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COMMITTEE ON
EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

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May 22, 2024

Kevin McCormack
Executive Director
National Electrical Benefit Fund Investments
2400 Research Blvd, Suite 500
Rockville, MD 20850-3266

Dear Mr. McCormack:

The Committee on Education and the Workforce (Committee) is investigating attempts by the Biden administration and certain pension funds to leverage retirement assets for the benefit of organized labor. As part of this investigation, the Committee requests documents and information relating to your duties as the Executive Director of National Electrical Benefit Fund Investments, as well as your involvement in activities to promote labor union interests.

On April 23, 2024, the White House announced your commitment to use private pension fund capital to promote labor union interests.¹ The White House further stated that “[t]he Biden-Harris Administration believes that it is critical that [labor union pension] funds . . . emphasize the interests and goals of workers.” However, the Biden administration wrongly says that diverting pension fund assets to promote collective bargaining is in the interest of participants in pension funds. Such diversion is illegal for pension funds subject to the *Employee Retirement Income Security Act of 1974* (ERISA), which mandates that such funds must be invested for the “exclusive purpose of (i) providing benefits to participants and their beneficiaries, and (ii) defraying reasonable expenses of administering the plan.”²

Great harm can ensue when pension funds pursue objectives other than investment return with the exclusive aim of funding promised pensions. For example, a 2016 Wilshire Associates report

¹ THE WHITE HOUSE, READOUT OF WHITE HOUSE CONVENING WITH OWNERS OF \$1 TRILLION IN WORKERS’ CAPITAL TO PROMOTE STRONG LABOR STANDARDS (Apr. 23, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/23/readout-of-white-house-convening-with-owners-of-1-trillion-in-workers-capital-to-promote-strong-labor-standards/>

² ERISA § 404(a)(1)(A); 29 U.S.C. § 1104(a)(1)(A).

estimated that the California Public Employees' Retirement System's (CalPERS) policy of excluding tobacco investments cost that fund up to \$3 billion.³ In response to increasing pressure to divest from fossil fuels, CalPERS estimated that divesting its \$9.4 billion in current holdings and reinvesting the capital in other investments would carry a transaction cost of between \$75 million and \$125 million.⁴ The California State Teachers Retirement System (CalSTRS) warned that divesting from fossil fuels would "increase CalSTRS unfunded liability and lead to higher state contributions."⁵ Unfortunately, the participants and beneficiaries of CalPERS and CalSTRS are not protected by ERISA, and neither are the California taxpayers who must foot the bill for misuse of plan assets.

However, the National Electrical Benefit Fund (NEBF) is subject to ERISA. For that reason, the Committee requests that you submit the following materials by June 7, 2024:

1. All communications and materials, including but not limited to decision making, investment solicitations, investment materials, or records of negotiations reflecting any activity to promote the interests of labor unions. Please also list those interests.
2. Any and all expenses paid by NEBF, including any expenses to attend meetings, to exercise existing or potential ownership interests to promote labor union interests.
3. All documents and communications related to your preparation for and participation in the initiative that the White House described in its April 23 press release, including but not limited to those exchanged with the White House, the Department of Labor, or other organizations that participated in the initiative.⁶

The Committee has jurisdiction over labor-related matters and ERISA, and it "shall review and study on a continuing basis the application, administration, execution, and effectiveness of laws and programs under its jurisdiction" as set forth in House Rule X.⁷ The Committee's investigation of this matter is within the Committee's jurisdiction and is a "subject on which legislation 'could be had.'"⁸

This request and any documents created as a result of this request will be deemed congressional documents and property of the Committee. If you have any questions about this request, please contact Committee staff at 202-225-4527.

³ *CalPERS Mulls Ending Tobacco Investment Ban*, PENSIONS & INV., Apr. 4, 2016, <https://www.pionline.com/article/20160404/PRINT/304049985/calpers-mulls-ending-tobacco-investment-ban>.

⁴ Hazel Bradford, *Divesting Fossil Fuels Looms Larger for More Funds*, PENSION & INV., May 22, 2023, <https://www.pionline.com/esg/divestment-fossil-fuels-looms-larger-some-asset-owners>.

⁵ *Id.*

⁶ READOUT OF WHITE HOUSE, *supra* note 1.

⁷ RULES OF THE U.S. HOUSE OF REPRESENTATIVES 6, 7, 9-12 (118th Cong.) (Jan. 10, 2023).

⁸ *Trump v. Mazars USA, LLP*, 140 S.Ct. 2019, 2031 (2020) (internal citations omitted).

Kevin McCormack

May 22, 2024

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Further, in the future, you may be invited to testify about these activities before the Committee. Your prompt attention to this request is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "Virginia Foxx".

Virginia Foxx
Chairwoman

A handwritten signature in blue ink that reads "Bob Good".

Bob Good
Chairman
Subcommittee on Health, Employment,
Labor, and Pensions

Enclosure

Responding to Committee Document Requests

1. National Electrical Benefit Fund Investments' (NEBFI) response to questions and request(s) should be answered or provided in a separate document and not included inside a narrative response.
2. In complying with this request, you should produce all responsive documents that are in NEBFI's possession, custody, or control, whether held by you or other past or present employees of NEBFI, or a representative acting on your behalf. Your response should also produce documents that you have a legal right to obtain, that NEBFI has a right to copy or to which you have access, or that you have placed in the temporary possession, custody, or control of any third party.
3. Records, documents, data, or information that have been requested and/or are related to underlying requests should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee on Education and the Workforce (the "Committee").
4. If any entity, organization, or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
5. The Committee's preference is to receive documents in electronic form (i.e., email, CD, memory stick, or thumb drive) in lieu of paper productions. To the extent responses are provided in paper form, any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to a request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued.
6. Regardless of format, documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Indicate the office or division and person from whose files each document was produced.
7. Regardless of format, documents produced to the Committee should include an index describing the contents of the production and a total page count for the entire production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box, or folder should contain an index describing its contents. Documents produced in electronic format should also be identified and indexed electronically.
8. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.

- (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
9. All documents shall be Bates-stamped sequentially and produced sequentially.
 10. When you produce documents, you should individually identify the paragraph, question number or request number in the Committee's request to which the documents respond.
 11. It shall not be a basis for refusal to produce documents that any other person or entity—either inside or outside of NEBFI—also possesses non-identical or identical copies of the same documents.
 12. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), NEBFI's staff should consult with the Committee staff to determine the appropriate format in which to produce the information.
 13. If compliance with any request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
 14. If NEBFI does not expect to produce all documents responsive to a request by the date requested, NEBFI's staff shall consult with the Committee as soon as it is known NEBFI cannot meet the deadline, but no later than 24 hours before the due date to explain:
 - (a) what will be provided by the due date;
 - (b) why NEBFI believes certain materials cannot be produced by the due date; and
 - (c) NEBFI's proposed timeline for providing any omitted information.
 15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should:
 - (a) identify the document, including its date, author, subject, and recipients;
 - (b) explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party;
 - (c) state how the document was disposed of;
 - (d) identify the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
 - (e) state the date of disposition; and
 - (f) identify the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

16. If any document responsive to this request cannot be located, identify the document and describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.
17. In the event that a document or portion of a document is withheld on the basis of alleged privilege, provide a privilege log containing the following information concerning any such document or redaction:
 - (a) Bates number(s);
 - (b) the alleged privilege asserted and the grounds therefor;
 - (c) the type of document;
 - (d) the general subject matter;
 - (e) any other description necessary to identify the document;
 - (f) the date, author, and addressee; and
 - (g) the relationship of the author and addressee to each other.

If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced.

18. Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date.
19. In complying with the request, be apprised that (unless otherwise determined by the Committee) the Committee does not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative-process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
20. Any assertion by a request recipient of any such non-constitutional legal bases for withholding documents or other materials, for refusing to answer any deposition question, or for refusing to provide hearing testimony, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee (or the chair of the Committee, if authorized) has consented to recognize the assertion as valid.
21. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or other NEBFI employees, or is otherwise apparent from the context of the request, you should produce all documents that would be responsive as if the date or other descriptive detail were correct.
22. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2023, to the present.

23. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery. Such submission shall include an explanation as to why the information was not produced originally.
24. If physical documents are to be delivered, documents should be delivered to the Majority Staff in Room 2176 of the Rayburn House Office Building during Committee office hours (9am-5pm, unless other arrangements are made) and signed by a member of the staff upon delivery.

Upon completion of the document production, NEBFI's written response should include a written certification, signed by Executive Director Kevin McCormack or his designee, stating that:

- (a) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and
- (b) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “documents in your possession, custody or control” means documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and/or documents that have been placed in the possession, custody, or control of any third party.
3. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
7. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflect s, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
8. The term “entity” includes any lawful association, corporation, partnership, proprietorship, trust, institution, or individual that has the legal capacity to: (1) enter into agreements and contracts; (2) assume obligations; (3) incur and pay debts; (4) sue and be sued in its own right; and (5) be accountable for illegal activities.
9. The term “privilege” includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.
10. The term “employee” means agent, borrowed employee, casual employee, consultant, de facto employee, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, contract employee, contractor, or any other type of service provider.
11. The term “NEBFI” means NEBFI, including (i) its predecessors, successors, wholly or partly owned direct or indirect subsidiaries, divisions, affiliates, boards, and joint ventures and any (ii) any current, past, or future partners, officers, directors, employees, representatives, or agents of any of the above entities.