Congress of the United States
Washington, DC 20515

July 20, 2020

Eugene Scalia
Secretary
Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Secretary Scalia,

We, the undersigned, write in strong opposition to the Department of Labor's (DOL) recently proposed rule pertaining to environmental, social, and governance (ESG) investing. This proposed rule drastically shifts the landscape of responsible, social investing and cuts at the freedom of private entities to invest based on their individualized priorities.

By preventing entities governed by the Employee Retirement Income Security Act (ERISA) from investing with ESG principles, the DOL has not only engaged in an overreach into the actions of private businesses, but it has also significantly burdened those engaging in a practice that has proven beneficial.

ESG investments presently account for only .1% of the total assets in defined contribution plans according to the Department of Labor, but there is increasing interest in them. In the United States, "mutual funds focused on sustainable investing attracted more than $20 billion in assets in 2019, more than 4 times the flows in 2018."[1] The DOL neglects current conventional wisdom in investing and seeks to impose their political principles on private entities. ESG investing is sustainable, responsible, impactful, and has documented financial benefits. Professional trends in financial investing point towards an increased emphasis on ESG investing to account for future returns, growth, and sustainability.

The NPRM cites research from Morningstar indicating increases in the use of the term "ESG" among institutional asset managers; in the array of ESG-focused investment vehicles available; in the number of ESG metrics, services, and ratings offered by third-party service providers; and in the asset flows into ESG funds. The NPRM suggests that these trends are evidence of ill-advised decision-making on the basis of ESG factors. It states: "The Department is concerned…that the growing emphasis on ESG investing may be prompting ERISA plan fiduciaries to make investment decisions for purposes distinct from providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan."[2] It

[1] Aron Szapiro, *Sharpening the Tools of the ESG Investor,* Morningstar (July 7, 2020); available at: https://www.morningstar.com/articles/990232/sharpening-the-tools-of-the-esg-investor-morningstars-view
[2] https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/financial-factors-in-selecting-plan-investments-proposed-rule.pdf (p. 10)

also asserts, "providing a secure retirement for American workers is the paramount, and eminently-worthy, 'social' goal of ERISA plans; plan assets may not be enlisted in pursuit of other social or environmental objectives."[3]

The NPRM fails to note, however, that Morningstar also found that funds based on environmental, social and governance goals outperformed conventional offerings during 2019[4] and the first quarter[5] of this year. Indeed, John Hale, the head of sustainability research at Morningstar, said in reference to the NPRM, "Not only could investments that focus on the long-term sustainability of companies lead to truly long-term outperformance because you're picking better quality companies…But there is also the systems argument, that you're helping to create a financial system and economy that will be more successful."[6]

There is little to suggest that workers sacrifice returns by investing in ESG funds. In fact, "a growing body of evidence suggests that using sustainable investments generally has not reduced risk-adjusted returns to date. In a recent study, Morningstar researchers found that investors that focus on companies with positive ESG attributes generally do not sacrifice returns, although there may be a small ESG premium in the U.S. A Government Accountability Office meta-analysis found that 88% of studies of the relationship between ESG factors and financial performance found that using ESG information does not reduce financial returns. In short, picking investments that score better on ESG metrics at the margin or as a tie-breaker could be a reasonable strategy for investors who want their investments to reflect their values."[7]

Moreover, the Department's ESG proposal runs directly counter to the Administration's recent investment instructions to the Thrift Savings Plan ("TSP") providing retirement benefits to millions of the federal government's own employees. On May 11, 2020, based on a letter from the White House citing humanitarian concerns,[8] you sent a letter to the Chairman of the Federal Retirement Thrift Investment Board ordering him to halt all steps that would result in the TSP investing the "I" Fund in Chinese companies. Two days after receiving these letters, the Federal Retirement Thrift Investment Board adhered to your request.

While the investment directions conveyed in the above-described letters cited some economic concerns with Chinese investment, they overwhelmingly emphasized "nonpecuniary" concerns with how the TSP's planned investment could benefit "military activities, espionage, and human

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[3] https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/financial-factors-in-selecting-plan-investments-proposed-rule.pdf (at p. 9)

[4] https://www.morningstar.com/articles/973590/us-esg-funds-outperformed-conventional-funds-in-2019.

[5] https://www.morningstar.com/articles/976361/sustainable-funds-weather-the-first-quarter-better-than-conventional-funds

[6] https://www.nytimes.com/2020/06/24/business/labor-retirement-investing.html

[7] Aron Szapiro, *Sharpening the Tools of the ESG Investor,* Morningstar (July 7, 2020); available at: https://www.morningstar.com/articles/990232/sharpening-the-tools-of-the-esg-investor-morningstars-view

[8] Letter from Lawrence Kudlow, Director, National Economic Council, and Robert O'Brien, National Security Advisor, to Secretary Eugene Scalia, Department of Labor (May 11, 2020) (online at cdn.govexec.com/media/gbc/docs/pdfs_edit/051220ew1b.pdf).

rights abuses by the Chinese government," among other non-economic factors, such as the "Chinese government's concealment of critical information concerning the novel coronavirus."[9] This reliance on nonpecuniary factors is in direct conflict with the approach in the proposed regulation.

As we seek to incentivize more responsible corporate structures and behavior, ESG has been a successful, free-market tool with which investors have been able to generate positive change. We reiterate our opposition to this rule and encourage the Administration to withdraw it. If you choose to continue with the proposed rule, we strongly urge you to extend the comment period from 30 days to 90 days to allow stakeholders reasonable time to analyze the proposal and provide sufficient and helpful feedback. We look forward to working with the DOL to develop rules that strengthen ERISA plans rather than hinder them.

Sincerely,

Brendan F. Boyle	Andy Levin	Suzan DelBene
Member of Congress	Member of Congress	Member of Congress

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[9] Letter from Secretary Eugene Scalia, Department of Labor, to Chairman Michael Kennedy, Federal Retirement Thrift Investment Board (May 11, 2020) (online at federalnewsnetwork.com/wpcontent/uploads/2020/05/051220_scalia_frtib_letter_FNN.pdf).