

1310 L Street, NW, 7th Floor
Washington, DC 20005
cei.org

202 331 1010 *main*
202 331 0640 *fax*



Jeanne Klinefelter Wilson
Acting Assistant Secretary of Labor
Employee Benefits Security Administration
200 Constitution Avenue NW
Suite S-2524
Washington, D.C. 20210

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Comment on Employee Benefits Security Administration proposed rule
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Richard Morrison
Research Fellow
Competitive Enterprise Institute¹

The Department of Labor’s move to safeguard the retirement future of beneficiaries of pension funds governed by the Employee Retirement Income Security Act of 1974 (ERISA) is well timed. As the Department correctly notes in its Notice of Proposed Rulemaking, recent years have seen a significant increase in “use of the term ESG among institutional asset managers” and “in the array of ESG-focused investment vehicles available.”² Proponents of an environmental, social, and governance (ESG) framework for investment and finance analysis have not just celebrated its growing popularity, but have actually warned observers that the movement behind it is propelled by sufficient force that they would be foolish to ignore or oppose it. If the carrot of being perceived as an ethical investment firm is not

¹ The Competitive Enterprise Institute (CEI) is a non-profit public policy organization dedicated to advancing the principles of limited government, free enterprise, and individual liberty. Founded in 1984, CEI has a long history of research and advocacy on federal regulation, including finance, pensions, and economic policy in general.

² Financial Factors in Selecting Plan Investments, Federal Register, Vol. 85, No. 126, June 30, 2020, <https://www.federalregister.gov/d/2020-13705/p-29>.

sufficient to motivate fund managers, ESG advocates have suggested that the stick of future financial losses and legal punishment lies awaits for managers who decline to embrace it.^{3,4,5}

While the issue is timely and relevant, ESG and parallel concepts like socially responsible investing (SRI) can be difficult to analyze with the rigor called for by the federal regulatory process because the definitions of the concepts are so vague, and competing frameworks have created confusion even for firms most closely involved with ESG/SRI ratings and analysis.⁶

The Department is wise to ground its current proposal on the existing statutory authority flowing from ERISA and its previous sub-regulatory guidance and to avoid the temptation to referee “good” ESG goals from “bad” ones. Depending on the authority doing the defining, following an ESG investing framework requires everything from the obvious (don’t participate in sex trafficking)⁷ to the highly controversial (mandated “diversity and inclusion competency” training in corporate offices).⁸ Existing law and guidance focuses on providing returns to beneficiaries, and the categorical difference between pecuniary and non-pecuniary concerns in the current proposal rightly reinforces that distinction.

³ Edward Mason, Head of Responsible Investment at the Church Commissioners for England, declared: “ESG investing is on a growth trajectory. It is fundamentally a good thing and it is unstoppable. ... These are major issues for modern business, and investors ignore them at their own peril.” Edward Mason, “ESG investment is an unstoppable force,” *Critical Resource*, June 2019,

<https://www.c-resource.com/2019/06/13/esg-investment-is-an-unstoppable-force/>.

⁴ Linda M. Lawson, CEO of the Global ESG Regulatory Academy, has insisted that even the policy preferences of the current administration could and should not stand in the way of parts of the executive branch of the U.S. government embracing and promoting ESG-compliant policy, especially regarding climate change. Linda M. Lawson, “Global Climate Change and Sustainability Financial Reporting: An Unstoppable Force with or without Trump,” presentation at Harvard Law School Forum on Corporate Governance, April 30, 2017,

<https://corpgov.law.harvard.edu/2017/04/30/global-climate-change-and-sustainability-financial-reporting-an-unstoppable-force-with-or-without-trump/>.

⁵ The consulting firm KPMG, in material promoting its “Sustainable investing” services—and echoing the advice of many similar firms—quotes unnamed hedge fund professionals to the effect that “ESG is no longer a nice-to-have; it’s a must-have” and “it seems inevitable that ESG components ... will take on increased importance in future investment.” KPMG, “Sustainable investing: fast-forwarding its evolution,” KPMG website, February 2020,

<https://home.kpmg/xx/en/home/insights/2020/02/sustainable-investing.html>.

⁶ Soyoung Ho, “ESG Reporting is All the Rage, but Companies are Unsure About Which Reporting Standards to Use,” Thomson Reuters, July 20, 2020, <https://tax.thomsonreuters.com/news/esg-reporting-is-all-the-rage-but-companies-are-unsure-about-which-reporting-standards-to-use/>.

⁷ Nick Pelosi and Rebecca Adamson, “Managing the ‘S’ in ESG: The Case of Indigenous Peoples and Extractive Industries,” *Journal of Applied Corporate Finance*, Vol. 28, No. 2 (Spring 2016), https://www.colorado.edu/program/fpw/sites/default/files/attached-files/managing_the_s_in_esg.pdf.

⁸ Helen C. Shelton, “Elevating Racial Equality Requires a Holistic ESG Approach,” *Triple Pundit*, July 17, 2020, <https://www.triplepundit.com/story/2020/racial-equality-esg/120926>.

Beware of Political Priorities Masquerading as Materiality Concerns

The Department rightly acknowledges that some investment criteria that fall under the ESG umbrella may be legitimate for evaluating the risk-adjusted economic value of a particular investment. In fact, some ESG advocates insist that ESG and similar investing theories are primarily about reducing risk for investors and only secondarily about advancing the altruistic or charitable priorities that the proposed rule warns fund managers against.⁹ This desire to have it both ways—offering investment options that allegedly prioritize ESG concerns for “ethical” investors while waving away concerns that prioritizing nonpecuniary objectives might reduce returns—is something the Department should be especially aware of in the present proceeding.

One way in which ESG investments with nonpecuniary goals are justified as financially prudent is to simply assume the future imposition of law and regulation that would be advantageous to the ESG-designated position. Investment vehicles that exclude energy companies because of their oil and gas operations, for example, might be justified by the claim that future climate change legislation or treaties will make such firms less attractive or leave such firms with “stranded assets” that they could no longer profitably employ.¹⁰

While taking into account future legislative changes is something a smart investor will clearly want to do, intelligent individuals can also fall victim to motivated reasoning, which allows them to justify an *a priori* desired outcome regardless of whether such an outcome is likely or reasonable. If one assumes dramatic changes to current environmental law or draconian restrictions on fossil fuel use, certain ESG bets may begin to look like smart investments. But those projections should be based on sober, objective analysis and not a fund manager’s personal enthusiasm for such policy changes.

It is not just individual money managers with environmental sympathies who employ such reasoning. Principles for Responsible Investment, an international body founded and funded by the United Nations that promotes ESG investment,¹¹ emphasizes what it calls the “Inevitable Policy Response” to climate change. While acknowledging that there are “few signals that governments will act forcefully on climate

⁹ One large investment firm advises its clients: “Sustainable investing is about long-term, finance-driven strategies—not to be confused with ethical investing. It is central to successful long-term investment outcomes and should be a key part of all asset owners’ investment approaches.” Willis Towers Watson, “Sustainable investment: Time for everyone to translate thinking into action,” Willis Towers Watson website, 2018, <https://www.willistowerswatson.com/-/media/WTW/Insights/2018/06/WTW-INV-2018-Sustainability-Investment-Asia.pdf>.

¹⁰ For an analysis of economic development and investment opportunities vis a vis the predicted problem of climate-related stranded assets, see Ben Caldecott, Elizabeth Harnett, Theodor Cojoianu, Irem Kok, and Alexander Pfeiffer, “Stranded Assets: A Climate Risk Challenge,” Inter-American Development Bank, 2016, <https://publications.iadb.org/publications/english/document/Stranded-Assets-A-Climate-Risk-Challenge.pdf>.

¹¹ “The PRI is the world’s leading proponent of responsible investment. It works to understand the investment implications of environmental, social and governance (ESG) factors and to support its international network of investor signatories in incorporating these factors into their investment and ownership decisions.” “About the PRI,” Principles for Responsible Investment, accessed July 22, 2020, <https://www.unpri.org/pri/about-the-pri>.

change” in the immediate term, they suggest that strict limits on greenhouse gas emissions will, within a few years, create dramatic changes to energy economics and make current technologies obsolete (or illegal).¹²

But that forecast is likely wishful thinking. Signatories to the U.N. Framework Convention on Climate Change (UNFCCC) have been attempting to negotiate a treaty to dramatically reduce greenhouse gas emissions for nearly 30 years and have come up short time and again.¹³ The Kyoto Protocol, negotiated pursuant to the UNFCCC, was finalized in 1997 and signed by President Bill Clinton on behalf of the United States in 1998. Even before Clinton’s signature was affixed, however, the U.S. Senate had already voted 95-0 to reject major provisions of the treaty.¹⁴ It was never ratified by the U.S., and President George W. Bush withdrew the U.S. from it in 2001. In terms of signatories meeting their emissions reduction targets since then, the Kyoto Protocol is largely considered a failure by both its opponents and supporters.^{15,16,17}

In 2016 the Paris Climate Agreement came into force, effectively succeeding the Kyoto Protocol, amid great public fanfare. The next year, however, President Donald Trump announced plans to withdraw the United States from the agreement at the earliest opportunity. Analysis from the Competitive Enterprise Institute argued persuasively that not only was the agreement flawed on policy grounds, but that the mechanism for its adoption was unconstitutional, casting serious doubt on the legality of any future administration re-joining the treaty absent an extremely unlikely Senate ratification.¹⁸ Moreover, in the approximately four years since the Paris Climate Agreement entered into force, performance in meeting

¹² “What is the Inevitable Policy Response?” Principles for Responsible Investment, accessed July 24, 2020, <https://www.unpri.org/inevitable-policy-response/what-is-the-inevitable-policy-response/4787.article>

¹³ “On 11 December 1990, the UN General Assembly establishes the Intergovernmental Negotiating Committee (INC) for a Framework Convention on Climate Change,” “UNFCCC—25 Years of Effort and Achievement,” United Nations Framework Convention on Climate Change, accessed July 24, 2020, <https://unfccc.int/timeline/>.

¹⁴ S. Res. 98 – “A resolution expressing the sense of the Senate regarding the conditions for the United States becoming a signatory to any international agreement on greenhouse gas emissions under the United Nations Framework Convention on Climate Change,” 105th Congress, First Session, July 24, 1997, <https://www.congress.gov/bill/105th-congress/senate-resolution/98>.

¹⁵ “You have to judge Kyoto to have been a failure. Just on the merits of what was done as a result of the agreement and countries not actually living up to their commitments or staying with the agreement,” said Kenneth P. Green, an environmental scientist at the Fraser Institute.” National Post Staff, “Kyoto Protocol, 10 years later: Did deal to combat greenhouse emissions work and what of its future?” *National Post*, February 14, 2005, <https://nationalpost.com/news/world/kyoto-protocol-10-years-later-was-the-deal-to-combat-greenhouse-emissions-successful-and-what-of-its-future>.

¹⁶ Brad Plumer, “Past climate treaties failed. So the Paris deal will try something radically different,” *Vox*, December 14, 2015, 2020, <https://www.vox.com/2015/12/14/10105422/paris-climate-deal-history>.

¹⁷ Christopher Napoli, “Understanding Kyoto’s Failure,” *SAIS Review of International Affairs*, Vol. 32, No. 2 (Summer-Fall 2012), pp. 183-196, <https://muse.jhu.edu/article/493430>.

¹⁸ Christopher C. Horner and Marlo Lewis, Jr., “The Legal and Economic Case Against the Paris Climate Treaty: Canceling U.S. Participation Protects Competitiveness and the Constitution,” *Issue Analysis* 2017, No. 6, Competitive Enterprise Institute, May 2017, <https://cei.org/content/legal-and-economic-case-against-paris-climate-treaty>.

the treaty's country-by-country "nationally determined contributions" toward greenhouse gas reduction has been so poor that even the agreement's most enthusiastic backers have publicly wondered whether it, too, is doomed to fail.^{19,20,21} In addition, the alleged certainty of assumptions about climate science on which both the Kyoto Protocol and the Paris Climate Agreement were built has continued to erode.²²

This is not the legal and policy track record of inevitability. It is true that proponents of stringent limits on fossil fuels and other plans directed at influencing global climate change have an extremely strong preference for their favored policies. They routinely make dramatic predictions of future catastrophe if their policies are not adopted, and very much want influential entities in business and government to perceive their recommended policies as important, valuable, and even "inevitable."

Their enthusiasm should not be confused with reality. This is true in the issue of climate change activism and in ESG concerns that might influence finance professionals in making investing decisions. It should not be considered legitimate to inject ideologically motivated reasoning into an ostensibly returns-only investment strategy by claiming that some far-off political development is somehow inevitable. Not only are future legislative and diplomatic developments unknowable with any certainty, but the track record of actual processes over recent decades argues against the kinds of assumptions that ESG-influenced managers routinely make and environmental activists go to great pains to prop up.

Additionally, we must confront the activist-investor waltz by which anti-corporate entities presume to warn firms and asset managers against political risks they themselves have worked to create. In short, environmental activist groups will work to make law and regulation inhospitable to certain industries and firms, then claim that investors must pressure the same industries and firms to change their operations, all the while claiming to be "protecting shareholder value" or providing some similar justification.²³ Such actions constitute an activist strategy for attacking disfavored firms and *creating* political risk, not an investment strategy for protecting shareholders by minimizing risk. Fund managers covered by the Department's rule should be wary of, and especially discouraged from, participating in this sort of bait-and-switch activity.

¹⁹ David Roberts, "The Paris climate agreement is at risk of falling apart in the 2020s," *Vox*, November 5, 2019, <https://www.vox.com/energy-and-environment/2019/11/5/20947289/paris-climate-agreement-2020s-breakdown-trump>.

²⁰ Brittany Gibson, "The Industrialized World Is Failing to Meet Paris Agreement Goals," *The American Prospect*, October 1, 2019, <https://prospect.org/world/climate-crisis-industrialized-world-failing-to-meet-paris-agreement/>.

²¹ Harry Cockburn, "Climate crisis: Failure to hit Paris agreement goals 'could cost world \$600 trillion,'" *Independent*, April 15, 2020, <https://www.independent.co.uk/environment/climate-crisis-paris-agreement-economic-cost-study-university-beijing-a9466406.html>.

²² Mario Loyola, "Twilight of the Climate Change Movement," *The American Interest*, March 31, 2016, <https://www.the-american-interest.com/2016/03/31/twilight-of-the-climate-change-movement/>.

²³ Marlo Lewis, Jr. "Trump Must Show Energy Companies He Will Fight Politics of Plunder," *OpenMarket*, Competitive Enterprise Institute, May 15, 2017, <https://cei.org/blog/trump-must-show-energy-companies-he-will-fight-politics-plunder>.

Beware of Claims of Mainstream Validation

Section (c)(1) of the proposed rule, “Consideration of Pecuniary vs. Non-Pecuniary Factors,” the heart of the Department’s current effort, is well crafted to define the boundaries of allowable investment choices—with one potential flaw. ESG-type factors are said to be permissible for use in pension fund investment decisions only if “qualified investment professionals would treat [them] as material economic considerations under generally accepted investment theories.” Highly motivated parties will likely attempt to undermine the rule’s intent with claims that ESG-focused investing is already “generally accepted.”

Large asset managers, like State Street Global Advisors, have recently issued reports validating this perspective, with one such report advising clients that “ESG may well be becoming a mainstream trend,” stating that fiduciary duty to beneficiaries is the most important reason for adopting such guidelines.²⁴ Others have gone quite further. Natalie Zhang of CNBC confidently reported in June of this year that ESG investing is “a trend that began to accelerate well before the current crises, and has now gone mainstream.”²⁵ In January 2020 Mette Lützhøft and Alex Eule of *Barron’s* enthused that “investors are flocking to sustainable investments,” and that “[f]rom Wall Street to Davos, sustainable investing is blazing a path into the mainstream.”²⁶ The January 2020 public letter written by BlackRock CEO Larry Fink to fellow CEOs of public companies, announcing his firm’s enhanced focus on climate risk in investing, is itself seen as a major validator of ESG as “mainstream.”²⁷ Attorneys David Katz, Sabastian V. Niles, and Carmen X. W. Lu also recently published a useful analysis of ESG from a business law perspective, “ESG in the Mainstream” with conclusions that strongly supported their chosen title.²⁸

Law and regulation in the United States frequently makes use of subjective standards, such as what is “reasonable,” “generally understood,” or “commonly practiced.” But such a shifting standard cannot become the basis for compliance (or defense against charges of non-compliance) with a rule based so closely on specifically prescribed statutory duties. Even if a manager of a private pension fund subject to ERISA’s requirements were to provide persuasive evidence that her ESG-led investment decisions were, if fact, “generally accepted” by her peers in the finance industry, it would not relieve her of her clearly

²⁴ “The view that ESG is simply part of fiduciary duty is becoming commonplace, with 46% [of senior finance executive survey respondents] citing this as a top push factor [for adoption].” State Street Global Advisors, “Into the Mainstream: ESG at the Tipping Point,” Research Report, November 2019, <https://www.ssga.com/library-content/pdfs/insights/into-the-mainstream.pdf>.

²⁵ Natalie Zhang, “How ESG investing captured trillions of dollars on Wall Street,” *CNBC*, June 25, 2020, <https://www.cnbc.com/2020/06/25/what-is-esg-and-socially-responsible-investing.html>.

²⁶ Mette Lützhøft and Alex Eule, “Investors Are Flocking to Sustainable Investments. Here Why,” *Barron’s*, January 28, 2020, <https://www.barrons.com/articles/esg-investing-hits-the-mainstream-51580245628>.

²⁷ Larry Fink, “A Fundamental Reshaping of Finance,” BlackRock, January 16, 2020, <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>.

²⁸ David Katz, Sabastian V. Niles, and Carmen X. W. Lu, “ESG in the Mainstream: Sell-Side Analysts Addressing ESG Concerns,” Harvard Law School Forum on Corporate Governance, May 29, 2020, <https://corpgov.law.harvard.edu/2020/05/29/esg-in-the-mainstream-sell-side-analysts-addressing-esg-concerns/>.



stipulated fiduciary duty under the statute. General acceptance of prioritizing ESG goals over maximizing beneficiary returns can no more be validated by its alleged ubiquity than could outright fraud or theft. The Department’s final rule should make that clear.

Compliance Burdens Arising from Documenting Investment Decisions

The Department’s notice of proposed rulemaking, in evaluating the potential compliance burden of the proposed rule, shows well-placed concern for the potential paperwork burden the rule could create. The structure of the rule, in which the heaviest burden would fall on managers currently “not following or misinterpreting the Department’s existing sub-regulatory guidance,” is also a good example of tailoring, rather than imposing a new comprehensive requirement that would be borne by all fund managers.

However, the Department should continue to exercise caution about any additional compliance burdens and stick to its goal to consistently impose not just a positive cost/benefit ratio, but the least possible additional cost on regulated entities to achieve the rule’s intended purpose. Beyond the important protections of existing requirements like the Paperwork Reduction Act and Executive Orders 12866 and 13771, departments and agencies should consider the cumulative total burden that regulated entities are already working under, how any proposed rule would increase it, and the dynamic effects of that increased total.

Not only are fund managers and financial institutions already working under a vast web of federal and state regulation directed at their particular profession and industry, they are also subject to the economy-wide regulations that apply to any public company. That accumulated, “vertical” burden has significant economic effects on individual firms, particular industries and sectors, and the U.S. economy as a whole. The Competitive Enterprise Institute’s Wayne Crews estimates that the current total cost burden of U.S. federal regulation comes to \$1.9 trillion per year, roughly \$14,000 per household, a staggering sum by any reckoning.²⁹

The accumulated burden of the federal regulatory state also harms innovation and slows economic growth overall, resulting in a smaller economy and lower investment returns—precisely the concern of the current proposed rule.³⁰ Investing with an eye toward ESG goals rather than maximizing risk-adjusted returns does a disservice to pension fund beneficiaries, as does an undue regulatory burden that throttles overall economic growth. The need to slow the growth of accumulated regulatory costs is so acute that even a rule such as this—intended to financially protect and benefit individual Americans—must still be subjected to the closest scrutiny when it comes to placing new compliance burdens on private entities.

²⁹ Wayne Crews, *10,000 Commandments 2020: An Annual Snapshot of the Federal Regulatory State*, Competitive Enterprise Institute, May 27, 2020, https://cei.org/sites/default/files/Ten_Thousand_Commandments_2020.pdf.

³⁰ Patrick A. McLaughlin, Nita Ghei, and Michael Wilt, “Regulatory Accumulation and Its Costs: An Overview,” *Policy Brief*, Mercatus Center, November 2018, <https://www.mercatus.org/publications/regulation/regulatory-accumulation-and-its-costs>.

Potential Confusion between “Left-Wing” and “Right-Wing” ESG Concerns

Despite the text of the rule covering all non-pecuniary concerns, the Department, during the current comment period and afterward, may be advised by various parties to reconsider its categorical prescription and weigh the political and ideological intentions of managers in choosing particular non-pecuniary investment criteria. The Department should reject such entreaties, especially those that confuse the focus on “ESG factors” *per se* with the overall prohibition on non-financial considerations.

Many of the policy preferences most frequently cited as being ESG concerns, such as climate change and hiring diversity, are more frequently characterized as priorities of progressive, left-leaning political groups, creating an impression by people across the political spectrum that topics falling under the ESG terminology are *de facto* left-liberal concerns.³¹ Thus, some observers may consider the Department’s current proposal targeted exclusively in that ideological direction.

Some prominent elected leaders and policymakers are proposing an alternate set of policies for evaluating companies that are more associated with right-leaning politics. President Donald Trump has frequently criticized U.S. companies that have closed domestic facilities while opening new facilities overseas, and has vowed to implement policies to stop such decisions in the future.³² Sen. Josh Hawley (R-MO) recently sponsored legislation to require U.S.-based companies to certify that their overseas manufacturing activities do not depend on forced labor and to penalize companies that fail to meet the legislation’s requirements.³³ This legislation is widely seen as being targeted at companies that have shifted manufacturing operations from the U.S. to facilities in China.³⁴ There are also calls for U.S. companies and investors to divest from holdings in and financial associations with Chinese firms, either because they allegedly lack financial transparency, threaten American national security interests, engage

³¹ Zach Conway, “Socially Responsible Investing Has a Politics Problem,” *Forbes*, April 2, 2019, <https://www.forbes.com/sites/zachconway/2019/04/02/socially-responsible-investing-has-a-politics-problem/#7649808f7140>.

³² Transcript of Presidential Candidate Donald Trump Rally in Kinston, North Carolina, C-SPAN, October 26, 2016, <https://www.c-span.org/video/?417502-1/donald-trump-campaigns-kinston-north-carolina>.

³³ Slave-Free Business Certification Act of 2020, (S. 4241), 116th Congress, Second Session, <https://www.hawley.senate.gov/sites/default/files/2020-07/Slave-Free-Business-Certification-Act.pdf>

³⁴ Mike Allen, “Hawley to squeeze corporate America on forced labor,” *Axios*, July 20, 2020, <https://www.axios.com/josh-hawley-forced-labor-legislation-china-499c6b3b-edde-4e7e-9ea3-cc9fe72e69d4.html>.

in religious discrimination, make use of forced labor, or were negligent in preventing the global spread of COVID-19.^{35,36,37}

Thus, in the same way that there has been a dramatic increase in discussion of and support for “traditional” ESG investing globally, in the past few years there has been growing support in the United States for policing the international investment decisions of firms from what could be termed a “nationalist” or “populist” perspective.

Despite being covered by the plain language of the proposed rule, the preexisting association of ESG with left-liberal priorities may lead to future confusion as to whether populist or nationalist non-pecuniary criteria are, in fact, meant to be covered by the Department’s rule and other associated sub-regulatory guidance.

While the Department is no doubt loath to specifically address partisan and ideological politics in the language of its proceedings (and will need to reevaluate any such guidance if Congress passes future related legislation), its final rule should make doubly clear that the rule applies to *any* non-pecuniary investment criteria, even when such standards are not part of what most people familiar with the field would classify as an “ESG” or “SRI” framework. These alternate social and governance priorities may be of great importance on their own and have significant political and cultural support, but as with policy concerns in the traditional ESG frame, ERISA-governed pension funds are not the appropriate arena in which to advance them.

³⁵ Rep. Vicky Hartzler (R-MO), “Wuhan is the final straw: The world needs to divest from China,” *The Hill*, July 1, 2020, <https://thehill.com/blogs/congress-blog/foreign-policy/505373-wuhan-is-the-final-straw-the-world-needs-to-divest-from>.

³⁶ Sen. Martha McSally (R-AZ) and Sen. Kevin Cramer (R-ND), “Letter to Larry Fink on Support for Chinese Companies Who Ignore U.S. Financial Regulations,” June 15, 2020, <https://senatorkevincramer.app.box.com/s/0tmsudixt2g59zjp1jrl6jwx6zjcij77>. Accompanying press release: Office of Sen. Kevin Cramer, “Senators Cramer, McSally Seek Answers on the Firm’s Support for Chinese Companies Who Ignore US Financial Regulations,” news release, June 16, 2020, <https://www.cramer.senate.gov/news/press-releases/sens-cramer-mcsally-ask-blackrock-to-explain-support-for-chinese-companies-who-ignore-us-financial-regulations>.

³⁷ Sen. Marco Rubio (R-FL) and Rep. Michael Waltz (R-FL), “Letter to Florida Gov. Ron DeSantis, CFO Jimmy Patronis, and Attorney General Ashley Moody on Retirement Investments Funneling to China,” May 19, 2020, https://waltz.house.gov/uploadedfiles/2020-5-19-letter_to_gov_desantis-ag_moody-cfo_patronis_re_frs_signed_final.pdf. Accompanying press release: Office of Rep. Michael Waltz (R-FL), “Waltz, Rubio Lead Letter to State on Retirement Investments Funneling to China,” news release, May 20, 2020, <https://waltz.house.gov/news/documentsingle.aspx?DocumentID=363>.