

United States Senate  
WASHINGTON, DC 20510

April 13, 2020

Deputy Assistant Secretary Timothy D. Hauser  
Employee Benefits Security Administration  
Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Dear Deputy Assistant Secretary Hauser,

We write today to express concern regarding reports that the Employee Benefits Security Administration is considering granting regulatory favors to Goldman Sachs Group Inc. (“Goldman Sachs” or “Goldman”) despite Goldman’s impending admission of criminal wrongdoing for its subsidiary’s role in the 1MDB global bribery scandal. As part of a settlement with the Department of Justice in that case, due to be finalized in June 2021, the bank has agreed to plead guilty for its role in a massive fraud that resulted in billions of dollars being stolen from the people of Malaysia.<sup>1</sup> Nevertheless, the Employee Benefits Security Administration (“EBSA”) has proposed a five-year exemption allowing the company to continue managing workers’ retirement assets.<sup>2</sup> Absent this exemption, federal law specifically bars entities with recent convictions from these activities. We urge you to reconsider and rescind this proposal, which would appear to give EBSA’s blessing to Goldman’s illegal behavior.

Companies that are convicted of or plead guilty to fraudulent schemes do not deserve special government favors. We have long been concerned about the federal government’s unwillingness to impose on white collar and corporate criminals the penalties necessary to deter future wrongdoing and protect consumers, taxpayers, and families.<sup>3</sup> Under the Trump administration, the federal government essentially abdicated its enforcement role, letting corporate crime run rampant.<sup>4</sup> You can and should end that abdication by ensuring corporate criminals are held fully accountable when they break the law.

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<sup>1</sup> Bloomberg, “DOL Delay on Goldman Sachs Exemption Puts Off Bribery Sentencing,” Ben Penn, March 2, 2021, <https://news.bloomberglaw.com/daily-labor-report/dol-delay-on-goldman-sachs-exemption-puts-off-bribery-sentencing>.

<sup>2</sup> Employee Benefits Security Administration, Federal Register Notice, “Proposed Exemption for Certain Prohibited Transaction Restrictions Involving The Goldman Sachs Group, Inc. (Goldman Sachs or the Applicant) Located in New York, New York,” January 4, 2021, <https://www.federalregister.gov/documents/2021/01/04/2020-29113/proposed-exemption-for-certain-prohibited-transaction-restrictions-involving-the-goldman-sachs-group>.

<sup>3</sup> Senator Elizabeth Warren, “Senator Warren Releases ‘Rigged Justice,’ First Annual Report Detailing How Weak Federal Enforcement Lets Corporate Offenders Off Easy,” press release, January 29, 2016, <https://www.warren.senate.gov/oversight/reports/senator-warren-releases-and-quotrigged-justice-and-quot-first-annual-report-detailing-how-weak-federal-enforcement-lets-corporate-offenders-off-easy>.

<sup>4</sup> Senator Elizabeth Warren, “Senator Warren, Representative Jayapal Release ‘Rigged Justice 2.0’; Report Details How President Trump and His Administration are Letting Corporate Crime Run Rampant,” press release, May 14, 2019, <https://www.warren.senate.gov/oversight/reports/senator-warren-representative-jayapal-release-rigged-justice-20-report-details-how-president-trump-and-his-administration-are-letting-corporate-crime-run-rampant>.

Goldman is currently considered to be a “qualified professional asset manager” (“QPAM”) under the Transaction Class Exemption promulgated by the Department of Labor pursuant to the Employee Retirement Income Security Act (“ERISA”).<sup>5</sup> QPAM status exempts a financial institution from the restrictions that ERISA would otherwise place on transactions involving retirement funds. In short, QPAM status gives Goldman Sachs the right to manage clients’ 401(k) and pension plans.

Under EBSA regulations, however, a financial entity is prevented from retaining QPAM status if it has been convicted of criminal activity involving trust management.<sup>6</sup> In an ongoing proceeding in federal court in Brooklyn, a subsidiary of Goldman Sachs has agreed to plead guilty to its role in the 1MDB scandal. In that scandal, billions of dollars were looted from a Malaysian sovereign wealth fund, a fund created through the sale of bond offerings, which Goldman Sachs arranged in exchange for \$600 million in fees.<sup>7</sup> The judge in that case is expected to finalize the Goldman affiliate’s conviction for its misconduct in June of this year.

Despite these transgressions – which are not the first time Goldman or its affiliates have run afoul of federal law<sup>8</sup> – EBSA has proposed granting Goldman an exemption that would allow it to retain its QPAM status and continue managing clients’ retirement plans. Even though EBSA itself acknowledged “the magnitude, gravity, duration and pervasiveness”<sup>9</sup> of Goldman Sachs’s misconduct when it declined a 10-year exemption request, it apparently saw no problem with a 5-year exemption, which the agency itself proposed. This distinction between a 5-year and 10-year exemption is illogical and absurd because the net effect is the same: a corporate criminal will be allowed to continue its lucrative business managing workers’ and consumers’ retirement funds.

The Department of Labor exists to protect American workers and their retirement savings from greed, corruption, and mismanagement. Exempting corporations from consequences for misconduct and allowing Wall Street’s most powerful bad actors to continue business as usual flies in the face of that obligation to the public.

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<sup>5</sup> 75 FR 38837.

<sup>6</sup> 70 FR 49305 I(g).

<sup>7</sup> New York Times, “Goldman Sachs Is Said to Admit Mistakes in 1MDB Scandal,” Matthew Goldstein, October 22, 2020, <https://www.nytimes.com/2020/10/20/business/goldman-sachs-1mdb-malaysia.html>.

<sup>8</sup> See, e.g., Reuters, “Goldman Sachs to pay \$15 million to settle SEC stock lending case,” Suzanne Barlyn, January 14, 2016, <https://www.reuters.com/article/us-goldman-sachs-sec-lending-idUSKCN0US2NN20160114>; Reuters, “Goldman settles with SEC for \$550 million,” Rachele Younglai and Steve Eder, July 16, 2010,


<https://www.reuters.com/article/uk-sec-goldman/goldman-settles-with-sec-for-550-million-idUSLNE66F01K20100716>; Bloomberg, “Ex-Goldman Director Gupta Indicted in Probe of Rajaratnam Trades,” Patricia Hurtado, David Glovin and Chris Dolmetsch, October 27, 2011, <https://www.bloomberg.com/news/articles/2011-10-26/ex-goldman-sachs-director-gupta-said-to-face-insider-trading-probe-charges>.

<sup>9</sup> Employee Benefits Security Administration, Federal Register Notice, “Proposed Exemption for Certain Prohibited Transaction Restrictions Involving The Goldman Sachs Group, Inc. (Goldman Sachs or the Applicant) Located in New York, New York,” January 4, 2021, <https://www.federalregister.gov/documents/2021/01/04/2020-29113/proposed-exemption-for-certain-prohibited-transaction-restrictions-involving-the-goldman-sachs-group>.

You have the opportunity to send a clear message that the federal government holds corporate criminals accountable for their misdeeds and does not give them special regulatory favors. We ask that you review and rescind this proposal.

Thank you for your attention to this this matter, and we look forward to your response.

Sincerely,

  
Elizabeth Warren  
United States Senator

  
Tina Smith  
United States Senator