NFIB

555 12th St. NW, Ste. 1001
Washington, D.C. 20004

Via www.regulations.gov
and U.S. First Class Mail

March 15, 2022

Hon. Martin J. Walsh, Secretary of Labor
c/o EBSA Office of Regulations and Interpretations
Attn: Request for Information on Possible Agency Actions
Room N-5655, Z-RIN 1210-ZA30
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Mr. Secretary:

RE: Department of Labor Employee Benefits Security Administration Notice titled "Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk," Z-RIN 1210-ZA30, 87 *Fed. Reg.* 8289 (February 14, 2022)

This letter presents comments of the National Federation of Independent Business (NFIB)[1] in response to the Department of Labor Employee Benefits Security Administration (EBSA) notice titled "Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk" and published in the *Federal Register* of February 14, 2022. The notice advises that "EBSA's efforts will focus on agency actions that can be taken under the Employee Retirement Income Security Act of 1974 (ERISA) . . . 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," in the implementation of Executive Order 14030 of May 20, 2021, and the Roadmap to Build a Climate-Resilient Economy (October 14, 2021) ("the Roadmap") issued by the Biden Administration.[2] NFIB asks EBSA to refrain from imposing the preferences of Government officials on the private decisions of American workers and their families as they save and invest for their futures.

In implementing Executive Order 14030 and the Roadmap, the Department of Labor should not restrict the freedom of Americans to choose investments for their retirement

---

[1] NFIB is an incorporated nonprofit association representing small and independent business members across America. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that governments of the United States and the fifty states hear the voice of small business as they formulate public policies. NFIB and many of its members have employee benefit plans subject to ERISA.

[2] 87 *Fed. Reg.* 8289, cols. 1 and 2.

savings, such as in Individual Retirement Arrangements (IRAs) and retirement savings plans under section 401(k) of the Internal Revenue Code (401(k)'s), by forcing Americans to accommodate the climate change investment preferences of Government officials. Fiduciaries who administer retirement plans covered by ERISA have a duty to act "solely in the interest of the participants and beneficiaries,"[3] advancing their pecuniary well-being; those fiduciaries do not have, nor should they have, a duty to act in the interest of, and according to the policy preferences of, the Government of the day.

The Department of Labor should construe sections 1 and 4(a) of Executive Order 14030 as limited to ensuring that investors have more information available to them about investments and not calling for any restrictions on the freedom of investment choice.[4] Such a construction also is consistent with the ERISA requirement to administer covered plans exclusively for the benefit of participants and their beneficiaries, with the care, skill, prudence, and diligence under the circumstances that a prudent person would exercise and according to the plan's governing documents.[5] Even with such a construction, the Department should take care to minimize the cost of collecting and disclosing to investors the new types of information and should not impose reporting or other burdens on administrators and fiduciaries of employee benefit plans.

Employers that establish benefit plans have as their objective helping workers provide for their future. Since enactment of ERISA, the Department of Labor and the Internal Revenue Service have for the most part shared that objective. Sadly, it appears that the Biden Administration no longer puts the financial interests of workers first. The Government should not play politics with the retirement plans, IRAs, and 401(k)'s into which Americans put their hard-earned money for retirement.

Sincerely,

David S. Addington

David S. Addington
Executive Vice President and General Counsel

---

[3] 29 U.S.C. 1104(a).

[4] Section 1 of Executive Order 14030 provides in part: "It is therefore the policy of my Administration to advance consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk (consistent with Executive Order 13707 of September 15, 2015 (Using Behavioral Science Insights to Better Serve the American People)), including both physical and transition risks; act to mitigate that risk and its drivers, while accounting for and addressing disparate impacts on disadvantaged communities and communities of color (consistent with Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government)) and spurring the creation of well-paying jobs; and achieve our target of a net-zero emissions economy by no later than 2050." Section 4 of Executive Order 14030 provides: "In furtherance of the policy set forth in section 1 of this order and consistent with applicable law and subject to the availability of appropriations, the Secretary of Labor shall: (a) identify agency actions that can be taken under the Employee Retirement Income Security Act of 1974 (Public Law 93- 406), the Federal Employees' Retirement System Act of 1986 (Public Law 99-335), and any other relevant laws to protect the life savings and pensions of United States workers and families from the threats of climate-related financial risk . . . ."

[5] 29 U.S.C. 1104(a).