

United States Senate
WASHINGTON, DC 20510

October 19, 2020

The Honorable Eugene Scalia
Secretary
Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Scalia,

Thank you for your leadership of the U.S. Department of Labor during the unprecedented challenges our country faces. I also applaud your decision, under the direction of President Trump, to instruct the Federal Retirement Thrift Investment Board to cease its plans to invest assets related to the Thrift Savings Plan into Chinese state-owned companies on May 11, 2020. I agree that investments in these companies pose an unacceptable risk for federal retirement plans. I write today to ask you to consider additional steps to secure the long-term financial security of hardworking Americans by limiting investment in these risky companies for all American retirement plans.

Both Assistant to the President for National Security Affairs, Robert O'Brien, and the Director of the National Economic Council, Larry Kudlow, noted the investment risk and national security concerns Chinese state-owned companies pose, including the possibility of sanctions and trade restrictions in response to Chinese violations of international humanitarian standards and trade agreements.¹ When Under Secretary of State for Economic Growth, Energy and the Environment Keith Krach wrote to university boards cautioning them about investing endowment funds in China, he said they have "...a moral obligation, and perhaps even a fiduciary duty, to ensure that your institution has clean investments and clean endowment funds."² The limitations you directed will provide important protections for the retirement security of federal employees; however, the financial well-being of private, non-government employees is still at risk.

Based on the ongoing threat investments in these companies pose to American retirement security, I ask you to consider expanding existing regulations on fiduciary duties under the Employee Retirement Income Security Act³ (ERISA) to include a prohibition on investment in certain types of Chinese investment vehicles by private retirement plans subject to ERISA. These companies may include:

¹ Letter from Secretary Eugene Scalia, Department of Labor, to Chairman Michael Kennedy, Federal Retirement Thrift Investment Board (May 11, 2020) (online at [federalnewsnetwork.com/wp-content/uploads/2020/05/051220_scalia_frtib_letter_FNN.pdf](https://www.federalnewsnetwork.com/wp-content/uploads/2020/05/051220_scalia_frtib_letter_FNN.pdf)).

² <https://www.state.gov/letter-from-under-secretary-keith-krach-to-the-governing-boards-of-american-universities/>

³ 29 U.S.C. Chapter 18

- Companies that the Department of Defense has identified as communist Chinese military companies acting directly or indirectly in the United States⁴,
- Chinese companies that engage in child labor or other abusive labor practices⁵
- Chinese companies with a substantial ownership interest by the Chinese Communist Party
- Chinese companies that fail to meet the required accounting and auditing standards required by any American company under United States law

If additional legislation is required for the Department of Labor to accomplish these goals, please provide a recommendation for Congress to consider. I look forward to working with you to protect the retirement security of all Americans from the growing risk of investments in these Chinese companies.

Sincerely,



Kelly Loeffler
United States Senator

⁴ <https://www.defense.gov/Newsroom/Releases/Release/Article/2328894/dod-releases-list-of-additional-companies-in-accordance-with-section-1237-of-fy/>

⁵ <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>