



May 16, 2022

VIA ELECTRONIC FILING

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

**RE: *Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk*; Attention:  
Z-RIN 1210-ZA30**

Dear Assistant Secretary Khawar,

Americans for Financial Reform Education Fund and the undersigned organizations write in response to the “Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk” (the “RFI”) from the Employee Benefit Security Administration (EBSA) of the Department of Labor (the “Department” or “DOL”).

We applaud the efforts taken by DOL to date to address climate-related financial risk to retirement savings pursuant to the Executive Order on Climate-Related Financial Risk, including through the 2021 proposed rule to embed Environmental, Social, and Governance (ESG) factors into the fiduciary duties of private retirement plan fiduciaries under the Employee Retirement Income Security Act of 1974 (ERISA). ESG-related systemic risks like climate change and racial and economic inequality represent a significant threat to the economy and especially to those companies and sectors that fail to adapt. The DOL should update its regulations and guidance accordingly and take the following actions. Specifically, we strongly encourage DOL to:

- Strengthen and finalize its ESG fiduciary duty rule on an expeditious timeline;
- Set minimum standards for consideration of climate change, racial and economic inequality, and other systemic risks by ERISA fiduciaries as well as fiduciaries of retirement plans under the Federal Employees’ Retirement System Act of 1986 (FERSA);
- Use Form 5500 Annual Return/Report (“Form 5500”) or a new systemic risk reporting form to collect data on climate-related financial risk to large pension plans;
- Require ERISA and FERSA money managers to explicitly integrate ESG considerations into their proxy voting policies and procedures;
- Include climate change and racial and economic inequality in its risk-based audit program of the Thrift Savings Plan (TSP) to identify risks and vulnerabilities and assess the likelihood and magnitude of harm from these risks; and

- Direct the Federal Retirement Thrift Investment Board (FRTIB) to conduct a rigorous audit of the TSP’s exposure to climate-related financial risk, set science-based emissions targets, and offer climate-friendly investment strategies to participants.

We expand on these recommendations below.

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Workers and retirees should be able to prudently choose and benefit from investments that provide long-term positive returns, yield healthy contributions to retirement plans, enhance—rather than undermine—workers’ share of earnings, and promote a healthy and livable planet, fair working conditions, and a racially just and democratic society while honoring their fiduciary duty. Private and public retirement plan sponsors and fiduciaries have a responsibility to ensure these conditions are met. Since climate-related financial risks threaten these goals, the regulations and norms that govern retirement plan management must take climate change into account explicitly. Failure to do so leaves workers and retirees unnecessarily vulnerable to climate-related financial risk that threatens their retirement income.

***Climate risk is financial risk, and ESG considerations are a core component of modern investing***

The economic risks posed by climate change and the necessary transition to a more resilient, clean energy economy are substantial. Regarding acute physical risk, climate-related disasters have become increasingly frequent and severe, with a record 42 events in the US from 2020 and 2021,<sup>1</sup> each of which has resulted in over \$1 billion in damage, for a total cost of over \$250 billion. The correlation of acute and chronic physical risks and losses caused by climate change, combined with transition risks caused by decarbonization are already impacting, or will impact, nearly all sectors of the economy. Credible economy-wide climate stress tests have revealed that climate change could shave off up to 18 percent of global GDP by mid-century,<sup>2</sup> with variable geographic and sectoral vulnerabilities that represent further threats to financial stability.<sup>3</sup>

That climate change represents a significant threat to financial performance and investment returns and a systemic threat to the capital markets and the financial system as a whole is no longer up for debate. A 2021 report from the White House National Economic Council states that “Climate change poses serious and systemic risks to the U.S. economy and financial system” and that “current U.S. regulatory framework makes it difficult for pension plan managers to adequately consider climate-related financial risk when they invest workers’ pensions.”<sup>4</sup> The Financial Stability Oversight Council recently released a bipartisan report that added “Climate change is an emerging threat to the

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<sup>1</sup> “Billion-Dollar Weather and Climate Disasters,” NOAA. <https://www.ncdc.noaa.gov/billions/>

<sup>2</sup> “World economy set to lose up to 18% GDP from climate change if no action taken, reveals Swiss Re Institute’s stress-test analysis,” Swiss Re Group, 2021. <https://www.swissre.com/media/news-releases/nr-20210422-economics-of-climate-change-risks.html>

<sup>3</sup> “The Implications of Climate Change for Financial Stability,” Financial Stability Board, 2020. <https://www.fsb.org/wp-content/uploads/P231120.pdf>

<sup>4</sup> “A Roadmap To Build A Climate-Resilient Economy,” The White House, 2021. <https://www.whitehouse.gov/wp-content/uploads/2021/10/Climate-Finance-Report.pdf>

financial stability of the United States.”<sup>5</sup> The Commodity Futures Trading Commission (CFTC) Market Risk Advisory Committee (MRAC) found in 2020 that:

**“Climate change is expected to affect multiple sectors, geographies, and assets in the United States, sometimes simultaneously and within a relatively short time frame” and that regulators “should clarify that climate-related factors—as well as ESG factors that impact risk-return more broadly—may be considered to the same extent as ‘traditional’ financial factors, without creating additional burdens.”<sup>6</sup>**

This means that retirement plan managers should be accounting for the financial impacts arising from the physical and transition risks inherent to the ongoing climate crisis and the drive to decarbonize the global economy. Increasingly, the climate crisis and the clean-energy transition are two of the most significant factors in the long term performance of individual firms, markets, and the economy as a whole. There is a substantial and growing body of evidence<sup>7</sup> that systemic issues like climate change, racial and economic inequality, and other ESG factors affect investment returns and corporate financial performance across many sectors, and will be particularly important to consider for typical retirement savers with long investment horizons and broad ownership of the market. And because greenhouse gas emissions worsen climate change—which is in turn a systemic risk to the market—high-emission investments actively undermine the rest of long-term investors’ portfolios.

Climate-friendly investing strategies generally serve well the long-term financial interest of workers and retirees. A meta analysis found that low-carbon investment strategies for a portfolio of stocks were associated with better investment returns in 65 percent of studies published from 2015 to 2020.<sup>8</sup> Even accounting for recent positive performance of oil and gas stocks amid a time of geopolitical instability that is driving supply shocks, the S&P500 energy index has a 5-year annualized increase of 3.55 percent since 2017,<sup>9</sup> compared to 10.45 percent for the S&P500 benchmark,<sup>10</sup> as of the time of writing. Offering low-carbon investment options will likely better protect workers and retirees’ savings and optimize the risk-return equation for long-term, sustainable growth.

Investors have taken note of this often superior performance. About 75 percent of professional investors say they incorporate environmental, social, and governance (ESG) factors into their

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<sup>5</sup> “Report on Climate-Related Financial Risk,” Financial Stability Oversight Council, 2021.

<https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>

<sup>6</sup> “Managing Climate Risk in the U.S. Financial System,” CFTC MRAC Subcommittee on Climate-Related Market Risk, 2020. <https://www.cftc.gov/PressRoom/PressReleases/8234-20>

<sup>7</sup> A recent review of over 1000 studies published in the last five years found that a higher ESG rating for an individual company was associated with higher corporate financial performance (e.g., return on equity or assets, or stock performance) in 58 percent of the studies, and a higher ESG rating for a portfolio of stocks was associated with better investment returns in 59 percent of the studies. For low carbon ratings in particular, the climate-friendly companies and portfolios performed better 57 percent and 65 percent of the time, respectively. Source:

<https://www.stern.nyu.edu/sites/default/files/assets/documents/ESG%20Paper%20Aug%202021.pdf>. See also E.g., “ESG and Financial Performance: Aggregated Evidence from More Than 2000 Empirical Studies,”

<https://www.tandfonline.com/doi/full/10.1080/20430795.2015.1118917>

<sup>8</sup> [https://www.stern.nyu.edu/sites/default/files/assets/documents/NYU-RAM\\_ESG-Paper\\_2021%20Rev\\_0.pdf](https://www.stern.nyu.edu/sites/default/files/assets/documents/NYU-RAM_ESG-Paper_2021%20Rev_0.pdf)

<sup>9</sup> <https://www.spglobal.com/spdji/en/indices/equity/sp-500-energy-sector/#overview>

<sup>10</sup> <https://www.spglobal.com/spdji/en/indices/equity/sp-500/#overview>

investment practices.<sup>11</sup> Seventy percent of U.S. retail investors and retirement savers support the ongoing Securities and Exchange Commission (SEC) effort to require climate disclosures from public companies,<sup>12</sup> and 64 percent of investors prefer to invest in companies that disclose their ESG criteria and practices.<sup>13</sup> Recently, 75 investors with \$4.7 trillion assets under management (aum) urged the SEC to make Scopes 1, 2, and 3 GHG emissions reporting mandatory for all registrants,<sup>14</sup> and 71 investors with \$10.4 trillion aum committed to the Net Zero Asset Owners Alliance, demonstrating that climate risk is a core part of their investment strategy.<sup>15</sup>

The problem: while large investors are acknowledging these risks by pouring money into sustainable investments<sup>16</sup> and often being rewarded with higher returns, so far most everyday retirement savers have missed out on these substantial economic benefits because of the antiquated rules and norms governing retirement plan management. This must change. Sustainable investment products and the integration of systemic risks are value-added components of modern investing and must be readily available to all retirement plan fiduciaries and participants, and encouraged by the Department. Changes under ERISA and FERSA are needed to adapt to this changing landscape of investment risk and market developments.

***The DOL must take actions under ERISA to safeguard private retirement plans from systemic risks like climate change and racial and economic inequality***

*In finalizing the 2021 fiduciary duty propose rule,<sup>17</sup> DOL should:*

- Restore fiduciaries' discretion to consider ESG factors. The Trump-era DOL restricted fiduciaries' ability to consider ESG factors in an effort to boost politically-favored industries and counteract the market- and investor-driven trend toward ESG investing. Because ESG factors are often economically relevant, in many cases they *must* be considered by a prudent fiduciary;
- Make ESG funds and investments eligible to serve as the default investment (the Qualified Default Investment Alternative, or QDIA) if the fiduciary has prudently selected them. There is no reason to penalize or restrict use of ESG funds simply because they produce collateral benefits;

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<sup>11</sup>

<https://www.businesswire.com/news/home/20210422005347/en/ESG-Investing-Reaches-Critical-Mass-Ongoing-Momentum-Depends-on-What's-Driving-the-Demand-Finds-Natixis-Investment-Managers-Survey>

<sup>12</sup> <https://www.sec.gov/news/press-release/2022-46>

<sup>13</sup> Americans for Financial Reform Education Fund and Public Citizen. Results of a nationwide survey: Retail investors' support for the SEC mandating climate-related financial disclosures from public companies. Embold Research. Published online April, 2022: [https://ourfinancialsecurity.org/wp-content/uploads/2022/04/Report\\_Climate-Disclosure-Survey-Results\\_AFR-PC-2-1.pdf](https://ourfinancialsecurity.org/wp-content/uploads/2022/04/Report_Climate-Disclosure-Survey-Results_AFR-PC-2-1.pdf)

<sup>14</sup> <https://www.asyousow.org/press-releases/2022/3/8/sec-climate-disclosure-rulemaking>

<sup>15</sup> <https://www.unepfi.org/net-zero-alliance/>

<sup>16</sup> See E.g., "A Broken Record: Flows for U.S. Sustainable Funds Again Reach New Heights," <https://www.morningstar.com/articles/1019195/a-broken-record-flows-for-us-sustainable-funds-again-reach-new-heights>

<sup>17</sup> <https://www.federalregister.gov/documents/2021/10/14/2021-22263/prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights>

- Encourage fiduciaries to consider a range of ESG factors beyond climate change, workforce, and governance issues. Listing “climate change” rather than “environmental” factors and constraining the set of “social” factors—as the ERISA fiduciary duty proposal did—could bias against the consideration of important issues like climate and environmental justice; Indigenous rights; use of water and natural resources; ecological and regional impacts in the global forest, food, and land sector; and chemicals, plastics, and air toxics pollution; and
- Encourage fiduciaries to consider economically relevant factors like corporate impact on racial and economic inequality, as well as political activity.<sup>18</sup>

*Through new rulemaking and guidance, DOL should:*

- Set a minimum standard for consideration of systemic risks to retirement savings managed under ERISA, including climate change, racial and economic inequality, and threats to democracy;
- Provide guidance on the process of integrating ESG factors into investment practices, develop educational materials, and convene workshops providing instructions for Sustainable Investment Policies;<sup>19</sup>
- Highlight to fiduciaries the benefits of investing in and providing options for funds managed by individuals of diverse racial, ethnic, and economic backgrounds and diverse gender identities and sexual orientations;
- Provide a standardized format for fiduciaries to disclose to the DOL, plan participants, and beneficiaries how they integrate ESG factors into their investment practices;
- Require at least one ESG-specific option that addresses climate, racial and economic inequality, and other ESG systemic risks (beyond the ESG integration fiduciaries should implement across the board) among a prudently constructed lineup of funds offered to participants in participant-directed plans;
- Ensure that participant-directed plans provide options of funds managed by individuals of diverse racial, ethnic, and economic backgrounds and diverse gender identities and sexual orientations.

While the majority of investors want to be Paris-aligned,<sup>20</sup> fewer than 3 percent of defined contribution plans offer a climate-friendly investment option.<sup>21</sup> The vast majority of the 140 million Americans who rely on ERISA plans to save for retirement do not even have the option of investing with companies best oriented toward a climate-safe future. There are a number of market rate ESG funds that have performed as well or better than their non-ESG counterparts over the past decade,

<sup>18</sup> For financial impacts from these factors, see E.g., <https://fortune.com/2021/07/21/uber-lyft-drivers-stage-nationwide-strike-right-to-unionize-better-pay/>; [www.nbcnews.com/business/business-news/fired-interrogated-disciplined-amazon-warehouse-organizers-allege-year-retaliation-n1262367](http://www.nbcnews.com/business/business-news/fired-interrogated-disciplined-amazon-warehouse-organizers-allege-year-retaliation-n1262367); [www.nytimes.com/2020/07/28/magazine/pollution-philadelphia-black-americans.html](http://www.nytimes.com/2020/07/28/magazine/pollution-philadelphia-black-americans.html); <https://endpolicesurveillance.com/documents/2021-05-03-Motion-for-Leave-to-File-Brief-as-Amici-Curiae-with-Ex.-A-Amicus-Brief-attached.pdf>;

<sup>19</sup> See E.g., [www.unpri.org/an-introduction-to-responsible-investment/an-introduction-to-responsible-investment-policy-structure-and-process/4917.article](http://www.unpri.org/an-introduction-to-responsible-investment/an-introduction-to-responsible-investment-policy-structure-and-process/4917.article)

<sup>20</sup> See E.g., [www.barrons.com/articles/future-returns-wealthy-see-a-role-in-investing-to-tackle-climate-change-01632255522](http://www.barrons.com/articles/future-returns-wealthy-see-a-role-in-investing-to-tackle-climate-change-01632255522)

<sup>21</sup> <https://www.napa-net.org/news-info/daily-news/could-esg-options-boost-401k-participation>

and there is no credible reason that a fiduciary would be unable to find such a fund addressing systemic ESG risks to offer to their participants that meets ERISA criteria.<sup>22</sup>

*DOL should create a new sustainability schedule for Form 5500 Annual Return/Report (“Form 5500”) or develop a new systemic risk reporting form to collect data on climate-related financial risk to large pension plans, in line with the recommendations of the Task Force for Climate-Related Financial Disclosures asset owner guidance.<sup>23</sup> These data should include:*

- How plan investment policy statements specifically address climate-related and other systemic financial risks;
- Whether service providers disclose or meet metrics related to such financial risks;
- Whether and how plans have factored climate-related financial risk into their analysis of individual investments or investment courses of action;
- Whether and how plans use or plan to use risk management tools like climate scenario analysis or greenhouse gas emissions inventories;
- Whether plans have made climate-related commitments to participants and their progress to date;
- Whether plans have made other ESG- or sustainability-related commitments to participants and their progress to date; and
- How plan fiduciaries voted on proxy proposals involving climate-related and other ESG financial risks.

While significant amounts of climate-related data from investee companies exists in today’s marketplace, the SEC is currently receiving comments on a proposal to standardize this information.<sup>24</sup> The DOL should set standardized disclosure requirements for pension plans that are harmonized with the SEC’s anticipated disclosure regime.<sup>25</sup>

***The DOL must take actions under FERSA to safeguard the Thrift Savings Plan (TSP) from systemic risks like climate change and racial and economic inequality***

The DOL should protect the TSP from systemic risks related to climate change, racial and economic inequality. To do so, the DOL should:

- Include these factors in its risk-based audit program to identify risks and vulnerabilities and assess the likelihood and magnitude of harm from these risks; and
- Incorporate climate-related risk management practices that have been developed by financial institutions, investors, and regulators, including financed emissions analysis and

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<sup>22</sup> The SEC will likely soon provide more clarity regarding definitions, disclosures, and criteria for different types of sustainable funds, and the Department should incorporate their work into future actions. Recent examinations of major asset managers’ ESG funds have revealed that a portion of some of the largest asset managers’ funds include investments in companies that have had serious negative impacts related to racial, economic, and environmental injustices. In order to adequately address the systemic risks and economic harms of investments in extractive industries, the Department should follow developments and provide guidance to fiduciaries on best practices for examining these issues. See E.g., [www.bloomberg.com/graphics/2021-what-is-esg-investing-msci-ratings-focus-on-corporate-bottom-line/?sref=f7rH2jWS](https://www.bloomberg.com/graphics/2021-what-is-esg-investing-msci-ratings-focus-on-corporate-bottom-line/?sref=f7rH2jWS) (“A Bloomberg Intelligence analysis earlier this year showed that BlackRock’s ESG Aware holds a portfolio that closely tracks both the S&P 500 and BlackRock’s own top-selling S&P 500 fund, with two notable exceptions: The ESG fund has a “sustainable” label thanks to MSCI, and it’s more heavily weighted in 12 fossil fuel stocks than the actual S&P 500.”)

<sup>23</sup> Question 4; <https://www.fsb.org/wp-content/uploads/P141021-4.pdf>

<sup>24</sup> <https://www.sec.gov/news/press-release/2022-46>

<sup>25</sup> Question 7

disclosure, climate scenario analysis and stress testing, net zero emission target setting, and divestment where appropriate or necessary.<sup>26</sup> These techniques are being used by many fund managers (e.g., sovereign wealth funds,<sup>27</sup> public pensions<sup>28</sup>) and should also be encouraged for both private retirement plan fiduciaries and the Federal Retirement Thrift Investment Board (FRTIB).

To protect the TSP, the FRTIB should be directed to:

- Conduct a rigorous audit of the TSP's exposure to climate-related financial risk and collect data from asset managers, including financed emissions and climate-related risk management strategy and metrics for various funds;
- Seek to reduce its financed emissions according to the International Energy Agency's Net Zero by 2050 scenario,<sup>29</sup> using the Partnership for Carbon Accounting Financials (PCAF) accounting methodology;<sup>30</sup> and
- Implement a climate-friendly investment option to allow federal pension holders to opt into an investment that is completely divested from fossil fuels,<sup>31</sup> an increasingly common demand from federal employees.<sup>32</sup>

***DOL must ensure that fiduciaries vote proxies involving systemic risks like climate change and racial and economic inequality***

To ensure that plan fiduciaries under ERISA and FERSA consider climate change, racial and economic inequality, and other systemic ESG factors in their stewardship decisions, including on how they vote on proxy proposals involving climate-related risk, we recommend engaging in regulatory action to:

- Require fiduciaries to explicitly integrate ESG considerations into their proxy voting policies and procedures;
- Require the policies and procedures to address how asset managers will handle conflicts of interest related to their management of corporations' employees' 401(k)s or desire to manage them;
- Disallow safe harbor policies like always voting with management as presumptively not in the best interest of asset owners;
- Create a presumption that not recalling shares in time to vote is a violation of fiduciary duty; and

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<sup>26</sup> Question 10

<sup>27</sup> Question 11

<https://www.asianinvestor.net/article/swfs-step-up-on-climate-change-risk-assessments/474264>;

<https://www.responsible-investor.com/skancke-led-advisory-group-tells-nbim-to-introduce-regular-climate-stress-tests/>;

<https://www.reuters.com/business/sustainable-business/norway-wealth-fund-push-firms-have-net-zero-target-s-government-says-2022-04-01/>

<sup>28</sup> [https://www.calpers.ca.gov/docs/board-agendas/202006/invest/item08c-01\\_a.pdf](https://www.calpers.ca.gov/docs/board-agendas/202006/invest/item08c-01_a.pdf);

<https://www.calstrs.com/path-to-net-zero>;

<https://www.osc.state.ny.us/press/releases/2020/12/new-york-state-pension-fund-sets-2040-net-zero-carbon-emissions-target>

<sup>29</sup> <https://www.iea.org/reports/net-zero-by-2050>

<sup>30</sup> <https://carbonaccountingfinancials.com>

<sup>31</sup> Questions 12-13, 18.

<sup>32</sup>

<https://labornotes.org/blogs/2021/06/get-fossil-fuels-out-our-pension-say-environmental-protection-workers>

- Require fiduciaries to consider investment horizons, systemic risks (especially in diversified portfolios), economic impacts to households beyond financial returns, and non-financial goals as indicated through fund selection or other means when making voting decisions.

Question number 21 asks, in part, whether DOL should “coordinate with the SEC on its efforts to inform and protect investors from misleading statements about fund adherence to policies that address climate-related financial risk (often referred to as “greenwashing”).” DOL and the SEC should indeed coordinate on addressing this issue.

Due to investor demand, many asset managers offer ESG-related advisory services and investment products. However, because of the lack of guidelines for how to market and administer them, they can be misleading.<sup>33</sup> A recent report by Action Center on Race and the Economy (ACRE) and LittleSis reveals that the second largest asset manager offers ESG funds that do not screen out extractive industries.<sup>34</sup> Indeed, the SEC’s Division of Examinations has identified various aspects of ESG-related services and products as priorities for examination, including the practice of “overstating or misrepresenting the ESG factors considered or incorporated into portfolio selection (e.g., greenwashing), such as in their performance advertising and marketing.”<sup>35</sup> With the new SEC climate disclosures proposal and the upcoming SEC human capital management disclosures proposal, an additional needed step will be rulemaking to establish guidelines for the marketing and administration of ESG-related funds to protect investors and retirement plans.

***DOL should provide guidance on the enhanced climate-related risks of private equity***

Additionally, any standards that DOL creates for considering climate-related systemic risks should apply to pension plan investments in private markets. Considering the lack of transparency surrounding private fund investments, it is difficult for investors to assess how their investment with any particular fund might contribute to the climate crisis and ultimately prove a risky investment for workers’ retirement savings.

Given the potential climate-related risks that the opaque private equity industry poses to investors, ESG considerations, particularly those related to climate change, are important for any prudent plan to consider as part of its fiduciary duty when investing in private funds.

We thank the DOL for its efforts to improve climate-related risk management in retirement plans and pensions and urge the discussed actions to safeguard workers’ and retirees’ invested savings. Please reach out to Alex Martin ([alex@ourfinancialsecurity.org](mailto:alex@ourfinancialsecurity.org)) and Natalia Renta ([natalia@ourfinancialsecurity.org](mailto:natalia@ourfinancialsecurity.org)) to discuss further.

Sincerely,

Americans for Financial Reform Education Fund  
350.org  
Adasina Social Capital  
Change Finance

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<sup>33</sup> <https://time.com/6095472/green-esg-investment-funds-greenwashing/>

<sup>34</sup> [https://acrecampaigns.org/research\\_post/vanguards-empty-promises/](https://acrecampaigns.org/research_post/vanguards-empty-promises/)

<sup>35</sup> <https://www.sec.gov/files/2022-exam-priorities.pdf>

Climate Finance Fund  
Consumer Action  
Croatan Institute  
Divest Oregon: Reinvest in a Fossil Free Future  
Evergreen Action  
Impact Investors, Inc.  
Institute for Agriculture and Trade Policy  
Intentional Endowments Network  
Ocean Conservancy  
Private Equity Stakeholder Project  
Public Citizen  
Sierra Club  
Sunrise Project  
Sustainable Advisors Alliance, LLC