DEPARTMENT OF LABOR

Employee Benefits Security Administration

Z–RIN 1210–ZA30

Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Request for Information.

SUMMARY: The Employee Benefits Security Administration (EBSA) is issuing this Request for Information (RFI), in furtherance of the Executive Order on Climate-Related Financial Risk, to solicit public input on EBSA's future work relating to retirement savings and climate-related financial risk. EBSA's efforts will focus on agency actions that can be taken under the Employee Retirement Income Security Act of 1974 (ERISA), the Federal Employees' Retirement System Act of 1986 (FERSA), and any other relevant laws, to protect the life savings and pensions of U.S. workers and families from the threats of climate-related financial risk.

DATES: Submit written comments on or before May 16, 2022.

ADDRESSES: You may submit written comments, identified by Z–RIN 1210–ZA30, to either of the following addresses:

▪ *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

▪ *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: Request for Information on Possible Agency Actions.

Instructions: All submissions received must include the agency name and Regulatory Identifier Number (Z–RIN). Persons submitting comments electronically are encouraged not to submit paper copies. Comments will be available to the public, without charge, online at *www.regulations.gov* and *www.dol.gov/agencies/ebsa* and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Avenue NW, Washington, DC 20210. Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information pertaining to this Request for Information, contact Fred Wong or Colleen Brisport Sequeda, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

A. Climate-Related Financial Risk

On May 20, 2021, President Biden signed Executive Order 14030 on Climate-Related Financial Risks (the Order). The Order outlined a whole-of-government approach to mitigating climate-related financial risk and to safeguarding the financial security of America's workers, families, and businesses from the threat that climate change poses to their life savings. Section 4 of the Order directed the Department of Labor (Department) to ensure the resilience of workers' life savings and pensions through a series of actions.

Those actions included directing the Department to ''consider publishing, by September 2021, for notice and comment a proposed rule to suspend, revise, or rescind 'Financial Factors in Selecting Plan Investments,' 85 FR 72846 (November 13, 2020), and 'Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,' 85 FR 81658 (December 16, 2020).'' Pursuant to the Order, on October 14, 2021, the Department proposed a rule under ERISA to empower plan fiduciaries to safeguard the savings of America's workers by making it clear that fiduciaries may consider climate change and other ESG factors when they make investment decisions and when they exercise shareholder rights, including voting on shareholder resolutions and board nominations.

In addition, on October 15, 2021, the Administration released a comprehensive, government-wide strategy to measure, disclose, manage, and mitigate the systemic risks climate change poses to American families, businesses, and the economy in the form of a report entitled ''A Roadmap to Build a Climate-Resilient Economy.'' [1] The report points out that climate change poses serious and systemic risks to the U.S. economy and financial system. As outlined in this report, the U.S. government is using all of its tools to properly account for and mitigate climate change-related financial and economic risks, as climate impacts are already affecting American jobs, homes, families' hard-earned savings, and businesses. In a report issued on October 21, 2021, the Financial Stability Oversight Council (FSOC) identifies climate change as an emerging threat to U.S. financial stability.[2] That report includes recommendations to U.S. financial regulators laying out actions to identify and address climate-related risks to the financial system and promote the resilience of the financial system to those risks.

This RFI is intended to further the goals of the Order and the Roadmap by assisting the Department in identifying steps that it can take under applicable law to further protect the life savings and pensions of U.S. workers and families from the threats of climate-related financial risk.

B. Employee Retirement Income Security Act of 1974

The Employee Retirement Income Security Act of 1974, as amended (ERISA), covers retirement plans (including traditional defined benefit pension plans and individual account defined contribution plans such as 401(k) plans) and welfare benefit plans (*e.g.,* employment based medical and hospitalization benefits, apprenticeship plans, and other plans described in section 3(1) of Title I) of most private-sector employers. The goal of Title I of ERISA is to protect the interests of participants and their beneficiaries in employee benefit plans. Plan sponsors must design and administer their plans in accordance with ERISA. Among other things, Title I of ERISA requires that sponsors of private employee benefit plans provide participants and beneficiaries with adequate information regarding their plans. Also, those individuals who manage plans (and other fiduciaries) must meet certain standards of conduct, derived from the common law of trusts and made applicable (with certain modifications) to all fiduciaries. The law also contains detailed provisions for reporting to the government and disclosure to participants. Furthermore, there are civil enforcement provisions aimed at assuring that plan funds are protected and that participants who qualify receive their benefits. Title II of ERISA

[1] *See* FACT SHEET: Biden Administration Roadmap to Build an Economy Resilient to Climate Change Impacts | The White House (available at *https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/15/fact-sheet-biden-administration-roadmap-to-build-an-economy-resilient-to-climate-change-impacts/*) (Oct. 14, 2021).

[2] *See https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf.*

contains standards that must be met by employee retirement benefit plans in order to qualify for favorable tax treatment.

The administration of ERISA is shared among the U.S. Department of Labor (Department), the Department of the Treasury and the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC). The Department administers Title I of ERISA, which contains rules for reporting and disclosure, vesting, participation, funding, fiduciary conduct, and civil enforcement. The IRS administers Title II of ERISA, which was codified in the Internal Revenue Code (Code) and is periodically amended to establish requirements that must be met by employee retirement benefit plans to qualify for favorable tax treatment. Some of the Code provisions are parallel to some of the Title I rules. Title III is concerned with jurisdictional matters and with coordination of enforcement and regulatory activities by the Department and IRS. Title IV covers the insurance program for defined benefit pension plans and is administered by the PBGC.

Prior to a 1978 reorganization, there was some overlapping responsibility for administration of the parallel provisions of Title I of ERISA and the tax code by the Department and the IRS, respectively.[3] As a result of this reorganization, the Department has primary responsibility for reporting, disclosure, and fiduciary requirements; and the IRS has primary responsibility for participation, vesting, and funding issues. However, the Department continues to have a role in those areas and works with the IRS on matters that materially affect the rights of participants, regardless of primary responsibility.

C. Federal Employees Retirement System Act of 1986

The Federal Employees' Retirement System Act of 1986 (Pub. L. 99–335) (FERSA) established the Federal Employees' Retirement System (FERS) for Federal employees, postal employees, and Members of Congress. The FERS has three elements: (1) Social Security; (2) the FERS basic retirement annuity and FERS supplement; and (3) the Thrift Savings Plan (TSP), which is a tax-deferred retirement savings plan similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Code. FERSA also established in the executive branch the Federal Retirement Thrift Investment Board (FRTIB) to be responsible for administering the TSP. The Department exercises specified statutory authority under FERSA. For example, EBSA is charged with establishing a program to carry out audits to determine the level of TSP compliance with FERSA requirements relating to fiduciary responsibilities. In addition, FERSA also provides the Department with authority to prescribe regulations regarding fiduciary responsibility and prohibited transaction provisions to carry out 5 U.S.C. 8477.

D. Executive Orders

The President's May 20, 2021, Executive Order 14030 on Climate-Related Financial Risk (the Order) states that the ''intensifying impacts of climate change present physical risks to assets, publicly traded securities, private investments, and companies,'' and that ''the global shift away from carbon-intensive energy sources and industrial processes presents transition risks to many companies, communities, and workers.'' [4] Furthermore, the Order points out that the failure to appropriately and adequately account for and measure these physical and transition risks threatens the competitiveness of U.S. companies and markets, and the life savings and pensions of U.S. workers and families. The Order sets forth the policy of the Administration to advance disclosure of climate-related financial risk (consistent with Executive Order 13707 of September 15, 2015), and to act to mitigate that risk and its drivers.

Section 4(a) of the Order directs the Department to identify agency actions that can be taken under ERISA, FERSA, and any other relevant laws to protect the life savings and pensions of U.S. workers and families from the threats of climate-related financial risk.[5]

The May 20 Executive Order complements the President's January 20, 2021 Executive Order 13990 on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, which acknowledges the Nation's ''abiding commitment to empower our workers and communities; promote and protect our public health and the environment,'' and sets forth the policy of the Administration to listen to the science, improve public health and protect our environment, and bolster resilience to the impacts of climate change.[6]

This RFI is limited to the matters within the scope of section 4(a) of Executive Order 14030, as addressed in the Request for Comments section of this document. This RFI does not solicit comments on recently proposed amendments to the Department's Investment Duties throughout regulation (29 CFR 2550. 404a–1) published on October 14, 2021.[7] That proposal was published after the Department, pursuant to the two Executive Orders,[8] conducted a review of final rules adopted in late 2020 that amended the Investment Duties regulation and created uncertainty as to whether a fiduciary may consider climate change and other environmental, social, or governance (ESG) factors in selecting investments and investment courses of action, and exercising shareholder rights, such as proxy voting.[9] The comment period on that proposal ended December 13, 2021.

II. Request for Comments

General

1. Please provide your views on how EBSA should address and implement the action items set forth for EBSA in Executive Order 14030 on Climate-Related Financial Risk. Specifically, what agency actions can be taken under ERISA, FERSA, and any other relevant laws to protect the lifesavings and pensions of U.S. workers and families from the threats of climate-related financial risk?

2. Executive Order 14030 uses the phrase ''climate-related financial risk'' to encompass a wide variety of risks under two broad categories: Physical risks and transition risks. What are the most significant climate-related financial risks to retirement savings and why?

Data Collection Regarding ERISA-Covered Plans

3. Should EBSA collect data on climate-related financial risk for plans? If so, please specify with as much precision as possible what information EBSA could and should collect, potential sources of such information, as well as how EBSA should collect it.

4. Should EBSA use Form 5500 Annual Return/Report (''Form 5500'') to collect data on climate-related financial risk to pension plans? For example, EBSA could add questions to the Form 5500 to collect data on climate-related financial risks to retirement plans and

[3] 5 U.S.C. App. (2018).

[4] 86 FR 27967 (May 25, 2021).

[5] *Id* at Section 4(a).

[6] 86 FR 7037 (January 25, 2021).

[7] 86 FR 57272 (October 14, 2021).

[8] Executive Order 14030 Section 4(b) and Executive Order 13990 Section 2.

[9] *See* ''Financial Factors in Selecting Plan Investments,'' 85 FR 72846 (November 13, 2020), and ''Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,'' 85 FR 81658 (December 16, 2020).

their service providers. For instance, the Form 5500 could try to collect information about whether and how plan investment policy statements specifically address climate-related financial risk, whether service providers disclose or meet metrics related to such financial risks, and whether and how plans have factored climate-related financial risk into their analysis of individual investments or investment courses of action. Similarly, the Form 5500 could try to collect data on whether, and how, plan fiduciaries voted on proxy proposals involving climate-related financial risk. If you think EBSA should use the Form 5500 to collect this, or similar, information, please specify the data that should be collected, how it should be presented as part of the Form 5500, and how collecting that data or information would help protect the life savings and pensions of U.S. workers and families from the threats of climate-related financial risk.[10]

5. Other than the Form 5500, are there other methods of collecting data on climate-related financial risks to plans that EBSA should consider? For instance, should the Department conduct an information request/survey on plan sponsor or employee awareness of such risks, and if so, should that information request categorize the information based on plan size, *e.g.,* large plans versus small plans, or segmented in an other way?

6. Should administrators of ERISA plans be required to publicly report on the steps they take to manage climate-related financial risk and the results and outcomes of any such steps taken, in a form that is more easily accessible to the public, and timelier, than the Form 5500? If so, what alternative to the Form 5500 could be used for such a report, how should this report be compiled, what should be the contents, and how should it be made available to the public?

ERISA Fiduciary Issues

7. Changes in the financial markets, particularly an increased number of metrics and tools allowing for additional analyses of investments, give ERISA plan fiduciaries more information on which to make decisions on climate-related financial risk factors in evaluating the merits of competing investment choices. Some private sector sources are developing structured ESG research data for evaluating corporate performance. What are the best sources of information for plan fiduciaries to utilize in evaluating such risks with respect to plan investments? Are there difficulties or challenges in obtaining such information or comparing information from different sources? If so, what is the source or sources of those difficulties or challenges, and what are the solutions?

8. Do any guaranteed lifetime income products (*e.g.,* annuities) help individuals efficiently mitigate the effects of at least some climate-related financial risk? If so, what mitigation measures do these products take? Would such products constitute a safe and efficient strategy to transfer climate-related financial risk from the participant/employee to the insurer/guarantor? If so, should EBSA take steps to facilitate the inclusion of these products in ERISA-covered defined contribution plans? If so, what steps should be taken and what products should be considered, and why? Are there climate-focused annuities that plans could offer?

FERSA

9. 5 U.S.C. 8438 defines the specific types of investments that are permissible under the TSP. Given the scope of 5 U.S.C. 8438, what specific actions relating to FRTIB's consideration of ESG factors, including climate-related financial risks, when making investment decisions could and should EBSA take, consistent with EBSA's authority and role under FERSA, and why?[11]

10. The Executive Director and the members of the FRTIB are TSP fiduciaries, and are subject to the fiduciary responsibility and prohibited transaction provisions set forth at 5 U.S.C. 8477.[12] FERSA requires the Department to, among other things, establish a program to carry out audits to determine the level of compliance with these standards and obligations.[13] Those responsibilities have been delegated to EBSA, which implements a risk-based audit program that identifies risks and vulnerabilities, assesses the likelihood of harm from these risks and vulnerabilities, and considers the magnitude of potential damage associated with the various risks and vulnerabilities. FERSA also provides the Department with specific authority to prescribe regulations to carry out 5 U.S.C. 8477.[14] How can EBSA best conduct an audit program, consistent with its authority and role under FERSA, that identifies and assesses the risks and vulnerabilities posed to TSP by climate change? What types of questions should the audit program answer? What data sources should EBSA use to answer them?

11. What policies and practices do managers of sovereign wealth funds or public pensions, in the United States or overseas, follow to help mitigate climate-related financial risks, and are these policies and practices significantly different from the policies and practices of managers of ERISA-covered plans? Which of these policies and practices could the Department or the FRTIB incorporate into their obligations under FERSA?

12. A 2021 GAO Report recommended that FRTIB conduct a rigorous audit of TSP's exposure to climate-related financial risk. What data, if any, should FRTIB collect on TSP's exposure to climate-related financial risk? What types of data, if any, should it collect from asset managers regarding climate-related financial risk?

13. What information, if any, should the FRTIB collect on asset managers' policies, including their consideration of climate change and ESG factors in their stewardship and investment decision-making, and how their actual behavior corresponds to their stated policies? How could this data inform FRTIB's own decision-making and management of TSP?

14. What actions, if any, should the TSP's asset managers, take to incorporate climate-related financial risk, consistent with FERSA's terms and their duty of prudence?

15. The TSP's fund offerings rely on passive index investing. Is there evidence that the indices relied upon by the TSP systematically underestimate or overestimate the risks associated with climate change, or that the market fails to appropriately factor in the risks associated with climate change in pricing publicly-traded assets?

16. What analysis could FRTIB undertake to inform whether other possible indices may better take into account the risks posed by climate change? What analysis could FRTIB perform to weigh this feature against other characteristics of these indices such as their fees? What actions could FRTIB take to consider climate change and other material ESG factors in directing investment selection decisions for the TSP, consistent with FERSA's statutory requirement that indices be ''commonly recognized'' and a ''reasonably complete representation'' of the market?

[10] The Department solicited comments on this topic in 2016, but received very limited information. *See* 81 FR 47534, 47564 (July 21, 2016). This RFI is revisiting the question in light of section 4(a) of Executive Order 14030.

[11] 5 U.S.C. 8438(f).

[12] 5 U.S.C. 8477(a)(3), (b) and (c).

[13] 5 U.S.C. 8477(g)(1).

[14] 5 U.S.C. 8477(f).

17. Other than investments, are there any incentives that could be offered to encourage more effective incorporation of climate-related financial risks into TSP, using the regulatory authority delegated to the Secretary or other administrative authorities under FERSA?

18. Some material suggests that when plan participants know their plan offers ESG options, many will invest in them. *See, e.g., ESG Options in 401(k) Plans Could Lead to Higher Contribution Rates According to Schroders Survey,* (May 13, 2021), available at *https://www.schroders.com/en/us/private-investor/media-centre/retirement-survey-2021-esg/* (when plan participants know their plan offers ESG options, 90% invest in them). In a 2017 survey of TSP participants, twenty-two percent of respondents said they most want the TSP to offer a broader range of investment options. *See Federal Retirement Thrift Investment Board: 2017 Participant Satisfaction Survey,* P. 11, fig. 8 (2017) available at *https://www.frtib.gov/ReadingRoom/SurveysPart/TSP-Survey-Results-2017.pdf.* Are there additional data suggesting, measuring, or otherwise indicating whether federal employees' prefer ESG-focused investments?

Miscellaneous

19. Are there any legal or regulatory impediments that hinder managers of investments held in savings and retirement arrangements not covered by ERISA, such as IRAs, from taking steps to mitigate against climate-related financial risks to those investments? Does the absence of prudence and loyalty obligations with respect to these arrangements leave them vulnerable to climate-related financial risks?

20. Should EBSA sponsor and publish research to improve data and analytics that ERISA plan fiduciaries could use to evaluate climate-related financial risks? If so, what research subjects should EBSA sponsor?

21. Is there a need to educate participants, especially those responsible for making their own investment decisions in participant-directed individual account plans, about climate-related financial risks? If yes, what role, if any, should EBSA play in sponsoring and providing such education? In addition, what efforts, if any, should EBSA make to coordinate with the Securities and Exchange Commission on its efforts to inform and protect investors, especially individual investors such as plan participants, from potentially misleading statements about fund adherence to policies that address climate-related financial risk (often referred to as ''greenwashing'')? [15]

22. Is there a need to educate owners of IRAs about climate-related financial risks? If yes, what role, if any, should EBSA play in assisting the IRS or States (for those having state automatic-IRA arrangements) in sponsoring and providing such education?

Signed at Washington, DC, this 4th day of February, 2022.

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

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BILLING CODE 4510–29–P

[15] *See, e.g.,* SEC Division of Examination Risk Alert *https://www.sec.gov/files/esg-risk-alert.pdf.*

DEPARTMENT OF LABOR

[Docket No: DOL–2021–00##]

Privacy Act of 1974; System of Records

AGENCY: Employment and Training Administration (ETA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A–108, this modified Privacy Act System of Records is titled Foreign Labor Certification System and Employer Application Case Files, DOL/ETA–7. The system contains information provided by members of the public (Employers) who file labor certification applications, labor condition applications for permanent or temporary employment of foreign workers; employers who file requests for prevailing wage determinations that may support an application for temporary and permanent labor certification; agents and foreign labor recruiters whom employers may engage in the recruitment of prospective H–2B workers with regard to labor certification applications filed in the H–2B temporary employment program and all persons or entities hired by or working for such recruiters or agents and any agents or employees of those persons or entities.

DATES:

Comment Dates: We will consider comments that we receive on or before March 16, 2022.

Applicable date: This notice is applicable upon publication, subject to a 30-day review and comment period for the routine uses.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, hand delivery, or courier:* 200 Constitution Avenue NW, N–5311, Washington, DC. In your comment, specify Docket ID DOL–2021–00##.
- *Federal mailbox: https://dol.gov/privacy.*

All comments will be made public by DOL and will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: To submit general questions about the system, contact Brian Pasternak by telephone at 202–513–7350, or by email at *Pasternak.Brian@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL is modifying a system of records, DOL/ETA–7, subject to the Privacy Act of 1974, 5 U.S.C. 552a. The purpose of this system of records is to house information provided by employers who file labor certification application; who request prevailing wage determinations that may support temporary or permanent labor certifications; agents and foreign labor recruiters whom employers may engage in the recruitment of prospective H–2B workers with regard to labor certification applications filed employment program, and all persons or entities hired by or working for such recruiters or agents and any agents, or employees of those persons or entities. The foreign worker is identified on applications for permanent employment certification, they are not identified nor listed on applications for temporary employment certification, prevailing wage determination, nor labor condition applications.

The Department now proposes a change to an existing routine use to include disclosures to the Department of Justice (DOJ), Civil Rights Division, among the list of participating agencies with which the Department may share information from the system in connection with administering and enforcing related immigration laws and regulations. In addition, the Department is eliminating the term ''alien'' from the title and description of the system of records notice. The Civil Rights Division's Immigrant and Employee Rights Section (IER) is responsible for enforcing the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b.