

United States Senate

WASHINGTON, DC 20510

October 21, 2021

The Honorable Gene L. Dodaro
Comptroller General of the United States
441 G Street, NW
Washington, DC 20548

Re: Report on Climate Change Risks for Federal Workers' Retirement Savings

Dear Comptroller General Dodaro:

On June 24, 2021, the Government Accountability Office (GAO) released a report titled, *Retirement Savings: Federal Workers' Portfolios Should Be Evaluated For Possible Financial Risks Related to Climate Change*. The GAO report recommended that the Federal Retirement Thrift Investment Board evaluate the investment offerings in the Thrift Savings Plan in light of risks related to global warming.

In support of the proposition that global warming-related risks may be inadequately reflected in current market prices, the GAO report relies significantly on a September 2020 report from the climate-related market risk subcommittee of the Market Risk Advisory Committee (MRAC) of the Commodity Futures Trading Commission (CFTC).¹

We have significant concerns about GAO's reliance on the subcommittee report given that the report was issued in violation of the Federal Advisory Committee Act (FACA), the regulations issued thereunder, and MRAC's charter. The report acknowledges that it reflects solely the work of the subcommittee and does "not necessarily reflect the views of the MRAC, the Commodity Futures Trading Commission or its staff, or the U.S. Government."² The subcommittee is composed of a number of individuals who represent entities poised to benefit financially from the creation of a climate risk regulatory structure, such as asset managers, data providers, and Wall Street banks.

FACA includes important procedural requirements so that the advice provided by advisory committees is relevant, objective, and open to the public. FACA's provisions apply not only to an advisory committee, but also to any subcommittee or other subgroup.³ Key FACA protections include having meetings open to the public and providing timely notice of each meeting in the Federal Register.⁴

¹ Climate-Related Market Risk Subcommittee, *Managing Climate Risk in the U.S. Financial System* (2020), available at <https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf>.

² *Id.*

³ See 5 U.S.C. App. § 3 (defining the term "advisory committee").

⁴ *Id.* at § 10.

In testimony before the House Select Committee on the Climate Crisis, CFTC Commissioner Rostin Behnam stated that “[t]he Subcommittee held two in person meetings beginning 10 months ago before the COVID-19 pandemic, and then held monthly, then weekly, and then almost daily telephonic meetings as they conducted their work.”⁵ None of these meetings, however, were noticed in the Federal Register nor is there any evidence that they were open to the public.

FACA regulations adopted by the General Services Administration (GSA) require that “if a subcommittee makes recommendations directly to a Federal officer or agency, or if its recommendations are to be adopted by the parent advisory committee without further deliberations by the parent advisory committee, then the subcommittee’s meetings must be conducted in accordance with all openness requirements” required for advisory committees.⁶ Yet the subcommittee report was made public by a press release without being submitted to, or approved by, the MRAC.⁷

This omission is important because, under FACA regulations, subcommittees that report to a parent advisory committee generally are not subject to FACA. However, GSA has stated that this provision does not shield subcommittees from FACA when the advice or recommendations are not subject to deliberation by the parent advisory committee. Otherwise, the public would be deprived of its opportunity to know about, and participate contemporaneously in, an advisory committee’s deliberations.

In the preamble to the final FACA regulations, GSA advised: “Agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops advice or recommendations that are not expected to be reviewed and considered by the parent advisory committee before being submitted to a Federal officer or agency. These exclusions may run counter to the provisions of the Act that require contemporaneous access to the advisory committee deliberative process.”⁸

Finally, the MRAC charter specifically forbids any subcommittee from providing reports and/or recommendations directly to the CFTC or to any CFTC officer or employee.⁹ The MRAC charter expressly states that subcommittees shall have no authority to make decisions on behalf

⁵ Prepared Statement of Rostin Behnam, Commissioner, Commodity Futures Trading Commission, before the House Select Committee on the Climate Crisis, *Creating a Climate Resilient America: Strengthening the U.S. Financial System and Expanding Economic Opportunity* (Oct. 1, 2020), available at <https://docs.house.gov/meetings/CN/CN00/20201001/111064/HMTG-116-CN00-Wstate-BehnamR-20201001.pdf>.

⁶ 41 C.F.R. § 102-3.145.

⁷ CFTC’s Climate-Related Market Risk Subcommittee Releases Report, Press Release No. 8234-20 (Sept. 9, 2020), available at <https://www.cftc.gov/PressRoom/PressReleases/8234-20>. The release of the subcommittee report was also not in connection with any meeting of MRAC. According to the CFTC’s website, the MRAC held only a single meeting last year, at which point the subcommittee had not completed its report at that time. See Minutes of the Meeting of the U.S. Commodity Futures Trading Commission’s Market Risk Advisory Committee (July 21, 2020), available at https://www.cftc.gov/media/5361/mrac_minutes072120/download.

⁸ 66 Fed. Reg. 37728, 37729 (July 19, 2001) (preamble of final rule).

⁹ Renewal Charter of the Market Risk Advisory Committee (Apr. 29, 2020), available at https://www.cftc.gov/media/3936/mrac_charter042920/download.

of the MRAC.¹⁰ Public release of the subcommittee report without approval or deliberation by the MRAC effectively constitutes recommendations being made directly to the CFTC and its staff seemingly in violation of FACA, the FACA regulations, and the MRAC charter.

Because the subcommittee report was issued in an apparent violation of these provisions, we ask that GAO immediately withdraw its report on retirement savings and ask that you respond to us regarding this matter no later than October 29, 2021.

Sincerely,



Pat Toomey
Ranking Member
Committee on Banking, Housing, and Urban
Affairs



Ron Johnson
Ranking Member
Permanent Subcommittee on Investigations

cc: The Hon. Robin Carnahan, Administrator, General Services Administration
The Hon. Rostin Behnam, Acting Chairman, Commodity Futures Trading Commission
Ravindra Deo, Executive Director, Federal Retirement Thrift Investment Board
Tranchau (Kris) T. Nguyen, Director, Education, Workforce, and Income Security,
Government Accountability Office

¹⁰ *Id.* at § 13 (“MRAC subcommittees shall have no authority to make decisions on behalf of the MRAC. No determination of fact or policy shall be made by any MRAC subcommittee on behalf of the Commission.”).