



April 24, 2023

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J)  
Washington, DC 20580

**Re: Request for Public Comment - Guides for the Use of Environmental Marketing Claims**  
Green Guides Review (16 CFR part 260) (Matter No. P954501)(RIN 3084-AB15)

Americans for Financial Reform Education Fund (AFREF) thanks the Federal Trade Commission (“FTC”) for recognizing the value of review and updates on its Guides for the Use of Environmental Marketing Claims (“Green Guides” or “Guides”), and for its request for public comment on the matter.

The purpose of the Guides is to prevent unfair or deceptive marketing, acts, or practices.<sup>1</sup> AFREF is a nonprofit organization which works to lay the foundation for a strong, stable, sustainable, and ethical financial system – one that serves the economy and the nation as a whole. Our focus in responding to this request for comment is to protect consumers from greenwashing with respect to financial services and investments. The explosive rise of the Environmental, Social, and Governance (ESG) investment space has raised new questions about what constitutes fair and faithful marketing and disclosure around financial products and services. While other regulators like the Securities and Exchange Commission have recently proposed enhancing disclosures for public companies and registered funds, and enacting new fund naming rules, the FTC also has a critical role to play in requiring companies to transparently provide consumers with accurate information in their claims and marketing of these products.

Specifically, the FTC should address the use of certain terms—as identified for comment for the green guides review process—by asset management firms, investing platforms, retirement account provider sites, and investing apps. These terms used for mutual funds or exchange-traded funds require closer inspection for their use in making ESG claims and in marketing materials to consumers related to net-zero emissions and/or the clean energy transition. More guidance is

---

<sup>1</sup> “Part 260-Guides for the Use of Environmental Marketing Claims.” *Federal Trade Commission*. 2012.  
<https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>

needed since these types of products are likely to expand given that global ESG assets under management are expected to grow more than 20% between 2022 and 2025 to about \$50 trillion.<sup>2</sup>

### **Sustainable and ESG**

The term “sustainable”, alongside “green” and “eco-friendly” is often viewed as an overused and empty term related to greenwashing products to consumers<sup>3</sup>, which is why this request for comment seeks input on the addition of the term “sustainable” to the Green Guides, since it is not addressed in the 2012 Guides.<sup>4</sup> The terms “sustainable” and “ESG” should be added as examples under § 260.4 General Environmental Benefit Claims, where “It is deceptive to misrepresent, directly or by implication, that a product, package, or service offers a general environmental benefit.” Given the vague use of the terms to describe a broad range of products, and the resultant confusion on behalf of consumers, the FTC should discourage use of “sustainable” or “ESG” in naming and marketing products unless accompanied by a detailed qualification or definition of the term provided to consumers alongside the claim.

The goal is not to discourage genuine investment in ESG or sustainability-minded funds, but to ensure that marketers are not purporting to deliver nonexistent benefits of their funds and misleading investors in their decision making. Examples of funds using these terms but featuring very different characteristics and strategies include: Fidelity U.S. Sustainability Index Fund (FITLX)<sup>5</sup> a passive index fund which tracks the MSCI USA ESG Index, the Vanguard ESG U.S. Stock ETF<sup>6</sup> a passive index fund which tracks the FTSE US All Cap Choice Index, and the BlackRock Sustainable Advantage CoreAlpha Bond Fund (BIAAX)<sup>7</sup> which is an actively managed fund.

### **Carbon Offsets**

Please see the comment led by Sierra Club, and endorsed by AFREF and additional partners, for detailed recommendations around carbon offsets in this update to the Guides.<sup>8</sup>

---

<sup>2</sup> Will Paige, “Predictions for ESG in 2023: Stronger regulations and intensifying competition will fail to end sustainable investing boom,” *Insider Intelligence*. December 21, 2022.

<https://www.insiderintelligence.com/content/2023-predictions-esg-sustainable-finance>; “ESG assets may hit \$53 trillion by 2025, a third of global AUM,” *Bloomberg Intelligence*. February 23, 2021.

<https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/>

<sup>3</sup> Haaland, Marie, “Americans believe these sustainability terms are overused by many of today's companies,” *SWNS Digital*, September 6, 2021.

<https://swnsdigital.com/us/2021/06/americans-believe-these-sustainability-terms-are-overused-by-many-of-todays-companies/>

<sup>4</sup> “Part 260-Guides for the Use of Environmental Marketing Claims.” *Federal Trade Commission*. 2012.

<https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>

<sup>5</sup> “Fidelity® U.S. Sustainability Index Fund,” *Fidelity*. Accessed April 16, 2023:

<https://fundresearch.fidelity.com/mutual-funds/summary/31635V398>

<sup>6</sup> “ESGV,” *Vanguard*. Accessed April 21, 2023: <https://investor.vanguard.com/investment-products/etfs/profile/esgv>

<sup>7</sup> “BlackRock Sustainable Advantage CoreAlpha Bond Fund,” *BlackRock*. Accessed April 16, 2023:

<https://www.blackrock.com/us/individual/products/284591/blackrock-sustainable-advantage-corealpha-bond-fund>

<sup>8</sup> “Comment to FTC on Green Guides Offsets Provisions,” *Sierra Club, Action for the Climate Emergency, Amazon Watch, Americans for Financial Reform Education Fund, Greenpeace USA, Institute for Agriculture and Trade Policy, Public Citizen, and Union of Concerned Scientists*. April 24, 2023.

## Recommended Additions to the Green Guides

In addition to the words, terms, and phrases already covered by the Guides, we recommend the FTC consider providing guidance on the terms “carbon neutral,” “net-zero,” “low-carbon,” “decarbonization,” and “Paris-aligned” as it relates to companies’ and financial institutions’ use of “net-zero” or other committed transition plans in sustainability reports or other public marketing documents. Relatedly, fossil fuel companies, utilities, and financial service providers may tout “hydrogen” as a “clean” energy or fuel source and product to consumers in their transition plans or other marketing materials. The FTC should add to the Guides that the term “hydrogen” cannot be used alone in materials and that its type, based on how it is produced, should be specified using the now commonly accepted terms “gray hydrogen,” “blue hydrogen,” “green hydrogen,” etc. given that these technologies have become more subsidized by the Federal Government and more heavily marketed to consumers.<sup>10</sup>

We recommend the FTC consult with the Securities and Exchange Commission (SEC) in development of the updated Guides, as the SEC finalizes its proposed rule to prevent misleading or deceptive fund names<sup>11</sup> and its proposed ESG rules<sup>12</sup>. The FTC should also consult with the Commodities Future Trading Commission (CFTC) regarding the agency’s next steps following its summer 2022 request for information on climate risk<sup>13</sup> to which AFREF submitted comments related to carbon offsets, futures, and derivatives regulation<sup>14</sup>. We thank the FTC for its request for public comment and look forward to the next iteration of the Green Guides. For more information, contact [jessica@ourfinancialsecurity.org](mailto:jessica@ourfinancialsecurity.org).

Sincerely,

*Americans for Financial Reform Education Fund*

---

<https://www.sierraclub.org/sites/www.sierraclub.org/files/2023-04/Sierra%20Club%20et%20al%20Comment%20to%20FTC%20on%20Green%20Guides%20offsets%20provisions.pdf>

<sup>9</sup> Ibid. Discussion on the use of these terms whenever the claims are based on the use of carbon offsets is included in the above letter to the FTC (footnote 8).

<sup>10</sup> “Hydrogen explained,” *U.S. Energy Information Administration*. January 21, 2022.

<https://www.eia.gov/energyexplained/hydrogen/production-of-hydrogen.php>; Alan Krupnick and Aaron Bergman, “Incentives for Clean Hydrogen Production in the Inflation Reduction Act,” *Resources for the Future*. November 9, 2022.

<https://www.rff.org/publications/reports/incentives-for-clean-hydrogen-production-in-the-inflation-reduction-act/>

<sup>11</sup> “Press Release: SEC Proposes Rule Changes to Prevent Misleading or Deceptive Fund Names,” *U.S. Securities and Exchange Commission*. May 25, 2022. <https://www.sec.gov/news/press-release/2022-91>

<sup>12</sup> “Press Release: SEC Proposes to Enhance Disclosures by Certain Investment Advisers and Investment Companies About ESG Investment Practices,” *U.S. Securities and Exchange Commission*. May 25, 2022.

<https://www.sec.gov/news/press-release/2022-92>

<sup>13</sup> “CFTC Releases Request for Information on Climate-Related Financial Risk,” *Commodity Futures Trading Commission*. June 2, 2022. <https://www.cftc.gov/PressRoom/PressReleases/8541-22>

<sup>14</sup> “Letters to Regulators: CFTC Must Address Climate Risk, Carbon Offsets,” *Americans for Financial Reform Education Fund*. November 7, 2022.

<https://ourfinancialsecurity.org/2022/11/letters-to-regulators-cftc-must-address-climate-risk-carbon-offsets/>