

**Congress of the United States**  
**Washington, DC 20515**

July 29, 2021

The Honorable Marty Walsh  
Secretary of Labor  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, DC 20210

Dear Secretary Walsh,

We write to inquire about the Department of Labor’s (DOL) plans regarding environmental, social, and governance (ESG) investing and plans to formulate a new rule allowing ERISA plan fiduciaries to consider ESG factors when evaluating plan investments. We urge DOL to issue such a rule and ask that you inform us of DOL’s plans to do so, including the process and timetable the Department will follow. We hope to work with you to ensure that this new rule is strong, clear, and enduring.

We objected to the previous administration’s promulgation of the “Financial Factors in Selecting Plan Investments” (the “ESG rule”<sup>1</sup>) regulation in November 2020, and thank the Department for its decision not to enforce it.<sup>2</sup> We agree with the Department’s assessment that the “ESG rule” had a chilling effect by creating the perception that fiduciaries could face legal risk if they incorporated ESG principles when assessing a potential investment.<sup>3</sup> We also agree with stakeholders who argued that the “ESG rule” was rushed and failed to consider the ample evidence highlighting the long-term value of ESG investing for workers’ retirement security.<sup>4</sup>

While ending that rule’s enforcement is a necessary first step, we feel it is just that – a first step. A new rule is essential to eliminate the aforementioned chilling effect and allow plan fiduciaries to incorporate ESG factors into their investment strategies without fear of legal consequences.

ESG investing is growing at a tremendous rate. In 2020 alone, \$51.1 billion in net investments went into sustainable funds, nearly double the previous annual record.<sup>5</sup> We believe this is evidence of workers’ desire to make sure that their retirement investments reflect their values. This desire is backed up by evidence that shows that investments that consider ESG principles generally performed as well or better than comparable conventional investments.<sup>6</sup> Workers do

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<sup>1</sup> <https://www.govinfo.gov/content/pkg/FR-2020-11-13/pdf/2020-24515.pdf>

<sup>2</sup> <https://www.dol.gov/newsroom/releases/ebsa/ebsa20210310>

<sup>3</sup> <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/erisa/statement-on-enforcement-of-final-rules-on-esg-investments-and-proxy-voting.pdf>

<sup>4</sup> *Id.*

<sup>5</sup> <https://www.morningstar.com/articles/1026261/us-sustainable-funds-continued-to-break-records-in-2020>

<sup>6</sup> <https://www.gao.gov/assets/gao-18-398.pdf>

not have to make a trade-off between getting a return on their investments and their principles, and the rules and regulations governing pension investments should not force them to. Instead, those rules should provide clarity so that sustainable investing is not burdensome.

We understand that DOL has many pressing concerns under its jurisdiction, especially as the Department strives to protect workers and Build Back Better from the pandemic. We thank you for making workers' retirement security and investing preferences a priority. We look forward to working with you to finalize a new rule that makes ESG investing easier for America's workers and stand ready to provide the support necessary to do so as quickly as possible.

We look forward to your reply.



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Andy Levin  
Member of Congress



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Cindy Axne  
Member of Congress



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Suzan DelBene  
Member of Congress



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Jesús G. "Chuy" García  
Member of Congress

/s/ Suzanne Bonamici  
Member of Congress

/s/ Judy Chu  
Member of Congress

/s/ Mondaire Jones  
Member of Congress

/s/ James Langevin  
Member of Congress

/s/ Carolyn B. Maloney  
Member of Congress

/s/ Jimmy Panetta  
Member of Congress

/s/ Terri Sewell  
Member of Congress

/s/ Michael F.Q. San Nicolas  
Member of Congress

/s/ Rashida Tlaib  
Member of Congress