

United States Senate

WASHINGTON, DC 20510

June 12, 2020

The Honorable Eugene Scalia, Secretary
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Secretary Scalia,

We have serious concerns that your June 3 Information Letter regarding private equity investments and defined contribution plans will further expose American workers to private equity's predatory reach. We request additional information as to how the Department arrived at its conclusion and ask that you immediately reconsider your Department's position for the sake of American workers.

Your information letter affirms that plan fiduciaries would not, in the view of your Department, violate their fiduciary duties by adding private equity investments as a component of a designated investment alternative in a defined contribution plan. You further shared that the letter supports President Trump's May 19 executive order related to economic recovery from COVID-19: "This Information Letter will help Americans saving for retirement gain access to alternative investments that often provide strong returns," you said. In truth, it is but one more example of workers taking a back seat to Wall Street profits under the Trump Administration.

Private equity has a long-standing track record of profiting at the expense of workers. When investors purchase a company, they actually have little incentive to ensure the company improves its performance. The managers of the fund profit from the management fees they impose, and they are free to use the companies they acquire to take out loans that are later paid as dividends. They can sell off the assets of the companies they acquire and assume little risk for the bets they make. These perverse incentives, investor-friendly rules, and gaps in private equity transparency and governance ultimately put workers at risk of losing their pay, their benefits, their jobs, and their livelihoods.

This path of destruction stretches into a variety of industries. We have raised concerns about private equity's role in manufactured housing, in nursing homes, in local newspapers, and – not the least of which – in the American retail sector. Just in the last few years, private equity has left in its wake Toys "R" Us, Shopko, Payless ShoeSource, Charlotte Russe, Bon-Ton, Nine West, David's Bridal, Claire's, and more. To consider one example, when Toys "R" Us filed for bankruptcy in 2017, more than 30,000 workers lost their jobs with no severance or benefits. They fought for months for a dignified severance, but the private equity firms that bought it pocketed \$200 million in fees they extracted from the company throughout their ownership.

Encouraging additional investment through private equity – as your June 3 information letter does – fuels this model of destruction-for-profit. Target-date plans often serve as the default investment option in defined contribution plans with more than \$1.7 trillion invested in target-date funds at the end of 2018. These defaults could soon comprise, in part, private equity investments, and retirement plan participants may not even know that they are not only benefiting from, but also participating in, the pillaging of American workers.

We ask that you provide responses to the following questions:

Did your Department take into account the role of private equity in the bankruptcy of American companies as it considered the June 3 information letter that will give rise to untold new private equity investment? If so, please share any analysis or findings that played a role in this consideration.

Did your Department take into account the role of private equity in the one million direct or indirect job losses over the last decade¹? If so, please share any analysis or findings that played a role in this consideration. If not, why not?

Did your Department consider the ability of ordinary investors in a defined contribution fund to understand how private equity operates – utilizing leveraging and complex arrangements – coupled with their higher fee structure and lack of transparency?

Did your Department make any attempt to project the extent to which private equity investment would increase as a result of this information letter?

Finally, you stated this letter supports President Trump's May 19 executive order that directed agencies "to remove barriers" to the "innovation, initiative, and drive of the American people." There is no barrier to private equity investing in innovations and initiatives that can only be overcome by granting them access to workers' retirement nest eggs. Given the predatory history of this industry, please explain how promoting private equity, as this information letter does, meets the objective of the May 19 executive order.

We appreciate your responses to these questions and urge you to immediately reconsider this misguided decision. Opening up private equity investments in target-date funds used by 401(k) and other similar plans effectively provides another platform for private equity's destruction. The cost to American workers is far too great.

Sincerely,

/s/
Senator Sherrod Brown

/s/
Senator Elizabeth Warren

/s/
Senator Bernard Sanders

/s/
Senator Tammy Baldwin

/s/
Senator Sheldon Whitehouse

/s/
Senator Jeffrey A. Merkley

/s/
Senator Edward J. Markey

¹ <https://united4respect.org/pirateequity/>