MEMO# 34033

February 14, 2022

DOL Requests Public Input on Potential Agency Actions to Address Climate-Related Financial Risks to Retirement Savings

[34033]

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TO: ICI Members
Investment Company Directors
ICI Global Members
ESG Advisory Group
ESG Fund Disclosure Working Group
ESG Public Company Disclosure Working Group
ESG Task Force
Global Retirement Savings Committee
Pension Committee
Pension Operations Advisory Committee
Proxy Working Group
SEC Rules Committee SUBJECTS: ESG
Pension RE: DOL Requests Public Input on Potential Agency Actions to Address Climate-Related Financial Risks to Retirement Savings

On February 11, the Department of Labor (DOL) released a Request for Information (RFI) seeking public comment on what actions, if any, DOL should take under federal law to protect retirement savings and pensions from risks associated with changes in climate.[1] The RFI is broadly drafted and addresses ERISA plans, non-ERISA plans for federal employees (Federal Employees' Retirement System (FERS), including the Thrift Savings Plan (TSP)), as well as IRAs (including state sponsored automatic-IRA arrangements). The RFI is in response to an Executive Order issued in May 2021.[2]

Comments to the RFI are due on May 16, 2022.

Overview of RFI

The RFI includes 22 questions, categorized into five topics.

General

DOL asks two broad questions regarding what the most significant climate-related financial risks to retirement savings are and what actions DOL could take to ameliorate them.

Data Collection Regarding ERISA-Covered Plans

DOL asks four questions regarding whether DOL should collect data on climate-related financial risk for plans,[3] and whether it should use the Form 5500 or other methods to collect such data, and whether plans should be required to publicly report on the steps they take to manage climate-related financial risk.

ERISA Fiduciary Issues

DOL asks two questions regarding fiduciaries' information gathering to assess such risks, and whether any guaranteed lifetime income products (e.g., annuities) help individuals efficiently mitigate the effects of at least some climate-related financial risk.

FERSA

DOL asks ten questions that relate to FERS and TSP, including one question regarding whether indices relied upon in the TSP's passive index investing "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."

Miscellaneous

DOL asks four broad questions about retirement arrangements outside of ERISA (e.g., IRAs); whether DOL should sponsor and publish research to improve data and analytics that ERISA plan fiduciaries could use to evaluate climate-related financial risks; and whether there is a need to educate participants and IRA owner about climate-related financial risks.

We anticipate that ICI will submit a comment letter. Please let us know if you have thoughts on the questions or ICI's response, or if you would like to join a working group to develop ICI's response.

Shannon Salinas
Associate General Counsel - Retirement Policy

endnotes

[1] The RFI was published at 87 Fed. Reg. 8289 (February 14, 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-02-14/pdf/2022-02798.pdf, and DOL's press release on the RFI is available at https://www.dol.gov/newsroom/releases/ebsa/ebsa20220211. Although DOL issued a proposal addressing ESG investing in ERISA plans, DOL specifies that this RFI does not solicit comments relating to that proposal. For a summary of the proposal, see ICI Memorandum No. 33832, dated October 18, 2021, available at

https://www.ici.org/memo33832.

[2] Executive Order on Climate-Related Financial Risk (May 20,2021) available at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/20/executive-order-on-climate-related-financial-risk/. Section 4a of the EO directs DOL to "identify agency actions that can be taken under [ERISA], [FERS], 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." Section 4c of the EO directs DOL to "assess — consistent with the Secretary of Labor's oversight responsibilities under the Federal Employees' Retirement System Act of 1986 and in consultation with the Director of the National Economic Council and the National Climate Advisor — how the Federal Retirement Thrift Investment Board has taken environmental, social, and governance factors, including climate-related financial risk, into account."

The RFI is also mentioned at the bottom of page 25 of the White House's "Roadmap to Build a Climate-Resilient Economy" (October 14, 2021), available at https://www.whitehouse.gov/wp-content/uploads/2021/10/Climate-Finance-Report.pdf. ("DOL is further protecting retirement savings from climate risk by evaluating the legal parameters surrounding the FRTIB's investment decision-making process and conducting its own legal analysis of the existing authority to address climate-related financial risks to Federal employee retirement plans under the Federal Employees' Retirement Savings Act (FERSA). The Department will supplement its internal analysis with an RFI soliciting public input on additional actions that could be taken under ERISA, FERSA, or other laws to further protect workers' life savings from climate-related risks. DOL will then submit a report to the President in November with an update on its efforts to address climate-related financial risk to retirement and pension plans.")

[3] As an example, DOL specifies that the Form 5500 could be used 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 collect data on whether, and how, plan fiduciaries voted on proxy proposals involving climate-related financial risk.
