

Congress of the United States

Washington, DC 20515

June 1, 2026

The Honorable Keith Sonderling
Acting Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington DC, 20210

Re: Proposed Rule on Fiduciary Duties in Selecting Designated Investment Alternatives, RIN 1210-AC38

Dear Acting Secretary Sonderling,

The Department of Labor (“DOL”) has proposed a dangerous rule that would expose Americans’ retirement savings to greater risk while weakening the protections Congress enacted under the Employee Retirement Income Security Act (“ERISA”). By opening the door to expanded private equity investments in 401(k)s and other retirement plans, the rule would funnel workers’ hard-earned savings into opaque, high-fee, and often underperforming funds that are desperate for new sources of capital. At the same time, it would leave retirees with fewer legal protections and less recourse when those investments fail. The consequences could extend far beyond Americans’ retirement accounts: private equity’s extractive business model has already devastated hospitals, nursing homes, housing markets, public safety services, and local communities in Massachusetts. DOL should not use Americans’ retirement security to prop up an industry searching for its next cash infusion. We urge you to withdraw the proposed rule immediately.

DOL’s proposed rule, “Fiduciary Duties in Selecting Designated Investment Alternatives” (RIN 1210-AC38), would establish a new “safe harbor” framework under ERISA for fiduciaries selecting investment options for 401(k) and other participant-directed retirement plans, including alternatives such as private equity and other illiquid assets. The proposal directs fiduciaries to evaluate investments based on factors such as performance, fees, liquidity, valuation, benchmarks, and complexity, while signaling that higher-cost, riskier, and less liquid investments may nonetheless satisfy ERISA’s prudence requirements if fiduciaries follow a documented process. In practice, the rule would lower legal and regulatory barriers that have historically discouraged the inclusion of private market investments in ordinary Americans’ retirement accounts.

The proposed rule tips the scales in favor of investment managers and plan sponsors, weakening longstanding ERISA protections for plan participants. Compared to publicly listed stock indexes, private equity funds have significantly underperformed in recent years while simultaneously charging higher fees.¹ A 2026 study of fifteen large private equity focused funds found that they returned only *half* the amount of certain traditional index funds such as the S&P 500 Index.² Despite this lackluster performance, these private equity funds charged a median fee more than 125 times higher than a leading S&P 500 fund and consistently charged fees several percentage points higher

¹ Jim Baker & Alyssa Giachino, *Private equity lags stocks for retail investors*, Private Equity Stakeholder Project (Jan. 27, 2026), <https://pestakeholder.org/reports/private-equity-underperforms/>.

² *Id.*

than other traditional index funds.³ This fee rate has a startling effect on retirement savings. According to DOL’s own analysis, a one percent difference in fees and expenses could mean 28 percent less retirement money in the bank when it is time to retire.⁴

In addition to underperformance and higher fees, these risky private equity funds also have less liquidity and transparency. By its very nature, private equity often has capital “locked up” for years while index funds often allow near immediate buying and selling.⁵ Such illiquidity means that plan participants would often be less able to access their retirement savings when they need cash for a down payment, paying medical bills, or otherwise staying afloat during an emergency. Additionally, unlike traditional stock in publicly traded companies, private equity funds have far fewer disclosure requirements related to performance and valuation. Given the opacity of private equity, the true value of their investments is incredibly difficult for investors to assess, especially for small and medium plan sponsors.

The proposed rule gets around this problem in problematic ways. First, it loosens rules around appropriate benchmarks used for valuation. Additionally, it allows plan sponsors to engage in a “check the box” consideration of key factors such as performance, fees, liquidity, and valuation. Finally, it absolves fiduciaries of liability when they rely on an expert, regardless of whether that reliance was reasonable. Traditionally, ERISA has held fiduciaries to “the highest standard under the law.”⁶ The rule would erode this standard to the detriment of America’s workers.

We are concerned that DOL is opening up Americans’ hard-earned retirement savings to risky private equity investment at a time when global private equity fundraising has been at its lowest level in a decade, shrinking by 11 percent in 2025 alone.⁷ This decline provides poor performing and cash-strapped private equity firms with a perverse incentive to tap into the \$12.2 trillion-dollar retirement market.⁸ DOL should not revise ERISA regulations to shore up the accounts of private equity firms unwilling or unable to find other sources of financing.

Beyond the risks to individuals’ retirement savings, the proposed rule threatens broader aspects of life in Massachusetts. Unfortunately, Bay Staters are no stranger to the damaging effects of unfettered private equity firms on hospitals, health care systems, supply chains for municipalities, housing, and other critical areas across the commonwealth. Juicing this model with billions in retirement savings — bolstering some of the lowest performing private equity funds struggling to get existing investors — will exacerbate this model’s damaging effects of short-term extraction over long-term investment. The pitfalls of these assets for individuals’ retirement plans — opacity, lack

³ *Id.*

⁴ U.S. Department of Labor, *Disclosures to Help Employees Understand Their Retirement Plan Fees FAQs*, DOL.gov (last visited May 26, 2026), <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/retirement-plan-fee-disclosures.pdf>.

⁵ Morgan Stanley Private Equity Solutions Team, *An Introduction to Private Equity Basics*, Morgan Stanley (Nov. 11, 2025), <https://www.morganstanley.com/im/en-us/individual-investor/insights/articles/introduction-to-private-equity-basics.html>.

⁶ *Howard v. Shay*, 100 F.3d 1484, 1489 (9th Cir. 1996).

⁷ Joyce Guevarra & Neel Hiteshbhai Bharucha, *Private equity fundraising totals continue to decline in 2025*, S&P Global (Jan. 9, 2026), <https://www.spglobal.com/market-intelligence/en/news-insights/articles/2026/1/private-equity-fundraising-totals-continue-to-decline-in-2025-96694779>.

⁸ Stephanie Dhue & Sharon Epperson, *What private assets in 401(k) plans mean for investors: ‘You’re only asking for trouble,’ one advisor says*, CNBC (Aug. 7, 2026), <https://www.cnbc.com/2025/08/07/trump-private-assets-retirement-plans.html>.

of transparency, short-termism, illiquidity — also make these assets damaging to the broader economy.

The gutting and collapse of Steward Health Care, owned by private equity firm Cerberus Capital Management, is one of the most prominent examples of private equity mismanagement with a wide impact.⁹ This private equity firm and Steward CEO, Ralph de la Torre, pillaged Steward’s health care system, extracting wealth from struggling hospitals while reportedly making \$800 million from its ownership of the company. Cerberus Capital Management and de la Torre shortchanged vital investments in critical staff, systems, and infrastructure in pursuit of short-term profit; the neglect precipitated the closures of Carney Hospital in Dorchester, Massachusetts, leading to the layoff of 753 employees, and the Nashoba Valley Medical Center in Ayer, Massachusetts, leading to the layoff of 490 employees.¹⁰

Steward’s greed had dire consequences on patients as well. According to a 2025 report on Steward’s demise, the resource extraction and neglect turned deadly in Massachusetts when “a woman who gave birth at a Steward hospital died after the embolization coil needed to stop a bleed following childbirth was unavailable.”¹¹ According to reporting, “the hospital’s supply of embolization coils had been repossessed by the company that owned them because Steward had not paid its bill.”¹²

Similarly, reports detail the role of private equity across other aspects of health care in Massachusetts, including the deterioration of nursing homes and the bankruptcy of Genesis Health Care at the hands of private equity firms JER Partners, Formation Capital, and ReGen Healthcare.¹³ The same Steward model of short-term extraction and neglect contributed to two nursing home facilities in Massachusetts reaching settlements for improper care, including failure to prevent avoidable injuries and failure to conduct basic emergency training and drills.¹⁴ These short-term extraction models often lead to understaffing, financial instability, and cost-cutting at the expense of health and safety, resulting in federal legislation seeking to rein in private equity’s role in health care.¹⁵

⁹ Mary Bugbee, *The Pillaging of Steward Health Care: How a private equity firm and hospital landlord contributed to Steward’s bankruptcy*, Private Equity Stakeholder Project (June 26, 2026), https://pestakeholder.org/wp-content/uploads/2024/07/PESP_report_Steward-Bankruptcy_2024.pdf.

¹⁰ Mary Bugbee, *Steward Health Care’s bankruptcy: one year later*, Private Equity Stakeholder Project (May 6, 2025), <https://pestakeholder.org/news/steward-health-cares-bankruptcy-one-year-later/>.

¹¹ Mary Bugbee, *The Pillaging of Steward Health Care: How a private equity firm and hospital landlord contributed to Steward’s bankruptcy*, Private Equity Stakeholder Project (June 26, 2026), https://pestakeholder.org/wp-content/uploads/2024/07/PESP_report_Steward-Bankruptcy_2024.pdf.

¹² *Id.*

¹³ Michael Fenne, *Genesis Healthcare files for bankruptcy*, Private Equity Stakeholder Project (Aug. 11, 2025), <https://pestakeholder.org/news/genesis-healthcare-files-for-bankruptcy/>; Jordan Rau, *How delays and bankruptcy let a nursing home chain avoid paying settlements for injuries and deaths*, CBS News (Dec. 9, 2025), <https://www.cbsnews.com/news/genesis-nursing-home-bankruptcy-settlements/>; Press Release, U.S. Senator Elizabeth Warren, Warren, Blumenthal, Welch, Goodlander Investigate Genesis HealthCare Private Equity Bankruptcy and Its Impact on Nursing Home, Assisted Living Residents Across the Country (Oct. 8, 2025), <https://www.warren.senate.gov/newsroom/press-releases/warren-blumenthal-welch-goodlander-investigate-genesis-healthcare-private-equity-bankruptcy-and-its-impact-on-nursing-home-assisted-living-residents-across-the-country>.

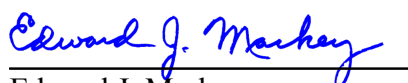
¹⁴ Jordan Rau, *How delays and bankruptcy let a nursing home chain avoid paying settlements for injuries and deaths*, CBS News (Dec. 9, 2025), <https://www.cbsnews.com/news/genesis-nursing-home-bankruptcy-settlements/>.

¹⁵ Press Release, U.S. Senator Edward J. Markey, Senator Markey, Rep. Jayapal Introduce Health Over Wealth Act, Setting Guardrails for Private Equity in Health Care (July 25, 2024), <https://www.markey.senate.gov/news/press->

Fire fighters in Massachusetts have likewise been victims of private equity. The private equity buyout and consolidation of fire truck manufacturers has doubled the price of fire trucks in just a few years, costing municipalities millions more for the same product.¹⁶ Delays in the production of new fire trucks now range from two to four years.¹⁷ Similarly, private equity is gobbling up the software on which fire fighters rely, leading to higher prices for cash-strapped fire departments and localities.¹⁸

The DOL should not promulgate a rule under which workers may have their retirement savings used to underwrite a model of finance that actively exacerbates the affordability crisis in Massachusetts. Likewise, DOL should not allow workers to have their savings used to supercharge a model that makes their financial outlook more precarious. We urge you to withdraw this proposed rule to ensure that the hard-earned retirement savings of Americans are protected with the full weight of ERISA, as Congress intended.

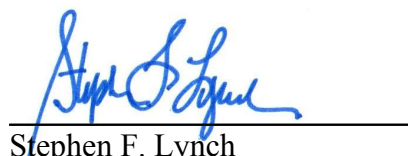
Sincerely,



Edward J. Markey
United States Senator



Elizabeth Warren
United States Senator



Stephen F. Lynch
Member of Congress

[releases/senator-markey-rep-jayapal-introduce-health-over-wealth-act-setting-guardrails-for-private-equity-in-health-care](#); Press Release, U.S. Senator Elizabeth Warren, Senators Warren, Markey Introduce the Corporate Crimes Against Health Care Act of 2024 (June 11, 2024), <https://www.warren.senate.gov/newsroom/press-releases/senators-warren-markey-introduce-the-corporate-crimes-against-health-care-act-of-2024>.

¹⁶ Mike Baker et al., *As Wall Street Chases Profits, Fire Departments Have Paid the Price*, N.Y. Times (Feb. 17, 2025), <https://www.nytimes.com/2025/02/17/us/fire-engines-shortage-private-equity.html>; Press Release, U.S. Senator Elizabeth Warren, Sens. Warren, Banks Open Bipartisan Investigation Into Harms of Private Equity in Fire Truck Manufacturing (Apr. 15, 2025), <https://www.warren.senate.gov/newsroom/press-releases/sens-warren-banks-open-bipartisan-investigation-into-harms-of-private-equity-in-fire-truck-manufacturing>.

¹⁷ *Id.*

¹⁸ Mike Baker, *Private Equity Finds a New Source of Profit: Volunteer Fire Departments*, N.Y. Times (Dec. 14, 2025), <https://www.nytimes.com/2025/12/14/us/fire-department-software-private-equity.html>.