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ESG Investigations Tracker

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ESG has become a prominent and divisive political issue in the United States. In addition to public criticisms of ESG initiatives, a number of states have launched investigations into or taken action regarding whether certain ESG practices violate state and federal laws (see the Debevoise State-Level ESG Investment Developments Tracker [here](#)). Similarly, following the 2022 midterm elections, ESG has become an increasingly important topic for the U.S. Congress. This tracker collects developments relating to the uptick in investigations of ESG practices and initiatives.

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June 6, 2023	House Committee on Oversight and Accountability holds "ESG Part II: The Cascading Impacts of ESG Compliance" hearing	<p>On June 6, 2023, the House Committee on Oversight and Accountability held the second hearing in a planned series about the growth of ESG investing practices. The hearing largely tracked the arguments raised during the first hearing on May 10 (see below).</p> <p>In addition to reiterating concerns related to fiduciary duties, Republican committee members and witnesses claimed that investors lack choice in deciding whether or not to pursue an ESG investing strategy. In their testimony, witnesses argued that companies and asset managers are being "forced" to implement an ESG agenda. Republican committee members also expressed concerns over "ESG scoring" and claimed that there are adverse consequences when a company receives a low ESG rating. Finally, Representative Lisa McClain (R-MI) stated that the Committee would "continue to investigate this matter."</p> <p>In contrast, Democratic committee members argued that employing ESG considerations is an effective investment strategy and emphasized the need to make ESG-related data available to investors.</p>	Committee Hearing
May 24, 2023	Louisiana sues EPA over Clean Air Act policies	<p>On May 24, 2023, Louisiana filed a suit in the Western District of Louisiana, claiming that an Environmental Protection Agency (EPA) policy requiring state regulators to "analyze a project's potential impact on nearby communities of color before granting a Clean Air Act (CAA) permit" is improper. The lawsuit is based on an EPA review of CAA permits for industrial chemical plants outside New Orleans. The suit alleges that the EPA is now taking issue with those permits because the facilities are "disproportionately harming the surrounding, predominantly Black neighborhoods."</p> <p>The complaint cites violations of the private non-delegation doctrine, the imposition of "disparate-impact-based requirements in contravention of Title VI," and rulemaking beyond the EPA's statutory authority as bases for the lawsuit.</p>	Complaint Article
May 22, 2023	House Republicans pen letter challenging EPA's proposed emissions standards	<p>On May 22, 2023, Republican members of the House sent a letter to Environmental Protection Agency (EPA) Administrator Michael Regan expressing concerns with the agency's proposed vehicle emissions standards and urged Regan to rescind the proposal. The EPA proposal was announced on April 12, 2023, and would impose new standards on car and truck manufacturers to reduce vehicle emissions and accelerate the shift towards electric vehicles (EVs).</p> <p>The letter claims that the proposed standards are "unworkable and impractical" and constitute "deliberate market manipulations to prop up EVs." It also claims that the purported environmental benefits of EVs are overstated and that a transition to EVs would impose excessive financial costs on Americans.</p>	Letter to EPA Press Release

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May 17, 2023	Senate Republicans send letter to Fed expressing concerns over pilot climate scenario exercise	<p>On May 17, 2023, Republican members of the Senate sent a letter to Federal Reserve (Fed) Chair Jerome Powell expressing frustration with the Fed's "engagement on environmental policymaking and research far outside of its statutory mandate." The letter cites the Fed's "pilot climate scenario analysis exercise" (see below) as an example of a policy that lacks statutory authority and is instead part of the Fed's "growing track record of climate activism."</p> <p>The letter concludes by urging Powell to maintain the independence and legitimacy of the Fed by operating within what the letter's authors see as the Fed's statutory authority.</p>	Letter to Fed
May 17, 2023	House Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs holds hearing on EPA's proposed vehicle emissions standards	<p>On May 17, 2023, the House Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs held a hearing titled "Driving Bad Policy: Examining EPA's Tailpipe Emissions Rules and the Realities of a Rapid Electric Vehicle Transition." The hearing was intended to examine the Environmental Protection Agency's (EPA) proposed vehicle emissions standards.</p> <p>The main concerns expressed by Republican members of the committee involved the alleged EPA preference for electric vehicles (EVs) and the resulting reduction in U.S. consumers' choice for vehicle options. They also commented on the substantial "mineral inputs" required to manufacture EVs, the inability of the U.S. electric infrastructure to handle a shift to EVs, and the high financial cost of EVs for consumers.</p>	Subcommittee Hearing
May 15, 2023	Republican attorneys general send letter to the NZIA over legality of climate commitments	<p>On May 15, 2023, Republican attorneys general representing 23 states sent a letter to the Net-Zero Insurance Alliance (NZIA) expressing concerns over the group's efforts to "advance an activist climate agenda." The attorneys general allege that the NZIA's climate targets require member companies to pressure their clients into taking costly actions to reduce emissions.</p> <p>Specifically, the letter claims that the NZIA protocols appear to violate state and federal antitrust law by manipulating the insurance market, increasing prices, and otherwise being "unfair or unreasonably harmful to competition." Additionally, the attorneys general claim that NZIA membership requirements violate other state laws, such as Louisiana's prohibition on insurers "engaging in any discrimination [between customers] that is not based on underwriting risk." The letter concludes by requesting various documents and information related to NZIA member companies' climate commitments.</p> <p>In the weeks since the letter was sent, half of the 28 NZIA member companies have left the alliance. One insurer, Germany's Munich Re, cited concerns about "material antitrust risks" in explaining its rationale for leaving the NZIA.</p>	Letter to NZIA Reuters Article on NZIA Departures Insurance Business Article on NZIA Departures
May 10, 2023	House Committee on Oversight and Accountability holds	<p>On May 10, 2023 the House Committee on Oversight and Accountability held a hearing about the growth of ESG investing practices. This hearing, the first in a planned series related to ESG,</p>	Committee Hearing

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	<p>"ESG Part I: An Examination of Environmental, Social, and Governance Practice with Attorneys General" hearing</p>	<p>comes on the heels of the March 30 letter from 21 Republican attorneys general to U.S. asset managers regarding their use of ESG factors (see below).</p> <p>Testimony in opposition to ESG investing came from two of the letter's signatories, Alabama Attorney General Steve Marshall and Utah Attorney General Sean Reyes. Their main arguments were that: (i) asset managers are breaching their fiduciary duties to investors by placing "causes over profits;" (ii) ESG creates threats to American independence and national security; and (iii) ESG alliances like the Net-Zero Banking Alliance and Climate Action 100+ are anti-competitive and should be subject to antitrust law. Additionally, Marshall and Reyes called on the Committee to investigate three areas: (1) whether the Federal Energy Regulatory Committee is properly overseeing asset managers who own utility company shares (see below); (2) whether proxy advisory firms are making ESG-based voting recommendations that are not in the best interests of shareholders; and (3) whether the Department of Labor rule permitting ESG considerations in selecting retirement fund investments exceeds the agency's statutory authority (see below).</p> <p>On the other side, Illinois State Treasurer Michael Frerichs testified in favor of ESG considerations as appropriate investment criteria. He argued that ESG data constitutes material information for investors to assess risk and maximize returns. He stated that limiting the use of ESG factors prevents investors from making fully informed decisions. Frerichs further argued that the use of ESG factors aligns with acting in a client's best interests and these considerations are particularly relevant to long-term returns.</p> <p>Additionally, Democratic Committee members repeatedly emphasized that restricting the use of ESG considerations is contrary to free market principles.</p>	
<p>May 10, 2023</p>	<p>Republican attorneys general challenge BlackRock's utilities holdings</p>	<p>On May 10, 2023, Republican attorneys general representing 17 states filed a motion with the Federal Energy Regulatory Commission (FERC) seeking review of BlackRock's utilities holdings. In the motion, the attorneys general expressed concern over BlackRock using its voting stake to impose its ESG priorities on utility companies and "force utility companies to phase out traditional energy investment."</p> <p>BlackRock is permitted to own \$10 million or more of U.S. utility company voting shares pursuant to a "blanket authorization" from FERC. The waiver was originally granted on the basis of BlackRock being a passive and non-controlling investor. However, the attorneys general allege that BlackRock is no longer functioning as a passive investor in utility companies, but rather is seeking to influence utility companies' operations. The complaint ultimately requests that FERC audit BlackRock for compliance with the waiver and issue orders requiring BlackRock and its subsidiaries to "function as passive, non-controlling investors," as</p>	<p>Motion</p> <p>Reuters Article</p>

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		appropriate.	
April 26, 2023	House Subcommittee on Environment, Manufacturing, and Critical Materials holds "Exposing the Environmental, Human Rights, and National Security Risks of the Biden Administration's Rush to Green Policies" hearing	<p>On April 26, 2023, the House Subcommittee on Environment, Manufacturing, and Critical Material held a hearing about the alleged risks posed by the Biden Administration's "green" energy policies. The subcommittee's main arguments against the Administration's green energy policies included that: (i) there are environmental drawbacks to renewables, such as the clearing of land for solar panels and wind turbines; (ii) global renewable energy supply chains involve human rights violations; and (iii) greater use of renewables threatens national security by expanding U.S. reliance on its adversaries, especially China and Russia. Subcommittee Chair Bill Johnson (R-OH) argued for greater scrutiny of the transition to renewables and touted the benefits of a "diverse energy mix."</p> <p>In addition, witness testimony and subcommittee member questions focused on the financial costs of renewable energy. For instance, Representative Dan Crenshaw (R-TX) discussed the issue of "energy insecurity" and claimed that residents of states such as California that have transitioned primarily to renewable energy are experiencing higher energy costs. Other members argued that the U.S. can and already does achieve emission reductions without transitioning primarily to renewables, such as through the increased use of natural gas.</p>	Subcommittee Hearing
April 25, 2023	Louisiana attorney general opens investigation into Climate Action 100+	On April 25, 2023, Louisiana Attorney General Jeff Landry opened an investigation into Climate Action 100+, an investor coalition seeking to reduce greenhouse gas emissions. According to the attorney general's office, the investigation will examine whether asset managers breached their fiduciary duties to investors by prioritizing climate initiatives. Specifically, the investigation will focus on two members of the Climate Action 100+ Steering Committee: Franklin Templeton, a global asset manager, and CalPERS, California's public employee retirement system.	Washington Times Article
April 18, 2023	SEC Chair Gensler testifies before House Committee on Financial Services	<p>On April 18, 2023, SEC Chair Gensler testified before the House Committee on Financial Services. Chair Gensler received questions from both Republicans and Democrats about the SEC's proposed climate disclosure rule.</p> <p>From the Republicans, many of the questions were directed at the SEC's authority to implement climate disclosures and the cost to businesses, particularly small businesses, of complying with the proposed rule. In response to a question about whether the SEC has the authority to make the climate disclosure rule, Chair Gensler stated that the SEC has "the legal authority to enact rules about disclosure, about risk. And climate risk is something investors today are investing in, so it's just . . . about disclosure, about these material risks in the financial companies and in companies that are accessing the financial markets." He added that the purpose of the rule is to bring "consistency and comparability" to the disclosures that are already happening and</p>	Committee Hearing Written Testimony

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		<p>to information on which investors are relying. Chair Gensler added that the SEC is “not a climate regulator” and that the proposed rules are “merit neutral.” In response to questions about the cost to small businesses, Chair Gensler stated that the climate disclosure rules would only apply to public companies.</p> <p>Many of the questions from Democrats related to the disclosure of Scope 3 emissions. Scope 3 emissions, which are emissions that occur in a company’s supply chain, are a part of the proposed rule that the SEC has previously contemplated “softening.” Questions by several Democrats at this hearing indicated that they would like to see the Scope 3 emissions disclosures remain in the rule. In response to a question about investor support of the climate disclosure rules, Chair Gensler said, “There’s generally been strong support among investors and some that are in opposition to the so-called Scope Three disclosures, but generally very strong support. Far more mixed on the issuer side.” Chair Gensler also stated, citing the Wall Street Journal, that about 70% of U.S. public companies will be required to report Scope 3 emissions under Europe’s Corporate Sustainability Reporting Directive (CSRD) regime.</p>	
<p>March 30, 2023</p>	<p>Republican attorneys general challenge asset managers over ESG considerations</p>	<p>On March 30, 2023, the office of the Montana Attorney General, on behalf of the Montana Attorney General and 20 other Republican attorneys general, issued a letter to 53 of the largest asset managers in the United States, including BlackRock, State Street and JPMorgan Chase. The letter asserts that the asset managers have disregarded their fiduciary duties to their clients by joining initiatives that seek to reduce greenhouse gas emissions, such as Net Zero Asset Managers (NZAM) and Climate Action 100+. The letter asserts that the asset managers, after joining such initiatives, failed to advertise all of their funds as ESG despite the emissions commitments made; failed to adequately explain the risks of funds advertised as ESG; and failed to disclose conflicts of interest between climate and financial motives.</p> <p>The letter also discusses a number of shareholder proposals where the asset managers will be required to choose between ESG policy and prioritizing financial returns, namely: (1) climate change resolutions in banking; (2) underwriting activities in insurance; (3) net zero compliance in utilities and energy; and (4) abortion and political spending. For each category, the letter notes that the shareholder proposal fails to explain any financial benefit to the company or how the policy promotes financial goals over what the letter states are political and partisan ESG policies. The letter concludes by noting the attorneys general’s intention to continue to evaluate the asset managers’ activities as part of ongoing investigations into potential violations in this area.</p>	<p>Office of the Attorney General for the State of Montana, Louisiana and Utah</p> <p>Reuters</p>
<p>March 29, 2023</p>	<p>House Subcommittee on Financial Services and General</p>	<p>Republican members of the House Subcommittee on Financial Services and General Government repeatedly questioned the SEC’s authority to write climate disclosure rules during a hearing</p>	<p>Subcommittee Hearing</p>

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	Government questions SEC Chair Gensler about climate disclosure	on March 29, 2023. In response to criticism that Congress has “seen you sprint outside your congressional jurisdiction,” SEC Chair Gensler said the SEC is “merit-neutral. . . . We are trying to bring consistency and comparability to those disclosures.” Later in the hearing, Chair Gensler added, “Investors today around the globe, thinking about the value of those investments that they make, are taking into consideration climate risk. Companies today are already making disclosures. . . . Our role is to ensure that those disclosures . . . are not misleading those investors.” However, Chair Gensler noted that the Scope 3 disclosures in the proposed rule are “not as well developed” and that the SEC is taking a look at those and other parts of the rule.	
March 28, 2023	House Republicans pen letter to the Department of the Interior regarding alleged efforts to obstruct domestic energy production	Representatives from the Committee on Oversight and Accountability and the Committee on Natural Resources jointly wrote a letter to the Department of the Interior (DOI) expressing concern about the process for issuing offshore leases. Specifically, the letter requested documents and information related to Lease 258 and other Bureau of Ocean Energy Management (BOEM) sales. Regarding Lease 258, which is related to the development of the Cook Inlet in Alaska, the representatives questioned why, despite the benefits, the BOEM recommended the highest possible royalty rates due to “social costs of greenhouse gas emissions.” The representatives stated that the increased royalty rate priced out prospective energy producers. The letter stated that due to the DOI’s actions, there is “pressing need for oversight of DOI’s permitting review process and the Biden Administration’s prioritization of its climate agenda above states’ revenue streams, economic development, and the energy security of all Americans.”	Letter to DOI
March 5, 2023	Democratic members of Congress write letter to SEC Chair regarding climate disclosure rule	Senators Elizabeth Warren and Sheldon Whitehouse led more than 50 lawmakers in pressing SEC Chair Gensler to ensure that the SEC fulfill “its duty to investors and follow through on finalizing a strong climate disclosure rule without delay.” The impetus for the letter stemmed from reports that the SEC might soften its proposed climate rule. The letter identifies two specific concerns: that the SEC was considering (i) increasing the threshold at which companies must report climate costs and (ii) curtailing Scope 3 emissions disclosure requirements. The letter notes that the SEC’s initial proposal “has broad backing from institutional investors and asset managers,” including the California Public Employees’ Retirement System. Additionally, the letter urges the SEC to maintain the initial Scope 3 disclosure requirements, indicating that without them “companies could also simply offload emissions-intensive activities to suppliers or downstream customers to appear cleaner without actually lowering their emissions or resultant transition risk.”	Democratic Lawmakers’ Letter to Chair Gensler
February 28– March 20, 2023	President Biden vetoes H.J. 30, a joint resolution	On March 20, 2023, President Biden vetoed H.J. Res. 30, a joint resolution disapproving of the Department of Labor (DOL) ESG Rule (described below). In his message to the House of	President’s Veto Reuters Article –

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	passed by the House and Senate disapproving of the Department of Labor's ESG Rule	<p>Representatives, President Biden said, "There is extensive evidence showing that environmental, social, and governance factors can have a material impact on markets, industries, and businesses." The President went on to state that not considering ESG factors, like "the physical risks of climate change and poor corporate governance," could have negative impacts on investment returns.</p> <p>The resolution reached the President's desk after the House of Representatives and Senate passed the resolution. Pursuant to the Congressional Review Act, Congress had 60 days from January 30, 2023 to pass a joint resolution of disapproval of the DOL's ESG Rule. On February 28, 2023, the House of Representatives approved the resolution by a 216–204 vote. The following day, on March 1, 2023, the Senate approved the resolution by a 50–46 vote, with two Democrats voting with the Republicans.</p>	<p>House</p> <p>Reuters Article – Senate</p>
February 22, 2023	Republican members of Congress send letter to SEC Chair Gensler regarding proposed climate disclosure rule	The chairs of the House Financial Services Committee and House Subcommittee on Oversight and Investigations, as well as the Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs sent a letter to SEC Chair Gensler regarding the proposed climate rule. In the letter, the members of Congress requested records and other information related to the climate rule. Additionally, the letter questions the SEC's authority to write the rule. Citing the Supreme Court's recent ruling in <i>West Virginia v. EPA</i> requiring agencies to point to clear congressional authorization for actions, the letter states that "Congress did not intend for the SEC to be an arbiter of business strategies, much less the determining body for climate policies."	Republican Lawmakers' Letter to Chair Gensler
February 3, 2023	House Financial Services Committee announces Republican ESG working group	<p>On February 3, 2023, Chairman of the House Financial Services Committee Patrick McHenry (R-NC) announced the creation of a Republican ESG working group to develop the party's response to the ESG movement. The working group will be led by the Chair of the Oversight & Investigations Subcommittee Bill Huizenga (R-MI).</p> <p>The press release announcing the formation of the working group stated that the purpose of the group is to "combat the threat to our capital markets posed by those on the far-left pushing environmental, social, and governance (ESG) proposals." According to Chairman McHenry, the nine-member working group is tasked with developing a "comprehensive approach to ESG that protects the financial interests of everyday investors," as well as the U.S. capital markets. The press release stated that the working group will educate members and develop policy within the Committee's jurisdiction and throughout the broader House Republican Conference to coordinate the party's response to ESG policies at the national and state levels.</p>	Press Release
January 26, 2023	Republican attorneys general	On January 26, 2023, Republican attorneys general representing 25 states sued the Department of Labor (DOL) seeking to block	Complaint

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	sue the Department of Labor	<p>regulations, effective January 30, 2023, that permit fiduciaries to consider climate change and other ESG factors when selecting investments for retirement plans (the "Rule"). The Rule, finalized in November 2022, expressly permits fiduciaries under the Employee Retirement Income Security Act of 1974, as amended (ERISA) to take ESG factors into account as long as they comply with ERISA's fiduciary duties of prudence and loyalty.</p> <p>The lawsuit alleges that the Rule exceeds the DOL's statutory authority under ERISA and "undermines key protections for retirement savings of 152 million workers" in the name of promoting ESG factors in investing, including the Biden-Harris Administration's stated desire to address climate change. The lawsuit claims that the Rule will result in reduced investment in the fossil fuel industry, which would directly harm many of the plaintiff states.</p> <p>The lawsuit also asserts that the Rule fails under the "major questions doctrine" due to the magnitude of the assets impacted by the Rule. The "major questions doctrine," which was the basis of the Supreme Court's decision to strike down an EPA rule aimed at curbing climate change in <i>West Virginia v. EPA</i>, requires clear congressional authorization for agency actions that are of economic or political significance.</p>	Debevoise Update – DOL ESG Rule
January 25, 2023	House Democrats establish sustainable investment caucus	<p>On January 25, 2023, Democratic leaders in the House of Representatives announced the establishment of a sustainable investment caucus. According to Representative Sean Casten (D-IL), the caucus is intended "to progress past the distortion of facts and have robust, open-minded discussions about sustainable investing." The Sustainable Investment Caucus is co-chaired by Casten and Representative Juan Vargas (D-CA) and includes five other Democratic lawmakers in its initial member roster.</p> <p>The new caucus is a defensive response to House and Senate Republicans' efforts, in addition to state-level measures in Texas and Florida, to interrogate ESG investing practices. At the state level, Delaware State Treasurer Colleen Davis has spoken in favor of the caucus, emphasizing particular concerns with misinformation in the anti-ESG movement.</p>	Press Release ESG Clarity
December 16, 2022	House and Senate Republicans attempt to block new DOL Rule in anti-ESG strategy	<p>On December 16, 2022, Representative Andy Barr (R-KY) and Senator Mike Braun (R-IN) introduced a joint resolution to nullify the Department of Labor's ("DOL") recently proposed rule. The DOL rule permits conscious ESG investing, including consideration of climate change, by fiduciaries in retirement plans.</p> <p>Although the current makeup of Congress and Democratic control of the White House makes the resolution unlikely to pass, the proposal is nonetheless viewed as part of Republicans' larger strategy to challenge ESG measures at the federal and state levels. Ultimately, Barr and Braun's actions will bring more</p>	Press Release

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		attention to pro-ESG activities at the executive level and keep the issue live on the congressional floor.	
December 15, 2022	BlackRock and State Street officials testify about ESG investing before Texas State Senate Committee	<p>On December 15, 2022, the Texas Senate Committee on State Affairs held a hearing with regard to investing practices tied to ESG factors. The committee subpoenaed executives from BlackRock, Vanguard, State Street Global Advisors and Institutional Shareholder Services Inc. to testify about climate priorities in investing strategies. After Vanguard withdrew from the Net Zero Asset Managers (NZAM) initiative earlier in the month, it was not represented at the hearing.</p> <p>Texas lawmakers allege that these investment firms have violated Senate Bill 13, a 2021 state law that bars the state from investing in companies that divest from oil, natural gas and coal companies. The law permits Texas to preclude from participation in state contracts any investment companies that divest from the oil and gas sector. The law is anticipated to have a major impact on Texas's state pension funds, including the Texas Permanent School Fund (\$46 billion), the Teacher Retirement System of Texas (\$165 billion), the Employees Retirement System of Texas (\$31 billion) and the Texas Municipal Retirement System (\$31 billion).</p> <p>The hearing was led by Texas Republicans, who inquired whether asset managers violate fiduciary duties to investors and put too much pressure on portfolio companies by complying with climate investing initiatives like Net Zero Asset Managers (NZAM). The state senators also questioned the companies' participation in federal-level policymaking on ESG requirements.</p> <p>Both BlackRock and State Street representatives maintained their commitment to the best returns for their clients throughout the questioning. State Street Global Chief Investment Officer Lori Heinel also emphasized the existence of funds dedicated to non-renewable energy sectors, such as oil and gas.</p>	<p>Pensions & Investments Article</p> <p>Reuters Article</p> <p>Texas Tribune Article</p>
December 6, 2022	House Republicans launch investigation into "Climate Cartel"	<p>On December 6, 2022, Republican members of Congress sent a letter to executives of the Steering Committee for Climate Action 100+ noting the role the organization plays in efforts to advance firms' ESG policies. Climate Action 100+ is an investor-led initiative that aims to ensure that the world's largest corporate greenhouse gas emitters act on climate change.</p> <p>The letter, addressed to Mindy Lubber (CEO of Ceres) and Simiso Nzima (Management Investment Director of CalPERS), requests information about ESG-related conduct or agreements that, the authors of the letter state, could be unlawful under U.S. antitrust laws. The letter requests numerous documents by December 20, 2022, including those related to:</p> <ul style="list-style-type: none"> The various markets, sectors or industries in which Climate Action 100+ or Ceres help investors, members or 	<p>Letter</p>

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		<p>other companies advance ESG-related goals;</p> <ul style="list-style-type: none"> Guidance from Climate Action 100+ or Ceres on how investors, members or other companies can or should advance ESG-related goals; Efforts by Climate Action 100+ or Ceres to obtain or solicit agreements, commitments or other types of participation from any investors, members or other companies, including but not limited to BlackRock, State Street or Vanguard, to advance ESG-related goals; Communications between or among investors, members or other companies referring or relating to their joint or collective efforts to advance ESG-related goals, including any documents and communications reflecting or suggesting agreement over specific steps, policies or best practices; The founding of Climate Action 100+, including any documents and communications about the need for Climate Action 100+ to facilitate advancing ESG-related goals, and about the roles of Ceres and CalPERS; and Communications with proxy advisory firms, including Institutional Shareholder Services and Glass Lewis, or financial services companies, including PayPal, referring or relating to ESG-related goals. <p>The letter also includes a formal request to preserve all existing and future records and materials relating to facilitating and coordinating companies' efforts to achieve ESG-related goals.</p> <p>The letter was signed by Representative Jim Jordan (R-OH), the incoming chair of the House Judiciary Committee, as well as Representatives Dan Bishop (R-NC), Matt Gaetz (R-FL), Scott Fitzgerald (R-WI), Cliff Bentz (R-OR) and Tom McClintock (R-CA).</p>	
<p>December 5, 2022</p>	<p>House Republicans ask Federal Trade Commission to explain a new policy that they worry might be giving weight to ESG priorities as it reviews corporate mergers</p>	<p>On December 5, 2022, Republican members of Congress sent a letter to Federal Trade Commission (FTC) Chair Lina Khan, requesting an explanation of whether the FTC is using ESG as a factor in merger reviews.</p> <p>The letter sets out two main concerns:</p> <ul style="list-style-type: none"> First, that the FTC replaced its policy interpreting its statutory mandate to root out unfair methods of competition with one that "relies on a much broader, more amorphous, reading of [its mandate] that can easily be manipulated by the political whims" of the FTC (the "Policy Statement"); and Second, that merging companies have reported inquiries from the FTC requesting information outside the traditional scope of whether consumers have been 	<p>Letter</p>

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		<p>harmful, including how a deal would affect ESG issues.</p> <p>The letter contends that the FTC’s Policy Statement and its reported promotion of ESG criteria in merger reviews could make it less likely that the FTC would “address collusive activities supporting ESG.” The members of Congress express concerns that Khan’s comments during the September 20, 2022 Senate Judiciary Committee hearing (see below), namely that “[ESG] ‘cooperation or agreements, in as much as they can affect competition, are always relevant,’ left open the possibility that collusion on ESG initiatives may not be an enforcement priority.”</p> <p>The letter also asserts that the Biden-Harris Administration’s executive order on competition raises concerns that using ESG criteria “as a political tool has spread to other regulators such as the Federal Deposit Insurance Corporation (FDIC) or the Securities & Exchange Commission (SEC).”</p> <p>The letter was signed by Representatives Scott Fitzgerald (R-WI), Andy Biggs (R-AZ), Tom Tiffany (R-WI), Warren Davidson (R-OH), Byron Donalds (R-FL), Michelle Fischbach (R-MN), Greg Steube (R-FL), Matt Gaetz (R-FL), Randy Weber (R-TX), Chip Roy (R-TX), Doug Lamborn (R-CO) and Matt Rosendale (R-MT).</p> <p>The letter requests a response from Khan by December 19, 2022.</p>	
<p>November 21, 2022</p>	<p>Democratic attorneys general respond to Republican criticism of ESG investing</p>	<p>On November 21, 2022, D.C. Attorney General Karl Racine and 17 other Democrat state attorneys general wrote to members of Congress about their warnings against ESG investing. In particular, the letter addresses the August 4, 2022 letter sent by 19 Republican attorneys general to BlackRock, arguing that relying on ESG investment criteria rather than shareholder profits in managing state pension funds was potentially in violation of state and federal law.</p> <p>The attorneys general’s letter emphasizes that ESG factors “are like any other material factors—such as supply chain concerns or changing interest rates—that inform investment decision-making” and that consideration of ESG factors is therefore a part of prudent investment decision-making. The letter also suggests that state pension funds are considering ESG factors because this yields positive financial results, even in states where this would now be prohibited. The attorneys general also highlight the importance of preventing greenwashing and the SEC’s efforts in this area.</p> <p>The letter also responds to the suggestion that public pension plans taking ESG factors into account in financial decisions would be contrary to their fiduciary duties; the attorneys general are clear in their view that the consideration of ESG factors is consistent with legal responsibilities to evaluate potential risk and reward in assessing the merits of an investment.</p> <p>Lastly, the letter rejects the claim that asset managers that</p>	<p>Letter</p>

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		<p>consider ESG factors may be violating antitrust and competition laws on the basis that an expression of general recommendations or a statement in favor of or against certain policies does not, without more, constitute a violation of the Sherman Act. The consideration of ESG factors does not “categorically block investment in any given industry or sector,” but merely allows for an “evaluation of the expected impact of environmental, social, and governance events on returns.”</p>	
<p>November 15, 2022</p>	<p>Senate Committee on Banking, Housing, and Urban Affairs holds “Oversight of Financial Regulators: A Strong Banking and Credit Union System for Main Street” hearing</p>	<p>On November 15, 2022, the Senate Committee on Banking, Housing, and Urban Affairs held a hearing with representatives from the Federal Reserve (Fed), the National Credit Union Administration (NCUA), the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC). At this hearing, Senator Patrick Toomey (R-PA), the Ranking Member of the Committee, voiced his concerns over the politicization of financial regulation.</p> <p>Toomey pointed out three examples that demonstrate this politicization:</p> <ol style="list-style-type: none"> 1. The Fed announced a “pilot climate scenario analysis exercise” with the six largest U.S. banks to ensure that banks understand their transition risk as it pertains to global warming; 2. The Fed, FDIC and OCC joined the Network for the Greening of the Financial System, which seeks to “mobilize mainstream finance to support the transition toward a sustainable economy”; and 3. The NCUA has also made recommendations that credit unions consider altering membership requirements and product offerings because of climate change. <p>Senator Mike Rounds (R-SD) also focused a question to the representative from the NCUA about a statement in the NCUA’s draft 2022-2026 strategic plan related to the NCUA’s suggestion that credit unions serving agricultural communities consider altering their membership.</p> <p>Outside of these statements and questions, other comments in the hearing related to banks and credit unions’ ability to manage climate-related and geopolitical risks. Specifically, Michael Barr, Vice Chairman of Supervision at the Fed, said that he is concerned about the long-term risks from climate change and geopolitical instability. Additionally, he indicated that the Fed was interested in joining the FDIC and the OCC in providing guidance to the largest banks, those with over \$100 billion in assets, related to climate-related risks.</p>	<p>Committee Hearing</p>
<p>November 3, 2022</p>	<p>Republican Senators including Grassley and Cotton warn law</p>	<p>On November 3, 2022, Senators Marsha Blackburn (R-TN), Tom Cotton (R-AR), Chuck Grassley (R-IA), Mike Lee (R-UT) and Marco Rubio (R-FL) authored identical letters to 51 leading law firms. The</p>	<p>Letter Press Release</p>

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	firms about ESG initiatives	<p>letters contained explicit warnings about each firm’s ESG practice and its impact on clients and the U.S. economy.</p> <p>In particular, the Senators argued that ESG initiatives could violate federal antitrust law. In this regard, they cited Federal Trade Commission (FTC) Commissioner Lina Khan as stating that ESG group initiatives are “relevant to” the FTC insofar as they threaten competition. They also relied upon a statement by Assistant Attorney General of the Antitrust Division Jonathan Kanter, who expressed agreement with the general idea that anticompetitive behavior is subject to antitrust laws.</p> <p>The Senators also expressed concerns about the ESG movement’s impact on the energy sector, particularly coal, oil and gas companies and geopolitical competition. Ultimately, the Senators warned that Congress will begin investigating ESG initiatives for possible violation of antitrust laws and advised firms to preserve relevant evidence in anticipation of such investigations.</p>	
October 31, 2022	Senator Pat Toomey requests ESG ratings firms disclose methodology	<p>On October 31, 2022, Senator Patrick Toomey (R-PA) wrote to a group of 12 ESG ratings firms requesting information on methodologies used to calculate ESG ratings, and requiring them to preserve documents, communications and other information related to the request. The 12 firms are MSCI, ISS, Bloomberg, Sustainalytics, Moody’s, CDP, S&P Global, FTSE Russell, RepRisk, FactSet, Refinitiv and Arabesque S-Ray.</p> <p>The letters were a follow-up to an initial request sent on September 20, 2022, asking the firms to share non-proprietary methodologies used to assign ESG ratings to companies. Specifically, the September 20 letters asked the firms to answer a number of questions, including:</p> <ul style="list-style-type: none"> • whether companies have an opportunity to submit clarifying comments to their ratings for the benefit of investors; • how the firms determine the credibility of the data sources used; • how the firms approach ratings with respect to issues such as abortion and gun control; and • how the firms deal with potential conflicts of interest in cases where the firms also issue proxy vote recommendations or offer advisory services. <p>The October 31 letters stated that there is an “increased bipartisan interest in conducting oversight of the ESG industry” and that “the use of ESG factors in capital allocation has become an issue of increasing bipartisan interest to Congress and regulators.” Furthermore, Toomey highlighted concerns about the “veracity” of third-party data, the opacity of ratings</p>	<p>Letter Press Release - U.S. Senate Committee on Banking, Housing, and Urban Affairs</p>

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		methodologies and the management of conflicts of interest.	
September 22, 2022	Senate Committee on Banking, Housing, and Urban Affairs holds Hearing for Annual Oversight of the nation's largest banks	<p>On September 22, 2022, the Committee on Banking, Housing, and Urban Affairs conducted a hearing on Annual Oversight of the Nation's Largest Banks. The hearing was led by Chairman Sherrod Brown (D-OH) and Ranking Member Patrick Toomey (R-PA). Representatives from the following banks were in attendance as witnesses: Wells Fargo & Company, Bank of America, JPMorgan Chase & Co., Citigroup, Truist Financial Corporation, U.S. Bancorp and the PNC Financial Services Group.</p> <p>In his opening statement, Toomey accused large banks of acquiescing to demands for them to face issues not related to banking itself "by embracing a liberal ESG agenda that harms America." In particular, Toomey pointed to banks' greenhouse gas emission reduction pledges, commitments to paying the costs of employees' travel to obtain abortions, decisions not to finance firearm manufacturers and statements on voting rights and immigration policies. He urged banks to instead maintain independence from social and political issues in order to continue fulfilling their societal role as "drivers and promoters of free enterprise."</p> <p>All witnesses wrote positively about their banks' impacts on climate, diversity and social mobility initiatives. William H. Rogers, Jr. (Truist), Andy Cecere (Bancorp) and William S. Demchak (PNC) all spoke about their banks' ESG programs or impacts specifically. None of the witnesses directly responded to Toomey's criticisms regarding ESG in their written statements.</p>	Hearing - Annual Oversight of the Nation's Largest Banks
September 20, 2022	FTC Chair Lina Khan and DOJ Assistant Attorney Jonathan Kanter testify before the Senate, confirming that there is no ESG exception to antitrust laws	<p>On September 20, 2022, the Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights held a hearing on the "Oversight of the Enforcement of the Antitrust Laws." During a Q&A session, Senator Tom Cotton (R-AR) asked Federal Trade Commission (FTC) Chair Lina Khan and Assistant Attorney General Jonathan Kanter of the Department of Justice's General Antitrust Division about ESG antitrust concerns, and specifically about Climate Action 100+ and BlackRock.</p> <p>Both Khan and Kanter confirmed that there is no ESG exception to antitrust laws. Khan further confirmed that ESG cooperation or agreements, "in as much as they can affect competition, are always relevant" to the FTC. Kanter confirmed that when firms have substantial power and use that power to achieve anticompetitive ends, that should be actionable under antitrust laws.</p>	Subcommittee Hearing
September 15, 2022	SEC Chairman Gary Gensler testifies before the U.S. Senate Committee on Banking, Housing, and Urban Affairs	<p>On September 15, 2022, Securities and Exchange Commission (SEC) Chairman Gary Gensler testified before the U.S. Senate Committee on Banking, Housing, and Urban Affairs. Gensler highlighted the SEC's efforts in driving greater efficiency, integrity and resiliency in the funds and investment management space, for instance by proposing a rule enhancing the disclosure</p>	Committee Hearing Written Testimony

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		requirements for advisers and investment companies marketing themselves with ESG-related labels. This would help ensure that investors can see the information that supports claims by funds and advisers.	
September 6, 2022	BlackRock responds to attorneys general's letters	<p>On September 6, 2022, Dalia Blass, BlackRock's head of external affairs, responded to a letter from certain state attorneys general (see below), stating that the letter "makes several inaccurate statements about BlackRock's motive for participating in various ESG-related initiatives" and that this participation is "entirely consistent" with BlackRock's fiduciary duties. Furthermore, BlackRock stated that its engagement process with the companies in which it invests on behalf of its clients is focused on enhancing transparency.</p> <p>BlackRock also argued that climate risks pose investment risks and that this view is "by no means unique" but also not "universal"; it therefore offers its clients a "broad choice of investment products that are designed to help them meet their varied goals, priorities, and risk tolerances." BlackRock also described itself as an industry leader in offering clients a choice in proxy votes.</p> <p>Furthermore, BlackRock stated that its participation in climate-related initiatives neither reflects coordinated activity implicating antitrust laws nor "mixed motives" inconsistent with its duty to act solely in its clients' interests. For instance, when joining Climate Action 100+, BlackRock says it submitted a memorandum explicitly stating that its participation is "not an informal or formal agreement to (i) buy, sell, hold, or vote our shares together with any other CA100+ signatory, or (ii) act in concert with any other signatory to acquire or consolidate control over any company or its board."</p> <p>Lastly, BlackRock stated in its response that it does not boycott energy companies or any other industry, and that it is "troubled by recent efforts to use 'anti-boycott' statutes to limit retirees' options in meeting [their retirement] goals." BlackRock also stated that its votes against management on climate-related issues are not to penalize companies, but rather to achieve the best long-term value for those companies and their shareholders.</p>	BlackRock Letter
August 4, 2022	Nineteen attorneys general criticize BlackRock for relying on ESG investment criteria rather than prioritizing shareholder profits	<p>On August 4, 2022, 19 attorneys general wrote to Larry Fink, the CEO of BlackRock, stating that BlackRock relies on ESG investment criteria rather than shareholder profits in managing state pension funds, potentially in violation of state and federal law.</p> <p>The letter set out six concerns regarding BlackRock's ESG activities, namely:</p> <ol style="list-style-type: none"> 1. <u>Neutrality</u>: A letter from BlackRock's chief client officer stated that BlackRock is agnostic on the question of energy and merely offers investing clients a range of investment options in the energy sector. The attorneys 	AGs' Letter

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		<p>general argued that this apparent neutrality “differs considerably” from BlackRock’s public commitments, including its membership in the Net Zero Managers Alliance.</p> <ol style="list-style-type: none"> 2. <u>Dialogue</u>: The attorneys general argued that though BlackRock states that it has joined climate change advocacy organizations, including the Glasgow Financial Alliance for Net Zero (GFANZ) and Climate Action 100+, in order to participate in “dialogue” with governments, companies and financial institutions on ESG matters, this dialogue is not regarding how to maximize financial returns, as required by state law. For example, the attorneys general argued that the expressed purpose of GFANZ is to “alter the planet’s climate trajectory,” not to “dialogue.” 3. <u>Duty of loyalty</u>: Many state laws require a fiduciary to discharge duties solely in the interest of the participants and beneficiaries. The attorneys general argued that BlackRock’s actions around promoting net zero, the Paris Agreement and/or taking action on climate change indicate “rampant violations of this duty” and constitute acting with mixed motives. 4. <u>Duty of care</u>: Many states require a fiduciary to make reasonable efforts to verify facts relevant to the investment. The attorneys general argued that BlackRock’s commitment to have all assets under management achieve net zero by 2050 could be a pretext to force companies to adopt climate policies, despite the fact that the United States has not implemented net zero mandates. The attorneys general argued that BlackRock’s focus on net zero and on making climate issues “the number one portfolio engagement factor” is further evidence that it does not have a sole focus on financial returns. 5. <u>Antitrust</u>: The attorneys general argued that BlackRock’s “coordinated conduct” with other financial institutions to impose net zero raises antitrust concerns and could be a breach of Section 1 of the Sherman Act. 6. <u>Energy boycotts</u>: Many of the attorneys’ general states have adopted legislation prohibiting energy company boycotts. As the definition of an energy boycott includes actions to penalize companies for failing to meet emissions standards beyond what is required by relevant law, the attorneys general argued that voting against companies for failing to meet disclosure standards not required by law could be a breach of the prohibition on energy boycotts. 	

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May 26, 2022	Former Vice President Mike Pence calls for government intervention to halt the "ESG craze"	<p>Writing in <i>The Wall Street Journal</i> in May 2022, former Vice President Mike Pence argued that certain progressive politicians and regulators are subverting the democratic process through ESG regulatory strategies. In particular, Pence focused on ESG-scoring schemes, which he believes "empower an unelected cabal of bureaucrats, regulators and activist investors to rate companies based on their adherence to left-wing values." Pence pointed to the S&P 500 ESG Index's delisting of Tesla as an example of ESG being weaponized to achieve political goals—here, Pence asserted, punishing Tesla CEO Elon Musk for his criticism of the Biden-Harris administration.</p> <p>Not only are ESG initiatives democratically illegitimate, Pence continued, but they are also bad for U.S. businesses. Pence pointed to the fact that Exxon Mobil and Chevron have received lower ESG ratings than Russian state-owned competitors, hurting the ability of U.S. companies to compete in the global market. ESG efforts, according to Pence, have also resulted in corporate boards being usurped by environmental interests and banks refusing to finance U.S. oil and gas producers.</p> <p>Going forward, Pence urged two strategies to combat the impact of ESG principles on U.S. businesses. First, Pence advised local, state and federal lawmakers to curb the influence of ESG principles, particularly when it comes to state pension funds managed by investment professionals who are "pushing a radical ESG agenda," through effective legislation. Second, Pence called upon Republican political leaders to ensure that "end[ing] the use of ESG principles nationwide" is integral to the Republican platform.</p>	WSJ – Republicans Can Stop ESG Political Bias