THORN RUN PARTNERS
GOVERNMENT RELATIONS

Client Memo

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ESG Activity in Washington in 2021 and 2022

OVERVIEW

In recent years, there has been a renewed focus by the investor community and some corporations to promote environmental, social, and corporate governance (ESG) issues as part of their capital expenditure planning. Democrats have prioritized ESG as way to harness some of the powers of capitalism to drive the systemic changes they have advocated for but have not successfully changed the law on. There has been a wide variety of legislation introduced in recent years to push ESG in hiring, disclosure and reporting practices. This activity has switched into high gear in the last year, with Democratic control of both chambers of Congress and the White House.

The Biden administration has made fighting climate change and enhancing ESG a central focal point in its key staffing and administrative agenda. In a confirmation hearing for President Biden's picks to lead the SEC and CFPB, Gary Gensler and Rohit Chopra respectively, their commitment to reevaluating corporate governance and addressing climate risk further solidified the focus we expected to see on ESG activity under this administration.

This memo provides an overview of the policy landscape in Washington for issues pertaining to ESG. This includes summaries of bills pertaining to: (1) reporting, disclosure, and review; (2) diversity in hiring; and (3) sustainability and the environment.

LEGISLATIVE ACTIVITY

The following bills largely reflect reintroduced legislation, which we expect to continue throughout this 117th Congress.

Reporting, Disclosure, and Review

- Improving Corporate Governance Through Diversity Act — Sponsored by **Sen. Bob Menendez (D-NJ),** this bill (S. 374) would amend the Securities Exchange Act of 1934 to require public companies to disclose the racial, ethnic, gender and veteran composition of their corporate boards and senior management. The bill would also require the Treasury Department's Director of the Office of Minority and Women Inclusion to publish a report to the SEC every three years, including best practices and compliance. Additionally, it would establish a Diversity Advisory Group to study the status of corporate diversity and to submit annual reports to Congress. H.R. 1277, Sponsored by **Rep. Greg Meeks (D-NY),** is the House companion.

- S. 530 — Sponsored by Sen. Menendez, this bill would amend the Securities Exchange Act of 1934 to require shareholder authorization before a public company may make certain political expenditures, and for other purposes.
- ESG Disclosure Simplification Act — Sponsored by **Rep. Juan Vargas (D-CA**), this bill (H.R. 1187) would provide for disclosure of additional material information about public companies and establish a Sustainable Finance Advisory Committee, and for other purposes.
- Diversity and Inclusion Data Accountability and Transparency Act **—** Sponsored by **Rep. Joyce Beatty (D-OH),** this bill (H.R. 2123) would amend t Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), P.L. 111-203, to require regulated financial firms with more than 100 employees to disclose diversity data.
- Climate Risk Disclosure Act — Sponsored by **Rep. Sean Casten** (D-IL), the bill (H.R. 2570) — reintroduced in the Senate as well by Sen. Elizabeth Warren (D-MA) — directs the SEC to require that publicly listed companies detail their direct and indirect greenhouse gas emissions, the fossil fuel assets they own or manage, risk management strategies for dealing with climate change and how companies' valuations would fare if the world warmed 1.5 degrees Celsius or if lawmakers passed policies to avert that mark. S.1217, Sponsored by Sen. Elizabeth Warren (D-MA) is the Senate Companion. **This bill passed the House Financial Services Committee during its May 12 markup.**
- Federal Reserve Racial and Economic Equity Act — Sponsored by **Rep. Maxine Waters (D-CA),** this bill (H.R. 2543) would amend the Federal Reserve Act to add additional demographic reporting requirements, to modify the goals of the Federal Reserve System, and for other purposes.
- Promoting Diversity and Inclusion in Banking Act — Sponsored by **Rep. Al Green (D-TX),** this bill (H.R. 2516) would amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to require Federal banking regulators to include a diversity and inclusion component in the Uniform Financial Institutions Rating System, and for other purposes.
- Shareholder Political Transparency Act — Sponsored by **Rep. Bill Foster (D-IL),** this bill (H.R.1087) requires an issuer of securities to disclose information related to expenditures for political activities. Specifically, issuers must disclose quarterly any such expenditure, including by identifying any candidate the expenditure was made in relation to and any trade association or other tax-exempt organization that received dues or other payments that may be used for political activities.
- S. 1217 — Sponsored by **Sen. Elizabeth Warren (D-MA**), this bill would amend the Securities Exchange Act of 1934 to require certain disclosures relating to climate change.
- S. 1327 — Sponsored by Sen. Warren, this bill would amend the Federal Reserve Act to add additional demographic reporting requirements and to modify the goals of the Federal Reserve System.
- Greater Accountability in Pay Act — Sponsored by **Rep. Nydia Velázquez (D-NY)**, this bill (H.R. 1188) would amend the Securities Exchange Act of 1934 to require issuers to disclose information on pay raises made to executives and non-executive employees. **This bill passed the House Financial Services Committee during its May 12 markup.**
- S. 1815 — Sponsored by **Rep. Mark Warner (D-VA),** this bill would amend the Securities Exchange Act of 1934 to require issuers to disclose to the Securities and Exchange

Commission information regarding workforce management policies, practices, and performance, and for other purposes. H.R. 3471 is the House companion, sponsored by **Rep. Cynthia Axne (D-IA)**.

Diversity in Hiring at the Regulatory Level

- H.R. 1136 — Sponsored by **Rep. Alcee Hastings (D-FL),** this bill would establish a Government-wide initiative to promote diversity and inclusion in the Federal workforce, and for other purposes.

Environmental/Sustainability Proposed Bills

- H.R. 1780 — Sponsored by **Rep. Nydia Velázquez (D-NY),** this bill would amend the Securities Exchange Act of 1934 to require disclosures related to the Paris Climate Agreement, and for other purposes. The bill would require the U.S. Securities and Exchange Commission (SEC) to promulgate a rule that would compel public companies to make part of their annual shareholder report the steps they are taking to meet the greenhouse gas emissions targets and temperature goals set forth in the Paris Climate Accord.
- S. 588 — Sponsored by **Sen. Diane Feinstein (D-CA),** this bill would establish the Advisory Committee on Climate Risk on the Financial Stability Oversight Council. The bill would require that "not later than 1 year after the date of enactment of this Act," the Federal Insurance Office shall publish a report that: (1) assesses the potential impact of climate financial risk on the insurance sector in the United States; and (2) recommends ways to modernize and improve the system of climate risk insurance regulation in the United States. H.R. 1549, sponsored by Rep. Casten is the House companion bill.
- S. 606 — Sponsored by **Sen. Jeff Merkley (D-OR**), this bill would require the Board of Governors of the Federal Reserve System and the Securities and Exchange Commission to issue an annual report to Congress projecting and accounting for the economic costs directly and indirectly caused by the impacts of climate change, to require the Federal Retirement Thrift Investment Board to establish a Federal Advisory Panel on the Economics of Climate Change, and for other purposes.
- S. 873 — Sponsored by **Sen. Dick Durbin (D-IL),** this bill to establish the Climate Change Advisory Commission to develop recommendations, frameworks, and guidelines for projects to respond to the impacts of climate change, to issue Federal obligations, the proceeds of which shall be used to fund projects that aid in adaptation to climate change, and for other purposes. H.R. 2013, sponsored by **Rep. Ted Deutch (D-FL)** is the House companion bill.
- H.R. 1936 — Sponsored by **Rep. Joe Neguse (D-CO),** this bill would require the Comptroller General to evaluate and issue a report on the structural and economic impacts of climate resiliency at the Federal Emergency Management Agency, including recommendations on how to improve the building codes and standards that the Agency uses to prepare for climate change and address resiliency in housing, public buildings, and infrastructure such as roads and bridges.
- H.R. 3604 — Sponsored by **Rep. Andy Levin (D-MI)**, this bill would amend the Employee Retirement Income Security Act of 1974 to allow fiduciaries incorporate environmental and sustainability factors into their investment decisions.

Notably, on June 16, the House passed H.R. 1187 — which became the Corporate Governance Improvement and Investor Protection bill, by a narrow vote of 215-214. Four Democrats —Reps. Schrader (OR), Lee (NV), Fletcher (TX), Cuellar (TX) — voted alongside all Republicans against the bill.

This legislation combined a handful of measures that had previously passed out of the House Financial Services Committee including: (1) requiring public companies to disclose certain ESG matters in annual filings with the Securities and Exchange Commission (SEC); (2) mandating the reporting of certain expenditures for political activities; (3) requiring public companies to disclose information on pay raises made to executives and non-executive employees; (4) requiring certain disclosures relating to climate change; and (5) forcing public corporations to disclose their financial reporting on a country-by-country basis. Read the full TRP memo on the ESG bill, and path forward, here.

Additionally, lobbying disclosure reports show that advocacy surrounding ESG initiatives has grown significantly in the past year. According to the reports, ESG mentioned as a specific issue for 63 clients between July 1 and September 30 — nearly double that of the first quarter. The uptick in activity is presumably attributed to the President's climate agenda and the SEC's highly anticipated ESG rulemaking — which is expected to be released in early 2022.

CONGRESSIONAL ACTIVITY

Responses to the Nasdaq's Diversity Proposal

In December, the Nasdaq filed a proposal with the Securities and Exchange Commission that would require listed companies to have at least one female board member, plus one board member from an underrepresented minority or who is Lesbian, Gay, Bisexual or Transgender. Companies that don't disclose diversity information face potential delisting, while those that report their data but don't meet the standards will have to publicly explain why. Last month, the proposal was met with differing Congressional responses:

- On February 12, Senate Republicans sent a letter to SEC Acting Director Lee, urging the Securities and Exchange Commission to reject a proposed rule from Nasdaq Inc. that would require public companies to adopt new racial and gender diversity standards for their boards. The lawmakers say Nasdaq should not use its "quasi-regulatory authority to impose social policies" and that the proposal would cost companies money and discourage closely held firms from going public. The SEC has until this summer to make a preliminary, and possibly binding, decision. The Senators argue that "NASDAQ's proposal is not consistent with a free market under Section 6(b)(5) of the Exchange Act because its arbitrary diversity requirement does not demonstrably improve corporate performance and could sometimes harm it."
- On February 22, House Financial Services Committee Members Carolyn Maloney (D-NY) and Greg Meeks (D-NY) sent a letter to SEC Acting Chair Allison Herren Lee, urging the agency to adopt the NASDAQ's recent proposal to provide transparency in the board-level composition and diversity of listed companies. The Congressmen wrote: "As longtime champions of legislation aimed at improving corporate board diversity, we strongly believe that by

requiring companies to analyze the makeup of their boards through public disclosure, we will create incentives and inspire change to ensure boards better reflect the American public at large."

Hearings & Other Activity

On February 25, the House Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets held a hearing entitled "Climate Change and Social Responsibility: Helping Corporate Boards and Investors Make Decisions for a Sustainable World." The hearing discussed the potential implementation of corporate climate disclosure mandates on publicly traded companies — an issue that was met with partisan debate. Republicans maintained that the notion many corporations are voluntarily disclosing environmental, social, and corporate governance (ESG) related information, and that imposing a government mandate would harm the country's geopolitical competitiveness, overburden small corporations (as compared to large corporations), and politicize information that, if material, is already required to be disclosed. Meanwhile, Democrats maintained that the risk climate change poses on the financial system — and on minority and low-income communities in particular — makes ESG-related corporate activity disclosures, and the standardization of them, critical to providing reliable, comparable data.

On March 2, the Senate Banking Committee held a nomination hearing for both Gary Gensler and Rohit Chopra. Regarding diversity and inclusion, Mr. Gensler stated that diversity in board and senior leadership benefits decision making, which is a positive step forward. He maintained that human capital in general will continue to become more important to investors when making investment decisions. On the topic of materiality, Ranking Member Toomey and Mr. Gensler disagreed on what can constitute as material. While Senator Toomey argued that financially insignificant information should not be considered material or forced to be disclosed in any circumstance, Mr. Gensler maintained that while a small piece is often not material, many investors would argue that financially insignificant political of energy-related spending by a corporation may be material to investors. Sen. Richard Shelby (R-AL) highlighted the difference between political and economic materiality, to which Mr. Gensler affirmed that he will be ground in economic materiality if confirmed. Mr. Gensler committed to bringing consistency and comparability to disclosure guidelines.

On March 18, the Senate Banking Committee held a hearing entitled "21st Century Economy: Protecting the Financial System from Risks Associated with Climate Change." While all parties were quick to address that climate change is occurring and will shape industries across the globe, Republicans on the Committee raised questions about whose role it is to address this change. Some argued that incorporating climate risk would be an "abuse" of regulatory authority and would ultimately be used to punish politically disfavored industries. Others voiced concern that the data is not sufficient or clear enough to be able to effectively model. Democrats, however, urged congressional and regulatory action to advance climate-related disclosures to respond to investor demand and to ensure that companies are transparent and take responsibility for climate impacts.
Sen. Bill Hagerty (R-TN) noted that property and casualty reinsurance markets underwrite hundreds of billions of premiums annually, and that there is already high sophistication for those who do model

weather-related risk. Dr. Zycher reasoned that insurance companies have powerful incentives to model such risk and are much less subject to political pressure, litigation threats, and regulatory mandates than is the case for the Fed or the SEC. Chairman Brown asked what financial regulators should do to ensure banks meet their 2030 and 2050 low-carbon goals. Mr. Gelzinis called for stress-testing and risk management standards that include actionable transitional plans. Dr. Keohane advocated transparency in how banks will measure and report their own emissions as well as those of their investments.

On March 18, Senate Banking Republicans sent a letter to Jerome Powell on the Federal Reserve's involvement in climate change. All Republicans on the Committee signed onto the letter, led by Ranking Member Pat Toomey (R-PA), urging the Fed to stick with helping lower America's unemployment rate and keeping prices stable. They expressed concern the Fed might use its supervision of the banking system to "further environmental policy objectives," which "would be beyond the scope of the Federal Reserve's mission." The lawmakers wrote that the Fed lacks "jurisdiction over and expertise in environmental matters," questioning whether it had the authority to police climate risks. "We urge you to refrain from taking any additional actions with respect to climate-related risks that would impose certain costs for uncertain benefits." Over the past few months, the Federal Reserve has joined an international group of central banks focused on climate risk, pointed to climate change as a threat to financial stability and established its own Supervision Climate Committee.

On March 18, Chairwoman of the House Committee on Financial Services, Maxine Waters (D-CA), and Congresswoman Joyce Beatty (D-OH), Chair of the Subcommittee on Diversity and Inclusion, sent requests to the nation's 31 largest investment firms — those with $400 billion or more of assets under management — for data on their diversity and inclusion. "We are making progress to ensure a comprehensive understanding of diversity and inclusion performance in the financial services industry," the lawmakers wrote in the letter. "However, this cannot be achieved until organizations, especially the largest investment managers, disclose their diversity data and policies with the Offices of Minority and Women Inclusion, Congress, and the public." The release explains that the requests are part of a longstanding effort to hold the financial services sector accountable and provide the American public with a complete picture of how financial firms are meeting their commitments to diversity and inclusion. The press release listing the 31 firms can be found here.

On March 24, Sens. Warren (MA), Van Hollen (MD), Merkley (OR), and Whitehouse (RI) sent a letter to various insurance companies seeking information about how they disclose their preparations for climate change — especially regarding its underwriting as well as their investment policies pertaining to coal and other carbon-intensive projects. They requested a response by April 16 to several questions regarding climate risk assessments and underwriting polices.

On April 14, Gary Gensler was confirmed by a vote of 53-45 to lead the Securities and Exchange Commission. The Senate voted again on April 20 to approve Securities and Exchange Commission (SEC) Chairman Gary Gensler for a full five-year term to serve as a commissioner and chairman of the SEC through June 5, 2026.

On May 23, Senate Banking **Ranking Member Pat Toomey (R-PA)** wrote to the leaders of the Atlanta, Boston, and Minneapolis Federal Reserve banks, condemning them for what he categorized as an "obsession with race." The senator wrote to the three banks on their work on what he called "politically charged social causes," which he deemed as "wholly unrelated to the Federal Reserve's statutory mandate." Sen. Toomey told the banks that some of their recent work on race issues suffered from severe bias and added, "all of the policy prescriptions recommended to treat the presumed ubiquity of racism required a more intrusive and expansive government." Toomey requested both written materials and briefings on the matter in the second week of June.

On May 25, the Senate Banking Convened its annual oversight hearing of the Federal Reserve, featuring testimony from the Fed's Vice Chair of Supervision, Randal Quarles. With respect to the Fed's Supervising Climate Change Committee, Sen. Chris Van Hollen (DMD) asked when Congress can expect to see a regulatory framework on climate change or other deliverables. Vice Chair Quarles acknowledged he is currently unable to give a timeline, but was able to commit that the central bank will be very engaged in receiving input from both Congress and the public.

On May 27, the House Financial Services Committee convened a hearing entitled "Holding Megabanks Accountable: An Update on Banking Practices, Programs and Policies," featuring testimony from the CEOs of six of the largest U.S. banks. The six CEOs outlined their respective Banks effort's to support their consumers and the economy through the pandemic, as well as their racial equity and climate initiatives. GOP Members were highly critical of the banks' involvement in climate issues but were otherwise supportive of the activities of each bank, particularly during the pandemic. Meanwhile Democrats, praised their climate mitigation efforts, but encouraged the institutions to do more to advance racial equity and enhance consumer protections.

On May 26, the Senate Banking Committee convened its HFSC counterpart hearing with the six bank CEOs. The executives reviewed the work their organizations have done in response to the COVID-19 pandemic to offer financial relief to customers and small businesses, as well as to support the well-being of their employees. Senators' lines of questioning focused on: (1) COVID-19 relief efforts and their implications for banks and customers; (2) CEO and employee compensation; (3) initiatives to reach underserved communities through Community Financial Deposit Institutions (CDFIs) and Minority Depository Institutions (MDIs); and (4) environment, social, and corporate government (ESG) issues.

On June 16, Reps. Sean Casten (D-IL) and Mike Levin (D-CA) led a letter to SEC Chairman Gary Gensler, urging the commission to require public companies to disclose climate change risks (press release). The letter provided a list of eight requirements that should be included in order to effectively updated the current disclosure regime: (1) a standardized set of metrics and disclosures; (2) disclosure of direct and indirect emissions; (3) executive and board accountability for overseeing and addressing climate-related risk; (4) audits, testing, and reviews of climate-related assumptions, analyses, and disclosures; (5) disclosures by all companies and for large offerings of securities; (6) disclosures of climate risks by banks and funds; (7) cross-agency cooperation and engagement; and

(9) recognition that disclosure is not the only necessary reform for addressing climate risk. Twenty-two additional Democratic lawmakers signed on to the letter, which came just ahead of the House's passage of the Corporate Governance Improvement and Investor Protection bill.

On June 29, the House Financial Services Subcommittee on Diversity and Inclusion held a hearing entitled "The Legacy of George Floyd: An Examination of Financial Services Industry Commitments to Economic and Racial Justice." Originally scheduled for May to coincide with the anniversary of Mr. Floyd's murder, the hearing had been rescheduled to take into account a death in the family of the Subcommittee Chair. The purpose of the hearing was to examine the extent that banks and other financial institutions had made good on commitments to Black communities and businesses in the year following the death of George Floyd. During the hearing, Democrats made clear their goal to hold these entities accountable and requested increased transparency through racial equity audits to show that they were taking steps to address issues like the racial wealth gap. Republicans focused on how affordable financial services could help unbanked households. They also shared their interest in the role of financial technological advances like artificial intelligence (AI), machine learning, and cryptocurrency in promoting access to the financial system for traditionally underserved communities.

On June 30, the House Financial Services Subcommittee on Consumer Protection and Financial Institutions held a hearing entitled "Addressing Climate as a Systemic Risk: The Need to Build Resilience within Our Banking and Financial System." Members heard from a variety of academic and industry witnesses on the importance of addressing climate risk. While there was agreement that climate change poses risks, significant differences emerged among Subcommittee Members on whether there is sufficient information to address that risk appropriately and effectively through financial regulation. GOP lawmakers suggested that there is a severe lack of data that renders it virtually impossible to accurately quantify risk through stress testing or scenario modeling. They also expressed opposition to what they categorized as "targeting" the fossil fuel and nuclear energy industries for political purposes. Meanwhile, Democratic Members urged that forward action is needed to meet the moment and to ensure the stability of the U.S. and global economy. They called for new initiatives to transition to a cleaner economy, address racial inequity in the financial system, and increase corporate transparency.

On Tuesday, Aug 3, the Senate Banking Committee heard from the heads of the OCC, FDIC, and NCUA on financial inclusion. Senators focused their comments and questions around efforts to: (1) promote financial inclusion; (2) regulate financial technology (fintech) while enabling innovation; (3) modernize the Community Reinvestment Act (CRA); and (4) address future risks to the financial system. Meanwhile, the regulators outlined their respective actions and resilience in light of the COVID-19 pandemic, as well as highlighted their ongoing initiatives to ensure the financial system works for everyone.

Several Democratic Senators pressed the regulators on their plans to overhaul the Community Reinvestment Act, urging both fast action and the consideration of rural and tribal communities in addition to low-income and minority communities. FDIC Chair McWilliams highlighted the agency's

Mission Driven Fund which provides a vehicle for private sector investment in FDIC-insured Minority Depository Institutions (MDIs) and Community Development Financial Institutions (CDFIs). Mr. Hsu also praised that the workstream of credit invisibles under the OCC's Project REACh has "taken off" in finding ways to use alternative data sources to promote more inclusion in the financial system.

On Monday, **August 2**, Democratic Senators, including Sen. Elizabeth Warren (D-MA), Kirsten Gillibrand (D-NY) and Chris Van Hollen (D-MD) pressed the Treasury Department's new climate czar on what he's been up to — saying they've gotten little information on progress so far. In the letter to John Morton, who leads Treasury's climate hub, the senators sought to learn what steps he is taking to implement President Biden's climate agenda, including his May executive order on climate-related financial risk. They asked for a response by August 16 providing details on questions including how Treasury is coordinating financial regulators on climate risk and its timeline for those steps and whether Treasury has provided risk guidance to the financial sector, and the contents if so.

On October 5, the House Committee on Financial Services held an oversight hearing of the Securities and Exchange Commission (SEC), featuring testimony from Chair Gary Gensler. The discussion spanned a wide variety of issues central to the SEC, primarily including: (1) digital assets; (2) regulatory framework governing emerging financial technologies (fintech); (3) market structure; and (4) environmental, social, and corporate governance (ESG) metrics and disclosures. Regarding ESGs, the hearing featured intense debate over recent climate initiatives undertaken by the Commission, questioning the logistical impact of implementation and the SEC's legal authority. Democrats largely complimented SEC for its work to address climate risk. Two members of the committee raised questions regarding ESG that peaked other members' interests. Rep. Blaine Luetkemeyer (R-MO) echoed bipartisan consensus over the need to implement standards to ensure ESG-listed companies in fact meet certain climate criteria. Gensler agreed that such measures would benefit investors. Rep. French Hill (R-AR) probed the witness about the scope of emissions that may be covered under ESG rulemaking. The Chair exclaimed that all forms of emission will be considered under the SEC's regulatory process. Despite spirited conversations, no substantial initiatives, bills, or regulatory implications came from the hearing, as Chairman Gensler deflected on timeline and specificity of any potential ESG regulation.

On December 10, top Senate Banking Committee Republican Sen. Pat Toomey (R-PA) along with Senator Crapo, Ranking Member of the Senate Finance Committee (R-ID), and Senators Burr (R-NC), and Scott (R-SC) sent a letter to Depart of Labor Secretary Marty Walsh voicing their disapproval of a recent Department initiative requiring fiduciaries to consider ESG metrics in their retirement investment activities on behalf of their clients. Among their concerns, they claim the new proposal is too broad and fails to properly define ESG standards. Additionally, they call into question claims that ESG funds outperform the broader equity market. This comes as the Biden Administration has ramped up Executive branch efforts to combat climate change amid Congressional gridlock over the President's social and environmental spending package.

On December 13, Rep. Andy Levin (D-MI) — along with 23 of his Democratic colleagues — sent a letter to Labor Secretary Marty Walsh in support of the Department's recently proposed rule governing how retirement plans consider ESG factors in their investing strategies. While they applauded the Department's reversal of the prior administration's prohibition of such considerations, they urged Labor Department officials to three recommendations when formulating the final rule: (1) modify examples used in the proposed rule to, "further the spirit and scope of the regulations;" (2) permit the inclusion of Economically Targeted Investments (ETIs) if they are assumed to be equal or better alternatives; and (3) encourage fiduciaries to adopt more long-term timeframes when conducting investment and portfolio analysis.

In a January 18 letter, HFSC Chair Waters and Sen. Mark Warner asked Fed Chair Powell to issue guidance on efforts undertaken by the Fed to promote access to financial services in underserved communities. Specifically, they call for clarification on Subchapter S, ECIP, MDIs, and CDFIs. In the letter, they claim the lack of clarity may lead to such institutions limiting the amount of capital received under ECIP. Additionally, the lawmakers urge for urgent consideration of the request, saying that, "Given the quick timeline the Department is pursuing, we urge the Federal Reserve to provide clarity to Subchapter S and Mutual bank ECIP recipients on these questions as soon as possible. At a minimum, these institutions should have a response to the concerns they are raising to make an informed decision."

FEDERAL ACTIVITY

The Securities and Exchange Commission

The SEC, first under Acting Chair Allison Herren Lee and continued under Gary Gensler, has been the most active agency in addressing ESG. Outlined below are highlights of the agency's recent activity:

- On February 24, SEC Acting Chair Lee directed agency staff to begin work on revising its decade-old climate change disclosure guidance for public companies. The regulator sought to update the guidance to build "a more comprehensive framework that produces consistent, comparable, and reliable climate-related disclosures." Lee said in the statement that, "now more than ever, investors are considering climate-related issues when making their investment decisions. It is our responsibility to ensure that they have access to material information when planning for their financial future." This marked the agency's first move in the Biden era to address financial risks from global warming.
- On March 1, the SEC ruled that companies including Citigroup, Exxon Mobil and Pfizer have no legal basis to exclude shareholder proposals related to racial equity, lobbying and even federal subsidies for coronavirus vaccine development. This will have a direct impact on the upcoming proxy season, where shareholders could see votes on a racial equity audit at Citigroup; a report on how Exxon Mobil's lobbying affects global warming; and how government support affects vaccine prices and access at Johnson & Johnson and Pfizer, among other companies.
- On March 3, the SEC's Division of Examinations outlined its 2021 examination priorities, including a greater focus on climate-related risks. "This year, the Division is enhancing its focus on climate and ESG-related risks by examining proxy voting policies and practices to ensure voting aligns with investors' best interests and expectations, as well as firms' business

continuity plans in light of intensifying physical risks associated with climate change," said Acting Chair Lee.

- On March 4, the agency announced the creation of a Climate and ESG Task Force in the Division of Enforcement. The task force will be led by Kelly L. Gibson, the Acting Deputy Director of Enforcement, who will oversee a Division-wide effort, with 22 members drawn from the SEC's headquarters, regional offices, and Enforcement specialized units. The Climate and ESG Task Force will develop initiatives to proactively identify ESG-related misconduct and will also coordinate the effective use of Division resources to identify potential violations. "Proactively addressing emerging disclosure gaps that threaten investors and the market has always been core to the SEC's mission," said Acting Deputy Director of Enforcement Kelly L. Gibson, who will lead the task force.
- On March 11, the SEC's Division of Corporation Finance Acting Director John Coates issued a public statement announcing that it will closely review a Nasdaq Stock Market LLC proposal aimed at promoting board diversity at companies that list on its exchanges.
- On March 15, at a Center for American Progress Event, Chairwoman Lee emphasized that there is no single issue more pressing for the SEC than confronting the risks and opportunities that climate and ESG pose for investors, financial markets, and the economy. Acting Chair Lee issued a public statement requesting input on the Commission's climate disclosure framework. She argued that the SEC needs to help ensure material information gets into the market in a timely manner, which she contended is not being currently met by the voluntary framework. Lee underscored the need for consistent, comparable and reliable data, arguing that the question is no longer "if" but "how" to execute a comprehensive mandatory disclosure framework. Outside of climate risk, she spoke to the need for a broader range of ESG issues to be considered, including human capital disclosures such as workforce diversity, board room diversity rulemakings, and political spending. She urged that it is crucial to devise a climate and ESG framework that is flexible to meet the changing needs of the economy.
- On May 24, SEC Commissioner Allison Herren Lee said that the agency can require companies to disclose information on environmental, social and governance issues, whether or not it is considered material for investors. "As debates around climate and ESG disclosure have intensified, I have found through dozens if not hundreds of conversations that a number of misconceptions about materiality — what it is and what it is not — have proliferated," she said Monday during her keynote remarks at an American Institute of Certified Public Accountants event. Companies must disclose what is material, but Lee said the agency may go beyond that line as it drafts an ESG reporting proposal — the details of which haven't yet been released. She said there's a "widely held assumption" that the SEC can only require material disclosure. However, this is affirmatively not what the law requires, and thus not how the SEC has in fact approached disclosure rulemaking."
- Chair Gary Gensler said the agency is examining whether to require asset managers to bolster disclosure of workforce and management diversity. "I have asked SEC staff to consider ways that we can enhance such transparency," Gensler said Wednesday July 7 at an SEC event. That could include requiring disclosure of "aggregated demographic information about an adviser's employees and owners," he said. Gensler said it may also include having fund managers disclose their diversity and inclusion practices when selecting other advisers.

- The SEC's Asset Management Advisory Committee recommended by voice vote Wednesday July 7 the adoption of enhanced disclosure by public companies and investment products such as mutual funds. The SEC should encourage issuers to adopt a framework for disclosing ESG matters, the panel said, and frameworks could come from third-party standard setting organizations or those developed by industry groups. The committee did not tell the SEC to pick a third party, but instead says it should encourage issuers to look for a common framework and, if not, pursue rulemaking. If a public company decides to not adopt a disclosure framework, it should disclose why it chose not to, the panel wrote. "What we're saying is 'SEC, look you make the rule or encourage people to try and find a commonality in the way they disclose them and the way other companies in their industry disclose them,'" Edward Bernard, chair of the asset management panel, said in an interview.
- On July 20, SEC Commissioner Hester Peirce gave a keynote speech at a Brookings event on the role of the SEC in ESG investing. Commissioner Pierce cited ten theses outlining why implementing an ESG disclosure regime is in potentially problematic and at odds with the agency's mission. To read the full event recap, click here.
- On July 29, SEC Chair Gary Gensler delivered a speech on the need for consistent and comparable climate disclosure. He highlighted his directive for staff to develop a mandatory climate risk disclosure rule proposal for the Commission's consideration by the end of the year. Chair Gensler argued that "today, investors increasingly want to understand the climate risks of the companies whose stock they own or might buy. Large and small investors, representing literally tens of trillions of dollars, are looking for this information to determine whether to invest, sell, or make a voting decision one way or another." He asserted that a voluntary framework is not sufficient in providing consistency among corporate disclosures.
- On December 1, the SEC finalized its long awaited Universal Proxy voting rule which seeks to empower shareholders and provide more transparency in the selection of company directors. The rule, which takes effect in January 2022, provides a grandfather clause that does not mandate compliance until September 2022 to avoid disrupting the upcoming proxy season. Specifically, under the newly adopted framework, shareholders will have the ability to select any combination of nominees in the election of new directors as if they were in attendance in person. This shift clarifies existing regulation that varies by state and, some of which dictate that shareholders voting by proxy may only cast a vote for a specific slate of nominees — rather than selecting a combination of their preferred nominees. Additionally, shareholders will receive universal proxy voting cards for use in such elections. The new rule is expected to provide shareholders greater say in how companies address issues surrounding ESG matters.
- On December 7, SEC Chair Gensler mentioned at a Wall Street Journal conference that the Commission is considering whether to include emissions produced as a result of a firm's value chain into climate change disclosure requirements. In his remarks, he said that the Commission is considering scope 1, 2, and 3 emissions in its rulemaking process. Scope 3 emissions are those that are not directly produced by a firm, but its products. He noted that firms are publicly disclosing environmental impacts to investors, and many have made "net-zero" emissions pledges.

- In the SEC's first meeting of 2022 on January 26, Commissioners discussed the busy regulatory agenda for the year as they face increasing pressure from Administration officials to ramp up their efforts ahead of the midterm elections. Notably, however, the discussion saw no focus on the Commission's environmental regulatory push, as Commissioners weigh how to best implement such standards. One such proposal being considered is providing a safe harbor provision for "best estimate statements." The Commission is expected to release an RFI later this year with implementation of any measure being pushed to 2023. Chair Gensler stated last September that officials are working on a proposed rule requiring the disclosure of Scope 1 and Scope 2 emissions by U.S. listed companies. They are also considering the inclusion of Scope 3 emissions by all suppliers anywhere in the world. However, Commission officials have kept a tight wrap on ongoing efforts in the area and little is known about what thee final proposal may look like.

The Department of Treasury
In late April, Treasury Secretary Janet Yellen faced intense criticism from the left after naming a former private equity investor to be the department's first-ever climate counselor, a high-profile position that will be key to the agency's sweeping efforts to combat climate change. Yellen's pick, John Morton, is returning to government after most recently serving as a partner at the climate-focused investment firm Pollination. He earlier worked in the Obama White House as senior director for energy and climate change at the National Security Council, and as a private equity investor with Global Environment Fund.

On July 1, Treasury Secretary Janet Yellen announced that a group of 130 nations has agreed to a global minimum tax on corporations, part of a broader agreement to overhaul international tax rules. If widely enacted, the GMT would effectively end the practice of global corporations seeking out low-tax jurisdictions such as Ireland and the British Virgin Islands to move their headquarters to. Among the countries were all of the Group of 20 major economies, including China and India, which previously had reservations about the proposed overhaul. "For decades, the United States has participated in a self-defeating international tax competition, lowering our corporate tax rates only to watch other nations lower theirs in response. The result was a global race to the bottom: Who could lower their corporate rate further and faster? No nation has won this race," said Yellen.

On July 11, at the Venice International Conference on Climate, Treasury Secretary Janet Yellen said that she will lead a regulatory review to assess the risks that climate change may have on the financial stability of the U.S. The Financial Stability Oversight Council (FSOC), which is chaired by Treasury secretary and comprised of U.S. regulators from the Federal Reserve System, Securities and Exchange Commission (SEC) and others, will do an analysis as part of an executive order that the president signed regarding the financial risks related to climate, "outlining a whole-of-government process to assess climate risk to the U.S. financial system and federal government," Yellen said.

On July 19, President Biden tapped Graham Steele as assistant Treasury secretary for financial institutions. Mr. Steele, a former Democratic chief counsel on the Senate Banking Committee and aide to Sen. Sherrod Brown (D-OH), will oversee the Biden administration's plans to tighten regulations on Wall Street firms. That could include heightened scrutiny of cryptocurrencies; open-end mutual funds and hedge funds and their roles in market turbulence last year; and the financial sector's exposure to climate-change risks.

On October 21, Treasury Secretary Yellen released the long awaited FSOC Climate proposal, which had the Treasury Secretary calling climate change an emerging risk to the financial system and laid out over 30 specific recommendations for U.S. Financial Regulators to address and endeavor to mitigate these risks. The report was initiated in response to President Biden's Executive Order 14030, Climate-related Financial Risk. The release was intended to bolster the President's efforts when he attends the UN Conference on Climate in Glasgow next month. While some Republicans questioned the need for the report, it also wasn't received well by every environmental group, with some noting it was a "missed opportunity" because they viewed it as missing some critical risk reduction tools.

The Federal Reserve

In late January, the Federal Reserve announced the creation of a committee to examine the effects of climate change on banking and the economy. The Supervision Climate Committee (SCC) will be a "system-wide group bringing together senior staff across the Federal Reserve Board and reserve banks." Kevin Stiroh, who previously led bank supervision at the New York Fed, will lead the newly formed committee.

Additionally, on February 18, Federal Reserve governor Lael Brainard gave a speech on the role of financial institutions in addressing climate change risk, arguing that the economy and financial system are already being affected by climate change. In light of this, she said the central bank is ramping up work to ensure the financial system can deal with the risks that lay ahead of it.

On March 23, Brainard announced that the Federal Reserve plans to make climate change a major part of its Wall Street oversight by creating a new committee that will identify and respond to dangers a warming planet poses to the financial system. The Financial Stability Climate Committee (FSCC) will be "charged with developing and implementing a program to assess and address climate-related risks to financial stability." The central bank is investing in research and modeling to get a handle on how climate events can threaten firms and the broader economy, something she conceded might be challenging. The committee will coordinate with the multi-agency Financial Stability Oversight Council.

In January 2022, President Biden began nominating a slew of picks to fill vacancies at the Federal Reserve, including the renomination of Jerome Powell to serve another term at the helm of the Central Bank as well as current Governor Lael Brainard to serve as Vice Chair. A common theme among all of the nominees during their respective hearings was their stance on the potential risk of climate change. Republicans levied attacks at nominees over fears that the central bank will become increasingly involved in climate policy. However, nominees fell in line with Chair Powell's view that climate change poses a long-term risk and that the Fed's primary concern is ensuring financial stability. Powell and the other nominees pushed back on accusations that the central bank will begin actively participating in social and climate policy. Links to TRP's coverage of these events can be found here and here.

Office of the Comptroller of the Currency

On July 27, the Office of the Comptroller of the Currency said it has hired a senior bank regulator to help police climate risks. Darrin Benhart, the OCC's first climate change risk officer, has been at the agency since 1992. He most recently served on the team overseeing Bank of America. "Mr. Benhart's appointment is part of the agency's holistic efforts to ensure the federal banking system proactively manages the financial risks of climate change and its efforts to improve its energy efficiency and reduce its overall carbon footprint, which align with broader efforts across the federal government," the agency said in a press release. In addition, the OCC announced that it has joined the Network for Greening the Financial System (NGFS) — an international group of central banks and financial regulators developing rules to address climate risks.

The Pentagon

On March 11, the Pentagon announced the creation of a working group to respond to President Biden's series of executive orders aimed at addressing the climate crisis. "Climate change presents a growing threat to U.S. national security interests and defense objectives," Defense Secretary Lloyd Austin wrote in a March 9 memo to senior Pentagon leadership and combatant command leaders. The group, which will be chaired by Joe Bryan, the current special assistant to the secretary for climate, will "co-coordinate department responses to the executive order and subsequent climate and energy related directives," Pentagon spokesman John Kirby told reporters. The group will also track the Defense Department's progress in future moves to address climate change, including evaluating the Pentagon's energy efficiency programs and making sure military installations are more resilient to extreme weather.

The Department of Labor

On March 10, the U.S. Department of Labor's Employment Benefits Security Administration announced that it will not enforce recently published final rules on "Financial Factors in Selecting Plan Investments" and "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights." In the press release, Principal Deputy Assistant Secretary for the Employee Benefits Security Administration Ali Khawar stated: "These rules have created a perception that fiduciaries are at risk if they include any environmental, social and governance factors in the financial evaluation of plan investments, and that they may need to have special justifications for even ordinary exercises of shareholder rights. We intend to conduct significantly more stakeholder outreach to determine how to craft rules that better recognize the important role that environmental, social and governance integration can play in the evaluation and management of plan investments, while continuing to uphold fundamental fiduciary obligations."

On October 13, the U.S. Department of Labor's Employee Benefits Security Administration announced a proposed rule aimed at removing restrictions for fiduciaries, allowing them to consider climate change and other environmental, social and governance factors when selecting investment options.

The Department is seeking public comment on the proposed rule through December 13, 2021. In a press release announcing the measure, Acting Assistant Secretary for the Employee Benefits Security Administration Ali Khawar said: "The proposed rule announced today will bolster the resilience of workers' retirement savings and pensions by removing the artificial impediments – and chilling effect on environmental, social and governance investments – caused by the prior administration's rules. A principal idea underlying the proposal is that climate change and other ESG factors can be financially material and when they are, considering them will inevitably lead to better long-term risk-adjusted returns, protecting the retirement savings of America's workers."

The Commodity Futures Trading Commission

On Wednesday, March 17, the CFTC announced the establishment of a new unit to gauge the dangers posed by climate change to futures and options markets. The derivatives regulator said that its new Climate Risk Unit (CRU), which will be staffed from across the CFTC's divisions, will help ensure that new products and markets fairly take into account climate-change risks, including factors such as severe weather, in their pricing and other activities. The CFTC's new unit may also join domestic and international forums to help develop standards, practices and disclosures on climate finance.

White House

In response to President Biden's Executive Order on *Tackling the Climate Crisis at Home and Abroad* (E.O. 14008), the White House published its International Climate Finance Plan on April 22. Specifically, the plan outlines a series of steps the administration is looking to take with respect to mobilizing financial resources to assist developing countries reduce and/or avoid greenhouse gas emissions. The administration is also laying out steps to help promote climate resiliency and adaptation. In announcing the plan, the Biden administration outlines five key areas for its international climate finance goals and priorities. This includes: (1) scaling up climate finance and enhancing its impact; (2) mobilizing private sector finance internationally; (3) taking steps to end international official financing for carbon-intensive fossil fuel-based energy; (4) making capital flows consistent with low-emissions and climate-resilient pathways; and (5) additional steps to define, measure, and report on U.S. public climate financing.

Additional Agencies

The U.S. International Development Finance Corp. named its first-ever climate change officer in early May to help the federal overseas investment agency improve its portfolio's climate performance. DFC named Jake Levine as its chief climate officer and Aparna Shrivastava as his deputy. Levine and Shrivastava will take the lead on implementing two new goals announced at April's Leaders Summit on Climate: achieving a net-zero emissions portfolio by 2040 and boosting climate-centric investments to 33 percent by fiscal 2023.

Global regulators published a blueprint on Wednesday July 7 to give a "sense of direction" to proliferating initiatives for tackling climate-related financial risks before they fragment markets. The Financial Stability Board (FSB), which coordinates financial rules for the G20 group of nations, said its "roadmap" seeks to coordinate approaches to disclosures by companies and plug gaps in the data needed to spot financial stability "vulnerabilities" and develop tools to address them. A patchwork of disclosure methods have prompted a global regulatory initiative to set up an International Sustainability Standards Board (ISSB) to give cross-border investors consistent information.