

AFL-CIO

LEGISLATIVE ALERT

September 13, 2023

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The Honorable Virginia Foxx, Chairwoman
The Honorable Robert C. (“Bobbie”) Scott, Ranking Member
House Committee on Education and the Workforce
U.S. House of Representatives
Washington DC 20515

Dear Chairwoman Foxx and Ranking Member Scott,

The AFL-CO urges you to oppose four bills your committee will consider tomorrow: the Roll Back ESG to Increase Retirement Earnings (“RETIRE”) Act (HR 5339), the Retirement Proxy Protection Act (HR 5337), the No Discrimination in My Benefits Act (HR 5338), and the Department of Labor Succession Act (HR 4957).

Our elected officials should not be playing politics at the expense of working people’s retirement income security. Pension plans represent the deferred wages of hard working Americans, and ERISA requires plan fiduciaries to invest plan assets according to the duties of prudence and loyalty in order to maximize retirement benefits. To fulfill these duties, plan fiduciaries must have the freedom to consider in their investment and proxy voting decisions all relevant investment factors, which include environmental, social, and governance (“ESG”) risks.

HR 5339 and HR 5337, however, would discourage fiduciaries from considering ESG factors by prohibiting the consideration of so-called “non-pecuniary” factors unless the fiduciary satisfies burdensome documentation requirements. Similarly, HR 5337 will discourage fiduciaries from voting proxies on ESG issues that might be considered “non-pecuniary.” The Department of Labor (“DOL”) has wisely rejected the distinction between pecuniary and non-pecuniary factors based on concerns that this terminology causes confusion and has a chilling effect on investment choices that may increase plan participants’ retirement income security.

HR 5338 takes aim at the consideration of diversity by ERISA plans when selecting investment advisors. We oppose this bill as a blatant attempt to obstruct efforts to address long-standing racial and gender under-representation in asset management. DOL rules permit ERISA plans to consider the benefits of investment advisor diversity so long as the plan does not sacrifice risk-adjusted returns. Indeed, studies have shown that diversity can be a source of investment outperformance by casting a wider net for professional talent.

Last, HR 4957 is nothing more than a targeted and baseless attack on Acting Labor Secretary Julie Su while her nomination is pending Senate confirmation. Seventy-seven years ago, Congress rightfully concluded that when the Office of the Labor Secretary is vacant, the Deputy Secretary is the appropriate officer who shall perform the Secretary’s duties, regardless of how long it takes for the President and the Senate to fill that position. There is no basis for upsetting this long-standing judgment.

Thank you for your consideration of our views.

Sincerely,



William Samuel
Director, Government Affairs