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COMMITTEE ON  
EDUCATION AND THE WORKFORCE  
U.S. HOUSE OF REPRESENTATIVES  
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July 29, 2024

Theresa Taylor  
President and Vice Chair of Investment  
California Public Employees Retirement System  
400 Q Street  
Sacramento, CA 95811

Dear Ms. Taylor:

The Committee on Education and the Workforce (Committee) is investigating attempts by the Biden-Harris administration and the California Public Employees Retirement System ("CalPERS") to leverage retirement assets for the benefit of organized labor. Under the Internal Revenue Code (Code), CalPERS as a public pension is eligible for significant tax subsidies if, among other things, its benefits are part of a plan "for the exclusive benefit of [an employer's] employees or their beneficiaries."<sup>1</sup> The Committee seeks information to determine whether the law is being undermined by the Biden-Harris administration and violated by CalPERS.

On April 23, 2024, the Biden-Harris administration touted convening a group of "asset owners representing over \$1 trillion in public and pension fund capital" who committed to "promote strong labor commitments among funds, asset managers, and companies."<sup>2</sup> The Committee understands that you attended the event on behalf of CalPERS, and that CalPERS was one of the asset owners who made this commitment.<sup>3</sup> CalPERS claims significant tax benefits under Code section 401(a).<sup>4</sup> These tax benefits only are available for plans "of an employer for the exclusive benefit of his employees or their beneficiaries."<sup>5</sup>

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<sup>1</sup> 26 U.S.C. § 401(a).

<sup>2</sup> 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/>.

<sup>3</sup> "The five asset owners included CalPERS, National Electrical benefit Fund Investments, Blue Wolf Capital Partners, Hamilton Lane, and Meketa Investment Group." Letter from Soumya Dayananda, Partner, Willkie, Farr, & Gallagher, LLP on behalf of the Natl. Educ. Assn., to Reps. Virginia Foxx and Bob Good (June 14, 2024) (on file with H. Comm. on Educ. & the Workforce).

<sup>4</sup> [https://www.calpers.ca.gov/sources/member/CBEE/learning\\_guides/CalPERS\\_Retirement\\_Benefits-Nearing\\_Retirement.pdf](https://www.calpers.ca.gov/sources/member/CBEE/learning_guides/CalPERS_Retirement_Benefits-Nearing_Retirement.pdf).

<sup>5</sup> 26 U.S.C. § 401(a).

The *Employee Retirement Income Security Act of 1974* (ERISA) contains a provision similar to the “exclusive benefit” rule in the Code. Specifically, ERISA provides that fiduciaries of plans subject to ERISA must discharge their duties “solely in the interest of the participants and beneficiaries and ... for the exclusive purpose of providing benefits to participants and their beneficiaries.”<sup>6</sup> While ERISA does not apply to governmental plans such as CalPERS,<sup>7</sup> the Code’s exclusive benefit rule does apply.<sup>8</sup> To the extent that CalPERS is using plan assets for the benefit of social or political causes, the plan’s qualified tax status is no longer valid.<sup>9</sup>

CalPERS’ commitment the Biden-Harris administration and any actions consistent with that commitment would not be “for the exclusive benefit” of employees but instead would be to forward a political and social agenda.<sup>10</sup> The Committee seeks a better understanding of whether labor interests or CalPERS is diverting tax-subsidized retirement assets in violation of the “exclusive benefit rule.” The Committee also is interested in determining whether amendments to ERISA are needed to circumscribe this activity in the event that the Code is not enforced effectively. Please, therefore provide the following information not later than August 12, 2024:

1. The process used by CalPERS to determine its compliance with the exclusive benefit requirements of Code section 401(a).
2. All documents sufficient to show CalPERS’ monitoring its use of pension plan assets for the exclusive benefit requirements of Code section 401(a) and instances when the monitoring has noted that CalPERS has not adhered to the exclusive benefit requirements.
3. Any communications regarding whether investment activities may be at risk of violating the exclusive benefit requirements of Code section 401(a).
4. All documents related to monitoring expenses paid by CalPERS for any activities to promote labor union interests.
5. 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.

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<sup>6</sup> 29 U.S.C. § 1104(a)(1)(A), ERISA § 404(a)(1)(A).

<sup>7</sup> 29 U.S.C. § 1003, ERISA § 4(b)(1).

<sup>8</sup> [https://www.calpers.ca.gov/sources/member/CBEE/learning\\_guides/CalPERS\\_Retirement\\_Benefits-Nearing\\_Retirement.pdf](https://www.calpers.ca.gov/sources/member/CBEE/learning_guides/CalPERS_Retirement_Benefits-Nearing_Retirement.pdf) (stating on page 1 “CalPERS is a 401(a) Defined Benefit Plan”).

<sup>9</sup> Not only do social and political investing policies violate the Code, but they may also result in significant loss of income to the trusts involved. Estimates are that CalPERS lost \$3.581 billion in investment gains by divesting from tobacco stocks as a result of following a social investing policy. <https://www.ai-cio.com/news/calpers-decision-divest-tobacco-costly/>.

<sup>10</sup> 26 U.S.C. § 401(a).

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6. Any and all expenses paid by any CalPERS to attend meetings or to exercise existing or potential ownership interests to promote labor union interests.
7. All documents and communications related to the CalPERS' preparation for and participation in the initiative that the White House described in its April 23, 2024, press release, including but not limited to those documents and communications exchanged with the White House.

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.<sup>11</sup> The Committee’s investigation of this matter is within the Committee’s jurisdiction and is a “subject on which legislation ‘could be had.’”<sup>12</sup> This request and any documents created as a result of this request will be deemed congressional documents and property of the Committee.

Your prompt attention to this request is appreciated.

Sincerely,

Virginia Foxx  
Chairwoman

Enclosure

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<sup>11</sup> RULES OF THE U.S. HOUSE OF REPRESENTATIVES, Rule X cl. 2(b) (118th Cong.) (Jan. 10, 2023); *see also* Rule X (organization of committees), Rule X cl. 1 (committees and their jurisdictions), cl. 1(e) (Committee on Education and the Workforce), <https://rules.house.gov/sites/republicans.rules118.house.gov/files/documents/118/Additional%20Items/118-House-Rules-Clerk-v2.pdf>.

<sup>12</sup> *Trump v. Mazars USA, LLP*, 591 U.S. 848, 863 (2020) (internal citations omitted).