people are our greatest asset. July 2023.

3 *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

4 The document is referred to as the "proxy" statement because most investors do not attend the meeting in person to vote but instead cast their votes by proxy.

5 SEC Rule 14a-8(a).

6 For additional detail on requirements under SEC Rule 14a-8 see pages 22-25.

7 Hoepner, Andreas G. F. et al. "ESG shareholder engagement and downside risk". *Review of Finance*, 2024, 28, 483-510.

8 Barko, Tamas, Cremers, K. J. Martijn and Renneboog, Luc. "Shareholder Engagement on Environmental, Social, and Governance Performance". *Journal of Business Ethics*, 2022, 180, pp. 777–812, Center Discussion Paper Series No. 2017-040, European Corporate Governance Institute - Finance Working Paper No. 509/2017 , TILEC Discussion Paper No. DP 2017-021.

9 Prevost, Andrew, et al. "Labor Unions as Shareholder Activists: Champions or Detractors"? *Financial Review*. Vol. 47, Issue 2, February 2009, pp. 219-421.; Renneboog, Luc and Szilagyi, Peter. "The Role of Shareholder Proposals in Corporate Governance". *Journal of Corporate Finance* Vol. 17, Issue 1, February 2011, pp. 167-188; Bebchuk, Lucian. "The Case for Increasing Shareholder Power". *Harvard Law Review*, Vol. 118, No. 3, pp. 833-914. January 2005. Denes, Matthew et al. "Thirty Years of Shareholder Activism: A Survey of Empirical Research". *Journal of Corporate Finance*, Vol. 4, June 2017, pp. 405-424.

10 Source: Sustainable Development Institute (Si2).

11 Arnold Martin and Harris, Lee. "Top financial watchdog warns climate change set to trigger market panics". *Financial Times*. January 16, 2025.

12 Community Catalyst. "Corporate Greed in Health Care: A Metastasizing Disease". June 5, 2024.

13 https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/exchange-act-sections-13d-13g-regulation-13d-g-beneficial-ownership-reporting

14 Heath, Davidson and Macciocchi, Daniele and Ringgenberg, Matthew C. "The Economics of Investor Engagement". University of Miami Business School Research Paper No 5030999. December 12, 2024.

15 Bebchuk, Lucian and Cohen, Alma and Ferrell, Allen. "What Matters in Corporate Governance"? (September 1, 2004). *Review of Financial Studies*, Vol. 22, No. 2, pp. 783-827, February 2009, Harvard Law School John M. Olin Center Discussion Paper No. 491 (2004).

16 Papadopoulas, Kosmos and Frank Juan, and Parikh, Pinak. "U.S. Shareholder Proposals: A Decade in Motion". ISS Corporate. October 13, 2024.

17 McClellan, Denis. "John Gilbert, 88; Fought for Small Shareholders". *Los Angeles Times*. July 20, 2002.

18 Sloane, Lewis. "Lewis Gilbert, 86, Advocate of Shareholder Rights". *The New York Times*. December 8, 1993.

19 Norman, Michael. "Wilma Porter Soss, 86, A Gadfly at Stock Meetings of Companies". *The New York Times*.

20 "Evelyn Davis, known as corporate gadfly, dies at 89". *Reuters*. November 5, 2018.

21 "William Steiner, Shareholder Activist." CorpGov.net. October 16,2017.

22 "Kenneth Steiner Continues Father's Work." CorpGov.net. May 5, 2020.

23 Sook Kim, Queena. "Corporate Gadflies Are the Buzz". *The Wall Street Journal*. June 10,2004.

24 Kishan, Saijal. "Main Street's Most Prolific Corporate Agitator Finds a New Battlefield In ESG". Bloomberg. May 25, 2022.

25 See https://www.corpgov.net.

26 Papadopoulas, Kosmos and Frank, Juan and Parikh, Pinak. "U.S. Shareholder Proposals: A Decade in Motion". ISS Corporate. October 13, 2024.

27 Kastiel, Kobi and Nili, Yaron. "The Giant Shadow of Corporate Gadflies". *Harvard Law School Forum on Corporate*

*Governance*. April 21, 2021.

28 Goodman, Amy L. "Shareholder Proposal Developments During the 2013 Proxy Season". *Harvard Law School Forum on Corporate Governance*. July 22, 2013.

29 "Majority Voting for Directors". Council of Institutional Investors website. Accessed January 19, 2025.

30 "Calpers seeking majority vote for Apple board". Reuters. February 3, 2011.

31 Source: Proxy Monitor.

32 Office of Investor Education and Advocacy, Securities and Exchange Commission "Investor Bulletin: Say-on-Pay and Golden Parachute Votes". March 2011.

33 "A deep dive into BP's Deepwater Horizon Spill: a case study". About Resilience website. August 17, 2022.

34 Arnold, Martin and Harris, Lee. "Top financial watchdog warns climate change set to trigger market panics". *Financial Times*. January 16, 2025.

35 Sun, Yongping et al. "The impacts of climate change risks on financial performance of mining industry: Evidence from listed companies in China". *Resources Policy*, Volume 69. December 2020.

36 Carlin, David and Arshad, Mahee and Baker, Katy. "Climate Risks in the Industrial Sector, Risk Briefings: Insights for Financial Institutions". UN Environment Programme. April 2023.

37 Carlin, David and Arshad, Mahee and Baker, Katy. "Climate Risks in the Transportation Sector, Risk Briefings: Insights for Financial Institutions". UN Environment Programme. May 2024.

38 Carlin, David and Arshad, Mahee and Baker, Katy. "Climate Risks in the Agriculture Sector, Risk Briefings: Insights for Financial Institutions". UN Environment Programme. March 2023.

39 Carlin, David and Arshad, Mahee and Baker, Katy. "Climate Risks in the Real Estate Sector, Risk Briefings: Insights for Financial Institutions". UN Environment Programme. March 2023.

40 Flacks, Marti and Zou, Catherine. "To Build Resilient Global Supply Chains, Incorporate Respect for Human Rights". Center for Strategic & International Studies. December 16, 2022.

41 Jones, Rupert. "Understanding The True Cost of a Poor Workplace Safety Culture". *OH&S*. April 17, 2023.

42 Bozola, Elena et al. "The Use of Social Media in Children and Adolescents: Scoping Review on the Potential Risks". *Int J Environ Res Public Health*, 2022 Aug 12, 19(16):9960.

43 Neuhauser, Paul M. Comment letter to SEC. October 2, 2007.

44 US Department of the Treasury AIG Program Status. Accessed January 19, 2025.

45 Aggarwal, Reena and Briscoe-Tran, Hoa and Erel, Isil and Starks, Laura T. "Public Sentiment Decomposition and Shareholder Actions". Fisher College of Business Working Paper No. 2024-26. December 2, 2024.

46 US Securities and Exchange Commission. Release No. 34-89964; File No. S7-23-19 RIN 3235-AM49, Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8 AGENCY: Securities and Exchange Commission. September 23, 2020 at 26.

47 Sullivan & Cromwell LLP. "2024 Proxy Season Review: Part 1". August 13, 2024.

48 Clayton, Jay. "Regulation Best Interest and the Investment Adviser Fiduciary Duty: Two Strong Standards that Protect and Provide Choice for Main Street Investors". US Securities and Exchange Commission. July 8, 2019.

49 ALI Principles of Corporate Governance § 4.01(a) (1994).

50 ERISA, 29 U.S.C. § 1104(a).

51 UNEP Finance Initiative and Principles for Responsible Investment. "Fiduciary Duty in the 21st Century Final Report".

52 Attorneys General from 16 states and the District of Columbia. "Letter to the Chairs and Ranking Members of the Senate Banking, Housing, and Urban Affairs Committee and the House Financial Services Committee". November 18, 2022.

53 Office of the State Treasurer of Washington. "Material Factors in Public Finance and Investments, A review of laws in other jurisdictions and their impacts, A Report to the Legislation Senate Bill 5187, Section 123 (2) Chapter 475 (2023)". November 27, 2024.

54 Ibid.

55 Haan, Sarah C. "Is Democracy Relevant to the Way We Govern Public Companies"? Promarket, Stigler Center for the Study of the Economy and the State, University of Chicago Booth School of Business. July 15, 2024.

56 For the 2024 proxy season BlackRock states that its Americas region stewardship group held 1,767 engagements with

1,265 companies. In the case of 369 of these companies, there were multiple engagements. BlackRock Investment Stewardship. "2024 Global Voting Spotlight".

57 T. Rowe Price From the Field. "For or against? The year in shareholder resolutions—2023". April 2024.

58 Conversation with Tracey Rembert, Associate Director, Climate and Environmental Justice, Interfaith Center on Corporate Responsibility. December 20, 2024. See also Investor Alliance on Human Rights, "2024 Tech Proposals". February 1, 2024.

59 Krishnamurthy, Bharath. "Drug Prices and Shortages Jeopardize Patient Access to Quality Hospital Care". American Hospital Association. May 22, 2024. See also Flynn, Laurie. "What is behind the legal drug crisis in the US?" Stanford Medicine, Scope Beneath the Headlines. October 6, 2023.

60 Interfaith Center on Corporate Responsibility. "Statement for the Record by ICCR before United States Committee on Finance hearing on 'Drug Pricing in America: A Prescription for Change, Part II' ". March 12, 2019.

61 Not One Penny. "Not One Penny Statement on Pfizer's Annual Shareholders Meeting and Vote Today on Executive Compensation – CEO Will Receive Record 61 Percent Pay Increase in 2017". April 26, 2018.

62 Goeman, Carly J. "The Price Isn't Right: Shareholder Proposals as Opportunities for Institutional Investors to Restore Firm Value and Reduce Pharmaceutical Prices". *Columbia Business Law Review*. Vol. 2017, No. 2, 2017.

63 Interfaith Center on Corporate Responsibility. "In Race to Develop Covid-19 Medicines, Investors Urge Pharma Cos to Put People Ahead of Profits". August 11, 2020.

64 Interfaith Center on Corporate Responsibility. "Shareholders Ask Nine Pharma Companies to Report on Whether Patent Protections are Reducing People's Access to Medicines". December 12, 2022.

65 Mercy Investment Services."Advocating for affordable access to medicines". May 16, 2023.

66 As described by attorney Paul M. Neuhauser: *"The first shareholder proposals concerning predatory subprime lending were submitted in 2000 and the first asking securitizers to police the loan pool were submitted in 2003, in each case years before subprime lending became recognized as a major problem. The shareholder proposals constituted an early warning system for those who heeded them. Although these proposals were submitted to a number of companies and survived company challenges at the SEC, they never appeared on any proxy statement because the recipients in each case agreed to a change of policy with regard to predatory lending to subprime borrowers…Notably, the securitizers that received the precatory proposals and changed their practices have not been among those who have suffered during the recent unpleasantness."* See Neuhauser, Paul M. "Comment letter to SEC". October 2, 2007.

67 https://www.sec.gov/Archives/edgar/data/5272/000095011704001279/a37136.htm at p. 25.

68 https://www.sec.gov/Archives/edgar/data/5272/000095012304009398/y97715ae10vq.htm at p. 52.

69 Federal Reserve Bank of New York. "Actions related to AIG".

70 US Department of the Treasury. "AIG Program Status".

71 Interfaith Center on Corporate Responsibility. "In Race to Develop Covid-19 Medicines, Investors Urge Pharma Cos to Put People Ahead of Profit". August 11, 2020.

72 Not One Penny. "Not One Penny Statement on Pfizer's Annual Shareholders Meeting and Vote Today on Executive Compensation – CEO Will Receive Record 61 Percent Pay Increase in 2017". April 26, 2018.

73 Goeman, Carly J. "The Price Isn't Right: Shareholder Proposals as Opportunities for Institutional Investors to Restore Firm Value and Reduce Pharmaceutical Prices". *Columbia Business Law Review*. Vol. 2017, No. 2, 2017.

74 Source: Sustainable Investments Institute (Si2).

75 Ibid.

76 Interfaith Center on Corporate Responsibility. "Shareholders Ask Nine Pharma Companies to Report on Whether Patent Protections are Reducing People's Access to Medicines". December 12, 2022.

77 CDC, National Center for Health Statistics. "U.S. Overdose Deaths Decrease in 2023, First Time Since 2018". May 15, 2024.

78 Interfaith Center on Corporate Responsibility. "Health Equity Program: Opioid Accountability".

79 Lucas, Justin. "Impacts of the East Palestine Train Derailment Mapped". Urban Footprint. April 4, 2023.

80 Romm, Tony. "A year after East Palestine derailment, rail industry blocks new safety rules". *The Washington Post*. February 3, 2024.

81 https://s2.q4cdn.com/859568992/files/doc_financials/2024/ar/2024-csx-corp-proxy-statement.pdf at p. 110.

82 https://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/pdf at p. 87.

83 Green, Jay and Alcantara, Chris."Amazon warehouse workers suffer serious injuries at higher rates than other firms".

*The Washington Post*. June 1, 2021.

84 O'Donovan, Caroline. "Regulators struggle to rein in Amazon on safety for warehouse workers". *The Washington Post*. September 18, 2023.

85 Kim, Juliana. "Amazon manipulated injury data to make warehouses appear safer, a Senate probe finds". *NPR*. September 16, 2024.

86 https://s2.q4cdn.com/299287126/files/doc_financials/2022/ar/Amazon-2022-Proxy-Statement.pdf at p. 66.

87 https://s2.q4cdn.com/299287126/files/doc_financials/2023/ar/Amazon-2023-Proxy-Statement.pdf at p. 75.

88 https://s2.q4cdn.com/299287126/files/doc_financials/2024/ar/Amazon-com-Inc-2024-Proxy-Statement.pdf at p. 78.

89 Rabin, Roni Caryn and Hsu, Tiffany "Johnson & Johnson Feared Baby Powder's Possible Asbestos Link for Years". *The New York Times*. December 14, 2018.

90 Stempel, Jonathan. "Johnson & Johnson reaches $700 million talc settlement with US states". *Reuters*. June 12, 2024.

91 Hsu, Tiffany. "Black women's group sues Johnson & Johnson over talc baby powder". *The New York Times*. July 27, 2021

92 Povtak, Tim. "Johnson & Johnson to Continue Global Sale of Talc-Based Baby Powder". Asbestos.com. May 9, 2022

93 Fenton, Suzanne E. et al. "Per- and Polyfluoroalkyl Substance Toxicity and Human Health Review: Current State of Knowledge and Strategies for Informing Future Research". *Environ Toxicol Chem*. 2020 Dec 7;40(3):606–630.

94 Chaudhuri, Saabira. "As Fertility Rates Fall, Some Scientists Say Everyday Chemicals Are a Factor". *The Wall Street Journal*. December 14, 2024.

95 Source: Sustainable Investments Institute (Si2).

96 H.R. Rep. No. 73-1383, at 13 (1934) ("Fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange. Managements of properties owned by the investing public should not be permitted to perpetuate themselves by the misuse of corporate proxies.").

97 7 C.F.R. § 10659 (1942).

98 *Medical Committee for Human Rights v. SEC*, 432 F.2d 659, 677 (D.C. Cir. 1970) (vacated as moot).

99 SEC Staff Report on Corporate Accountability (1980) (citing S. Rep. No. 700, 85th Cong., 1st Sess., 3 (1957)).

100 *National Center for Public Policy Research v. SEC*, No. 23-60230 at 3 (5th Cir. November 14, 2024) (per curiam).

101 17 CFR § 240.14a-8(i).

102 Lewis, Sanford. "SEC No Action Statistics to May 1, 2024". *Harvard Law School Forum on Corporate Governance*. May 20, 2024.

103 https://www.sec.gov/files/corpfin/no-action/14a-8/cheveddenhp12125-14a8.pdf

104 https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf?

105 https://bit.ly/14Mletter

106 *Exxon Mobil Corporation v. Arjuna Capital, LLc*, United States District Court, ND TX, Fort Worth Division, No. 4:24-cv-00069-P, June 17, 2024.

107 Remarks of Darren Woods, Council of Institutional Investors Fall Conference, Brooklyn Marriott. September 10, 2024.

108 Sustainable Views. "Global investors see uncertain future for fossil fuels". October 17, 2024.

109 *Nat'l Ctr. for Pub. Pol'y Rsch. v. Sec. & Exch. Comm'n*, No. 23-060230 (5th Cir. Nov. 14, 2024).

110 https://clerk.house.gov/Votes/2024435

Mr. DESAULNIER. No. 2, the Wall Street Journal article I mentioned entitled, DOW Headed for Worst April since 1932, as Investors Send No Confidence Signal.

Chairman ALLEN. Without objection.
[The information of Mr. DeSaulnier follows:]



https://www.wsj.com/finance/investing/dow-jones-stocks-worst-april-1932-74fe82ac

MARKETS & FINANCE | INVESTING

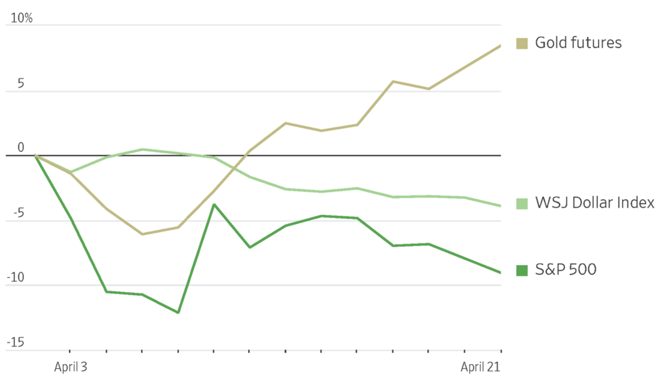
# Dow Headed for Worst April Since 1932 as Investors Send 'No Confidence' Signal

Few think administration's negotiations with trade partners will yield results soon enough to ease the strain

*By Hannah Erin Lang* Follow

*April 21, 2025 9:00 pm ET*

**Performance since April 2 'Liberation Day'**




Note: Gold based on most-active contract.
Sources: Dow Jones Market Data (dollar); FactSet (gold, S&P 500)

The Trump rout is taking on historic dimensions.

The Dow Jones Industrial Average shed almost 1,000 points on Monday and is headed for its worst April performance since 1932, according to Dow Jones Market Data. The S&P 500's performance since Inauguration Day is now the worst for any president up to this point in data going back to 1928, according to Bespoke Investment Group.

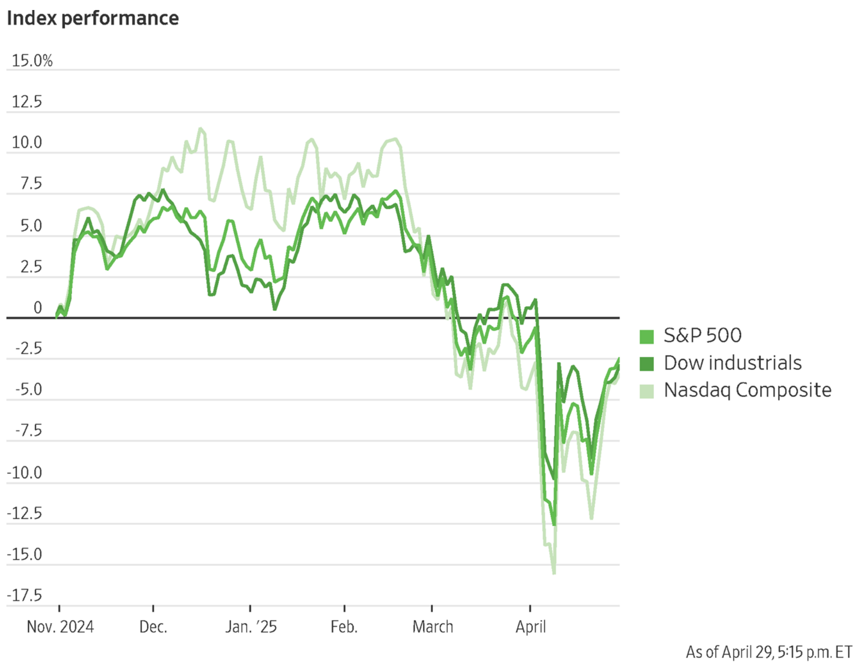
Worries about trade restrictions and the prospect of President Trump firing Federal Reserve Chairman Jerome Powell have investors bracing for greater losses ahead. Corporate earnings reports are rolling in, along with executives' tariff-dented outlooks for the months ahead. Few think the administration's negotiations with trade partners will yield results soon enough to ease the strain.

Meanwhile, counterweights that usually strengthen when stocks fall—such as government bonds and the U.S. dollar—are also under pressure, leaving investors with few havens to wait out the storm.

"It's the hallmark of the 'no confidence' trade," said Scott Ladner, chief investment officer at Horizon Investments. The Charlotte-based firm trimmed its U.S. equity position several weeks ago to favor more international stocks. "It's impossible to commit capital to an economy that is unstable and unknowable because of policy structure."

Here's how markets have reacted as threats have multiplied:

## Stocks

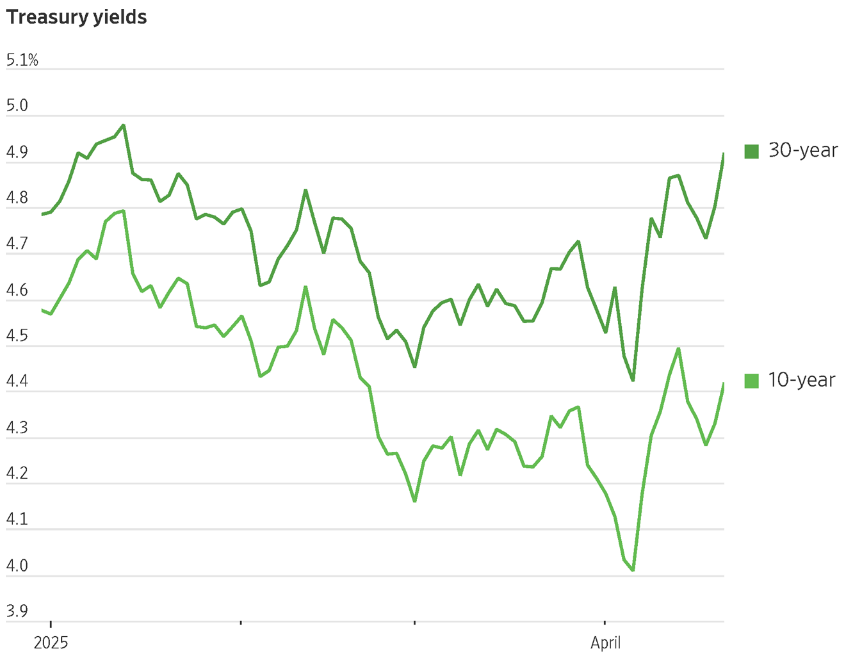



Source: FactSet

In the weeks after Donald Trump's presidential victory, major U.S. stock indexes soared, lifted by investors' hopes for tax cuts and a deregulatory push that could boost corporate earnings. But the administration instead pressed ahead with aggressive tariffs that threaten to raise prices and slow economic growth.

Many investors still wrote off the president's threats as mere bluster, a negotiating tactic meant to spur concessions from other countries. That changed on April 2, when Trump revealed steep tariffs that sent markets into a tailspin.

## Treasurys




Source: Tullett Prebon

Markets still haven't recovered—even after the president rolled back and delayed many of his tariff plans.

Typically, bond prices rise when stocks fall, offering a hedge for investors during stock market turmoil. But that hasn't been the case in recent weeks. Yields on 10-year U.S. Treasurys, a key benchmark for borrowing costs, have increased 0.16 percentage point in April. Bond yields rise as prices fall, meaning investors are selling U.S. government bonds—widely considered one of the safest and most dependable assets —even when stocks are falling.

## The dollar

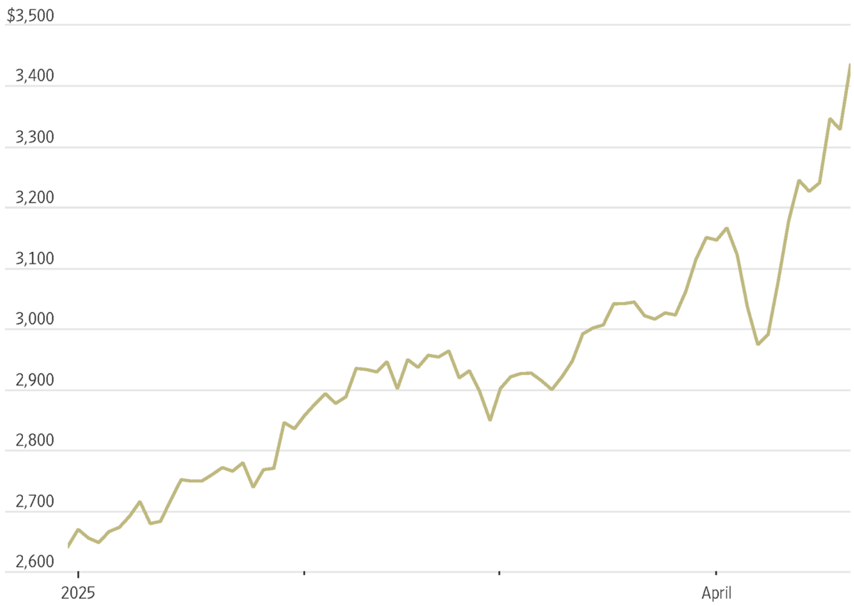
U.S. Dollar Index (DXY)


Source: FactSet

Concerns about the economy, along with fears about Trump's growing feud with the Fed, are weighing on the U.S. dollar. The ICE U.S. dollar index, a measure of the dollar against a basket of major currencies, slipped more than 1% on Monday to its lowest level in three years.

## Gold

**Gold futures price**




Source: FactSet

With other defensive plays falling short, investors have piled into one of oldest hedges there is: gold. Future prices for the precious metal reached another all-time high on Monday.

## VIX

Cboe Volatility Index


Source: FactSet

The markets' "fear gauge" remains elevated, with worries about the trade war and the broader economy adding up to expectations for more volatility ahead.

## Sentiment

**Investor sentiment**


Note: Bearishness measures expectations that stock prices will fall over the next six months. Bullishness measures expectations that stock prices will rise over the next six months. Neutral sentiment measures expectations that stock prices will stay essentially unchanged over the next six months,
Source: American Association of Individual Investors

The mood on Wall Street is darkening as a result. Bearishness levels—or expectations that stock prices will fall—among ordinary investors have hovered above 50% for eight consecutive weeks, according to a weekly survey from the American Association of Individual Investors. That is the longest-lasting bear majority on record, the investor group said, based on data going back to 1987.

Write to Hannah Erin Lang at hannaherin.lang@wsj.com

*Appeared in the April 22, 2025, print edition as 'Dow Nears the Worst April Since 1932'.*

**Further Reading**

**Dow Industrials Fall, Capping Another Tough Week on Wall Street**

Mr. DESAULNIER. Actually, No. 3, BlackRock's comment later expressing support for ESG investing.

Chairman ALLEN. Without objection.

[The information of Mr. DeSaulnier follows:]

**BlackRock**

December 13, 2021

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW, Room N-5655
Washington, DC 20210
Attention: RIN 1210-AC03

Submitted online via http://www.regulations.gov

**RE: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights: RIN 1210–AC03**

BlackRock, Inc. (together with its affiliates, "BlackRock")[1] respectfully submits its comments to the Department of Labor ("DOL") in response to the DOL's proposed rule regarding the consideration of prudence and loyalty in selecting plan investments and exercising shareholder rights (the "Proposal"). BlackRock strongly supports the DOL's goal of empowering plan fiduciaries to safeguard participants' savings by making it clear that fiduciaries may consider climate and other environmental, social, and governance ("ESG") factors.[2] Our investment conviction is that incorporating sustainability-related factors – which are often characterized and grouped into ESG categories – into investment decisions can provide better risk-adjusted returns to investors over the long-term. This conviction is founded on research by BlackRock, the industry, and academic research, in addition to our deep experience with both investment and risk management across asset classes. We believe the ability to consider climate and other ESG factors is imperative for ERISA plans and their participants (in the case of defined contribution plans), who are saving and investing for the long-term.

We commend the DOL's efforts to improve the 2020 final rules titled "Financial Factors in Selecting Plan Investments"[3] and "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights"[4] (together, the "2020 Rules"). The Proposal reflects a thoughtful analysis of the challenges presented by the 2020 Rules, incorporates feedback from a wide range of stakeholders, and takes significant positive steps toward the DOL's goal of empowering plan fiduciaries.

---

[1] BlackRock manages assets on behalf of individual and institutional clients across equity, fixed income, real assets, and other strategies. The assets we manage represent investors' futures and the investment outcomes they seek, and it is our responsibility to help them better prepare themselves and their families to achieve their financial goals. Two thirds of the assets we manage are retirement-related assets. BlackRock manages assets for public and private pensions, including defined benefit and defined contribution plans of varying sizes.

[2] DOL Fact Sheet, Oct. 13, 2021.

[3] 85 FR 72846 (Nov. 13, 2020).

[4] 85 FR 81658 (Dec. 16, 2020).

BlackRock further appreciates the DOL's efforts to counteract the negative perception of the use of ESG factors in investment decisions caused by the 2020 Rules. We acknowledge the challenge of constructing a regulation that balances those efforts with maintaining the DOL's long-standing principles-based interpretation of fiduciary investment duties.

While the Proposal is a significant improvement over the 2020 Rules, there are certain provisions that may create confusion and/or uncertainty for plan fiduciaries. In this letter, we (1) provide insights regarding the evidence of the financial relevance of ESG factors in various investment contexts and (2) offer specific recommendations to clarify and improve the Proposal.

**Section I: Financial Relevance of ESG Factors**

The DOL notes that "the body of research evaluating ESG investing as a whole shows ESG investing has financial benefits, although the literature overall has varied findings."[5] We believe additional information and insights could better contextualize the DOL's findings. Below we address the comprehensiveness of research on ESG fund performance as well as the evolution of ESG investing.

**The comprehensiveness of research on ESG fund performance**

As noted in our 2020 response to the DOL, there is a growing body of practitioner and academic evidence supporting the view that incorporating sustainability-related factors into investment decisions can improve risk-adjusted returns in portfolios over time. However, to accurately assess the performance of ESG funds versus their non-ESG peers, it is essential that researchers select an applicable universe of ESG funds, benchmark(s) (e.g., whether index or peers), and time period(s) for relative comparison. Otherwise, results can be easily skewed based on how the universe, benchmark, and time periods are determined.

For example, in the Winegarden report cited by the DOL,[6] the author compared ESG funds against the S&P 500. However, the ESG funds evaluated in the report were not all broadly diversified US equity funds. Many funds selected invested in equities of global clean technology-related companies, including large exposures to international and emerging market companies and/or were concentrated in one or two industries. Because of this dataset mismatch, Winegarden's comparison of the selected ESG funds against the S&P 500 does not isolate how incorporation of ESG data affects performance.

In contrast, while not academic papers, the periodic Sustainable Funds: US Landscape Reports from Morningstar[7] offer comprehensive information on ESG fund performance. These reports identify the broad universe of mutual funds that incorporate meaningful ESG language in their prospectuses and compare the performance, over 1-, 3-, and 5-year

---

[5] Proposal at 57290.

[6] Proposal at 57290-91 citing Wayne Winegarden, Environmental, Social, and Governance (ESG) Investing: An Evaluation of the Evidence. Pacific Research Institute (2019).

[7] Available at https://www.morningstar.com/lp/sustainable-funds-landscape-report

periods, of those funds relative to peers in their respective Morningstar category which includes similarly benchmarked funds that do not incorporate meaningful ESG language into their prospectuses. Morningstar's report covering year-end 2020 found that 69% of ESG funds performed in the top-half of their Morningstar category over the 1-year period, 75% over the 3-year period, and 69% over the 5-year period.[8] We encourage the DOL to revisit and enhance the regulatory impact analysis given the body of research demonstrating that considering risk and return factors for ESG can have material, positive financial impact.

**Evolution of ESG Investing**

ESG investing has evolved rapidly over the past ten years, shifting from a focus on values-based investing to a focus on long-term value creation. "Responsible investing" began decades ago with values-based investors seeking strategies that reflected their moral and ethical views. These first-generation strategies were typically negative exclusion strategies or "screens", and performance considerations were often secondary to excluding specific investments or types of investments. This could provide useful context when interpreting some of the research cited by the DOL.[9]

As ESG data has become more accessible over the past ten years, we have a better understanding of financially relevant ESG information, and ESG funds that incorporate financially relevant ESG data, including beyond exclusionary strategies, have become more common. Today at BlackRock, we have access to over 2000 categories of ESG metrics from multiple vendors in our proprietary portfolio and risk management system. Because of the rapid increase in ESG-related disclosures by companies and third party ESG data providers, as well as advancements in technologies, the use of ESG data to seek enhanced investment returns and/or mitigate investment risks has become more sophisticated.

As outlined in our 2020 paper, Sustainable Investing: resilience amid uncertainty[10], traditional financial accounting standards such as GAAP or IFRS do not provide investors with a complete picture of what is material – that is, the full set of risks and opportunities faced by companies. Additional information such as, for example, the regulatory context in which a company operates can equip investors to evaluate risks more comprehensively, in particular over the long-term and in market stress periods when uncertainty about future outcomes may be heightened.

That same research shows that a select group of flagship ESG indices have, as a group, outperformed over multiple periods of market turbulence relative to their non-sustainable peers and have also provided equal to or better than overall risk-adjusted performance on a multi-year basis. Similarly, during the market volatility in Q1 2020, funds across active

[8] Id.

[9] See e.g., Proposal at 57291 citing Pieter Jan Trinks and Bert Scholtens, The Opportunity Cost of Negative Screening in Socially Responsible Investing, 140 Journal of Business Ethics 2 (2017).

[10] Available at https://www.blackrock.com/corporate/literature/investor-education/sustainable-investing-resilience.pdf.

and index investment strategies that scored higher on sustainability metrics from Morningstar generally outperformed like peers with lower sustainability metric scores.[11]

**Section II: Recommendations to Clarify and Improve the Proposal**

We believe that plans and plan participants, who are generally long-term investors, are best served when plan fiduciaries can rely on clear and durable guidance that limits confusion and is free of bias. Therefore, BlackRock respectfully requests that the DOL consider the following suggestions to better align the Proposal with (1) the DOL's goal of empowering plan fiduciaries to safeguard participants' savings by clarifying that they can consider ESG factors, and (2) the DOL's position that proxy voting is the responsibility of plan fiduciaries, and fiduciaries can differ in their determinations regarding the exercise of shareholder rights.

**Modify paragraph (b)(2)(ii)(C)**

BlackRock agrees with the DOL that, depending on the facts and circumstances, a prudent risk/return analysis could require an evaluation of the economic effects of climate change or other ESG factors.[12] However, we are concerned that the words "may often require" may introduce uncertainty that could be confusing to plan fiduciaries and could lead them to interpret paragraph (b)(2)(ii)(C) either more broadly or less broadly than the DOL intended. There are common situations, such as when the objective of the applicable portion of the portfolio is to track the performance of an index, that a prudent analysis of the projected return relative to the portfolio's funding objective is unlikely to require an evaluation of the economic effects of ESG factors. By modifying the language as suggested below, the DOL would counteract any negative perception of the use of ESG factors in investment decisions created by the 2020 Rules while maintaining a principles-based approach to interpreting a fiduciary's duty of prudence.

> ***Suggested Revision:*** Modify paragraph (b)(2)(ii)(c) as follows: *"(C) The projected return of the portfolio relative to the funding objectives of the plan, which ~~may often require~~ **permits** an evaluation of the economic effects of climate change and other environmental, social, or governance factors on a particular investment or investment course of action."*

**Clarify certain aspects of paragraph (b)(4)**

BlackRock agrees with the DOL that "material climate change and other ESG factors are no different than other 'traditional' material risk-return factors."[13] We are also supportive of the DOL's efforts to remove prejudice to the contrary by adding paragraph (b)(4) to the Proposal. One way to potentially improve the section could be to replace "material" with "relevant" in order to keep terminology consistent with the language used in paragraph

[11] Sustainable Funds Weather the First Quarter Better Than Conventional Funds | Morningstar

[12] Proposal at 57276.

[13] Proposal at 57277.

(b)(1)(i). The DOL appears to use the terms "material" and "relevant" somewhat interchangeably in the preamble to the Proposal,[14] and prior non-regulatory guidance uses the terminology "relevant economic factors".[15] Moreover, it would be useful to avoid confusion with the test for the "materiality" of disclosures under the federal securities laws if that is not what the DOL intended.[16] To further enhance the clarity of the paragraph, we recommend the DOL expressly state in the regulation that a prudent fiduciary determines whether or not a particular factor is relevant.

> ***Suggested Revision:*** Modify paragraph (b) (4) as follows: "*A prudent fiduciary may consider any factor in the evaluation of an investment or investment course of action that, depending on the facts and circumstances,* ***it prudently determines is relevant*** ~~*is material*~~ *to the risk-return analysis, which might include, for example...*"

**Clarify disclosure requirement in paragraph (c)(3)**

BlackRock agrees with the DOL that the "tie-breaker" standard articulated in the Proposal is broader than the standard in the 2020 Rules and better aligns with Interpretive Bulletin 94-1. We also understand the importance of giving plan participants information to make an informed investment decision. However, we are concerned that the proposed disclosure requirement is unclear and could, unintentionally and inappropriately, broadly relegate ESG characteristics to collateral benefit factors.

As noted in the preamble, examples of tie-breaking characteristics may include alignment with the corporate ethos of the plan sponsor or the esprit de corps of the workforce.[17] We believe that the DOL intended the applicable fund characteristic to be disclosed but would not expect the plan fiduciary to specify the collateral benefit itself. In other words, the collateral benefit to the plan may be different from the characteristic of the fund that is expected to provide the collateral benefit. For example, if the plan fiduciary of the 401(k) plan for a sustainable clothing manufacturer selected a mutual fund with an investment objective to seek to maximize total return while seeking to maintain certain ESG characteristics versus a benchmark, then presumably the disclosure requirement would be satisfied with a prominent display of the fund's investment objective, rather than a statement regarding the fund objective's alignment with the plan sponsor's corporate ethos. As a result, we find the preamble's reference to alignment with corporate ethos as a "tie-breaking ***characteristic***" potentially confusing.[18]

---

[14] See e.g., 57277 - 57279

[15] See IB 2015-01.

[16] See Basic Inc. v. Levinson, 485 U.S. 224, 240 (1988) ("[M]ateriality depends on the significance the reasonable investor would place on the withheld or misrepresented information."); TSC Industries, Inc. v. Northway, Inc., 426 U. S. 438, 449 (1977) ("[A]n omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote... Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.").

[17] Proposal at 57280.

[18] Id. (emphasis added).

There are a number of reasons why the required disclosure should be limited to disclosure of the fund characteristic without mandating additional explanation of the collateral benefit to the plan. The feature or characteristic of an investment alternative that provides the collateral benefit to the plan is not always inherently non-financial. But by characterizing that feature as a collateral benefit characteristic without sufficient distinction between the characteristic and the collateral benefit it provides to the plan, the DOL may cause an unintentional implication that a fund characteristic providing a collateral benefit to a particular plan fiduciary is inherently non-financial or non-economic. A statement of that nature could provide an unprecedented window into the fiduciary's decision-making process, which could be understood by plan participants as a recommendation of the investment alternative providing the collateral benefit. Furthermore, this would almost certainly require modification of existing disclosures or the creation of new disclosures.

For these reasons, we encourage the DOL to consider the suggested revisions below, which could provide helpful clarity.

> ***Suggested Revision:*** Modify the penultimate sentence in paragraph (c)(3) as follows: "*...However, if the plan fiduciary makes such a selection in the case of a designated investment alternative for an individual account plan, the plan fiduciary must ensure that the ~~collateral-benefit~~ characteristic of the fund, product, or model portfolio* ***that could reasonably be expected to provide such collateral benefits*** *is prominently displayed in the disclosure materials provided to participants and beneficiaries*."

The DOL indicated that it assumes that existing participant disclosures generally could be sufficient to satisfy the new disclosure requirement. To provide additional certainty and potentially reduce administrative burdens, the DOL could clarify that the disclosure requirement would be satisfied if the applicable fund, product, or model portfolio characteristic is readily apparent from the name, investment objective, goal, or strategy of the investment alternative.

In keeping with the DOL's position that proxy voting is the responsibility of plan fiduciaries, and fiduciaries can differ in their determinations regarding the exercise of shareholder rights, we recommend two modifications to paragraph (d)(4).

**Modify paragraph (d)(4)(i)(B)**

Historically, most ERISA plans have not conducted in-house proxy voting or engagements because they have not had the expertise or the appetite to engage directly with portfolio companies in which they invest. Rather, they have deferred to their investment managers to manage proxy voting decisions. This fiduciary relationship has worked (and continues to work) effectively and to the benefit of ERISA plan participants, as asset managers' ability to scale the voting function streamlines the vote submission process, reduces the potential for analytical and operational error, and allows plans to benefit from their asset managers' expertise in making proxy voting decisions that are informed by engagements with issuers.

However, with the more widespread understanding that incorporating sustainability-related factors into investment decisions is likely to provide better risk-adjusted returns to investors over the long-term, increasing numbers of ERISA plan fiduciaries may choose to retain the ability to instruct the plan's trustee or investment manager to implement a proxy voting policy chosen by the plan fiduciary.

Accordingly, we recommend that the DOL consider modifying paragraph (d)(4)(i)(B) to acknowledge that a plan's named fiduciary that has retained the right to vote proxies may choose to vote those proxies or otherwise exercise shareholder rights appurtenant to their plan assets by directing an investment manager.

> ***Suggested Revision***: Modify paragraph (d)(4)(i)(B) to read: "*Where the authority to manage plan assets has been delegated to an investment manager pursuant to ERISA section 403(a)(2), the investment manager has exclusive authority to vote proxies or exercise other shareholder rights appurtenant to such plan assets in accordance with this section, except to the extent the plan, trust document, or investment management agreement expressly provides that the responsible named fiduciary has reserved to itself (or to another named fiduciary so authorized by the plan document) the right to direct a plan trustee* ***or investment manager*** *regarding the exercise or management of some or all of such shareholder rights.*

**Modify paragraph (d)(4)(ii)**

Regarding the obligations of an investment manager of a pooled investment vehicle that holds assets of more than one employee benefit plan, we believe paragraph (d)(4)(ii) can be improved to better align with existing industry practices consistent with an investment manager's fiduciary duty to all investors in a pooled investment vehicle. We encourage the DOL to modify paragraph (d)(4)(ii) to address the possibility that the responsible named fiduciary may choose to retain the authority to vote proxies or to direct an investment manager regarding the voting of proxies appurtenant to those plan assets that are invested in a pooled investment vehicle.

> ***Suggested Revision***: Modify paragraph (d)(4)(ii) to read as follows: "*In the case of proxy voting, to the extent permitted by applicable law, the investment manager may, or may allow a plan fiduciary to, vote (or abstain from voting) the relevant proxies to reflect a policy chosen by the plan fiduciary, in proportion to such plan's economic interest in the pooled investment vehicle, provided that the investment manager shall confirm that such policy is consistent with applicable law that pertains to the pooled vehicle, including Title I of ERISA and this section. Such investment manager may, however, develop a proxy voting policy consistent with Title I of ERISA and this section, and require all participating plans to accept the investment manager's proxy voting policy, before they are allowed to invest.*"[19]

[19] For ease of reference the following is a comparison of our suggested language with the original. "~~An investment manager of a pooled investment vehicle that holds assets of more than one employee benefit plan may~~

**********

We thank the DOL for providing the opportunity to comment in response to the DOL's proposed rule regarding prudence and loyalty in selecting plan investments and exercising shareholder rights. Please contact the undersigned if you have any questions or comments regarding BlackRock's views.

Sincerely,

Paul Bodnar
Head of Sustainable Investing

Nicole Rosser
Director, Legal & Compliance

---

*~~be subject to an investment policy statement that conflicts with the policy of another plan. Compliance with ERISA section 404(a)(1)(D) requires the investment manager to reconcile, insofar as possible, the conflicting policies (assuming compliance with each policy would be consistent with ERISA section 404(a)(1)(D)).~~ In the case of proxy voting, to the extent permitted by applicable law, the investment manager ~~must~~* ***may, or may allow a plan fiduciary to,*** *vote (or abstain from voting) the relevant proxies to reflect ~~such policies~~* ***a policy chosen by the plan fiduciary****, in proportion to ~~each~~* ***such*** *plan's economic interest in the pooled investment vehicle****, provided that the investment manager shall confirm that such policy is consistent with applicable law that pertains to the pooled investment vehicle, including Title I of ERISA and this section.*** *Such an investment manager may, however, develop a proxy voting policy consistent with Title I of ERISA and this section, and require* ***all*** *participating plans to accept the investment manager's ~~investment policy statement, including any~~ proxy voting policy, before they are allowed to invest. ~~In such cases, a fiduciary must assess whether the investment manager's investment policy statement and proxy voting policy are consistent with Title I of ERISA and this section before deciding to retain the investment manager~~"*



Mr. DESAULNIER. Thank you. A report from the Joint Economic Committee Democrats entitled Trump's Tariff Plans Would Drive Up Costs for Families and Shrink the Economy.

Chairman ALLEN. Without objection.
[The information of Mr. DeSaulnier follows:]

JEC JOINT ECONOMIC COMMITTEE

FACT SHEET | DECEMBER 2024

# Trump's Tariff Plans Would Drive up Costs for Families and Shrink the Economy

Trump is proposing massive new tariffs—or taxes on imported goods—that will drive up costs for Americans while hurting the overall economy. Despite Trump's claims that foreign countries pay for tariffs, evidence from Trump's previous tariffs shows that it was actually domestic importers and American families who faced higher costs after they took effect. If Trump actually imposes his proposed tariffs, economists expect they would cost a middle-class household thousands of dollars per year, and result in billions of dollars in losses for the national economy.

**Trump has proposed a series of tariffs that would drive up costs for families.**

Throughout 2024, Donald Trump has proposed a series of tariffs *on all goods* coming from outside the U.S. or on goods from specific countries. His recent proposals include:

- An across-the-board 10 percent tariff on all products imported from other countries.
- An across-the-board 20 percent tariff on all products imported from other countries.
- A 60 percent tariff—"or higher"—on all goods imported from China.
- An additional 10% above any additional tariffs on imports from China.
- A 25% tariff on products imported to the United States from Mexico and Canada.

Economists on the left and right agree: Trump's tariff plans will raise prices on consumers, harm the economy, and will not achieve the goals that Trump claims they will.

**Trump's tariffs would cost consumers thousands of dollars per year.**

- The Center for American Progress estimated that a 10% tariff on all goods imported to the United States and 60% tariff for all Chinese goods would cost a middle class U.S. household $2,500, while a 20% tariff on all imported goods and 60% tariff on Chinese goods would cost them $3,900 per year.
- The Peterson Institute for International Economics also finds that the 20% across-the-board tariff, coupled with a 60% tariff on Chinese goods, would result in a $2,600 annual loss for middle class families.
- Groups like the American Action Forum (AAF) and non-partisan consulting firm Ernst and Young (EY) are estimating losses in the U.S. economy, with AAF estimating a low of 0.16% in real Gross Domestic Product (GDP) losses, and EY estimating losses as high as 2.34% of real GDP—equivalent to $44.7 billion and $653 billion in end-of-year 2023 GDP terms, respectively.

**Trump's tariff plans would increase costs for goods that Americans rely on.**

Prices for things ranging from smart phones to clothes to food are likely to increase.

- The United States imports 60% of its fresh fruits and 38% of its fresh vegetables, according to 2021 data, with a majority of those imports coming from Mexico, and 20% of imported vegetables coming from Canada. The Produce Distributors Association has voiced concern that prices will rise significantly as a result of the tariff.

- Something as simple as a $17 plush toy could increase to $27, and the price of $80 jeans could increase to nearly $100, according to the National Retail Federation.
- Trump's proposed tariffs could also increase smartphone prices by 26%. For the newest version of the iPhone, this means the price could increase by over $200, and the cheapest version of the iPhone, sold directly by Apple, would be over $100 more expensive.

**Trump's past tariffs failed to deliver on his promised goals and caused harm to key U.S. sectors. His new tariffs could cause even more harm due to their size and scope.**

In his first term, Trump enacted tariffs on Chinese goods and on foreign steel and aluminum.

- Multiple studies have found that U.S. consumers paid for Trump's last round of tariffs through higher prices.
- Trump's tariffs also did not achieve their stated goal of bringing manufacturing jobs back to the United States. Instead, research shows either no change, or a decrease in manufacturing jobs as a result of Trump's tariffs.
- Trump's tariffs caused a trade war between the U.S. and China which, research finds, led to a loss in U.S. agricultural employment, as well as a loss of employment in the transportation and warehousing sector and the business services sector.
- Trump's 10% tariff on all goods and 60% tariff on Chinese goods would affect almost 10 times the value of goods Trump targeted with his 2018 and 2019 tariffs.

**Trump's tariffs could harm local economies across the country.**

JEC analysis has found that multiple state economies are heavily dependent on trade for statewide business. Two lists of the top ten states where GDP is most dependent on trade, and where GDP is most dependent on imports, are provided below. In addition, states like New Mexico would be especially harmed by tariffs on imports from Mexico given the integrated, cross-border supply chains for things like cars, computers, and other electronics.

**Top 10 States by Trade as a Share of GDP**

| State | Trade Share of State's GDP |
|---|---|
| Louisiana | 42% |
| Kentucky | 40% |
| Michigan | 35% |
| Texas | 32% |
| Indiana | 29% |
| South Carolina | 28% |
| Tennessee | 28% |
| Illinois | 28% |
| New Jersey | 23% |
| Mississippi | 23% |

Source: JEC calculations based on U.S. Census Bureau and Bureau of Economic Analysis data

Note: Calculations are based on nominal 2023-dollar figures. Trade share is calculated as (Exports + Imports).

**Top 10 States by Imports as a Share of GDP**

| State | Import Share of GDP |
|---|---|
| Kentucky | 26% |
| Michigan | 25% |
| Tennessee | 20% |
| Illinois | 20% |
| Indiana | 18% |
| New Jersey | 18% |
| South Carolina | 17% |
| Georgia | 16% |
| Texas | 15% |
| Mississippi | 13% |

Source: JEC calculations based on U.S. Census Bureau and Bureau of Economic Analysis data

Note: Calculations are based on nominal 2023-dollar figures.



Mr. DeSaulnier. Last, a statement on today's hearing from the Americans for Financial Reform Education Fund.

Chairman Allen. Without objection.

[The information of Mr. DeSaulnier follows:]

**Statement for the Record**

*On Behalf of*

**Americans for Financial Reform Education Fund**

*to the*

**Subcommittee on Health, Employment, Labor, and Pensions**

**House Committee on Education & Workforce**

**"Investing for the Future: Honoring ERISA's Promise to Participants"**

**April 30, 2025**

**Statement for the Record**
*On Behalf of*
**Americans For Financial Reform Education Fund**
*Before the*
**Subcommittee on Health, Employment, Labor, and Pensions**
**House Committee on Education & Workforce**

**April 30, 2025**

Americans for Financial Reform Education Fund (AFREF) writes to express its opinion on the meaning of honoring ERISA's promise to participants. AFREF is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, AFREF continues to work towards a strong, stable, and ethical financial system. We are committed to eliminating the inequity and systemic racism in the financial system and fighting for a just and sustainable economy. Workers, retirees, and their families have about $12 trillion in assets governed by ERISA that they are counting on to have a dignified retirement. It is critical to both safeguard these assets and strengthen other programs to truly achieve the objective of a dignified retirement for all.

In 2022, the Department of Labor finalized a commonsense rule that sets a floor necessary for safeguarding ERISA-governed worker assets. The rule clarified that: 1) ERISA fiduciaries are allowed to take into account environmental, social, and governance factors that are relevant to a risk and return analysis when making investment decisions; 2) ERISA fiduciaries can consider benefits to plan participants in addition to financial returns when the investments being considered would equally serve the financial interests of the plan; and 3) exercising shareholder rights, including proxy voting, is an important component of fiduciary management.[1]

Labor unions, investor groups, and public interest organizations strongly supported this rule when it was proposed, and defended it from a Congressional Review Act challenge[2] and attempts to legislate its reversal and reinstate unworkable 2020 rules these stakeholders opposed at the time.[3] The 2022 rule has also survived legal challenges, with a district court judge ruling twice to preserve the rule.[4] Notwithstanding the strong stakeholder support of the rule and its demonstrated legal durability, the current administration has indicated that it is considering rescinding the rule.[5] The rule should be preserved because:

**To protect workers' deferred wages, ERISA fiduciaries need to be allowed to consider all financial risks and opportunities when making investment decisions.** Environmental and social factors are relevant in evaluating investment risk and return and it is entirely appropriate — and in many cases necessary

[1] U.S. Department of Labor. Employee Benefits Security Administration. "Final Rule on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights." November 22, 2022.
[2] Americans for Financial Reform, Public Citizen, et al. "Re: Defend the Department of Labor Rule that Safeguards Workers' Retirement Security." Letter to Congressional Leadership. February 24, 2023.
[3] *See* Americans for Financial Reform et al. "Re: Opposition to anti-ESG bills that threaten workers' retirement security and our financial system, and weaken tools of corporate accountability." Letter to Members of the U.S. House of Representatives. September 17, 2024; *see also* Americans for Financial Reform. "Re: Markup of anti-ESG bills." Letter to Education and Workforce Committee, U.S. House of Representatives. September 13, 2023.
[4] Adams, Nevin E. "Federal Judge Again Backs ESG Rule." National Association of Plan Advisors. February 18, 2025.
[5] *State of Utah et al. v. Chavez-DeRemer et al.* United States Court of Appeals for the Fifth Circuit. "Motion for Abeyance." No. 23-11097. April 2025.

— for fiduciaries to consider these factors when making investment decisions. For example, the Human Capital Management Coalition — comprised of 36 institutional investors representing over $10 trillion in assets[6] — has noted that "[t]here is broad consensus that human capital management is important to the bottom line, and a large body of empirical work has shown that skillful management of human capital is associated with better corporate performance, including better risk mitigation."[7] As another example, the Financial Stability Oversight Council, in its 2021 report on climate-related financial risk, found that physical risks like the "[i]ncreased frequency and severity of acute physical risk events such as hurricanes, wildfires, floods, and heatwaves . . . are expected to lead to increased economic and financial costs."[8] Ignoring these real risks puts workers' retirement security at risk.

**To maximize benefits to participants and avoid their own assets being weaponized against them, ERISA fiduciaries should be able to consider benefits to participants in addition to financial returns.** Retirement investments can affect the real-life economic fortunes of workers and retirees in ways that go beyond the performance of those investments. The scale of pension investments can ameliorate economic burdens (through investments that generate collateral benefits) or exacerbate harms by bolstering sectors or companies that disadvantage customers or communities (like pharmaceutical price gouging or housing unaffordability). It is appropriate for pensions to consider the impact of their investments on the workers and retirees whose wages fund the pensions — without sacrificing workers' ability to retire with dignity.

**ERISA fiduciaries should exercise shareholder rights — including by voting proxies — in the best interest of participants.** As public company shareholders, funds governed by ERISA have the right to vote on company ballot items, including director elections, executive pay packages, and proposals brought by fellow shareholders on important risks related to unsound governance practices, climate change, union busting, racial discrimination, worker health and safety issues, lobbying activities, and more that affect corporate performance and shareholder returns. Groups representing the interests of corporate management have long sought to insulate boards and executives from investor input and accountability, including by making it more difficult for shareholder proposals to come to a vote and incentivizing pro-management votes.[9] To better serve the interests of participants and fulfill their fiduciary duty, ERISA fiduciaries should exercise shareholder rights in the best interest of participants, not rubber-stamp management practices regardless of the risks.

**The 2020 Department of Labor rules and similar proposals are unworkable and part of a larger "anti-ESG" campaign that seeks to force financial actors to ignore financial risks regardless of the consequences for workers' retirement security and the integrity of our financial system.** The 2020

---

[6] Human Capital Management Coalition. "About the Coalition."
[7] Human Capital Management Coalition. "Petition for Rulemaking to Require Issuers to Disclose Information About Their Human Capital Management Policies, Practices and Performance." U.S. Securities and Exchange Commission. July 6, 2017.
[8] Financial Stability Oversight Council. U.S. Department of the Treasury. "Report on Climate-Related Financial Risk." October 2021 at 17.
[9] Business Roundable. "The Need for Bold Proxy Process Reforms." April 2025; U.S. Chamber of Commerce. "U.S. Chamber: Proxy Advisory Industry and Shareholder Proposal System Need Reform." October 9, 2018; Zinner, Josh & Tim Smith. "NAM's SEC Lawsuit Undermines Shareholder Rights." Proxy Preview. March 14, 2024.

rules, a 2024 bill passed by the House of Representatives,[10] Project 2025,[11] and state anti-ESG laws[12] have all targeted fiduciaries' ability to make responsible investment decisions by seeking to create legal uncertainty over whether fiduciaries can take certain types of considerations into account. These legislative and regulatory efforts aim to create an ill-defined and deeply flawed distinction between "pecuniary" factors that those managing pension investments can take into account and "non-pecuniary" factors they cannot. Many have criticized this language for creating significant uncertainty and confusion for those overseeing pension investments.[13] Proponents of these policies appear to take the position that environmental and social factors are seldom, if ever, "pecuniary" or relevant to risk and return analysis, when the data shows these factors are often critical to risks and returns. Indeed, a coalition of 40 labor unions, investors, and advocacy organizations opposed a 2024 congressional bill which would have created such a distinction, pointing to the Trump-era rules that they noted:

> [W]ere widely criticized and have since been rescinded because they produced significant confusion about what fiduciaries are allowed to consider when making investment decisions, and had a chilling effect on the consideration of financially relevant information — thereby putting workers' retirement security at risk.[14]

Those concerned with workers' retirement security should also support the strengthening and expansion of Social Security, Medicaid programs, as well as oppose reckless tariffs. This administration has disparaged and targeted Social Security, putting its reliability at risk. But Social Security is the largest source of income for most retirees and lifts millions of older adults out of poverty.[15] Similarly, Medicaid provides critical healthcare coverage for over 7 million seniors,[16] yet this administration has proposed cutting its funds. Expanding — not threatening — these programs should be a priority for policymakers if they are truly concerned with retirement security. Lastly, reckless tariffs threaten both retirement income and retirees' cost of living,[17] threatening our ability to retire with dignity, and should be opposed.

We urge members of the Subcommittee on Health, Employment, Labor, and Pensions to refrain from undermining the 2022 Department of Labor rule and instead take a holistic approach to strengthening retirement security for all.

---

[10] Protecting Americans' Investments from Woke Policies Act. H.R. 5339. 118th Cong. (2024).
[11] Berry, Jonathan. Project 2025: Presidential Transition Project. Section 3: The General Welfare. "Chapter 18: Department of Labor and Related Agencies." The Heritage Foundation at 606 to 607.
[12] *See* Pleiades Strategy. "2024 Statehouse Report: Anti-ESG State Legislation Tracker & Analysis." 2024.
[13] Berger, David J., David H. Webber, and Beth Young. "The Liability Trap: Why the ALEC Anti-ESG Bills Create a Legal Quagmire for Fiduciaries Connected with Public Pensions." Feb. 17, 2023.
[14] Americans for Financial Reform. "Re: Opposition to anti-ESG bills that threaten workers' retirement security and our financial system, and weaken tools of corporate accountability." Letter to Members of the U.S. House of Representatives. September 17, 2024 at 2.
[15] Center on Budget and Policy Priorities. "Policy Basics: Top Ten Facts About Social Security." May 31, 2024.
[16] Center on Budget and Policy Priorities. "2025 Budget Stakes: Proposals Would Mean Higher Costs, Less Help for Seniors." April 28, 2025.
[17] Vernon, Steve. "Here's How President Trump's Tariffs Could Impact Your Retirement." Forbes. April 10, 2025.



Mr. DESAULNIER. I want to thank the Chair. Mr. Chairman, we are 100 days into this new administration, and workers and families in the district I represent, and around the country are tired of the chaos and turmoil and the thoughtless policy. The President's reckless tariffs are destabilizing financial markets, raising prices, and threatening a recession.

Social Security is under siege, and the House Republicans are plowing forward with their plan to cut taxes for the rich, and pay for it by making college more expensive, and gutting Medicaid. That is not progress, and we can do better. We are better than this. I yield back.

Chairman ALLEN. I thank the Ranking Member for your closing statement, and again, I want to thank the witnesses for your testimony. Obviously, you know, we have brought up a lot of interest in, you know, what the administration is trying to do here. I will note that at Election Date in November 2024, the national debt had increased for that year to date 2.35 trillion dollars.

I will also note that during the previous administration, 8 trillion dollars was spent and added to this economy, borrowed funds. That does not include the other dollars that were spent and doled out to consumers to buy products and what not, to I guess shore up the economy.

As of today, the debt to date is about 1.6 trillion, and we, you know, by my calculation, that is a savings of about 600 billion dollars. Anybody in this room that thinks that we can sustain that, I would like to have a solution. It is impossible. 37 trillion in debt. Now, you know, we all need to take responsibility for that, okay? I am not passing the torch one way or the other.

Something has got to be done. The other thing is we are running trillion-dollar trade deficits, trillion dollars. That is money going right out the door. We are enriching other countries. If you look at the trade situation, are we okay with them charging us multiple tariffs, and they can do business here at will?

You know, again, somebody has got to take this on. We can talk about the implications and everything else, but it has got to be fixed because it is unsustainable. Wealth is pouring out of this country, and it must stop because ,yes, our retirement is at risk.

Now, what is going to be interesting is right now we are in transition. This economy is in transition from a government funded GDP, to a privately funded GDP. There was a war on oil and gas. We have now unleashed oil and gas. It is going to take more than 100 days for those guys to crank up and get with it because just 6 years ago we had the greatest economy in the history of our lifetime.

This administration, the current administration, was able to pull that off. You know, we can talk about this right now, but again, you know, these things have to be addressed, along with what we are talking about here as far as retirement and the future of America. It needs to be an all-in cumulative effort to make this happen.

You know, you have got to reduce—we have got to balance this budget, and we have got to pay this debt off because we cannot continue to put this burden on the future of our children and grandchildren. It is clear, a good man leaves an inheritance for his children's children, and I am just glad to be a part of it.

I am glad to be able to work with my great colleagues here, as we look to solutions to make this happen. A big part of that is retirement plans, ERISA, and I want to thank our witnesses for your expert testimony today. The Biden administration ESG Rule ignores the current law and judicial precedent.

Under ERISA, a retirement plan fiduciary must act solely in the interest of the participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses.

Republicans are committed to protecting the retirement savings of workers, retirees, and their families. I look forward to continuing to work with all members of the Committee on providing American workers a secure retirement. With that, this hearing is adjourned.

[Whereupon, at 11:48 a.m., the Subcommittee on Health, Employment, Labor, and Pensions was adjourned.]

○