

The feds want your opinion on climate change and 401(k)s

The Employee Benefits Security Administration has had an on-again, off-again approach to whether employers can allow 401(k) investment choices to promote social, environmental, or other public policy causes—called economically targeted investments or sometimes environmental, social, or governance investing. Most of its advice has been issued in sub-regulatory documents called Interpretative Bulletins. Interpretative Bulletins, however, can be, and have been, revoked by later administrations.

To bring stability to 401(k) investment options, [proposed regulations](#) issued last October would permanently remove these IBs and would also allow employers to consider environmental factors as part of their fiduciary duty when picking funds. These regulations, however, have not yet been finalized.

20 questions

The EBSA now wants to know whether there are other [actions](#) it can take to promote ESG investing and it's soliciting answers to the following questions. We've done some judicious editing to make the questions easier to read.

The EBSA wants your answers by May 16, 2022. You can submit your answers through the [Federal eRulemaking Portal](#). You need to include the agency's name: Employee Benefits Security Administration and the Z-RIN Number: Z-RIN 1210-ZA30.

1. What actions can EBSA take to protect the life savings and pensions of employees and their families from the threats of climate-related financial risk?
2. What are the most significant climate-related financial risks to retirement savings and why?
3. Should EBSA collect data on climate-related financial risk for plans?
4. If EBSA should collect data on climate-related financial risk for plans, what information could and should it collect, the potential sources of such information, as well as how the information should be collected.
5. Should EBSA use Form 5500 to collect data on climate-related financial risk to pension plans? EBSA, for example, could add questions to the form to collect data on climate-related financial risks to retirement plans and their service providers.
6. Other than Form 5500, are there other methods of collecting data on climate-related financial risks to plans EBSA should consider?
7. Should EBSA conduct an information request/survey to assess plan sponsors' or employees' awareness of these risks?
8. Should plan administrators be required to publicly report the steps they take to manage climate-related financial risk in a form more easily understandable and timelier than Form 5500?
9. What alternative to Form 5500 could be used for a report, how should this report be compiled, what information should the alternative contain and how could the public access it?
10. What are the best sources of information for plan fiduciaries to utilize to evaluate risks with respect to plan investments?
11. Are there difficulties or challenges in obtaining information to evaluate risks or comparing information

from different sources? If so, please identify the difficulties, challenges and solutions.

12. Do any guaranteed lifetime income products (e.g., annuities) help individuals efficiently mitigate the effects of at least some climate-related financial risk?
13. Would guaranteed lifetime income products constitute a safe and efficient strategy to transfer climate-related financial risk from employees to the insurer/guarantor?
14. Should EBSA take steps to include guaranteed lifetime income products in ERISA-covered defined contribution plans?
15. What steps should be taken and what guaranteed lifetime income products should be considered and why?
16. Are there climate-focused annuities that plans could offer?
17. Should EBSA sponsor and publish research to improve the data and analytics fiduciaries could use to evaluate climate-related financial risks?
18. What research subjects should EBSA sponsor?
19. Is there a need to educate employees who hold 401(k) accounts about climate-related financial risks? What role should EBSA play in sponsoring and providing this education?
20. Should EBSA coordinate with the Securities and Exchange Commission on its efforts to inform and protect investors, especially individual investors such as employees, from potentially misleading statements about a fund's adherence to policies addressing climate-related financial risk (often referred to as "greenwashing")?