

July 30, 2020

The Hon. Eugene Scalia  
Secretary of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Dear Mr. Secretary:

The investment of private retirement funds into Chinese companies that do not comply with basic transparency standards, and in many cases rely upon child- and slave-labor, is incompatible with fundamental American values and must be discontinued.

Fortunately, the Department of Labor's proposed rule, Financial Factors in Selecting Plan Investments<sup>1</sup> seeking to rein in politicized investing by private pension fund managers provides the ideal opportunity to exclude non-transparent Chinese assets from inclusion in our nation's retirement portfolios.

The underlying proposed rule is an important protection for pensioners and 401(k) investors against involuntarily paying the price for a political "thumb on the scale," one that has the effect of shortchanging retirement security. Under the banner of "environmental, social (justice), and governance (ESG)," mutual fund and pension managers are increasingly investing in ways that advance their political and social predilections, but may not be consistent with their duties to clients. While such an arrangement may be acceptable to individual investors, Labor's proposed rule rightly points out that under the Employee Retirement Income Security Act of 1974 (ERISA), private pension fund managers must act with an "eye singularly" on their fiduciary responsibility to plan participants and beneficiaries.

Proponents of ESG causes have chosen to ignore the financial consequences of their actions and weaponized financial tools to pressure corporations to support their priorities. Many politicized fund managers push ESG as they can often charge higher fees for such investments while selling their political investments as the product of diligent financial analyses. The Labor Department is reminding pension managers that there is a place for politics and a place for sound investment decisions. When ESG investments put politics over fund performance, they are unsuitable.

There are already indications that fund managers may seek to flout Labor's rule if it is promulgated in its current form. It has been suggested that ESG fund managers might simply change their marketing materials to state that their ESG investments are actually designed to maximize returns. In crafting its final rule, Labor must, therefore, also ensure that fund managers further increase the transparency of their investment choices.

To that end, the proposed rule should be amended so as to require that private retirement investments be transparent, assuring fund managers and their beneficiaries that the companies they are buying are sound.

Incredible as it may seem, since at least 2013, when former Vice President Biden engineered a Memorandum of Understanding<sup>2</sup> giving Chinese companies a waiver from U.S. transparency requirements, retirement funds, pensions and other non-retirement investors have splurged on such

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<sup>1</sup> <https://www.federalregister.gov/documents/2020/06/30/2020-13705/financial-factors-in-selecting-plan-investments#open-comment>

<sup>2</sup> <http://upload.news.esnai.com/2013/0617/1371444412766.pdf>

companies – even though they do not meet the same auditing standards as their American corporate counterparts. The effect is to put U.S. retirement investors at great risk.

Now is the time to change this, by amending the proposed rule to require specifically that any company that wishes to be eligible for retirement or pension investing meet our nation’s statutory and regulatory standards for transparency.

To add insult to the injury arising from the present, non-transparent arrangement is the fact that many Chinese companies whose stocks are owned by U.S. retirement accounts and defined benefits pension plans are up to their necks in producing goods using child- and slave-labor.<sup>3</sup> By allowing investments into these companies, the Labor Department is effectively making individual 401(k) owners or pensioners parties to and profiteers from the exploitation of the victims of such cruel abuse.

This is wholly repugnant and unacceptable.

For all these reasons, we strongly support the Department of Labor’s proposed rule-making aimed at curbing some inadequately transparent and politicized investing by private pension fund managers. We urge as well that this principle be expanded to ensure that all assets held by private retirement funds, including the mutual funds in such accounts, are fully transparent consistent with the laws of the United States.

Sincerely,

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<sup>3</sup> <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>

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