



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

RE: Request for Information on Possible Agency Actions, Z-RIN 1210-ZA30

The Natural Resources Defense Council (NRDC) thanks the Employee Benefits Security Administration (EBSA) for the opportunity to comment on its Request for Information “on EBSA’s future work relating to retirement savings and climate-related financial risk.”<sup>1</sup> As the Financial Stability Oversight Council stated last year, climate change presents significant risks to the financial system. “In the United States and across the globe, climate-related impacts in the form of warming temperatures, rising sea levels, droughts, wildfires, intensifying storms, and other climate-related events are already imposing significant costs upon the public and the economy.”<sup>2</sup> Further, national governments – including the United States – have committed to mitigate climate change through reductions of greenhouse gas emissions, and “meeting these targets will require significant changes across the economy. Sectors of the economy that are GHG-intensive, which include the energy, transportation, manufacturing, and agricultural sectors, likely need to undergo significant structural changes.”<sup>3</sup> These risks – the physical risks and transition risks identified in the request for information<sup>4</sup> – pose risks to financial markets, companies, and investors, and retirement savings investments are not immune to them. We thus appreciate EBSA’s efforts to study the current and anticipated effects of climate-related financial risk.

NRDC is a nonprofit environmental organization with more than 3 million members and online activists. Since 1970, our lawyers, scientists, and other environmental specialists have worked to protect the world’s natural resources,

---

<sup>1</sup> 87 Fed. Reg. 8,289 (Feb. 14, 2022).

<sup>2</sup> Financial Stability Oversight Council, *FSOC Report on Climate-Related Financial Risk* at 3 (2021) available at <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> 87 Fed. Reg. at 8,290.

public health, and environment. Through its finance and legal experts, NRDC remains engaged in financial regulation as it relates to environmental issues.

*Implementing the action items set forth in Executive Order 14030*

EBSA took a significant step to implement Executive Order 14030, Climate-Related Financial Risk,<sup>5</sup> when it proposed to repeal<sup>6</sup> the previous administration's two final rules, Financial Factors in Selecting Plan Investments,<sup>7</sup> and Fiduciary Duties Regarding Proxy Voting and Shareholder Rights.<sup>8</sup> EBSA should finalize that proposed repeal. As NRDC explained in its comments, the previous administration's rules misunderstood the nature of investment strategies incorporating environmental, social, and governance (ESG) factors and drew a false distinction between investing based on ESG factors and investing based on financial factors. ESG factors are financially material and plan fiduciaries should not be discouraged from considering them when selecting plan investments, exercising voting rights, or identifying prudent qualified default investment alternatives.

*Climate-related financial risks are relevant to retirement savings investments*

The Intergovernmental Panel on Climate Change has reported, with high confidence, that anthropogenic climate change “has already caused multiple observed changes in the climate system.”<sup>9</sup> These changes include more frequent land and ocean heatwaves and an increase in land and ocean temperatures.<sup>10</sup> The Panel has also found “substantial evidence that human-induced global warming has led to an increase in the frequency, intensity and/or amount of heavy precipitation

---

<sup>5</sup> Executive Order 14030, *Climate-Related Financial Risk*, 86 Fed. Reg. 27,967 (May 20, 2021). The Executive Order instructed the Department of Labor to “identify agency actions” under its statutory authority “to protect the life savings and pensions of United States workers and families from the threats of climate-related financial risk;” to assess how federal retirement plans take climate-related risks into account; and to submit a report by November 2021 to the National Economic Council and the National Climate Advisor on steps taken to implement the Executive Order. *Id.* at § 4, 86 Fed. Reg. at 27,968-27,969.

<sup>6</sup> *See Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, 86 Fed. Reg. 57,272 (Oct. 14, 2021). The Executive Order also instructed the Department of Labor to “consider publishing” such a proposal. 86 Fed. Reg. at 27,968.

<sup>7</sup> 85 Fed. Reg. 72,846 (Nov. 13, 2020).

<sup>8</sup> 85 Fed. Reg. 81,658 (Dec. 16, 2020).

<sup>9</sup> IPCC, 2018, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels*, Ch. 3, Executive Summary available at: <https://www.ipcc.ch/sr15/chapter/chapter-3/>.

<sup>10</sup> *Id.*

events at the global scale.”<sup>11</sup> Even under an optimistic scenario in which climate change is limited to 1.5 degrees Celsius, the IPCC expects that the risks from extreme weather will grow in the coming decades.<sup>12</sup>

Financial losses from extreme weather have already grown in the previous decades. “During the first decade of the 21st century, there were only two years when weather disasters cost more than \$200 billion.”<sup>13</sup> Between 2011 and 2020, “those \$200 billion-dollar-a-year losses seem to have become more normal, with seven out of ten years grossing over \$200 billion in global losses from weather events.”<sup>14</sup> 2017 was the costliest year on record, with an estimated “\$470 billion in losses, including those from major Hurricanes Harvey, Maria and Irma.”<sup>15</sup> Insurers expect financial losses from extreme weather to continue rising.<sup>16</sup> The full scale of physical risks from climate change would also include corollary risks like disruptions in supply chains, interrupted operations, and poorer employee health.<sup>17</sup>

The transition to a lower-carbon economy also creates risks. “[T]ransition risks highlight the risks associated with society’s response to climate change. They typically involve policy, regulatory, technological, and market risks.”<sup>18</sup> Policy or regulatory risks run the gamut from carbon pricing to stringent emissions limits. Market risks include changes in consumer sentiment and the potential for existing technologies to be surpassed by more adaptable products. “[E]merging technologies such as renewable energy, battery storage, energy efficiency, and carbon capture and storage will affect the competitiveness of certain organizations . . . and ultimately the demand for their products and services from end users.”<sup>19</sup> There is a systemic aspect to transition risk; central bankers have warned about asset bubbles

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* ch. 3.4.12 tbl. 3.5.

<sup>13</sup> Katharina Bucholz, *Climate change: This is the impact of extreme weather events on the economy* (Sep. 10, 2021) <https://www.weforum.org/agenda/2021/09/extreme-weather-events-show-that-climate-change-comes-at-a-cost>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*; see also Swiss Re Institute, *The Economics of Climate Change* at 1 (Apr. 2021) available at <https://www.swissre.com/dam/jcr:e73ee7c3-7f83-4c17-a2b8-8ef23a8d3312/swiss-re-institute-expertise-publication-economics-of-climate-change.pdf>.

<sup>17</sup> See Madison Condon, *Market Myopia's Climate Bubble*, 2022 Utah L. Rev. 63, 78 (2022).

<sup>18</sup> Barnali Choudhury, *Climate Change As Systemic Risk*, 18 Berkeley Bus. L.J. 52, 62 (2021).

<sup>19</sup> *Id.* (quoting Task Force of Climate-Related Financial Disclosures, Recommendations of the Task Force on Climate-Related Financial Disclosure, Final Report 6 (2017)).

popping during a rapid transition away from fossil fuels, with the potential for contagion financial failures afterward.<sup>20</sup>

Retirement savings are not inherently more susceptible to either physical risks or transition risks, but retirement savings are particularly vulnerable to both kinds of risks because of their long time horizon. Certain sectors are more vulnerable to climate risks than others; fossil fuels are the obvious example, but experts have identified other “climate-policy relevant” sectors including housing, utilities, mining, and transport.<sup>21</sup> Investment funds typically hold equities in one or more of these sectors and so investment managers should be examining how climate risks may affect those funds.<sup>22</sup> Retirement savings plans hold a mix of investments in various sectors and hold some of those investments over a long time horizon, and so climate risk is a relevant consideration for pension investors.<sup>23</sup>

### *Recommended Actions from EBSA*

In addition to removing the previous administration’s regulations that serve as a barrier to managing climate risk, we encourage EBSA to take immediate steps to inform investors about how their retirement savings plans are, or are not, managing climate risk. The request for information identifies one possibility: using Form 5500 to collect information about how plans factor climate-related risk into their individual investments or investments courses of action and their proxy voting decisions. We recommend that EBSA move forward to develop climate-related risk disclosure additions to Form 5500. Collecting this kind of information would give retirement plan beneficiaries consistent and comparable information about how their retirement plans manage climate-related financial risk and inform their own retirement planning. Standardized disclosure would also be beneficial for EBSA itself, other regulatory agencies, Congress, and members of the public.

We also recommend that EBSA use its oversight authority for the Thrift Savings Plan to improve the Plan’s management of climate-related financial risks. In 2021, the Government Accountability Office found that the Thrift Savings Plan

---

<sup>20</sup> Condon, *supra* n.17 at 111-12.

<sup>21</sup> *Id.* at 111 & n.267 (citing Stefano Battiston, Antoine Mandel, Irene Monasterolo, Franziska Schütze & Gabriele Visentin, *A Climate Stress-test of the Financial System*, 7 *Nature Climate Change* 283, 283-84 (2017)).

<sup>22</sup> *Id.*

<sup>23</sup> See Fiona Reynolds & Sharon Hendricks, *One of America’s biggest pension funds is backing a bolder climate policy. Other investors should get on board.* Fortune.com (Mar. 4, 2021), <https://fortune.com/2021/03/04/climate-change-green-investing-calstrs-pension-fund-biden-policy/>.

did not incorporate climate-related financial risks into its investment approach.<sup>24</sup> As the GAO noted, many pension plans conduct scenario analysis to determine how their investment portfolios will fare under various climate change scenarios. EBSA should consider the feasibility of scenario analysis for the TSP; it is a powerful tool that can inform EBSA's work and the TSP's consideration of whether any changes to its investment approach are appropriate to address climate-related financial risks.

Finally, we encourage EBSA to consider issuing further guidance about how plan fiduciaries may incorporate climate-related financial risk into their investment and voting decisions. As we understand EBSA's longstanding guidance, fiduciaries may consider climate-related financial risks on equal terms with any other financial risk when making investment decisions or exercising plan rights. We anticipate that over the next few years various financial regulatory initiatives will provide investors with a great deal of new information about climate-related financial risks.<sup>25</sup> The availability of this information will likely raise questions for fiduciaries about what sort of information it is permissible to rely upon when selecting plan investments and exercising voting rights, and which information it is permissible to rely upon as a "tiebreaker" between financially prudent options. With climate-related financial risks becoming increasingly salient (and feasible to identify through consistent, comparable data) the distinction between return-based factors and "tiebreaker" factors will be blurred without prompt guidance from EBSA.

Thank you for the opportunity to comment. If we can be of further assistance to EBSA on any aspect of these comments, please contact Tom Zimpleman (tzimpleman@nrdc.org) or Sarah Dougherty (sdougherty@nrdc.org).

Sincerely,

Tom Zimpleman  
Sarah Dougherty  
Natural Resources Defense Council  
1152 15th St. NW, Suite 300  
Washington, DC 20005

---

<sup>24</sup> GAO-21-327, Retirement Savings: Federal Workers' Portfolios Should Be Evaluated For Possible Financial Risks Related to Climate Change (May 25, 2021).

<sup>25</sup> *See, e.g.*, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334 (Apr. 11, 2022).