United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

June 18, 2025

Edmund F. Murphy III
President and CEO
Empower Retirement
8515 East Orchard Road
Greenwood Village, CO 80111

Dear Mr. Murphy:

We write regarding our concerns about Empower's recently announced program to push retirement savers with 401ks, IRAs, and other defined-contribution plans into the private investment markets, including private equity funds.[1] Given the sector's weak investor protections, its lack of transparency, expensive management fees, and unsubstantiated claims of high returns, we are seeking information on how your company will ensure the safety of the billions of dollars of retirement savings it safeguards as it implements this program.

Publicly traded companies and funds are regulated by the Securities and Exchange Commission (SEC) and other state and federal financial regulators, and are operated in a transparent fashion with clear rules to protect investors. But investments in the private markets present a host of risks. Despite unverified self-reported claims that returns in the private market tower over other investment vehicles, the reality is that private funds yield returns that are, at best, on par with publicly-traded indices.[2] Fees can also be high: private funds usually charge around a two percent flat fee, with the ability to take an even larger cut — around 20 percent — when gains exceed a certain amount.[3] In comparison, mutual fund fees are typically under one percent.[4]

In recent years, the SEC has issued risk alerts identifying significant compliance failures among private funds, primarily regarding conflicts of interest, fees and expenses, and policies and procedures relating to material non-public information.[5] Among the most alarming problems

[1] Business Wire, "Empower to Offer Private Markets Investments to Retirement Plans," May 14, 2025, https://www.businesswire.com/news/home/20250513423930/en/Empower-to-Offer-Private-Markets-Investments-to-Retirement-Plans.
[2] University of Oxford, Saïd Business School, "An Inconvenient Fact: Private Equity Returns & The Billionaire Factor," June 15, 2020, https://ebicapital.nl/wp-content/uploads/2022/05/An-Inconvenient-Fact.pdf.
[3] Jacobin, "Private Equity is Coming for Your 401(k) Savings," Katya Schwenk, January 9, 2025, https://jacobin.com/2025/01/private-equity-biden-trump-retirement.
[4] *Id.*
[5] United States Securities and Exchange Commission, Office of Compliance Inspections and Examinations, "Observations from Examinations of Investment Advisers Managing Private Funds," June 2020, pp. 1-7, https://www.sec.gov/files/Private%20Fund%20Risk%20Alert_0.pdf; United States Securities and Exchange

identified were practices that led to overbilling, including failure to follow stated valuation procedures; preferential treatment for certain clients at the expense of other clients; failure to establish or follow ethics rules; and repeatedly failing to disclose conflicts of interest.[6] Just last week, Moody's Credit Rating released a report warning that private funds' recent efforts to sell to individual investors "raise[] questions about alignment, transparency and product integrity."[7]

More alarmingly, many of the companies that you are partnering with have been involved in enforcement actions taken by the SEC and other regulatory agencies. Franklin Templeton Investments, through its subsidiaries, have had at least 21 violations due to failing to meet investor protection standards and their duty as a benefits plan administrator that all resulted in fines by the SEC and the Department of Labor.[8] In 2020, Franklin Advisors settled charges with the SEC for breaching its fiduciary duty to client funds.[9] Franklin Resources agreed to pay more than $13 million in 2019 to settle an Employee Retirement Income Security Act (ERISA) class action brought by the firm's current and former employers alleging that the firm "breached their…[ERISA] fiduciary duties by causing Franklin Templeton's 401(k) plan to invest in funds offered and managed by Franklin Templeton when better-performing and lower-cost funds were available."[10]

Four private equity fund advisers affiliated with Apollo Global Management have paid almost $53 million to the SEC for misleading investors about their fees.[11] Goldman Sachs has been repeatedly fined by various regulatory agencies for investor protection violations.[12]

Even the Institutional Limited Partners Association (ILPA), the association for institutional investors invested in private equity, previously wrote to former SEC Chair Gary Gensler asking him to address inadequate regulatory protections associated with private equity investments.[13] Given that pension funds have long been able to pour their retirement funds into the private

---

Commission, Office of Compliance Inspections and Examinations, "Overview of the Most Frequent Advisory Fee and Expense Compliance Issues Identified in Examinations of Investment Advisers," April 2018, pp. 1-4, https://www.sec.gov/ocie/announcement/ocie-risk-alert-advisory-fee-expense-compliance.pdf.

[6] *Id.*

[7] The Wall Street Journal, "Moody's Sounds Alarm on Private Funds for Individuals," Matt Wirz, June 10, 2025, https://www.wsj.com/finance/investing/moodys-sounds-alarm-on-private-funds-for-individuals-8cd268c5?gaa_at=eafs&gaa_n=ASWzDAgDS03-q746s8M_IS0PidCm_-tzMo2ehi7bqHu3jnvFE_ItHDUtWoE5QHV-zXA%3D&gaa_ts=68489c9f&gaa_sig=Cuslas9f9RKl1Oe2UnI3PtShm_Pj_e_eYEkvAmiA1kJy4-xNBZMDREInH_ecZKTEIPoUlUnA_fhseKDH7QnnaQ%3D%3D.

[8] Good Jobs First, "Violation Tracker Current Parent Company Summary," https://violationtracker.goodjobsfirst.org/parent/franklin-resources.

[9] United States Securities and Exchange Commission, "SEC Charges Franklin Advisers with Breach of Fiduciary Duty and Violating Investment Company Limitations," press release, July 2, 2020, https://www.sec.gov/enforcement-litigation/administrative-proceedings/ia-5531-s.

[10] PlanSponsor, "Details of Settlement of Franklin Templeton Self-Dealing Lawsuit Revealed," Rebecca Moore, February 19, 2019, https://www.plansponsor.com/details-settlement-franklin-templeton-self-dealing-lawsuit-revealed/#:~:text=Franklin%20Resources%20will%20pay%20%2413%2C850%2C000,Franklin%20Templeton%20when%20better%2Dperforming.

[11] United States Securities and Exchange Commission, "Apollo Charged With Disclosure and Supervisory Failures," press release, August 23, 2016, https://www.sec.gov/newsroom/press-releases/2016-165.

[12] Good Jobs First, "Violation Tracker Current Parent Company Summary," https://violationtracker.goodjobsfirst.org/parent/goldman-sachs.

[13] Letter from the Institutional Limited Partners Association (ILPA), April 21, 2024, https://ilpa.org/wp-content/uploads/2021/04/2021.4.20-ILPA-Welcome-Letter-to-Chairman-Gensler-Final.pdf.

markets, the ILPA includes many state pension plans for public workers, including teachers, firefighters, and other essential workers.

A study done by an Oxford University scholar showed that private equity funds "have returned about the same as public equity indices since at least 2006," while extracting nearly a quarter trillion dollars in fees from public pension systems.[14] But these investments have consistently underperformed, and in some cases, even resulted in losses that required taxpayers to pick up the cost of underfunded pensions.[15]

Pensions' investments in private equity have been dubbed a "Wall Street time bomb."[16] Even institutional investors admit their uncertainty as to whether private equity's "very thin outperformance is worth the risk of opaque and illiquid investments whose actual value is often impossible to determine — investments that could crater when the money is most needed."[17] Yet proponents of allowing defined-contribution plans access to the private markets often cite the returns seen in pensions as a reason to further expand access to the private markets.

In addition to structural concerns with the private market and breaches of investor protection standards by some of your partners, recently there have been multiple signs of distress in the private markets. Cambridge Associates estimated that payouts to investors from private funds have fallen by about $400 billion in the last three years compared to historical norms.[18] Institutional investors are taking note and pulling out. Just last week, Yale University—historically a major proponent of private market investments— moved to offload up to $6 billion in private equity and venture funds, responding to its endowment's lackluster performance in recent years.[19] Fundraising by private equity hit a seven year low in the first quarter of 2025, $22 billion below the comparable figure for the same period last year.[20]

Now, market volatility, the risk of inflation, and general economic uncertainty stemming from President Trump's on-again, off-again tariffs have further exacerbated the risks of investing in the private markets. Private equity funds are finding it increasingly difficult to sell their assets to payout investors or honor redemptions.

Similar problems plague the private credit market. A 2023 report from the Federal Reserve noted the opaque nature of this market and the difficulty to assess default risk in private credit portfolios.[21] During a crisis or even momentary panic in the broader markets, private credit is

---

[14] University of Oxford, Said Business School, "An Inconvenient Fact: Private Equity Returns & The Billionaire Factory," June 10, 2020, pp. 1-15, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3623820.
[15] *Id.*
[16] The Lever, "A Wall Street Time Bomb," David Sirota, February 2, 2023, https://www.levernews.com/a-wall-street-time-bomb/.
[17] *Id.*
[18] Private Equity Wire, "PE payouts drop $400bn as deals slow in 2024," December 27, 2024, https://www.privateequitywire.co.uk/pe-payouts-drop-400bn-as-deals-slow-in-2024/.
[19] New York Times, "Yale is Rushing to Sell Billions in Private Equity Investments," Maureen Farrell, and Lauren Hirsch, June 10, 2025, https://www.nytimes.com/2025/06/10/business/yale-endowment-private-equity-trump.html.
[20] Buyouts. "North American private equity fundraising hits seven-year low in Q1," Kirk Falconer, April 8, 2025, https://www.buyoutsinsider.com/download-north-american-private-equity-fundraising-hits-seven-year-low-in-q1/.
[21] Federal Reserve System, Board of Governors of the Federal Reserve System, "Financial Stability Report," May 2023, p. 45, www.federalreserve.gov/publications/files/financial-stability-report-20230508.pdf.

more likely to experience liquidity freezes, inability to perform price discovery on their underlying assets, and lines of credit being terminated as traditional banks flock to safety.

Given these concerns, I am deeply worried about your announcement to begin promoting "alternative investments" to plan participants, including private equity funds. While you claim that this move will "help clients build secure and prosperous futures," there are many reasons to believe that the 19 million workers whose retirement funds you safekeep will be more at risk as a result of this partnership.[22]

To understand your decision to offer these products and how further venturing into the private markets will affect your clients, we ask that you provide answers to the following questions no later than **Monday, July 7, 2025**:

(1) Please explain how you decided that access to alternative investments—including private equity funds— would be in the best interest of your clients?
   (a) How, if at all, did you analyze returns for defined-benefit plans that currently have access to the private markets as compared to current returns in defined-contribution plans?
   (b) How, if at all, did you analyze projected returns for defined-contribution plans if they were to participate in the private markets?
(2) Did you obtain legal guidance as to the liability you could face from enabling clients to invest in risky private market investments?
   (a) If yes, under what circumstances did you determine if or when you would be liable?
(3) Please outline how your company will continue to maintain high investor protection standards while allowing plans to invest in the private markets?
   (a) What percentage of a defined-contribution retirement plan would be allowed to invest in a collective investment trust (CIT)?
   (b) How does your company plan on providing disclosures to retirement savers regarding the type of investment included in the CITs, returns on these investments, and the associated management fees?
   (c) How does your company plan on maintaining liquidity in defined-contribution plans?
(4) Please outline the details of your partnerships with Apollo, Franklin Templeton, Goldman Sachs, Neuberger Berman, PIMCO, Partners Group and Sagard. For each, please describe:
   (a) What profits you will earn from your clients' investments in their products;
   (b) Anything else you received in exchange for enabling your clients to invest in their products;
   (c) Whether you made any specific commitments to incentivize your clients to invest in their products;
   (d) Any other details pertinent to your partnerships that may impact your clients' returns.
(5) How will your fee structure change as a result of this partnership?

[22] Empower Retirement, "Empower to Offer Private Markets Investments to Retirement Plans," press release, May 14, 2025, https://www.empower.com/press-center/empower-offer-private-markets-investments-retirement-plans.

(6) How does Empower plan on marketing investment products in the private markets to retirement plan sponsors?
    (a) Will Empower pair sales of private market investment products with increased compensation for its employees?
    (b) Will Empower also educate plan sponsors on the risk of investing in the private markets as it promotes these products?

Sincerely,

Elizabeth Warren
Ranking Member
Committee on Banking,
Housing, and Urban Affairs