The policies contained in this bulletin were developed under the previous Republican administrations and were continued by the current Democratic administration.

This bulletin does not in any way affect existing legal requirements for placing priority on an investment's risk and rate of return. It does, however, say, that given comparable investments, pension managers can consider other benefits. I think that is common sense.

In testimony on this bill before the Economic and Educational Opportunities Committee in June, a witness representing the pension community stated this legislation is not necessary.

This legislation could make pension managers overly cautious about investments that produce collateral benefits. If this happens, we will undoubtedly see fewer pension investments creating American jobs. Some fear this could make worse the dangerous trend of pension funds being invested overseas instead of creating benefits here in the United States.

A number of Democratic amendments were offered in committee to improve this bill but they were defeated.

Mr. Speaker, I urge adoption of this open rule which will permit full debate on this bill and allow Members to make additional attempts to amend it.

Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. MARTINEZ].

Mr. MARTINEZ. Mr. Speaker, I rise in support of this open rule, although I will argue against the bill. I certainly appreciate that fact that this rule allows for a more extensive debate of the issues which have been brought out as this bill has progress through this House over the past several months. I believe the debate is important to those who feel that there is an inherent danger in economically targeted investments, and will put forth arguments to prove that with information that I believe is skewed. Their arguments seem to be based on assumptions that are questionable at best. Mr. SAXTON declared that investments in ETI's would cost each American pensioner $43,298 over 30 years.

Well, I have had those numbers analyzed and found that they are based on economic assumptions that would mean that every pensioner in the country would amass $2,075,000 in their pension plan under such an assumption, that a loss of $43,298 would represent a loss of 2 percent over that time, or less than the amount those same pensioners will be charged for their Medicare premiums under some of the current Republican proposals being floated.

Of course, I also learned that the rate of return on regular, approved investments would have to be 12 percent over the same 30 years—which is the rosiest forecast I have ever seen from an economist. One of the economists cited in the JEC report has written to Mr. SAXTON and stated, and I quote

I applaud your focusing of attention on U.S. pension plan management—we simply cannot afford to do otherwise, as a Nation of rapidly aging Americans. But I disagree with your proposal to prohibit the U.S. Labor Department pension experts from thinking about or discussing so-called economically targeted investments.

Mr. Speaker, I enter into the RECORD the letter from economist Olivia S. Mitchell, of the Wharton School of the University of Pennsylvania, as well as a response to the JEC report.

THE WARTON SCHOOL OF THE
UNIVERSITY OF PENNSYLVANIA,
Philadelphia, PA, September 11, 1995.

Congressman JIM SAXTON,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN SAXTON: I am the author of one of the three studies cited in a Joint Economic Committee discussion regarding your bill before the U.S. House tomorrow, in which you propose to curtail discussion and analysis of so-called ''economically targeted investments'' by the U.S. Department of Labor.

I applaud your focusing of attention on U.S. pension plan management—we simply cannot afford to do otherwise, as a nation of rapidly aging Americans. But I disagree with your proposal to prohibit the U.S. Labor Department pension experts from thinking about or discussing so-called economically targeted investments.

If two investment options are equivalent in terms of risk and return, and a manager must select one, a variety of other assessments will necessarily enter the decision. As researchers and policymakers, we need more analysis of how these other factors influence decision-making, and what their downstream implications are. In order to remain competitive domestically and internationally, we simply cannot prohibit discussion of, and research on, a vitally important question in the pension arena.

Thank you for your kind consideration.

Sincerely yours,

OLIVIA S. MITCHELL.

RESPONSE TO THE ''SUBSTANTIVE REPORT'' OF THE JEC ON ECONOMICALLY TARGETED INVESTMENTS

(''Through the Looking Glass with Representative Saxton'')

In an irresponsible attempt to unnecessarily frighten current and future pensioners, the ''economists'' at the Joint Economic Committee have concocted an incredible scenario about the potential impact of pension fund investment in Economically Targeted Investments (ETIs). The JBC report concludes that a hypothetical, across the board, investment by pension funds of 5% of their assets in ETIs, would sacrifice nearly $45,000 per participant over 30 years, and would leave the pension system $2.3 trillion underfunded. The assumptions underlying these conclusions are severely flawed.

If pension funds did what the JEC assumes, that is, year after year select investments that did not produce competitive, market rates of return, they would be violating the fiduciary requirements of ERISA, as delineated in the Interpretive Bulletin on ETIs that is at issue.

Even if one assumes that pension funds ignored the Interpretive Bulletin and the law and did as Representative Saxton suggests, the JEC report demonstrates how radically inflated the numbers have to get to show any ''harm.'' According to Representative Saxton's arithmetic, the total asset pool of pension funds in 30 years will be $107.7 trillion. Approximately 50 million participants holding assets of $107.7 trillion works out to approximately $2,075,000 per participant for retirement. And the 2% shortfall he predicts for funds invested in ETIs will result in the average pensioner having to scrape by on a mere $2,031,000.

The analysis assumes that pension funds will, on average, earn 12.1% on their investments over the next thirty years and that ETI investments will, on a risk adjusted basis, underperform these by about 2%, or earn about 10%. There are many problems with these assumptions:

A 12% return annually for 30 years on all of the assets of pension funds is not only beyond the wildest fantasies of any investment manager, but any investment manager claiming such returns, or even the 10% suggested for ETIs, over 30 years, would be laughed out of the business. Assuming such returns for funding purposes, in fact, would be in violation of the recently passed Retirement Protection Act of 1993.

It is possible that we could see sustained yields of up to 12% in the capital markets for thirty years. However, at the real rates of investment returns of the last thirty years, this implies about 8% inflation over the same period. If this occurs, a few dollars in ETIs will be the least of pensioners worries. Perhaps Mr. Saxton knows something we don't about the consequences of the Republican Party's economic policies.

In the absence of such inflation, if pension funds' assets were to grow by 12% annually over 30 years, they would own virtually all financial assets in the economy. This may come as a surprise to investors like Warren Buffett.

The assumed 200 basis point underperformances of funds invested in ETIs (a 10% return as versus a 12% return on investments) is based on studies that are either misapplied or have severve flaws, such as inadequate controls and time frames, marginal results, and obsolete or limited data.

Mr. HALL of Ohio. Mr. Speaker, I yield back the balance of my time.

Mr. LINDER. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

☐ 1315

POSTPONING VOTES ON AMENDMENTS DURING CONSIDERATION OF H.R. 1594, RESTRICTIONS ON PROMOTION BY GOVERNMENT OF USE OF EMPLOYEE BENEFIT PLANS OF ECONOMICALLY TARGETED INVESTMENTS

Mr. FAWELL. Mr. Speaker, I ask unanimous consent that during consideration of H.R. 1594 pursuant to House Resolution 215 the Chairman of the Committee of the Whole may postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment, and that the Chairman of the Committee of the Whole may reduce to not less than 5 minutes the time for voting by electronic device on any postponed question that immediately follows another vote by electronic device without intervening business, provided that the time for voting by electronic device on the first in any series of questions shall be not less than 15 minutes.

The SPEAKER pro tempore (Mr. SHAYS). Is there any objection to the request of the gentleman from Illinois [Mr. FAWELL]?

There was no objection.

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

The SPEAKER pro tempore. Pursuant to House Resolution 215 and rule XXIII, the Chair declares the House in the Committee of the Whole on the State of the Union for the consideration of the bill, H.R. 1594.

☐ 1316

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1594) to place restrictions on the promotion by the Department of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans, with Mr. EMERSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Illinois [Mr. FAWELL] and the gentleman from California [Mr. MARTINEZ] will each be recognized for 1 hour.

The Chair recognizes the gentleman from Illinois [Mr. FAWELL].

Mr. FAWELL. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania [Mr. GOODLING], chairman of the Committee on Economic and Educational Opportunities.

(Mr. GOODLING asked and was given permission to revise and extend his remarks.)

Mr. GOODLING. Mr. Chairman, I thank the subcommittee chairman for yielding time to me. The gentleman from Illinois [Mr. FAWELL] probably has forgotten more about ERISA than the rest of us in the Chamber know collectively about it.

Mr. Chairman, as we open the debate on H.R. 1594, which was ordered reported in a bipartisan vote by the Committee on Economic and Educational Opportunities on July 20, let me make very clear what is at stake and what the bill does and does not do.

At stake is whether the Department of Labor will continue to act as the Nation's pension watchdog, to ensure the safety of the $3.5 trillion backing the pensions and employee benefits of America's workers and private pensioners. Or, will the Department's role as guardian of those pension assets be undermined by this administration's actions to promote particular investments—investments that may be both risky and tainted by conflict of interest.

Economically targeted investments, or ETI's, is the euphemism used to describe these investments in Interpretative Bulletin 91–1 issued by the Department last June. The interpretive bulletin is but one element of the administration's many-pronged approach to promote particular investments within this ETI classification.

This bill is an attempt to protect workers and their pensions from the overzealous and misguided promotion of ETI's. First, the bill renders the interpretive bulletin null and void and declares that the landmark Federal pension law known as ERISA is to be interpreted and enforced without regard to it. The Secretary of Labor is also prohibited from issuing any other rule, regulation, or interpretive bulletin which promotes or otherwise encourages ETI's as a specified class of investments.

Second, the Department of Labor is directed to terminate the $1.2 million taxpayer financed clearinghouse through which the Department intends to promote particular ETI's. Further, the bill prohibits any agency from abusing the powers by establishing a future clearinghouse or database which lists particular ETI's.

Third, the bill states that it is the sense of the Congress that it is inappropriate for the Department of Labor, as the principal enforcer of ERISA's fiduciary standards, to take any action to promote or otherwise encourage economically targeted investments.

The bill takes us back to where we stood before the Clinton administration issued the bulletin and maintains the fiduciary standards under ERISA which have stood the test of time over the 21 years since its enactment, and which are not in need of repair.

By issuing the bulletin, the Department calls into question the framework within which employee benefit plan fiduciaries make their investment decisions. While the interpretive bulletin includes the gratuitous statement that ''the fiduciary standards applicable to ETI's are no different than the standards applicable to plan investments generally'', the real purpose of the bulletin is the promotion of investments that ''may require a longer time to generate significant investment returns, may be less liquid and may not have as much readily available information on their risks and returns as other asset categories.''

Could a better definition of a relatively risk investment be constructed? It is precisely this more risky type of investment that the Department cloaks in its broader and ambiguous definition of an ETI. In fact, it is unclear exactly what an ETI is under the Department's own interpretation. For example, in response to committee questions, the Assistant Secretary for Pension and Welfare Benefits stated that ''the bulletin defines ETI's in terms of the process by which an investment is chosen * * * [even though] there is no specific process * * * necessary to trigger the 'selection criteria'.'' In addition, the Assistant Secretary stated that ''ETIs are defined in terms of the reasons for which they are chosen,'' even though fiduciaries ''may not articulate that collateral benefits were a reason for selecting'' such investments. These contradictory and confusing statements are reason enough for rendering the interpretive bulletin null and void.

The bulletin's definition that ETIs are ''investments selected for the economic benefits they create * * *'' raises another question as to the intended scope of this new rule. Arguably, every investment can be asserted to create an economic benefit, since that is the very nature of investment capital. Indeed, if ETI's do not include all investments then which ones?

Clearly, they include the less liquid and more risky ones mentioned in the bulletin. Incredibly, it is these more risky investments that the Department now considers worthy of special promotion.

Furthermore, the public expression by Department officials that certain ETI's need to be encouraged seems to be based on the premise, disputed by the Congressional Budget Office, that the market does not work. Apparently, the administration believes pension managers are not investing an optimal amount of pensioners' money in ETI's. Those who are retired and those who will retire. But what is optimal, or enough? The various actions taken by the administration in this area has created confusion within the investment community and the general public. The Department has even had to deny that the Clinton administration intends to mandate that private pensions invest a certain percentage of their assets in ETI's. The millions of pension investors and private pensioners deserve better from the Nation's pension watchdog. By voiding the interpretive bulletin, the bill removes a serious element of confusion and reinforces the preeminence of the time-tested fiduciary standards under ERISA.

If the interpretive bulletin is a somewhat subtle means to promote ETI's, the Department of Labor's creation of a so-called ETI clearinghouse is much more direct. The Department, as Secretary of Labor Robert Reich has testified, fully intends to showcase ETI's for both public and private plan investment purposes. Here the Department has clearly deviated from its role as the chief enforcers of ERISA's prudence, exclusive benefit, and other fiduciary standards to become the chief promoter and apologist for social investments selected by a securities firm handpicked by the Department's chief ERISA enforcement officer. What are pensioners and the public supposed to conclude about such conduct by the administration?

Would it not be safe to assume that the Department would run into at least the appearance of conflict by instigating and funding a clearinghouse listing specific ETI transactions? Is it not also foreseeable that a plan which invested in an ETI listed by the clearinghouse might raise as a defense the argument that the Department had endorsed the investment notwithstanding any disclaimer to the contrary by the clearinghouse? Finally, might not the clearinghouse operators be influenced to list particular investments based on the fees paid