NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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Mr. Ali Khawar
Acting Assistant Secretary
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Submitted electronically via www.regulations.gov

Re: Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk (Z-RIN 1210-ZA30)

Dear Acting Assistant Secretary Khawar:

The National Coordinating Committee for Multiemployer Plans ("NCCMP") appreciates this opportunity to comment on the Employee Benefits Security Administration ("EBSA"), U.S. Department of Labor's ("the Department" or "DOL") Request for Information on *Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk*, published at 87 Fed. Reg. 8289 (February 14, 2022) (the "Proposal"). The Proposal seeks information to assist "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."

The NCCMP is the only national organization devoted exclusively to protecting the interests of multiemployer plans, as well as the unions and the job-creating employers of America that sponsor them, and the more than 20 million active and retired American workers and their families who rely on multiemployer retirement and welfare plans. The NCCMP's purpose is to assure an environment in which multiemployer plans can continue their vital role in providing retirement, health, training, and other benefits to America's working men and women.

The NCCMP is a non-partisan, nonprofit, tax-exempt social welfare organization established under Internal Revenue Code Section 501(c)(4), with members, plans and contributing employers in every major segment of the multiemployer universe. These industries include airline, agriculture, building and construction, bakery and confectionery, entertainment, health care, hospitality, longshore, manufacturing, mining, office employee, retail food, service, steel, and trucking/transportation. Multiemployer plans are jointly trusteed by labor and management trustees.

Overview

We appreciate the focus of the Administration and the Department on confronting the significant risks that climate change represents to many sectors of the financial markets, the global economy, and the livelihoods of multiemployer plan participants. However, this is a very complex issue, for which high quality data does not yet exist. Any reporting requirements need to be phased in slowly to allow time for the required corporate disclosures to be developed and implemented. We also have significant concerns in singling out climate-related financial risk as a reportable factor in trustee investment decision making. As discussed in our comments[1] on the Department's recent Proposed Rule on *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, Trustees consider many factors in making investment and allocation decisions.

As a threshold matter for questions 3 and 4, we do not believe that DOL should require ERISA plans to disclose a single factor that fiduciaries consider in the investment decision process. As we noted in our December 13, 2021 comment letter[2], Congress never intended for ERISA to second guess the investment decisions of the fiduciaries, but instead provided fiduciaries with a broad statutory framework[3] to support a prudent decision making process.

Currently, SEC registrants do not currently provide consistent or comparable climate-related risk data to investors. It would be unreasonable to assume that plans could provide information to the Department that would only be available from an SEC registrant. Plans may eventually have verifiable climate-related risk data given the ongoing rulemaking process at the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") on the Enhancement and Standardization of Climate-Related Disclosures for Investors (RIN 3235-AM87). The SEC's current rulemaking process is an important first step in providing investors with climate-related disclosures from SEC registrants.

We note that the SEC has said "we are concerned that the existing disclosures of climate-related risks do not adequately protect investors"[4] and that "additional disclosure requirements may be necessary or appropriate to elicit climate-related disclosures and to improve consistency, comparability, and reliability of climate related disclosures."[5] Further, the SEC said that "with respect to their existing climate-related disclosures (to the extent registrants are already disclosing such information), registrants often provide information outside of Commission filings and

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[1] The National Coordinating Committee for Multiemployer Plans, December, 13, 2021, accessed at https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AC03/00711.pdf, pages 3-6.

[2] Ibid, 5.

[3] 29 U.S.C. §1104(a)

[4] U.S. Securities and Exchange Commission, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21335 (April 11, 2022), accessed at https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-06342.pdf.

[5] Ibid.

provide different information, in varying degrees of completeness, and in different documents and formats – meaning that the same information may not be available to investors across different companies."[6] The full picture that the SEC paints is one in which the current environment provides investors with incomplete, inaccurate, and otherwise seriously deficient information as it relates to climate-related disclosures.

Should the Department move forward with a climate-related financial risk disclosure, it should do so only after the SEC has issued a Final Rule and registrants have fulfilled at least 5-years of reporting requirements. We also note that even this would result in a gap in information given the number of private entities that are not SEC registrants but whose debt and equity are invested in by ERISA plans.

Questions Raised by the Department

Given our comments above, we do not have anything to add with respect to questions 1, 2, 3 or 4.

With respect to question 5, we would support an information request/survey from the Department to plans if it was on a voluntary response basis. Any plan demographic information requested by the Department is certainly within its discretion.

Question 6 is addressed in our overview comments.

Question 7 is primarily addressed in our overview comments, with the additional note that data, data quality, data analyses, and data comparability remain evolving issues for climate-related measurement and risk disclosures.

Question 8 is not really a multiemployer plan issue. Irrespective of the climate angle suggested, we would note that guaranteed lifetime income products, primarily fixed annuities, are financially expensive to either the individual or the corporation seeking to defease its single employer defined benefit obligations. The corporation, however, receives other benefits in their purchase of annuities to defease defined-benefit obligations. For example, the financial markets punish firms with defined-benefit obligations because of the income statement and balance sheet volatility that a single employer defined-benefit plan incurs. Finally, most individuals in ERISA plans are already exposed to a lifetime annuity in the form of Social Security, so there is little justification for increasing that exposure for reasons related to asset allocation and expense.

Beyond our overview comments, we have no opinion on questions 9-18.

We have no view on question 19, 21 or 22.

Question 20 provides a similar opportunity for the Department as question 5. DOL sponsored and published research would provide an immediate opportunity to establish a current baseline while

[6] Ibid.

follow-up research after the SEC has acted would provide a means to understand how impactful the SEC's actions have been for investors.

Summary and Conclusion

NCCMP appreciates the opportunity to answer the Department's request for information. While we feel that requiring plans to provide a disclosure of climate-related financial risk is premature, we would support efforts by the Department to gain a greater understanding of climate-related issues on a voluntary basis.

Regards,

Michael D. Scott
Executive Director