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

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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.

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[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.