Annual Report
2023

Initiative on
Climate Risk
& Resilience Law

The Initiative on Climate Risk and Resilience Law (ICRRL) is a partnership focused on legal efforts on climate risk and resilience, particularly at the intersection of practice and scholarship

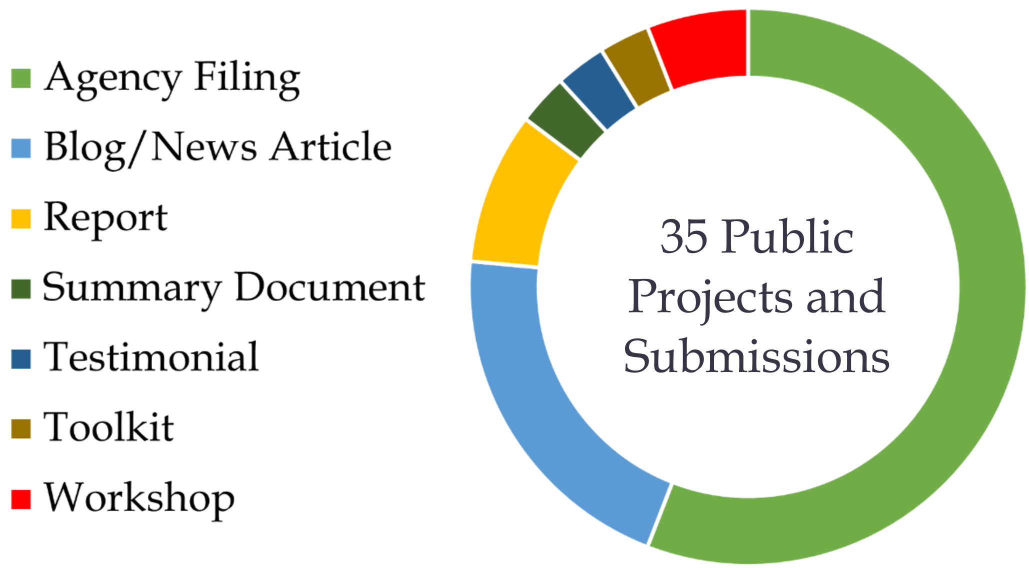
ICRRL is dedicated to driving recognition of climate risk and resilience through:

- Generation of original scholarship, practitioner resources, and legal filings on the subject of climate risk and resilience
- Synthesis and explication of evidence and best practices across sectors and geographies
- Collaborative engagement across interested entities, stakeholders, and parties

Principles:

- Climate risk and resilience must be embedded into the fabric of the law
- Enhancing climate resilience requires coordination among and within governments
- Resilience measures should be designed and implemented with the needs of communities that face greater risks from climate change in mind
- Climate science yields decision-useful information that should be incorporated into decision-making processes

Across ICRRL, team members have engaged through agency filings, blogs and news articles, reports, journal articles, and summary documents, testified before legislators or regulators, and hosted a series of workshops.



Public products from June 2022 through June 2023

ICRRL Highlights (*below*)

- SEC Climate-Related Disclosures
- SEC ESG Disclosures and Fund Names
- FAR Climate-Risk Disclosures
- Banking Regulation
- Energy System
- NEPA
- *Other*

Comments to the SEC on its Proposed Rule on Climate-Related Disclosures

On March 21st, 2022, the Securities and Exchange Commission (SEC) released a proposed rule that would require publicly-traded companies to disclose certain climate-related information in their registration statements and periodic reports; including:

- Information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial conditions;
- Certain climate-related information financial statement metrics in a note to their audited financial statements; and
- Disclosures of greenhouse gas emissions.

In response to the proposed rule, ICRRL submitted four comment letters described below.

Comments on Regulatory Precedents

This comment letter highlights regulatory precedents reaching back nearly sixty years that contradict criticisms and lend support to the proposed rule's approach.

Read here.

Comments on Economic Analysis

This comment letter commends the SEC for conducting an economic analysis that is consistent with relevant case law and suggests some revisions to provide additional context and support for the final analysis.

Read here.

Comments on Reasoned Explanation

This comment letter finds that the SEC has provided adequate explanations for its choices and recommends additions that could further bolster the SEC's explanations in the final rule.

Read here.

Comments from Climate Scientists/Experts

These comments from 15 climate experts explain the science behind climate change detection and attribution and highlight climate tools and data that companies can use to evaluate climate-related risks.

Read here.

Comments to the SEC on its Fund-Names and ESG Disclosures Proposed Rules

On May 25th, 2022, the SEC proposed a rule that would better align the names of investment companies with investor expectations, including for Environmental, Social, and Governance (ESG) investment funds, by requiring portfolio distribution requirements for funds whose name connotes a particular investment strategy. EDF and the Institute for Policy Integrity submitted the below comments:

- The Institute for Policy Integrity submitted comments on the SEC's economic analysis of the proposed rule and commended the Commission for complying with relevant case law and internal guidance on the cost-benefit analysis. The comments also recommended steps that the SEC could take in the final rule to provide additional clarity and context regarding its findings.

  Read here.

- EDF submitted comments in support of the SEC's proposed rule, stating that the Proposal would address key investor protection needs and should be finalized pursuant to the SEC's clear and express authority granted by Congress in the Investment Company Act, Securities Act, and Exchange Act.

  Read here.

On May 25th, 2022, the SEC proposed a series of new disclosures for investment companies regarding their Environmental, Social, and Governance (ESG) activities. These disclosures would reduce "greenwashing" by providing investors with comparable and decision-useful information about fund practices. EDF and the Institute for Policy Integrity submitted the below comments:

- The Institute for Policy Integrity submitted comments on the SEC's economic analysis of the proposed rule and commended the Commission for complying with relevant case law and internal guidance on cost-benefit analysis. The comments also recommended steps that the SEC could take in the final rule to provide additional clarity and context regarding its findings.

  Read here.

- EDF submitted comments in support of the SEC's proposed rule, stating that the Proposal would ensure that the growing number of funds and advisers using ESG-related claims in their marketing provide investors with the information needed to vet these claims.

  Read here.

Comments to the FAR on the Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk

On November 14th, 2022, the Federal Acquisition Regulation (FAR) proposed to require certain federal contractors to disclose both their greenhouse gas emissions and climate-related financial risks, as well as to set science-based targets to reduce their emissions. The Proposed Rule is an important step to safeguarding and promoting efficient and economical procurement and ensuring resilience of essential government functions in light of escalating climate-related financial and operational risks.

EDF and the Sabin Center submitted these joint comments to support the Federal Acquisition Regulatory Council's proposed rule on the disclosure of greenhouse gas emissions and climate-related financial risk. Climate change-driven shifts in weather and environmental conditions, and in markets and society, pose increasing, costly risks to efficient and economical operations—and the U.S. government and its supply chain are not immune. The disclosure and target-setting requirements in the Proposed Rule would benefit federal agencies and contractors by increasing the transparency of climate risks to their supply chains and operations, how contractors are managing those risks, and opportunities for collaboration and cost-savings The Proposed Rule would thus help enable the federal government "to properly analyze and mitigate climate risks" and ensure "prudent fiscal management" of the federal supply chain.

Read here

Additionally, the Sabin Center organized a comment letter that explains how scientists know human activities are driving global warming and highlight climate tools and data that companies can use to evaluate climate-related risks to their businesses.

Read here.

The Institute for Policy Integrity also submitted comments that offered several observations and recommendations to the FAR Council.

Read here.

Comments on Banking Regulation

At the Federal level…

EDF and IPI submitted joint comments to the Federal Reserve on principles for climate-related financial risk management for large financial institutions. These comments supported the draft principles as an important step in the Board's efforts to guide banks to update their risk management practices as needed in light of climate-related financial risks, thereby promoting safety and soundness. The comments also included recommendations to the Board to continue building upon the draft principles with final guidance and moving expeditiously and in coordination with other regulators working to address climate-related financial risk, including the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC). EDF and IPI have previously submitted joint comments to both the OCC and the FDIC regarding their proposed draft principles for management of climate-related financial risk.

Read here.

EDF and IPI submitted joint comments to the National Credit Union Administration in response to its request for on current and future climate and natural disaster risks to federally insured credit unions, related entities, their members, and the National Credit Union Share Insurance Fund. These comments support the NCUA's intention to promote safety and soundness by developing guidance, reporting requirements, and other regulatory actions as appropriate to bolster credit unions' management of climate-related financial risk. These comments recommend that the NCUA move expeditiously and in coordination with other regulators working to address climate-related financial risk and offer recommendations for doing so.

Read here.

At the State level…

The Sabin Center submitted comments on the New York State Department of Financial Services' proposed guidance for New York state regulated banking and mortgage institutions relating to management of material financial risks from climate change. These comments supported the proposed guidance as a valuable step in DFS' effort to ensure its regulated institutions integrate climate-related financial risks into their management frameworks. The comments also highlighted DFS' legal mandate and authority to regulate climate-related financial risk and offer information on existing climate tools and data that regulated institutions may use to evaluate climate-related risks to their business and community operations.

Read here.

Energy Systems

At the Federal level…

On July 1st, 2022, the Federal Energy Regulatory Commission released a notice of proposed rulemaking that would require transmission providers to file one-time informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments. The proposed rule would also define 'extreme weather vulnerability assessments' as an analysis that identifies where and under what conditions jurisdictional transmission assets and operations are at risk from extreme weather, how those risks will manifest themselves, and what the consequences will be for overall system operations.

In promulgating a final rule, EDF and the Sabin Center submitted comments that recommend that the Commission supplement the list of questions to be answered in the one-time reports to add requests for information related to consideration of climate-related impacts to generating units and to the distribution system. EDF and the Sabin Center also recommend that the Commission establish a clear and coordinated process for further reactions.

Read here.

At the State level…

ICRRL hosts the Forum on Climate Risk in the Electricity Sector, which brings together academic researchers and representatives of advocacy organizations working on issues relating to climate risk and resilience in the electricity sector. The Forum aims to provide an opportunity for participating organizations to exchange information, learn from each other's' experiences, and discuss new ways to make energy resiliency advocacy as effective and equitable as possible. Over the past year, ICRRL hosted four meetings of the Forum and has 18 participating organizations.

ONE-YEAR OF THE ELECTRIC RESILIENCE TOOLKIT

In June 2022, ICRRL launched the Electric Resilience Toolkit. This toolkit – which is divided into the four sections above – provides information on ways to enhance climate resilience planning by electric utilities. The toolkit was visited more than 500 times over the past year and features two of the most downloaded resources on the site: Climate Risks to Electric Infrastructure Supplement and Climate Resilience Planning Process Supplement.

Comments on the CEQ's NEPA Guidance on the Consideration of GHG Emissions and Climate Change

On January 9th, 2023, the Council on Environmental Quality released interim guidance to assist agencies in analyzing greenhouse gas and climate change effects of their proposed actions under the National Environmental Policy Act. Both the Sabin Center and the Institute for Policy Integrity submitted comments to offer support and provide recommendations for the adoption of CEQ's interim guidance, which will improve federal decision-making by ensuring that federal agencies fully and accurately account for climate change in environmental reviews as legally required under NEPA. This draft guidance cited ICRRL's *Evaluating Climate Risk in NEPA Reviews: Current Practices and Recommendations for Reform* report and included a section on climate risk analysis that aligned with the report's recommendations.

Read Sabin's comments here and IPI's comments here.

Other Comments

- Comments to the FIO on Climate-Related Financial Risk Data Collection
- Comments to the ISSB on Climate-Related Disclosures Exposure Draft
- Comments to the CFTC on Climate-Related Financial Risk
- Testimony of Carolyn Kousky on Reauthorization and Reform of the National Flood Insurance Program

Reports

- Catastrophe Bonds
- Parametric Insurance for Disasters
- Climate Science in Adaptation Litigation in the U. S.

Workshops

- Workshop on Physical Climate Risk and the United States Financial System
- Workshop on Understanding the Analytic Process of Physical Climate-Related Financial Risk Assessments

Team

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