

Employee Benefits Security Administration  
United States Department of Labor  
Office of the General Counsel  
US Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Re: Release Number: 10-997-NAT – Restatement proposal for sections 404(a)(1)(A) and 404(a)(1)(B) of ERISA

VIA [www.regulations.gov](http://www.regulations.gov)

I serve as general counsel for Timothy Partners, Ltd, the advisor of the Timothy Plan family of mutual funds and exchange traded funds. The Timothy Plan fund family and Timothy Partners are the pioneers of Biblically responsible investing (BRI). BRI investments are a growing subset that serve as alternatives to investment vehicles that are created without regard to investors' moral and religious convictions. I am writing to express my opposition to the proposed restatements.

#### **Intent to Restrict Investors' Selections**

It is understood that the proposed restatements have been designed with good intentions. I believe, however, that the result of the proposed rule changes will be a negative impact by restricting the menus of the selections made available in small ERISA accounts, without impacting the large, non-ERISA retirement accounts such as the CalPERS, Ohio PERS, and others. The proposal essentially states that only pecuniary interests can be considered by a fiduciary in the selection of specific investments or menu options. Although the proposal creates an avenue to a selection exception, it continues by stating that such exceptions will be rare, thus within the body of the proposal itself is the preemption of a petition or attempt to document the existence of such exception.

#### **Government Oversight**

It is well that government imposes restrictions on employer activities and access to retirement plans, however such restrictions are to prevent fraud, theft, and inequitable or unjust enrichment being reserved for executives and owners of business entities that elect to provide (and collect from) retirement funds for employees. Retirement plans, when vested, are the property of private citizens and history reminds us that those plans need the protections provided by government. Such oversight should not, however, reach beyond providing a safe haven for employees' retirement funds.

#### **Infringement on Investor's Rights**

Government intervention into citizens' private matters without a compelling reason is without merit. The imposition of a value system that creates an arbitrary set of rules being imposed by government on its citizens is beyond the scope of authority granted to any government agency. The subject proposal does just that; it creates an imposed set of values that restrict, by rule, an individual's right to select, establish, and maintain those personal values that are of the utmost of importance to him/herself.

#### **Freedom of Religion**

The proposed rule goes far beyond the above discussed imposition of values; the rule will raise question about infringing on the First Amendment guarantees set forth in the US Constitution. Certain (BRI) investment vehicles are designed and created for the purpose of allowing investors to invest their assets in a manner that reflects their religious convictions. Investing in such a manner is an expression of their

religious faith. The forced imposition of a value set that is contrary to and restricts the employment of values that reflect religious lifestyles and beliefs creates an environment in which individuals are forced to participate in activities, policies and procedures that are diametrically opposed to their belief system. Denying persons the right to avoid, and even being forced to participate in, activities deemed abhorrent by their moral ethic goes well beyond simply denying them the freedom of religion guaranteed in the First Amendment.

For the reasons cited here, I encourage you to please rescind the proposed restatements.

Thank you for your consideration in this matter.

Terry Covert, Esq.