



September 13, 2023

The Honorable Virginia Foxx
Chairwoman
House Committee on Education and The
Workforce
2462 Rayburn House Office Building
Washington, DC 20515

The Honorable Bobby Scott
Ranking Member
House Committee on Education and The
Workforce
2328 Rayburn House Office Building
Washington, DC 20515

Chairwoman Foxx, Ranking Member Scott, and Members of the Committee,

On behalf of US SIF: The Sustainable Investment Forum, I write in opposition to the bills amending the Employee Retirement Income Security Act of 1974 (ERISA): [HR5337](#), [HR5338](#), [HR5339](#), and [HR5340](#). The bills incorporate the ill-defined "pecuniary/non-pecuniary" standard, add burdensome requirements to plan administrators and will not serve plan participants' best interests.

[US SIF](#) is the leading voice advancing sustainable investing across all asset classes. Our mission is to rapidly shift investment practices toward sustainability-aligned goals with the aim of achieving long-term investment goals and preserving our planet and society. Our members include investment management and advisory firms, mutual fund companies, asset owners, data and research firms, financial planners and advisors, broker-dealers, banks, credit unions, community development financial institutions and non-profit associations, representing more than \$5 trillion in assets under management or advisement. US SIF members incorporate environmental, social and governance (ESG) criteria into their investment decisions and take their shareowner responsibilities seriously, including voting proxies and engaging with companies.

Sustainable investing and the incorporation of environmental, social and governance (ESG) criteria are already mainstream investing practices. As of year-end 2021, the US SIF Foundation [identified](#) \$8.4 trillion in total US assets under management (AUM) using sustainable investing strategies. This represents 13 percent—or 1 in 8 dollars—of the total US assets under professional management. Both professional investors and everyday, hard-working Americans want to align their investments with critical ESG criteria to minimize long-term risks to their investments and maximize returns. A [study](#) by Morgan Stanley found that 85% of all investors are interested in incorporating sustainable investing strategies into their investment practices.

The proposed legislation would reinstate the previous administration's ill-defined and unworkable "pecuniary/non-pecuniary" rules for plan investments and proxy voting. Our members find the pecuniary versus non-pecuniary standard to be confusing and not well suited to the realities of the investment industry. ESG data [may be material](#) to an investment's risk and/or return yet are often named non-pecuniary. A return to this categorization would be unhelpful for ERISA plan fiduciaries.

ERISA has the long-standing principle of the duties of prudence and loyalty, which requires ERISA plan fiduciaries to focus on relevant risk-return factors and not subordinate the interests of participants and

beneficiaries, such as by sacrificing investment returns or taking on additional investment risk. Under these duties, plan fiduciaries must consider all relevant data with respect to an investment, an investment course of action and when making their proxy voting decisions. ESG is a set of relevant data that may affect an investment's rate of return or level of risk. A fiduciary would not be able to fulfill their duty of prudence and loyalty if they do not have access to that data.

Retirement fund and pension plan fiduciaries must consider all relevant data when making investment decisions and determining proxy voting decisions. While they are not forced to consider ESG criteria, the market reflects the reality that accounting for long-term risks and opportunities is in the best interest of plan beneficiaries.

We hope that the Committee will consider the argument we have laid out here, allow fiduciaries to fulfill their duty of prudence and loyalty in the consideration of all relevant data and, ultimately, oppose the set of bills making this more difficult. If you have any questions regarding the contents of this letter, please contact me directly at bmcgannon@ussif.org or US SIF's Director of Policy and Programs, Rachel Curley, at rcurley@ussif.org.

Sincerely,



Bryan McGannon
Managing Director
US SIF: The Sustainable Investment Forum

Cc: Members of the House Committee on Education and The Workforce