



May 16, 2022

VIA ELECTRONIC SUBMISSION

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution, Ave, NW
Washington, DC 20210

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

To Whom It May Concern:

The Insured Retirement Institute, Inc. (IRI)¹ appreciates the opportunity to provide these comments to the Department of Labor (the Department) in response to its *Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk* (the RFI)². The RFI was developed, in part, in response to a directive to the Department by the Executive Order issued by President Biden last year on climate-based financial risk.³ These high-level comments follow continuing review and consideration by IRI's membership of the questions set forth in the RFI. However, these comments are more generally related to data collection and fiduciary issues under the Employee Retirement Income Security Act of 1974 (ERISA)⁴, the Federal Employees' Retirement System Act of 1986 (FERSA)⁵, and any other relevant laws and current regulations associated with climate-related financial risk. Our members continue to evaluate the specific questions enumerated in the RFI and would appreciate any opportunity to continue discussion of the questions identified in the RFI with the Department.

¹ The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker-dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., include the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

² 87 FR 8289 (Feb. 14, 2022).

³ 86 FR 27967, Executive Order 14030: Climate-Related Financial Risk (May 20, 2021).

⁴ 29 U.S.C. 1001 ET SEQ.

⁵ 5 U.S.C. Ch. 84.

As stated in the press release accompanying the RFI, our members acknowledge the RFI follows the Department's proposed rule, *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights* (the Proposed Rule),⁶ and "*the RFI deals with a broader set of questions than the Proposed Rule and is a different initiative.*"⁷ While our members recognize this RFI goes beyond the scope of the Proposed Rule, we would like to emphasize some of IRI's key comments on the Proposed Rule with respect to fiduciary obligations as the paramount factors for investment selection as set forth in ERISA.⁸ Therefore, a top priority for IRI is to ensure any investment selection rulemaking maintains neutrality between types of investments. Neutrality between investment factors is attainable under a rule built around ERISA's fundamental principles of prudence and loyalty, under which plan fiduciaries are required to act in the best interest of plan participants.⁹

IRI strongly supports the position that objective risk and return factors are the primary considerations in any fiduciary's evaluation of investment alternatives. Once a fiduciary has objectively satisfied its duties of prudence and loyalty, the fiduciary should be permitted to consider other factors, such as operational factors impacting administration of the plan or fees borne by participants, a firm's reputation, or the tenure of an investment manager and team. Our members acknowledge that in certain situations and for some retirement plans, climate-based financial risk would be an important and appropriate factor for a fiduciary's consideration. However, climate-based financial risk should not take precedence over other financial factors in such analysis, and for fiduciaries, no individual factor should be given more weight than others. Therefore, IRI continues to advocate for a principles-based approach to investment selection, including analysis of all financial risks and benefits, including but not limited to climate-based financial risks.

Further, our members have expressed concern related to the collection and disclosure of climate-related financial risk for retirement plans. Their concern is rooted in potential development of a litigation-focused roadmap for plaintiffs' attorneys and the possibility of dangerous precedents set by courts on the basis or assessment of climate-based financial risk associated with retirement plans. Additionally, our members believe that collection and disclosure of climate-related financial risks would place an undue burden and related hardships on plan sponsors and third-party administrators. In the absence of clear and compelling evidence that this burden would be outweighed by the benefits that such

6 86 FR 57272

7 DOL News Release on RFI on Possible Agency Actions to Protect Life Savings from Threats of Climate-Related Financial Risk (Feb. 11, 2022).

⁸ 29 U.S.C. Sec. 1104 - Fiduciary duties.

⁹ 29 U.S.C. Section 1104(a).

collection and disclosure might provide to plans and participants, IRI and our members would oppose the imposition of such requirements.

The RFI includes a question about EBSA's possible use of Form 5500 Annual Return/Report (Form 5500) to collect data on climate-related financial risk to pension plans. IRI and our members have concerns that doing so would undermine the purpose and function of Form 5500, and therefore, we would oppose the use of Form 5500 in this manner. Form 5500 is intended and designed to collect quantitative information about plans; we do not believe it would be appropriate to expand that Form to also capture information about how plan fiduciaries make their fiduciary decisions or what factors they took into consideration in making these decisions.¹⁰

The RFI also includes a question about whether administrators of ERISA plans should be required to publicly report on the steps taken to manage and/or mitigate climate-related financial risk. IRI would oppose any proposal along these lines. Whereas ERISA requires notices to participants and beneficiaries and disclosures to the DOL, ERISA does not require any plan to provide any information to the public¹¹. Privacy concerns combined with legal and regulatory risks to administrators and recordkeepers would outweigh the benefits of making such information publicly available.

IRI acknowledges that several regulators, both federal and state, have engaged in formal rulemaking and other forms of guidance on climate-related financial risk. IRI strongly urges the Department to coordinate and cooperate with the Securities and Exchange Commission (SEC), the National Association of Insurance Commissioners (NAIC), the Department of Treasury, and any other federal or state regulatory authorities engaged in climate-based financial risk data collection, disclosures and/or rulemaking. The SEC has already issued a comprehensive proposed rule on this important topic, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*¹², and IRI believes the SEC should be the lead federal regulator for our industry with respect to climate-related financial risk. In supporting this recommendation, the tax provisions of IRAs are governed by the Internal Revenue Code, and the underlying investments are subject to the Securities Act of 1933 and the Investment Advisers Act of 1940. Therefore, without regard to any specific factor of investment selection where regulation or education may be required, including climate-related financial risk, the SEC, not the Department would be the appropriate regulatory authority.

¹⁰ 29 U.S. Code § 1023 - Annual reports

¹¹ *Id.*

¹² 17 CFR 210, 229, 232, 239, and 249.

As stated above, IRI and our members will continue to assess and evaluate each of the possible proposals described in the RFI. We look forward to continuing this dialogue on climate-related financial risk with the Department and our other federal and state regulators.

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Thank you again for the opportunity to provide these comments. If you have questions about any of our comments on the RFI, or if we can be of any further assistance in connection with this important regulatory effort, please feel free to contact the undersigned at emicale@irionline.org.

Sincerely,



Emily Micale
Director, Federal Regulatory Affairs
Insured Retirement Institute