

February 9, 2023

Via www.regulations.gov

Jennifer Hawes
General Services Administration
Regulatory Secretariat Division
1800 F Street, NW
Washington, DC 20405

Re: Proposed Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk

Dear Ms. Hawes:

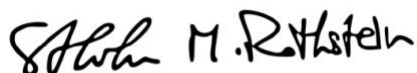
I write on behalf of Ceres in support of the proposed Federal Supplier Climate Risk and Resilience Rule (“Proposed Rule”) (FAR Case 2021-015, 87 Fed. Reg. 68312). In the attached comment, we explain why finalization of this rule will be critical to reducing the federal government’s climate-related financial risk and capitalizing on climate-related economic opportunities. We also provide our recommendations for potential improvement.

The Proposed Rule reflects an enormous amount of work by the Federal Acquisition Regulation Council and its staff, and we commend this effort.

Please feel free to reach out to me (srothstein@ceres.org) or John Kostyack (john@kostyackstrategies.com) if you have any questions or would like to discuss our recommendations.

Thank you for your consideration.

Sincerely,



Steven M. Rothstein

**Ceres Comments on Proposed Federal Acquisition Regulation: Disclosure of
Greenhouse Gas Emissions and Climate-Related Financial Risk
[FAR Case 2021-015]
February 9, 2023**

I. Summary of Recommendations	3
II. Background	5
III. Overview of Key Provisions	11
Three Tiers of Requirements	11
Tier 1 (Requirements for All SAM Registrants)	11
Tier 2 (Requirements for Certain Significant Contractors and Major Contractors)	12
Tier 3 (Requirements for Certain Major Contractors)	12
Responsibility Determinations Based on Contractor Representations	14
Waivers	14
Contractors Excused from Tier 2 and Tier 3 Requirements	15
Contractors Excused from Tier 3 Requirements	15
Exemptions	15
Deadlines	16
IV. The Proposed Rule Will Provide Enormous Taxpayer and Societal Benefits	16
The Proposed Rule Will Protect Taxpayers from Climate-Related Financial Risks and Improve Delivery of the Government’s Products and Services	18
The Proposed Rule Will Help Agencies and Contractors Prepare for the Transition to a Low-Carbon Economy	19
The Proposed Rule Will Reduce Supply Chain Vulnerabilities to Climate Change’s Physical Impacts	22
The Proposed Rule Will Reduce Systemic Risks to Federal Financial Stability and the National Economy	23
The Proposed Rule Will Reduce the Impact of Price Volatility and Inflation on Procurement	24
The Proposed Rule Will Simplify Review of Contractors’ Climate Risk Profiles	26
The Proposed Rule Will Help Taxpayers by Strengthening the Economy and National Security and Protecting the Environment and Public Health	27
V. With its Reliance on Widely-Accepted Private Standard-Setters, the Proposed Rule Will Simplify Disclosures and Target-Setting	29
VI. The Proposed Rule is Well Within the FAR Council’s Authority under Federal Procurement Law	32

VII. Ceres' Recommendations to the FAR Council for Strengthening and Clarifying the Proposed Rule	33
1. Close key disclosure gaps	33
a. Establish minimum standards for disclosures of GHG emissions, climate-related financial risks and opportunities and science-based targets	33
Calculations and Disclosures of Scope 1 and Scope 2 GHG Emissions	35
Calculations and Disclosures of Scope 3 GHG Emissions	35
Assessments and Disclosures of Climate-Related Financial Risks and Opportunities	36
Establishment, Validation and Disclosures of Science-Based Targets	38
b. Limit use of "mission-essential" waivers and improve transparency of waiver decisions	39
c. Prevent contractors that are contributing substantially to the government's climate risk from taking advantage of regulatory relief aimed at small businesses	40
d. Require a simplified disclosure of any efforts to address impacts to historically disadvantaged and fossil fuel-dependent communities	41
2. Clarify applicability of updates to standards	43
VIII. Ceres' Recommendations to the Council on Environmental Quality for Strengthening Implementation	43
1. Maximize impact of disclosures on spending decisions	44
a. Issue guidance on how disclosures will be used in modernizing procurement programs and strategies	44
b. Issue guidance on how disclosures will inform decisions on grants, loans, and other non-procurement spending	45
c. Establish a Center for Management of Supply Chain Climate Risk to accelerate learning	45
2. Conduct rigorous program oversight and evaluations and solicit public comment on needed improvements	47

I. Summary of Recommendations

Ceres appreciates this opportunity to provide comments on the proposed Federal Supplier Climate Risk and Resilience Rule put forward by the Federal Acquisition Regulatory Council (FAR Council).¹ We write to express our enthusiastic support for the Proposed Rule. As explained below, its disclosure provisions will provide critical information needed by the federal government in designing programs and strategies to reduce climate-related financial risk in its supply chain and to capitalize on climate-related economic opportunities. Its emissions reduction target requirements will ensure that the nation's largest contractors are committed to partnering with the government in reducing its climate risk.

We offer suggestions below for strengthening and clarification of the Proposed Rule and ensuring effective implementation. There are many thoughtful and important elements of the proposal, and we appreciate the White House's leadership on this vital issue. Recognizing these elements, we hope the FAR Council will consider these additional points:

- Borrowing from the excellent work of the four nonprofit entities identified in the Proposed Rule, establish federal standards for calculating GHG emissions, assessing climate-related financial risks and opportunities, and establishing science-based targets;²
- Require that large contractors use the methodologies of these entities or other widely accepted, science-based methodologies for meeting federal standards;³
- Limit the use of "mission-essential" waivers and improve transparency around the use of all waivers;

¹ See 87 Fed. Reg. 68312 (Nov. 14, 2022). With a membership consisting of the Administrator for Federal Procurement Policy, the Secretary of Defense, the Administrator of National Aeronautics and Space, and the Administrator of General Services, the FAR Council manages, coordinates, controls and monitors the maintenance and issuance of changes in the Federal Acquisition Regulations. See 41 USC 1302.

² If the FAR Council elects not to establish federal standards, we propose that it clarify that updates to private standards enacted following the effective date of the Proposed Rule are inapplicable and that it commits to regular updates to its rules to reflect such updates.

³ We recognize the term "standards" has various meanings depending on whether it is used in a regulatory context. To avoid confusion, we recommend that the FAR Council use "standards" solely in reference to its regulatory requirements and that any private sector guidance offered to a contractor for purposes of meeting one or more of the Proposed Rule's standards is not a standard, but a "methodology."

- Prevent businesses with large impacts on the government’s climate risk from taking advantage of regulatory relief aimed at small businesses; and
- Strongly encourage disclosure by the largest contractors of any voluntary efforts to address the needs of historically disadvantaged communities and fossil fuel-dependent communities.

We suggest strengthening of rule implementation with issuance of guidance by the Council on Environmental Quality on how the rule will be integrated with other procurement policies and practices as well as non-procurement spending; establishment of a Center for Management of Supply Chain Climate Risk; and rigorous program oversight and evaluation.

We respond in Sections IV and VII, respectively, to two questions on which the FAR Council requested comment: “The necessity of this collection of information for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility,” and “Ways to enhance the quality, utility, and clarity of the information to be collected.”

[Ceres](#) is a nonprofit organization working with the most influential capital market leaders to solve the world’s greatest sustainability challenges. Our [Investor Network](#), composed of investors with a combined total of \$60 trillion in assets under management, focuses on ramping up sustainable investments in clean energy, clean technology innovation, and global food and water systems. Our [Company Network](#) drives business leaders to action to stabilize the climate, protect water and natural resources, and build a just and inclusive economy. Our [Policy Network](#), with numerous corporate members, plays a critical role in passing some of the most ambitious climate laws in the country.

The [Ceres Accelerator for Sustainable Capital Markets](#) is a center within Ceres that aims to transform the practices and policies that govern capital markets in order to reduce the worst financial impacts of the climate crisis. It spurs action on climate change as a systemic financial risk—driving the large-scale behavior and systems change needed to achieve a net zero emissions economy. Through [Ambition 2030](#) and other key programs, Ceres works to reduce emissions from six of the largest sectors in the economy – steel, utilities, oil and gas, transportation, banking, and food and agriculture.

We appreciate the leadership of the FAR Council and other federal officials in preparing this Proposed Rule.

II. Background

As the world's largest purchaser of products and services, with \$630 billion in procurements in 2021, the federal government has enormous amounts of greenhouse gas (GHG) emissions embodied in its supply chain. These GHG emissions, along with its suppliers' exposure to extreme weather and other climate change impacts, leaves the government highly vulnerable to climate-related financial risks. The government has an obligation to protect taxpayers and promote economical and efficient procurement by identifying these climate change risks as well as opportunities to mitigate them. The collection of climate-related information facilitated by this Proposed Rule will make possible critically needed updates to contracting strategies and programs aimed at reducing climate risk.

The climate risk assessments and disclosures required by this rule will greatly reduce the costs and difficulties faced by federal agencies seeking to assess and manage climate risk in the federal supply chain. The standardized format called for in the Proposed Rule, along with the Proposed Rule's requirements that disclosures be posted on a public website and that the location of that website be shared with the federal government, will greatly facilitate the government's risk reduction work as well as such work by contractors, state and local agencies and other stakeholders.

In addition to requiring climate risk assessments and disclosures, the Proposed Rule calls for establishment and disclosure of validated science-based emissions reductions targets by the nation's largest contractors. These targets, along with the required assessments of progress toward targets, will likewise serve to facilitate the government's and stakeholders' efforts to reduce climate-related financial risk.

Together, the emissions calculations, risk assessments, targets and disclosures in the Proposed Rule will achieve the FAR Council's stated objectives of saving money for taxpayers and promoting economical and efficient procurement. They also will achieve the ancillary benefits of incentivizing climate-related technological innovation, creating jobs in sustainable businesses, strengthening the economy and national security, and protecting the environment and public health. Achievement of these benefits ultimately will benefit taxpayers through a strengthened revenue base and reduced procurement costs.

Increasing the resilience of the federal supply chain to climate-related financial risks is an urgent national priority. The October 2021 [Intergovernmental Panel on Climate Change \(IPCC\) report](#) on the physical science basis of climate change states: “Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in carbon dioxide (CO₂) and other greenhouse gas emissions occur in the coming decade. . . . Human-induced climate change is already affecting many weather and climate extremes in every region across the globe. Evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and, in particular, their attribution to human influence, has strengthened (over time).”

In its [annual report on billion-dollar weather and climate disasters](#) affecting the U.S., the National Oceanic and Atmospheric Association (NOAA) determined that the U.S. has experienced 338 disasters since 1980 where overall damages or costs reached or exceeded \$1 billion, for a total of \$2.295 trillion in costs. Such disasters are becoming more frequent in the U.S. as global temperatures increase. Last year NOAA found that the annual average for the most recent five years (2017-21) is 17.8 events, far greater than the 1980-21 annual average of 7.7 events. Earlier this year, [NOAA announced](#) that this trend was continuing: in 2022, the U.S. experienced 18 disasters with damages or costs reaching or exceeding \$1 billion. The harmful impacts are being felt widely across the country: according to researchers at [Rebuild by Design](#), in the years between 2011 and 2021, 90 percent of U.S. counties experienced a climate disaster, with some experiencing as many as 12 such disasters during that time.

Failing to heed the science highlighting growing climate risks to the federal supply chain increases the costs for products and services, increases bottlenecks and other disruptions and otherwise exposes taxpayers to serious harm. As noted by Steve Ellis of Taxpayers for Common Sense at a [December 2022 Ceres webinar](#) discussing the Proposed Rule, the growing costs to the federal government of responding to extreme weather and other climate-related disasters are the equivalent of a new tax; procurement policies that reduce climate risks are needed to reduce that tax burden.

In May 2021 President Biden issued [Executive Order 14030](#), calling for the FAR Council to consider requiring major federal suppliers to (1) publicly disclose GHG emissions and climate-related financial risk and (2) set science-based reduction targets. It also called for agencies to consider GHG emissions and climate risk in their procurement decisions. This Executive Order properly recognizes the critical role of federal procurement policy in increasing the visibility of climate risks in the federal supply chain and promoting efficient management of those risks.

In an October 2021 Advanced Notice of Proposed Rulemaking on FAR Case No. 2021-016, the FAR Council invited comments on how agencies could consider GHG emissions and climate risk in their procurement decisions. In [January 2022 comments](#), Ceres expressed its view that “the most important step that the FAR Council can take to reduce climate-related financial risk, is to require all federal suppliers to disclose and publish their GHG emissions and their science-based net-zero plans to reduce emissions on a pathway aligned with the internationally agreed target of 1.5°C.” The FAR Council is now taking this critical step with respect to large contractors as part of FAR Case No. 2021-15.

Updating procurement regulations to require that contractors estimate GHG emissions, assess climate risks and establish science-based emissions reduction targets will lead to important progress toward the government’s objectives of reducing global GHG emissions in alignment with Paris Agreement targets. This Proposed Rule also will increase the resilience of federal supply chains to risks from the transition to a low-carbon economy and the physical impacts of climate change. As discussed in Section IV, it also will provide much-needed protection for taxpayers.

Tracking and managing emissions and other climate-related risks builds supply chain resilience and reduces costs for both suppliers and the federal government. For instance, since setting its own climate goals, the federal government reports that it has reduced its building and vehicle energy use by at least 32 percent since 2008 and [saved taxpayers at least \\$11.8 billion annually](#).

A more systematic approach to identifying and addressing climate risks has the potential to reduce emissions and save taxpayers even more. Most of the FAR's climate-related policies are aimed at specific emissions sources or commercial and industrial processes, and not at the full range of climate risks that contractors face. See, e.g., FAR 23.703 (requiring agencies to “[i]mplement cost-effective contracting preference programs promoting energy-efficiency, water conservation, and the acquisition of environmentally preferable products and services”); FAR 23.802 (establishing federal policy giving “preference to the procurement of acceptable alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment.”); FAR 23.804 (requiring tracking and reporting of hydrofluorocarbons with high global warming potential by suppliers of air conditioners, refrigerators and other products).

In 2016, the FAR Council promulgated FAR 52.223-22, its only rule to date addressing GHG emissions from federal suppliers operating across the entire U.S. economy. Entitled “Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representation” (2016 FAR Rule), this rule requires all entities with \$7.5M or more of federal contract obligations in the prior fiscal year to make representations in response to two prompts:

1. Whether the contractor makes available on a publicly accessible website the results of a GHG emissions inventory, performed in accordance with the GHG Protocol Corporate Standard or a similar accounting standard; and
2. Whether the contractor makes available on a publicly available website a target to reduce absolute GHG emissions or GHG emissions intensity by a specific quantity or percentage.

If either of the questions is answered affirmatively, the contractor must identify the website on which the emissions inventory and/or target are disclosed. The representation is optional for those entities with less than \$7.5M of Federal contract awards in the previous fiscal year.

The 2016 FAR Rule received [support from most of those who responded to the FAR Council proposal. The shipping firm UPS was among the proposal’s supporters](#), stating that “federal agencies should have no less freedom [than private sector buyers] to pose [climate risk] questions to their vendors, and to choose to look elsewhere for a vendor who refuses to answer the questions.” Further, “[t]he best opportunity for sustainability is a world where sustainability becomes a matter of corporate competitive advantage.”

This approach to climate risk disclosure – essentially making climate risk assessment and target-setting by suppliers optional – was generally seen as a positive first step at the time. However, largely because of the purely voluntary nature of disclosure, the federal government did not meet its need for decision-useful information about climate-related financial risk in its supply chain. There is scant evidence that the 2016 FAR Rule has driven supplier climate risk assessments or meaningful reductions in climate risk.

Based on information collected from CDP and other sources, for the past several years the General Services Administration (GSA) has published and regularly updated a [Federal Contractor Climate Action Scorecard](#). The website currently provides summary metrics on all contracts obligated in FY21, excluding small businesses, government entities, nonprofits, and some Department of Energy site operators. It is perhaps the

best window into whether the 2016 FAR Rule has produced needed assessments of the federal government's climate risk from its supply chain and meaningful commitments to emissions reductions.

The GSA scorecard shows that a large number of federal procurement dollars are not covered by such disclosures. Contractors representing 60 percent of dollars spent by the federal government have publicly disclosed their GHG emissions, and contractors representing 20 percent of dollars spent have set or committed to setting targets through the Science-Based Targets Initiative (SBTi), the largest initiative [defining and promoting best practice](#) in emissions reductions and net-zero targets in line with climate science. Contractors representing another 47 percent of dollars spent had set emissions reduction targets without ensuring that they were science-based.

The statistics in the [most recent status report of the Task Force on Climate-Related Financial Disclosures \(TCFD\)](#), examining disclosures from a wide array of companies from around the world, also highlight the limits of voluntary disclosure of climate risk assessments: while 80% of companies disclosed in line with at least one of the TCFD-recommended disclosures for fiscal year 2021, only 43% disclosed in line with at least five. These levels of disclosure fall short of the TCFD's 11 recommended disclosures.⁴

Considering these incomplete disclosures of climate risk assessments and science-based emissions reduction targets, the FAR Council is wisely proposing to move beyond the 2016 FAR Rule's optional approach in favor of a more comprehensive, mandatory approach.

The growth of the government's climate-related financial risk due to increased government spending makes this a matter of great urgency. The government's annual contracting budget has [nearly tripled](#) in the past two decades, from \$235 billion in fiscal year 2001 to \$637 billion in fiscal year 2021. The GHG emissions associated with this increased spending have not been tracked, so it is difficult to estimate precisely the increase in federal supplier emissions that has taken place during this time. However, given the absence of a comprehensive emissions reduction strategy, one can presume that emissions increases from products and services provided by contractors have been quite substantial. As [the TCFD](#), [the SEC](#) and many others have demonstrated, an

⁴ As explained in a [February 2023 Ceres submission to the SEC](#) regarding its proposed climate risk disclosure rule, recent increases in corporate reporting in alignment with TCFD's recommendations represents important progress because, among other things, the overall costs of compliance with a disclosure rule based on the TCFD framework decline as adoption of this framework increases.

increase of GHG emissions is a key indicator of growing climate-related financial risk. The FAR Council’s thoughtful proposal will achieve meaningful and measurable reductions in emissions and climate risks by facilitating analysis of climate-related information and modernization of federal contracting strategies and programs.

Like the 2016 FAR Rule, the Proposed Rule does not impose specific emissions reductions or resilience-building requirements. However, by requiring GHG emissions disclosures by significant contractors and major contractors, as well as climate risk assessments and science-based emissions reduction targets by certain major contractors, the Proposed Rule provides a critical foundation for the federal government to measure, manage and reduce climate risks and costs in the federal supply chain.

The federal government should follow the lead of the many large corporate buyers that are rapidly increasing their demand for decision-useful climate risk information from their supply chains. The rapid growth of the Sustainable Procurement Leadership Council, which today has more than [180 members](#) with over \$300 billion in collective purchasing power just ten years after its founding, and the participation of over [280 companies](#) in CDP’s Supply Chain membership, highlights the urgency of this work. A [January 2023 survey of 2,000 C-level executives](#) by Deloitte and market research firm KS&R also shows the urgent need for action: 97 percent stated that they expect climate change to impact company strategy and operations in the next three years. Similarly, in PwC’s January 2023 [Annual Global CEO Survey](#), 76 percent of CEOs surveyed said they anticipate that climate risk would impact their supply chains in the next 12 months; 16 percent said they anticipate a “large” or “very large” impact.

III. Overview of Key Provisions

Three Tiers of Requirements

The Proposed Rule creates three tiers of requirements, with significant differences in responsibilities assigned to contractors based on the size of their federal contracts and other attributes.

Tier 1 (Requirements for All SAM Registrants)

The first tier of requirements applies to all entities registered in the [System for Award Management \(SAM\)](#) as interested in pursuing federal contracts. These entities must simply complete a representation regarding whether they meet the definition of a significant or major contractor. Significant contractors are defined as those with \$7.5M to \$50M of federal contract obligations in the prior fiscal year; major contractors are those with more than \$50M of such obligations. According to the FAR Council, 491,690 entities are currently registered in SAM; an estimated 5,766 (1.17%) would answer affirmatively the question of whether they are significant or major contractors. Thus, almost 99 percent of registered contractors would have no responsibilities aside from a simple representation that they are not significant or major contractors.

Tier 2 (Requirements for Certain Significant Contractors and Major Contractors)

The second tier of requirements applies to: (1) registered significant contractors not excused altogether from disclosure of climate information by the exceptions provisions; and (2) registered major contractors not excused altogether, or from more rigorous disclosure requirements, by the exceptions provisions. (The exceptions provisions are further discussed below.) In this tier of requirements, the Proposed Rule calls for inventorying Scope 1 and 2 emissions using the accounting standard established by the nonprofit GHG Protocol.⁵ This inventory must have been performed within the current or previous fiscal year and must be disclosed through the government's SAM website. We refer to contractors subject only to these requirements as "Tier 2 contractors."

Tier 3 (Requirements for Certain Major Contractors)

⁵ Scope 1 emissions are defined in the Proposed Rule as "direct greenhouse gas emissions from sources that are owned or controlled by the reporting entity," and Scope 2 emissions are defined as "indirect greenhouse gas emissions associated with the generation of electricity." However, the Proposed Rule also calls for use of the GHG Protocol, which [defines Scope 2 emissions](#) more broadly as "emissions from the generation of acquired and consumed electricity, steam, heat, or cooling." Because the Proposed Rule refers to these emissions sources collectively as "electricity," we presume that the FAR Council intended to align with this broader definition.

The third tier of responsibilities applies to registered major contractors that are not excepted due to their status as Small Business Association-designated small businesses or nonprofits. In addition to inventorying and disclosing Scope 1 and 2 emissions, these contractors must:

- (1) Inventory “relevant” Scope 3 emissions;⁶
- (2) Disclose GHG emissions and climate risk information recommended for disclosure by the TCFD;
- (3) Develop and disclose science-based emission-reduction targets;⁷ and
- (4) Have the targets validated by the nonprofit Science-Based Targets Initiative (SBTi).

The required disclosure must be performed annually by completing portions of the nonprofit CDP’s Climate Change Questionnaire that, as identified by CDP, align with the TCFD’s recommendations. The required target validation must be obtained within the previous five calendar years. Both the CDP Questionnaire responses and SBTi-validated targets must be made available on a publicly accessible website, which the FAR Council defines as one “that the general public can discover using commonly used search engines and read without cost.”

We refer to contractors subject to these requirements as “Tier 3 contractors.”

Using data on FY 2021 contract obligations, the FAR Council states that roughly 964 entities (major contractors not designated as small businesses) would be subject to the rule’s Tier 3 requirements, while approximately 4,802 entities would be subject only to the Tier 2 requirements.⁸ Stated differently, based on the FAR Council’s analysis of FY2021 data, roughly 17 percent of all significant and major contractors would be Tier 3 contractors, while 83 percent would be Tier 2 contractors. Tier 3 contractors would

⁶ Scope 3 emissions are defined in the Proposed Rule as greenhouse gas emissions, other than those that are Scope 2 emissions, that are a consequence of the operations of the reporting entity but occur at sources other than those owned or controlled by the entity.

⁷ A science-based target is defined as “a target for reducing greenhouse gas emissions that is in line with reductions that the latest climate science deems necessary to meet the goals of the Paris Agreement to limit global warming to well below 2°C above pre-industrial levels and pursue efforts to limit warming to 1.5°C.”

⁸ The FAR Council does not provide an estimate of the number of major contractors that would be excused from Tier 3 responsibilities due to nonprofit status.

represent a mere 0.28% of SAM-registered contractors; Tier 2 contractors would represent 0.98% of SAM-registered contractors.

Responsibility Determinations Based on Contractor Representations

The FAR Council proposes to use the FAR's responsibility provision, under which only contractors deemed by contracting officers to be responsible are eligible for contract awards, as its enforcement tool.⁹ Its Proposed Rule calls for contracting officers to assess the climate-related representations made by contractors as part of their determination of whether they are responsible and therefore eligible.

Waivers

Under two proposed new waiver provisions and a proposal to preserve an existing waiver rule, loss of eligibility for federal business due to non-compliance would not be automatic.

First, the contracting officer may only "presume" that the prospective contractor is Non responsible if it fails to comply with required representations or if the contracting officer has reason to doubt the veracity of the representations. If the contracting officer finds that the contractor is making a good faith effort to comply, the agency's senior procurement executive may provide a waiver for up to one year to allow the contractor to bring itself into compliance.

Second, the senior procurement executive of an agency is empowered to waive the rule's requirements for facilities, business units, or other defined units "for national security purposes" or emergencies or other mission essential purposes. The rule does not define "national security," "emergencies" or "mission essential."¹⁰ Nor does it require

⁹ Under section 9.103 of the FAR, it is federal policy that "No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility."

¹⁰ FAR 23.105 offers complete exemptions from the FAR's environmental rules for certain activities upon a finding by an agency head that an activity constitutes an "emergency response" or that an exemption is "in the interest of national security." However, this existing regulation also does not provide a definition of these terms.

that a record of these types of waivers be made accessible to the public on the agency's website.

Finally, small businesses (which, according to the FAR Council, represent 56% of the 5,766 entities covered by Tiers 2 and 3 of the rule) also benefit from waiver authority given to the Small Business Administration under the existing FAR.¹¹

Contractors Excused from Tier 2 and Tier 3 Requirements

In the “exceptions” section of the Proposed Rule, five contractor types (tribal entities, higher education institutions, nonprofit research entities, state and local governments, and certain entities with management and operating (M&O) contracts) are excused from the rule's Tier 2 and Tier 3 requirements even if their total contract obligations in the previous year exceeded the rule's threshold of \$7.5 million or more.

Contractors Excused from Tier 3 Requirements

Another key provision in the “exceptions” section of the Proposed Rule is the treatment of small businesses and nonprofit organizations. The FAR Council proposes to limit their obligations to Scope 1 and 2 emissions disclosures (Tier 2), even if they are major contractors and otherwise would be subject to Tier 3 requirements.

Small businesses are defined as contractors with primary NAICS codes that, due to revenue or workforce size, put them in the small business category. An [SBA guide](#) allows companies with NAICS codes to determine if they qualify as small businesses; the determination is made based on either average annual receipts or average number of employees over a specified period of time. As discussed in Section VII below, we recommend modifying this approach to Tier 3 requirements to avoid excusing entities with high climate risk and sufficient financial resources.

Exemptions

The Proposed Rule would exempt acquisitions listed at [FAR 4.1102\(a\)](#), the regulation excusing contractors from the usual requirement that they be registered in the SAM at

¹¹ Upon making a determination of nonresponsibility with regard to emissions disclosures by a small business entity, the contracting officer must refer the matter to the Small Business Administration, which then must decide whether to issue a Certificate of Competency. [FAR subpart 19.6](#) empowers the SBA to override the contracting officer and declare the small business eligible for a contract award.

the time an offer is submitted. The FAR Council explains that this is necessary for reasons of enforceability: enforcement “is accomplished via review of a significant or major contractor’s representations in SAM.”

Contracts exempted from SAM registration under this regulation include those involving sensitive matters such as classified contracts, those awarded by deployed contracting officers in the course of military operations, and those awarded by contracting officers located outside the U.S. for support of diplomatic or developmental operations.

Deadlines

The Proposed Rule has two key deadlines for contractors. The first applies to all Tier 2 and Tier 3 contractors. Starting one year after publication of a final rule, a significant or major contractor must have completed a GHG inventory and disclosed the total annual Scope 1 and Scope 2 emissions from its most recent inventory in SAM.

The second of the two key deadlines arrives in the following year. All of the Tier 3 requirements - completing a GHG inventory that covers relevant Scope 3 emissions, completing and disclosing responses to the annual CDP Questionnaire, and developing and disclosing an SBTi-validated science-based target – must be completed two years after publication of a final rule.

IV. The Proposed Rule Will Provide Enormous Taxpayer and Societal Benefits

The Proposed Rule will deliver a wide array of benefits to the public without creating undue burdens for contractors – all the while helping the federal government, U.S. taxpayers and contractors reduce their climate-related financial risks and costs.

By focusing on Tier 2 and Tier 3 contractors, the FAR Council sensibly would apply the key emissions calculation, risk assessment, target-setting and disclosure requirements to entities receiving the most annual Federal contract obligations. This will elicit needed information from those with “the most responsibility for the management of GHG

emissions and climate risks impacting the Federal Government’s supply chains.”¹² According to the Proposed Rule, “[t]he major contractor requirements would address 64 percent of Federal Government spend and approximately 69 percent of supply chain GHG impacts.... Collectively, this rule will cover 86 percent of annual spend and about 86 percent of supply chain GHG impacts.”

By using the responsibility determination of contracting officers as its enforcement mechanism, the Proposed Rule creates a simple way for contractors to demonstrate compliance and for contracting officers to ensure compliance. The representations that would be required to secure a responsibility determination are straightforward: the contractor need only indicate if it is a significant or major contractor and, if so, whether it has taken the procedural steps required under Tier 2 or Tier 3 of the rule, as applicable.¹³ Through its waiver provisions, the Proposed Rule gives contracting officers and other federal officials flexibility to reduce these compliance measures. The Proposed Rule further reduces compliance costs by providing for the use of widely adopted private methodologies for emissions calculations, climate risk assessments and target-setting, as further discussed in Section V.

The FAR Council’s Proposed Rule to assess and manage federal suppliers’ climate risk exposure is consistent with approaches already in widespread use by large customers in the private sector. An August 2022 [Federal Reserve Board research paper](#) examined how physical climate risks affect firms’ financial performance and operational risk management in global supply chains. According to the Fed researchers, weather shocks at supplier locations were already reducing the operating performance of suppliers and customers. Further, customers were responding to perceived changes in suppliers’ climate-risk exposure: when realized shocks exceeded expectations, customers were 6 to 11 percent more likely to terminate existing supplier-relationships.

¹² As discussed in Section VII, Ceres has concerns that roughly one-third of those entities with the largest federal contracts – those designated as small businesses by the Small Business Administration despite having over \$50M in contract obligations the previous fiscal year – would be excused from Tier 3 responsibilities despite their high climate risk and sufficient financial resources.

¹³ Although the contractor must review procedural compliance, the Scopes 1 and 2 emissions data disclosed by Tier 2 and 3 contractors through the SAM website and additional disclosures made by Tier 3 contractors on a public website are not reviewed by the contracting officer as part of its responsibility determination. As discussed in Section VIII, because the responsibility determination does not rest on the accuracy or completeness of responses to these inquiries, the Council on Environmental Quality must closely monitor implementation of the rule with an eye toward assessing the adequacy of these disclosures.

Customers subsequently chose new suppliers with lower expected climate-risk exposure.

According to a [February 2022 survey by Just Capital](#), the public overwhelmingly wants information on climate risk and believes the federal government has an important role to play in eliciting it.

As explained below, the proposed measures to assess and manage climate will help protect taxpayers while strengthening our economy and national security and protecting the environment and public health.

The Proposed Rule Will Protect Taxpayers from Climate-Related Financial Risks and Improve Delivery of the Government's Products and Services

Climate change poses significant challenges and opportunities in virtually every economic sector in the U.S. As we witnessed during the past few years with the Covid-19 pandemic, unaddressed corporate vulnerabilities can significantly harm our lives and livelihoods. The discontinuance of operations and closures of companies reveal the fragility of national and global supply chains and the importance of a proactive approach to supply chain risks.

Climate risks to the federal government and the overall economy fall into two categories. Transition risk is the risk that companies will not be adequately prepared to participate in the transition to a low-carbon economy currently underway. Physical risk is the risk that companies will not be adequately prepared for new weather extremes and other physical impacts of climate change.

At the core of the Proposed Rule is the TCFD's disclosure framework. The use of this framework reflects a recognition by the FAR Council that once the federal government's largest contractors disclose their approaches to transition risk and physical risk as recommended by the TCFD, federal agencies and contractors will have more of the information they need to address these risks and related opportunities. This information will be invaluable to agencies in their acquisition planning, solicitation design and source selection processes.

The TCFD's recommended disclosures have four core elements: governance, strategy, risk management and metrics/targets. Within each of these elements, the TCFD recommends disclosures about the climate-related risks and opportunities that the company sees, as well as the processes followed to identify and assess those risks and opportunities and the targets and metrics used by the company to evaluate progress in addressing them.

As discussed below, an efficient and effective federal procurement system – one that protects the financial interests of taxpayers while delivering essential services - can be achieved only if suppliers' handling of climate risks is assessed and managed. Unfortunately, as discussed in Section II above, many large U.S. contractors do not currently disclose sufficient information about the risks that climate change poses to their assets and operations and have not made commitments to reduce GHG emissions in alignment with Paris Agreement targets. For large federal suppliers, disclosures of emissions, climate risk assessments and target setting are frequently incomplete or delivered in formats that are not decision-useful. The Proposed Rule would help rectify this problem.

The Proposed Rule Will Help Agencies and Contractors Prepare for the Transition to a Low-Carbon Economy

These disclosures made pursuant to the Proposed Rule – particularly those relating to Scope 1, 2 and 3 GHG emissions, science-based targets and transition plan implementation - will be critical to the government's ability to measure, manage and reduce risks arising from the transition to a low carbon economy, such as rapid changes to policy and technology and shifting attitudes of customers and the workforce. They will facilitate invaluable collaboration between agencies and suppliers, and among suppliers, that seek to address these challenges.

The disclosure will also help companies evaluate and leverage tremendous economic opportunities arising from the transition to a decarbonized economy. For years, many companies have recognized the growing market advantages of delivering zero-carbon technologies and other climate change solutions. By developing and implementing effective transition plans, they have seized the opportunities created by the accelerating shift to a low-carbon economy to meet customer demand, grow their profits and ensure their long-term sustainability. This information produced by the Proposed Rule's required disclosures will help agencies identify these forward-looking companies in

designing their procurement programs and strategies and help suppliers highlight their efforts to provide solutions.

Virtually every day, more evidence emerges of the significant economic opportunities arising from the transition. For example, In June 2022, [McKinsey](#) estimated that the net-zero-by-2050 goal will provide investment opportunities amounting to \$9.2 trillion per year from 2023 to 2050. In December 2022, the International Energy Agency (IEA) issued its [annual 5-year projection of growth in global renewable energy capacity](#), anticipating almost 30 percent higher growth than in its 2021 forecast, the “largest ever upward revision of IEA’s renewable power forecast,” with solar PV capacity by itself exceeding natural gas by 2026 and coal by 2027. According to the IEA, “fossil fuel supply disruptions have underlined the energy security benefits of domestically generated renewable electricity, leading many countries to strengthen policies supporting renewables.”

Meanwhile, [Credit Suisse](#) has pointed to the Inflation Reduction Act (IRA) as one of the key drivers of the accelerated transition away from carbon-intensive energy sources, concluding that the IRA “will have a profound effect across industries in the next decade and beyond” and could ultimately shape the direction of the American economy. Ceres also has noted [the transformative potential impact of the Inflation Reduction Act](#).

Changes over the past year in a key sector of the economy – surface transportation – highlight the historic nature of the risks and opportunities associated with this transition. Responding to the IRA’s electric vehicle (EV) and battery incentives, as well as EV mandates from China, California and other major markets, automakers have [recently announced dramatic updates to sales and production targets](#), such as commitments by Volvo (100% EV sales by 2030), Ford (50% EV sales by 2030), and BMW (50% EV sales by 2030). In January 2023, [BP lowered its projection of oil demand](#) from its 2022 projection, citing the IRA’s incentives along with Russia’s invasion of Ukraine. It now anticipates that fossil fuels’ share of total primary energy sources will fall from 80 percent in 2019 to between 55 and 20 percent by 2050.

Dramatic changes in the manufacturing sector similarly highlight risks for companies failing to prepare for the transition and opportunities for forward-looking companies. In its January 2023 [Energy Tech Perspectives report](#), the IEA forecasts that the market for mass-manufactured clean technologies will triple by 2030 under existing national policies and pledges.

It is in the interest of federal taxpayers, and in fact, every U.S. resident, that the federal government and its suppliers have increased visibility into transition risks and opportunities in the federal supply chain. Greater transparency enables federal agencies and suppliers to work together to achieve efficiencies and cost-savings in contracts. It also enables agencies to identify problems with suppliers that could impact their ability to meet contract timelines and obligations. This risk is especially acute considering the federal government's reliance in many instances on multi-year contracts, the use of which [the FAR strongly encourages](#) to reduce costs and broaden the competitive base of suppliers.

The FAR Council's Proposed Rule contains three core provisions, based on TCFD recommendations, that directly confront the buildup of transition risk in the federal supply chain.

First, as noted above, the Proposed Rule requires Tier 2 contractors to annually disclose Scopes 1 and 2 emissions and Tier 3 contractors to disclose Scopes 1 and 2 and relevant Scope 3 emissions.

Second, as also noted above, the Proposed Rule requires Tier 3 contractors to establish and annually disclose validated science-based emissions reduction targets.

Third, the Proposed Rule effectively requires that Tier 3 contractors disclose their plans for achieving science-based targets (commonly known as climate transition plans) *and detail their progress* in implementing those plans. This is because Tier 3 contractors must complete and disclose the portions of the CDP Questionnaire aligned with TCFD recommendations, and the TCFD recommends these disclosures.¹⁴

Obtaining consistent and reliable disclosures about contractors' science-based targets, and progress toward those targets, will be critical to the federal government's success in reducing climate risk in its supply chain. Net Zero Tracker analyzed in a [June 2022 report](#) the net-zero emissions goals set by 1,181 companies and found that 65 percent showed a "troubling lack of clarity on essentials." In another June 2022 report, SBTi found that only 46% of companies setting science-based targets were disclosing

¹⁴ A [CDP technical note](#) identifies key TCFD-recommended questions, including a request to "describe the targets used by the organization to manage climate related risks and opportunities and performance against targets." The technical note also includes a host of TCFD-recommended questions about the organization's Scope 1, 2 and 3 emissions. As discussed in Section VII, Ceres recommends that the federal government directly require disclosures of this information rather than indirectly by calling for a CDP Questionnaire.

progress toward those targets. In a March 2022 report, CDP found that of the 13,100 organizations disclosing environmental data, only 135 met its criteria for a credible climate transition plan – the key document for setting the metrics against which progress toward targets is evaluated. In an [October 2022 report](#), Ceres, CDP and partner organizations provided detailed recommendations on how companies can improve the credibility and usability of these transition plans. A [May 2022 Ceres report](#) offers suggestions on how such plans could be improved in the food sector.

With its mandate for emissions disclosures by Tier 2 and Tier 3 contractors and for science-based targets and reports on progress toward those targets by Tier 3 contractors, the Proposed Rule will enable agencies to compare disclosures among contractors and to work with contractors to improve disclosure quality. Over time, the information that agencies and contractors develop will be a central part of their strategy development as they work to reduce costly transition risk and ensure timely delivery of critical products and services.

The Proposed Rule Will Reduce Supply Chain Vulnerabilities to Climate Change’s Physical Impacts

The Proposed Rule’s requirement for Tier 3 contractors to respond to TCFD-recommended questions also ensures that the federal government receives critically needed information about the preparedness of those major contractors to address the physical impacts of climate change. The TCFD defines the risks of physical impacts as including both acute risks (event-driven) and chronic risks (those due to longer-term shifts in climate patterns). Thus, for example, the chronic risks of [megadroughts](#) and their [impacts on transportation of essential commodities on major waterways](#) would be a fundamental component of any climate risk disclosure by a contractor dependent on such waterways for its shipments.

Through its reliance on the TCFD framework, the Proposed Rule requires a host of disclosures about a Tier 3 contractor’s assessment of, and response to, these threats to its operations and its finances. Disclosures of this information by Tier 3 contractors will enable federal agencies and contractors to better assess and manage these risks, reducing their costs and enhancing their ability to deliver critical products and services. By facilitating the sharing of lessons among the largest contractors, the government will improve its own resilience to climate impacts as well as resilience across the economy.

A [January 2020 McKinsey study](#) highlights the broad scientific consensus that both the public and private sectors are unprepared for physical climate change impacts. According to McKinsey, “the pace and scale of adaptation are likely to need to significantly increase to manage rising levels of physical climate risk. Adaptation is likely to entail rising costs and tough choices that may include whether to invest in hardening or relocate people and assets.”

Federal agencies have recently engaged in a concerted effort to develop and implement [climate adaptation and resilience plans](#). However, substantial knowledge gaps are inhibiting the government’s ability to ensure that facilities, operations, and investments are resilient to climate impacts.¹⁵

The Proposed Rule would provide a wealth of information about the vulnerabilities of the federal supply chain to climate change impacts. These disclosures will inform a new generation of agency adaptation plans with concrete procurement actions to reduce these vulnerabilities.

The Proposed Rule Will Reduce Systemic Risks to Federal Financial Stability and the National Economy

The Financial Stability Oversight Council (FSOC) [2022 Annual Report](#) emphasizes climate change as an emerging and increasing threat to U.S. financial stability. The Proposed Rule’s disclosure and target-setting requirements also help to reduce systemic risks that jeopardize federal finances and program delivery. The broad failure of federal suppliers and other businesses to align their operations with Paris-aligned emissions reduction targets poses significant risks to the overall economy, in turn threatening government operations.

As explained in the [October 2021 report](#) of the state-commissioned California Climate-Related Risk Disclosure Advisory Group, under the leadership of Stanford University’s Alicia Seiger, the government is “a long-term owner and insurer of last resort of a wide variety of infrastructure.” This is especially true of the federal government, which in

¹⁵ In many ways, the government is playing catch-up after years of neglect. In a [2015 report on climate risks to critical supply chains](#), the General Accounting Office focused on the lack of preparedness of the federal government. It analyzed adaptation plans of 24 federal agencies and found that only 12 included information on agency-specific risks. Only four agencies identified agency-specific actions to manage climate risks to their supply chains.

recent years has repeatedly served as the financial backstop for numerous communities suffering climate-related damages due to worsening tropical storms, flooding, drought, and wildfires. The Advisory Group’s recommended solution to this challenge is mandatory contractor disclosures, through which the government can obtain “critical information to understand and manage these risks.”

The federal government also serves as the ultimate backstop for companies in the financial sector facing potential failures, like it did in 2008. Without significant steps to address transition risk through greater emissions disclosure and rapid emissions reductions by companies across the economy, [many experts](#) fear a financial crisis at or beyond the scale of the Global Financial Crisis of 2008, spurred by a sudden and widespread deflation in asset values at carbon-intensive businesses. As highlighted in a [September 2022 Ceres report](#), this hidden risk is distributed across major financial institutions.

In October 2021, the Financial Stability Oversight Council released a [major report](#) finding that climate change is an emerging and increasing threat to financial stability. The report identifies threats to the basic functioning of our financial system and economy from both transition risk and physical risk and emphasizes the importance of corporate disclosure of climate risk information, including information on GHG emissions. With its emphasis on disclosure by the federal government’s largest contractors, the Proposed Rule will make an important contribution to reduction of this systemic risk.

The Proposed Rule Will Reduce the Impact of Price Volatility and Inflation on Procurement

One of the key benefits of the Proposed Rule is that it will help the federal government with addressing price volatility and inflation. By prompting suppliers to identify emissions reductions strategies and providing both agencies and suppliers with information about climate-related economic opportunities from transitioning to a low-carbon economy, the rule will reduce the harms that price volatility and inflation cause to efficient and economical federal procurement.

Mark Zandi, Moody’s chief economist, is among the many experts who have noted the role of fossil fuel dependence in driving price volatility and inflation. [According to Zandi](#), “Invariably, it’s the high cost of oil and fossil fuels in general that drive big fluctuations

and overall inflation.... Every recession since World War II has been preceded by a jump in oil prices.” Reducing reliance on fossil fuels “will significantly reduce its grip on inflation in the broader economy.”

According to a November [2022 study](#) by Weber et al., supply shocks in just eight “systemically significant” sectors, including “Petroleum and coal products” and “Oil and gas extraction,” are the primary drivers of price instability. A [December 2022 Bloomberg analysis](#) of reductions in Russian oil and gas supplies following the Ukraine invasion bears this out – it concludes that this supply shock has already imposed \$1 trillion in costs on European energy consumers, with significant additional costs expected in the coming years.

A [December 2022 study](#) by Positive Money highlights another linkage between fossil fuels and inflation: climate-driven weather disasters erode infrastructure and supply chains, impact food production, and reduce worker productivity. Prices increase as the scale and frequency of extreme weather increase.

As [President Biden has highlighted](#), recent spikes in fossil fuel prices linked to the Russian invasion of Ukraine have resulted in financial gains for shareholders and executives, not investments in innovative technologies that would reduce costs for consumers or taxpayers. In fact, executives have repeatedly signaled a desire to capitalize on Ukraine-related foreign demand growth to increase those costs. For example, Tellurian Chairman Charif Souki [recently expressed the view](#) that if U.S. LNG exports are expanded, domestic and international gas prices will converge in the latter half of this decade. In this scenario, U.S. consumers with fossil gas in their supply chains (such as the federal government) could be subject to dramatic cost increases.

A [September 2022 study](#) by Way et al. demonstrates how transitioning from a fossil-based energy system to a low-carbon energy system by 2050 would likely result in overall net savings of many trillions of dollars—even without accounting for climate damages or co-benefits of climate policy. Thanks to [learning curves](#), clean energy sources will offer steady decreases in prices in the coming decades.

A key inflation-fighting feature of the Proposed Rule is that disclosures will enable agencies and suppliers to identify ways to deliver on energy efficiency. As the [Green Purchasing Guide](#) of the National Association of State Procurement Officials explains, sustainable purchasing has become an integral part of public procurement in recent

years in significant part because of the cost savings of energy-efficient products and services.

With the benefit of the GHG emissions and climate risk disclosures provided under the Proposed Rule, federal agencies will be able to identify expanded opportunities to build partnerships with contractors that help facilitate the transition away from costly fuel sources and toward renewable energy sources and energy efficiency.

The Proposed Rule Will Simplify Review of Contractors' Climate Risk Profiles

In today's largely voluntary disclosure regime, large customers, investors and other stakeholders struggle with the wide array of formats and locations of climate risk disclosures. In a [January 2022 report](#), the Conference Board found that more than half of S&P 500 companies disclose climate risks in annual reports and 71% disclose GHG emissions in their annual reports, sustainability reports, or company websites. However, not enough of these reports are prepared in a format that is decision-useful for the federal government.

The disclosures required by the Proposed Rule will significantly increase the efficiency of federal review of contractors' climate risk profiles by aligning federal disclosure requirements with existing global standards and methodologies already used by a large number of companies. The standardized format called for in the Proposed Rule, along with the Proposed Rule's requirements that disclosures be posted on a public website and that the location of that website be shared with the federal government, will greatly facilitate federal risk reduction work as well as the risk reduction efforts of state and local governments, investors, and other entities.

As the largest customer in the world, the federal government has a legitimate need for its potential contractors to facilitate its risk reduction work by providing disclosures about climate risks in a decision-useful format.

The Proposed Rule Will Help Taxpayers by Strengthening the Economy and National Security and Protecting the Environment and Public Health

In addition to facilitating more effective and efficient procurement, the government's efforts to reduce its climate risk will have sizable payoffs for the economy, national security, the environment, and public health. Advancing these objectives has the combined benefit of producing taxpayer savings and improving overall quality of life.

Strengthening the economy

Numerous analysts have recognized that firms delivering solutions to the massive challenges posed by climate change have bright prospects in today's economy. For example, a [January 2022 Deloitte study](#) found that the U.S. economy could gain \$3 trillion if it rapidly decarbonizes over the next 50 years. According to Deloitte, "this once-in-a-generation transformation could add nearly 1 million more jobs to the US economy by 2070."

The Proposed Rule will increase the federal government's and suppliers' visibility into opportunities to partner on climate solutions and economic revitalization. Tracking and managing emissions could spur significant private-sector transformations. For example, the supplier disclosures provided under this rule, once combined with product disclosures provided pursuant to the Administration's "Buy Clean" policies, could provide information to help scale the technologies needed to decarbonize key sectors such as steel, concrete, aluminum, and chemicals. We discuss in Section VI our recommendations for integrating the disclosures required under this rule with Buy Clean disclosures and other product-level and project-level climate disclosures.

According to a [June 2022 analysis](#) of supply chain risk management by the Gartner consulting firm, leading companies see climate change as both a near- and long-term threat *and* an opportunity for differentiation to achieve competitive advantage. With the disclosure required by the Proposed Rule, federal agencies and suppliers will have much greater visibility into these opportunities. Partnering with federal agencies, firms with well-reasoned strategies for reducing climate risk and seizing climate-related opportunities will accelerate U.S. economic revitalization. As noted earlier, these opportunities continue to grow as a result of policies such as the Inflation Reduction Act and the Bipartisan Infrastructure Law.

Strengthening national security

The federal government has long recognized climate change as a threat to national security for reasons ranging from sea level rise impacts on defense installations to increased resource scarcity, regional conflicts, political instability, and mass migrations. In January 2021, the [Defense Department announced](#) a series of actions to make climate change a priority focus area, including climate risk assessments and actions to reduce the department’s carbon footprint and spur the development of climate-friendly technologies at scale. In October 2021, the Department released a [detailed climate risk assessment](#), identifying a wide variety of national security risks posed by climate change – including climate change’s impacts to supply chains.¹⁶

Notably, defense procurements represent [a majority of the U.S. procurement budget](#). Many of the nation’s largest contractors help determine the resilience of the vast supply chains of defense agencies. The proposed rule will help build this resilience, and thereby reduce national security risks, by driving suppliers to track and more effectively manage climate risk.

Protecting the environment and public health

Climate change’s large-scale ongoing damage to the environment and public health, and the prospects for even more significant damage in the coming decades, has been [well-documented by the IPCC](#) and other leading authorities. This damage shows up in substantial increases in the environmental and health protection and restoration costs of federal agencies as well in those of state, local, tribal and private entities. For example, according to a [May 2021 NRDC report](#), fossil-fuel generated air pollution and climate change impose \$820 billion in health costs on U.S. communities *each year*—a burden that falls heaviest on historically disadvantaged communities. With its proposed climate risk assessment and target-setting provisions, the FAR Council will enable federal agencies, suppliers, and other partners to identify cost-saving solutions to climate-related environmental and health problems.

¹⁶ To ensure continued high-quality risk assessments, we recommend that the federal government limit the use of the national security waivers offered by the Proposed Rule. In Section VII, we recommend ensuring that any such waivers are publicly disclosed and that the use of waivers is regularly assessed during program evaluations.

V. With its Reliance on Widely Accepted Private Standard-Setters, the Proposed Rule Will Simplify Disclosures and Target-Setting

In crafting the Proposed Rule, the FAR Council was faced with a decision on how best to leverage third-party standards and methodologies already in widespread use in the marketplace. In this section, we explain why we largely support the FAR Council's reliance on GHG Protocol, TCFD, and SBTi standards and methodologies and the widely used CDP disclosure approach. In Section VII, we explain how the FAR Council could strengthen its proposal by putting in place federal standards for GHG emissions calculations, climate risk assessments, target-setting and disclosures and by encouraging use of these methodologies and those of other qualified entities in meeting those standards.

The FAR Council's reliance on the nonprofit entities identified in the Proposed Rule greatly simplifies compliance with the rule by contractors as well as the use of required disclosures by federal agencies and stakeholders. The costs and burdens of collection, analysis and disclosure will be minimized by leveraging standardized approaches already in widespread use in the U.S. and around the world.

Like other large companies around the world, numerous contractors that would be covered by the Proposed Rule are very likely already using, or will soon be using, the GHG Protocol's methodology for calculating emissions, the TCFD's recommendations for assessment of climate-related financial risks and opportunities, SBTi's approach to target-setting and CDP's platform for disclosure.

- In [comments filed](#) in response to the FAR Council's October 2021 Advanced Notice of Proposed Rulemaking FAR Case 2021-016, numerous trade associations and major companies, including the Council of Defense and Space Industry Associations (at 8), Professional Services Council (at 5-6), Aerospace Industries Association (at 2), Boeing (at 2-3), HP (at 3), and Microsoft (at 5), expressed support for leveraging the existing frameworks of the leading private climate risk disclosure organizations.
- [More than 90 percent](#) of Fortune 500 companies reporting through CDP use the GHG Protocol. Corporate contributors to its methodologies range from 3M Corporation to Chevron to PriceWaterhouseCooper.

- Over 3,400 companies and institutional investors in 95 jurisdictions have publicly endorsed the TCFD recommendations, and [over 120 regulators and governments](#) around the world are TCFD supporters.
- Over 11,000 individuals and entities filed comments in response to the U.S. Securities and Exchange Commission’s (SEC’s) March 2022 proposed climate risk disclosure rule, with comments from investors and corporations showing [“strong support”](#) for use of the TCFD framework.
- In [2021](#), 400 companies (80%) from the S&P 500 index, worth over US\$28.2 trillion in market capitalization, responded to CDP’s climate change questionnaire, the vast majority of which disclosed against at least 80% of the TCFD-tagged questions in the CDP climate change questionnaire.
- The [proposed climate disclosure standard](#) developed by the International Sustainability Standards Board (ISSB) is aligned with the TCFD. Countries around the world are expected to adopt the ISSB standard, in whole or in part, in the next two years.¹⁷
- Beginning in 2022, TCFD-recommended disclosures became [mandatory in the United Kingdom \(UK\)](#) under the UK’s Company Regulations and Limited Liability Partnership Regulations for over 1,300 UK-listed companies and private firms. The disclosure requirements [specifically apply to contractors](#) of the UK government.
- In the US, the [National Association of Insurance Commissioners \(NAIC\) voted](#) to require new climate disclosures based on the TCFD for insurers that operate in 15 states. These filings will reflect over 200 companies or close to 80% of the insurance market by size and will significantly add to TCFD adoption in the U.S.
- Comments filed on the March 2022 climate risk disclosure proposal issued by the SEC also provide useful data on the marketplace’s embrace of these standard setters. Ceres [analyzed](#) 320 institutional investors’ comments on the SEC’s proposal and determined that 100% of these investors support the SEC’s proposed use of the TCFD framework, 99% support its proposed use of GHG Protocol for Scope 1-2 disclosures, 97% support its proposed use of GHG Protocol for Scope 3 disclosures, and 95% support disclosure of emissions reduction targets.
- At the end of 2021, [2,253 companies across 70 countries and 15 industries](#), representing more than one third (\$38 trillion USD) of global market

¹⁷ The International Financial Reporting Standards (IFRS) Foundation is leading the development of the ISSB standard; 144 jurisdictions currently require the use of the accounting standards that the IFRS put in place.

capitalization, had approved emissions reductions targets or commitments with the SBTi.

- A wide array of industry-specific guidance and tools have been built using the GHG Protocol as their foundation. For example, the Partnership for Carbon Accounting Financials (PCAF), created by the financial services industry to establish a standard for Scope 3 emissions disclosures by financial institutions, uses the GHG Protocol. In addition to supporting this standard, [PCAF explicitly advocates](#) for assessing climate-related risks in line with the TCFD, setting science-based targets using SBTi and reporting to stakeholders through CDP.
- Tara Schmidt, Head of Climate and Sustainability Strategy, Sustainability & ESG Finance at Lloyds Bank and Bank of Scotland, [recently referred to the TCFD as a “game changer.”](#) According to Schmidt, “[e]xternal frameworks like the TCFD and science-based targets giv[e] everyone an opportunity to ‘compare and contrast to best-in-class and [find] opportunities that [climate change] could potentially present.”
- Leading companies such as [Mars, HP, Unilever, Ford, JLL and Walmart](#) are already relying on the GHG Protocol and SBTi to measure, manage and reduce their Scope 3 emissions. According to [Kate Monahan of Trillium Asset Management](#), this work is critical for prioritizing emissions reduction opportunities in the packaged food industry, where Scope 3 emissions represent more than 90 percent of companies’ total emissions on average.

A key benefit to reporting companies from the FAR Council’s use of widely respected private methodologies is that, because their adoption by companies and other reporting entities is so rapidly increasing, learning will likewise increase at a rapid pace, driving significant reductions in costs to both contractors and agencies and other users of contractor disclosures. A [June 2022 white paper](#) from the World Resources Institute and Concordia University on Scope 3 measurement highlights how the rate of learning about this complex area of climate risk assessment is accelerating now that the number of Scope 3 practitioners has scaled. This learning - including how to make reasonable estimates where high-quality source data are unavailable - will continue to accelerate as emissions disclosures using the GHG Protocol are increasingly mandated by financial regulators, large customers, investors, and others.

VI. The Proposed Rule is Well Within the FAR Council’s Authority under Federal Procurement Law

Requiring the largest federal contractors to publicly disclose their GHG emissions, climate-related financial risks and opportunities, and science-based targets is squarely within the executive’s authority to set procurement policy.

The history of federal procurement law and policy shows that the federal government has wide latitude to determine those with whom it will deal and to fix contract terms. Over seventy years ago, Congress assigned the President a central role in managing the federal contracting system. The Federal Property and Administrative Services Act of 1949 (“Procurement Act”) provides that “[t]he President may prescribe policies and directives that the President considers necessary to carry out” the Act’s objective of “an economical and efficient” federal procurement system.¹⁸

Courts largely have upheld procurement policies established by the executive branch to promote the Act’s economy and efficiency purposes. For example, the D.C. Circuit Court of Appeals has recognized that the Procurement Act “grants the President particularly direct and broad-ranging authority over those larger administrative and management issues that involve the Government as a whole.”¹⁹

The Proposed Rule has a close nexus to economical and efficient procurement and is well within the executive’s broad authority. Importantly, the Proposed Rule does not impose any new or unique change to the procurement process, but rather sets out a needed update to the requirements of the 2016 FAR Rule, as described below. The Proposed Rule will result in significant benefits to taxpayers and the national economy by helping identify vulnerabilities in federal supply chains and cost-saving mitigation opportunities, facilitating valuable collaboration with and among contractors, and increasing efficiencies in corporate disclosure processes and industries. Moreover, as discussed above, the Proposed Rule would achieve those benefits by harnessing established global standards and methodologies already used by many U.S. companies—including many of the largest federal contractors—thereby reducing compliance costs.

¹⁸ 40 U.S.C. § 101.

¹⁹ *AFL-CIO v. Kahn*, 618 F.2d 784, 789 (D.C. Cir.) (*en banc*), *cert. denied*, 443 U.S. 915 (1979).

The Proposed Rule is also in line with extensive past practice. Since the adoption of the Procurement Act, Presidents have regularly exercised their authority to direct government procurement. Contracting requirements that drive innovation and cost-savings through greater efficiencies in contractor operations are commonplace. Past procurement policies have included measures prohibiting certain civilian contractors from engaging in employment discrimination, requiring contractors to inform employees of certain labor rights, requiring contractors to use an electronic system to verify employee work authorization, and requiring contractors to provide paid sick leave. Like these procurement policies, the Proposed Rule will result in verifiable economic and efficiency benefits for the federal government and contractors that flow through federal contracts.

VII. Ceres' Recommendations to the FAR Council for Strengthening and Clarifying the Proposed Rule

1. Close key disclosure gaps

a. Establish minimum standards for disclosures of GHG emissions, climate-related financial risks and opportunities and science-based targets

As discussed in Section V, the Proposed Rule's reliance on GHG Protocol, TCFD, SBTi and CDP is beneficial. Contractors, agencies, and stakeholders all benefit from the standardization, broad stakeholder participation and continuous learning and improvement that is central to the four entities' approaches. These benefits can best be achieved with the addition of clear federal standards describing what must be disclosed.

The Proposed Rule defers significantly to the four nonprofit entities to provide clarity on what Tier 2 and Tier 3 contractors must disclose. For example, the Proposed Rule does not describe with specificity the climate risks and opportunities that Tier 3 contractors must disclose. Instead, the Proposed Rule tells contractors to complete "those portions of the CDP Climate Change Questionnaire that align with the TCFD recommendations as identified by CDP." Moreover, departing from the approach of the 2016 FAR Rule, which as noted above calls for use of "the GHG Protocol Corporate Standard *or a similar accounting standard*" (emphasis added), the Proposed Rule requires reliance on the current standards and methodologies of the four nonprofit entities. This approach

poses the risk that the methodologies established by these entities at the time of the rulemaking will become outdated, with the Proposed Rule also becoming outdated and out of sync with science and best practices.

Ceres recommends that the FAR Council close these gaps by establishing minimum standards, described below. This would provide greater clarity and certainty to contractors, agencies and stakeholders, while still leveraging the benefits of the carefully developed methodologies offered by the four nonprofit entities.

Ceres also recommends that contractors be provided with the ability to select among available methodologies for calculating emissions, assessing climate risks, and establishing and validating science-based targets, so long as these methodologies meet minimum thresholds of widespread acceptance and scientific integrity and are fully disclosed. Contractors should be required to briefly summarize the methodologies employed in their annual climate disclosures.

We anticipate that the vast majority of Tier 2 and 3 contractors will elect to use the methodologies of the four nonprofits identified in the Proposed Rule to take advantage of their standardization, broad stakeholder engagement and continuous learning and improvements. However, although the GHG Protocol, TCFD, and SBTi are likely to serve for the foreseeable future as the leaders on emissions calculations, climate risk assessment and target setting, respectively, and CDP will also likely continue serving as the leading climate disclosure platform, the FAR Council should highlight their industry-leading methodologies while also allowing the use of similarly rigorous methodologies and disclosure platforms. By allowing this flexibility, the FAR Council will empower contractors to decide which science-based methodologies best fit their needs and objectives and will help ensure that its Proposed Rule remains consistent with the latest science-based approaches in widespread use in the marketplace.

Adopting this flexible approach to implementing federal standards would be consistent with the 2016 FAR Rule, in which contractors are instructed to indicate in their SAM website representations whether they have performed a GHG emissions inventory “in accordance with the GHG Protocol Corporate Standard *or a similar accounting standard*” (emphasis added).

We recommend that the FAR Council strike the following balance between setting minimum federal standards and relying on methodologies developed by third-party entities:

Calculations and Disclosures of Scope 1 and Scope 2 GHG Emissions

As noted above, the FAR Council already provides a clear standard in its Proposed Rule governing the emissions disclosures required by both Tier 2 and Tier 3 contractors. This standard is found in section 23.XX03(a) of the Proposed Rule, which calls for Tier 2 and Tier 3 contractors to annually estimate Scope 1 and Scope 2 emissions using the definitions of these emissions at proposed section 23.XX02. Proposed section 23.XX03(a) also makes clear that Tier 2 and Tier 3 contractors must annually disclose these emissions on the SAM website. We recommend providing greater flexibility to contractors regarding the calculation methodology: rather than limiting contractors to the GHG Protocol, the FAR Council should require contractors to use “the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard or another widely-accepted, science-based methodology” in calculating these emissions.

Calculations and Disclosures of Scope 3 GHG Emissions

As noted in Section II, a key element of the FAR Council's Proposed Rule is the requirement that Tier 3 contractors inventory and disclose Scope 3 emissions.

The Proposed Rule’s definition of “annual climate disclosure” specifies that this disclosure must include disclose “relevant” Scope 3 emissions. The Proposed Rule also suggests that relevant Scope 3 emissions will be included in the CDP Questionnaire: it requires ²⁰“those portions of the CDP Climate Change Questionnaire that align with the TCFD recommendations as identified by CDP.”²¹

We recommend that the FAR Council provide greater clarity by expressly requiring that Tier 3 contractors calculate relevant Scope 3 emissions and disclose them annually along with Scope 1 and 2 emissions. These emissions disclosures should be made in SAM as well as on a publicly accessible website.

As we propose with regard to Scope 1 and Scope 2 emissions calculations, we suggest that the Proposed Rule require contractors to use “the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard or another widely-accepted, science-based methodology” in calculating Scope 3 emissions. In addition, the definition of

²⁰ See, e.g., Proposed Rule at 68316: explaining that a delayed starting date for Tier 3 requirements is needed to provide “additional time to complete a GHG inventory that covers relevant Scope 3 emissions.”

²¹ The [TCFD recommends](#) “appropriate” Scope 3 GHG emissions disclosures.

Scope 3 emissions in proposed section 23.XX02 should be expanded to define what constitutes “relevant” Scope 3 emissions. We hope the FAR Council considers adding the following two elements to its definition of relevancy.

First, the FAR Council should add to its standard the test for relevant Scope 3 emissions used in the GHG Protocol Corporate Standard. It states that Scope 3 emissions categories may be relevant for any of the following reasons:

- They are large (or believed to be large) relative to the company’s Scope 1 and Scope 2 emissions
- They contribute to the company’s GHG risk exposure
- They are deemed critical by key stakeholders (e.g., feedback from customers, suppliers, investors, or civil society); or
- There are potential emissions reductions that could be undertaken or influenced by the company.

Second, the FAR Council should consider the [bright-line test](#) provided by SBTi for evaluating the first of these four factors: “if scope 3 emissions represent more than 40% of a company’s overall emissions, [the company must] set a target to cover this impact.”

Finally, after incorporating into the rule the GHG Protocol’s 15 categories of Scope 3 emissions, the FAR Council should consider requiring that Tier 3 contractors disclose whether any of these categories were excluded from its Scope 3 emissions calculations and, if so, that they provide a rationale. This is industry best practice, currently required by both the GHG Protocol and CDP.

Assessments and Disclosures of Climate-Related Financial Risks and Opportunities

Ceres strongly supports the FAR Council’s proposal to require annual disclosures of Tier 3 contractors’ climate-related financial risks and opportunities in alignment with TCFD recommendations. However, rather than directing Tier 3 contractors to complete those portions of the CDP Questionnaire that align with the TCFD “as identified by CDP,” the FAR Council should identify in its rule the relevant questions that must be addressed. Using the January 2022 [CDP Technical Note on the TCFD](#) (at 11) and February 2022 [CDP Technical Note: Reporting on Transition Plans](#) (at 8), which were in turn derived from the June 2017 [Recommendations of the Task Force on Climate-Related Financial Disclosures](#) and the October 2021 guidance [Implementing the](#)

[Recommendations of the Task Force on Climate-Related Disclosures \(Implementation Annex\)](#), we propose the following questions be considered for inclusion in the rule and that required responses be included in the annual climate disclosure placed on a public website:

Governance

- 1. Describe the board's oversight of climate-related risks and opportunities*
- 2. Describe management's role in assessing and managing climate-related risks and opportunities*
- 3. Describe the board-level oversight on the climate transition plan and defined governance mechanisms to ensure delivery of the plan's targets*

Strategy

- 1. Describe the climate-related risks and opportunities the organization has identified over the short, medium, and long term*
- 2. Describe the impact of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning*
- 3. Describe the resilience of the organization's strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario*
- 4. Outline time-bound financial planning details of the transition plan, such as capital expenditure, operating expenditure, and revenue*
- 5. Identify time-bound actions in the transition plan to decarbonize business operations and the value chain, with time-bound Key Performance Indicators*
- 6. Describe how policy engagement aligns with the organization's climate ambitions and strategy*

Risk Management

- 1. Describe the organization's processes for identifying and assessing climate-related risks and opportunities*
- 2. Describe the organization's processes for managing climate-related risks*
- 3. Identify how processes for identifying, assessing, and managing climate-related risks are integrated into the organization's overall risk management*

Metrics and Targets

- 1. Disclose the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process*

2. *Disclose Scope 1, Scope 2 and, if appropriate, Scope 3 greenhouse gas (GHG) emissions, and the related risks*
3. *Describe the targets used by the organization to manage climate-related risks and opportunities and performance against targets*

We recommend that the FAR Council revise its definition of an annual climate disclosure to include responses to these questions rather than responses to a CDP questionnaire. In responding to these questions, Tier 3 contractors should be required to use recommendations provided by TCFD or any other entity with a widely accepted, science-based framework for assessing climate-related risks and opportunities. Finally, the FAR Council should preserve its requirements that the annual climate disclosure be published on a publicly accessible website and that the location of this disclosure be included in the representations on the SAM website.

Establishment, Validation and Disclosures of Science-Based Targets

Proposed section 23.XX03 of the Proposed Rule provides a clear standard regarding emissions reductions targets: Tier 3 contractors must develop a target that is science-based, they must secure validation that the target is science-based from SBTi, and they must make the validated target available on a publicly-accessible website. Moreover, the definition of a science-based target at proposed section 23.XX02 is also clear: a target for reducing GHG emissions is science-based if it is “in line with reductions that the latest climate science deems necessary to meet the goals of the Paris Agreement to limit global warming to well below 2°C above pre-industrial levels and pursue efforts to limit warming to 1.5°C.”

As explained in Section IV, these requirements will be enormously helpful to the federal government in its broader initiative to reduce climate risk to taxpayers and the delivery of essential government services. We recommend only one modification to this standard: the FAR Council should replace the requirement that Tier 3 contractors secure validation of targets from SBTi with a requirement that they secure validation from “the Science-Based Targets Initiative or any other assurance provider that uses a widely-accepted, science-based framework for ensuring consistency of an emissions reduction target with the section 23.XX02 definition of a target that is science-based.”

This would be consistent with the approach we recommend with respect to GHG emissions and climate-related financial risks and opportunities: the federal government would establish the standard but would give Tier 3 contractors the flexibility to choose a widely accepted and science-based methodology for achieving the standard. The FAR

Council would ensure that the emissions reduction target is credible by requiring third-party assurance.

By requiring third-party assurance of a science-based methodology for setting targets, the FAR Council would be following a well-established federal strategy for ensuring effective contractor oversight. An example is the U.S. Department of Defense's approach to its [Cybersecurity Maturity Model Certification \(CMMC\) program](#), which implements cybersecurity requirements for federal contractors. Under [section 252.204-7021 of the Defense Federal Acquisition Regulation Supplement](#), certain contractors must obtain a CMMC certificate from an accredited CMMC Third- Party Assessment Organization and maintain it at the appropriate level for the duration of the contract.

b. Limit use of “mission-essential” waivers and improve transparency of waiver decisions

Ceres supports the targeted use of waivers to avoid unjust results or when an urgent situation requires that procurements move forward despite a supplier's lack of compliance. Thus, we have no objection to the one-year waiver that the Proposed Rule offers to contractors making an effort at compliance and we do not object in concept to the proposed waiver for national security and emergency reasons. However, the Proposed Rule provision that senior procurement executives be authorized to waive compliance with the rule for any procurement that is “mission essential” is too open-ended. The FAR Council should craft a narrow definition of “mission essential” to focus on achieving the stated purposes of the Proposed Rule. This will be essential to avoid confusion among senior procurement executives and contractors and to avoid potential abuse.

The FAR Council does not explain its objectives for the proposed “mission-essential” waiver, thus making it difficult for commenters to offer suggestions on how this objective could be achieved without producing unintended negative impacts. However, we suggest that the FAR Council clarify that it would *not* be legitimate to issue a waiver based on a Tier 3 contractor's claimed inability to perform the rule's requirements. Such a claim would not be credible considering that such a contractor, by definition, would have received federal contract awards exceeding \$50M in the previous fiscal year and thus would have the needed resources to complete this important work. We recommend that the FAR Council substantially reduce agency discretion to offer waivers for mission-essential purposes, especially such waivers for Tier 3 contractors - the contractors most likely to pose the most significant risk to the federal government.

The early years of implementation of the waiver provisions should offer many lessons about how they can be properly tailored so that the climate risk reduction objectives are not undercut. To facilitate evaluation of these decisions by program managers and the public, the rule should consider requiring that waivers for emergency, national security and mission-essential reasons be explained in writing and that the explanations be provided on a publicly accessible website. This is the sensible approach that the FAR Council proposes for the one-year waiver. Applying this approach for other waivers likewise makes good sense.

The FAR Council also could issue a policy statement on the importance of avoiding excessive use of waivers and the importance of senior procurement executives ensuring, to the greatest degree possible, that contractors with sizable carbon footprints and potentially vulnerable infrastructure disclose their climate risks and strategies for addressing them.

c. Prevent contractors that are contributing substantially to the government's climate risk from taking advantage of regulatory relief aimed at small businesses

We recommend that the FAR Council remove its provision excusing contractors from Tier 3 requirements, despite having more than \$50M of contract volume in the previous fiscal year, simply because they meet the Small Business Administration's technical definition of a small business.

Under [federal regulations](#), a company is treated as a small business by the Small Business Administration (SBA) if, based on a three-year lookback, it has either low average annual receipts or a low average number of employees. The thresholds depend on the North American Industry Classification System (NAICS) code under which it is classified.

If a business is in a category in which average annual receipts is the determining factor, the largest average receipts that a business could earn and still qualify as a small business under the SBA's definition would \$41.5M. Thus, there is no reason to excuse a major contractor (i.e., one with over \$50M in contract obligations the previous fiscal year) from Tier 3 duties under the small business exception based on its average receipts. The FAR Council effectively addresses concerns about overburdening

contractors with insufficient financial resources by limiting Tier 3 duties to those with over \$50M in contract obligations the previous fiscal year.

Major contractors that fall within one of the SBA's small business categories that use the "average number of employees" tests likewise should not be excused from Tier 3 duties. If regulatory relief were extended to this subset of SBA-designated small businesses, contractors engaged in "Fossil Fuel Electric Power Generation" (designated as small businesses if the average number of employees is less than 750) and "Petroleum Refineries" (designated as small businesses if the average number of employees is less than 1500) could be excused from Tier 3 duties. The FAR Council would be undercutting the Proposed Rule's purposes if it were to provide regulatory relief to major contractors in the face of the likely high climate risks and obvious financial resources of entities such as these.

According to the FAR Council, 389 major contractors (approximately one-third of major contractors) would have their obligations reduced from Tier 3 to Tier 2 under the proposed small business exception. Unless there are extenuating circumstances (which have not been articulated in the Proposed Rule), Tier 3 requirements should apply to all of these contractors. Their annual contract obligations of \$50M or more in the prior fiscal year is a strong indicator of significant climate risk to the federal government, as well as the financial resources to carry out climate risk assessments and target-setting.

d. Require a simplified disclosure of any efforts to address impacts to historically disadvantaged and fossil fuel-dependent communities

As the Biden Administration has recognized, any efforts to reduce GHG emissions and build climate resiliency must address redlining and other historical inequities. These inequities persist today in communities typically inhabited by low-income and/or Black, Indigenous and People of Color (BIPOC) residents and that are overburdened by pollution and underinvestment. In its [Federal Sustainability Plan](#), the Administration calls for agencies to "consider incorporating the goals of the Justice40 Initiative into operational planning and decision making regarding Federal facilities, fleets, and operations. Specifically, they will consider how certain Federal investments might be made toward the goal that 40 percent of the overall benefits flow to disadvantaged communities."

To effectuate this strategy, we encourage the FAR Council to put in place an easy-to-implement mechanism for Tier 3 contractors to voluntarily disclose any actions they are taking to address climate-related injustices. We recommend that the Proposed Rule be amended to call for a representation on the SAM website by Tier 3 contractors on whether their annual climate disclosure voluntarily discusses any current or planned actions taken to address challenges faced by historically disadvantaged communities. It might be helpful to offer the Administration’s [Climate & Economic Justice Screening Tool](#) (including any updates to this tool) to assist contractors in identifying these communities.

We also recommend that the Proposed Rule be amended to call for a representation by Tier 3 contractors on whether their annual climate disclosure voluntarily discusses any current or planned actions taken with respect to a “just transition” for fossil fuel-dependent communities. Numerous communities and workers that have long been dependent on carbon-intensive businesses are at risk of getting left behind by the energy transition and are often faced with polluted water supplies and other unfunded environmental cleanup burdens. The federal government has an interest in facilitating their transition to the new clean energy economy. An [October 2022 report by Ceres and partners on transition plans](#) provides useful information that could assist the FAR Council in formulating a definition of just transition for these communities. Leading sustainability standard setters such as the Global Reporting Initiative, the Workforce Disclosure Initiative and Sustainability Assurance Standards Board have likewise provided disclosure metrics relevant to the just transition. The federal government should consider providing information distilled from these and other reports as guidance to contractors.

We recognize that the TCFD does not currently call for disclosure information on actions to assist historically disadvantaged or fossil fuel-dependent communities. Given the absence of any history of disclosure of these matters pursuant to the TCFD framework or related standards, it would be premature for the FAR Council to mandate specific disclosures about such actions or to tie eligibility for federal contracts to such disclosures. However, the rule should require representations from Tier 3 contractors on whether they have *voluntarily* discussed in their annual disclosures any current or planned actions to address challenges faced by these communities.

Although such voluntary disclosures would not affect the responsibility determination that decides eligibility for federal contracts, they would nonetheless begin to provide the federal government with valuable information on two important climate risk factors.

Gathering information about contractors' actions and commitments regarding historically disadvantaged and fossil fuel-dependent communities would greatly advance the federal government's and the nation's interests in identifying opportunities to address these climate-related risks and opportunities.

2. Clarify applicability of updates to standards

If the FAR Council elects not to adopt our recommendation in Section VII.A.1 that it adopt its own standards, it should address how it intends to treat updates to those private standards that take place after the Proposed Rule has been promulgated as a final rule.

The Proposed Rule is clear that contractors must (depending on their contract volume and other factors) use the GHG Protocol to calculate emissions, make TCFD-recommended disclosures of climate risks and opportunities using the CDP Questionnaire and set science-based targets validated by SBTi. However, it is ambiguous when it comes to the updates that these private entities regularly enact. The FAR Council should clarify that only the standards in place on the effective date of the final rule apply.

With respect to any updates enacted by the private entities after the effective date of the final rule, the FAR Council should commit to regular updates of the Proposed Rule's definitions (through a notice-and-comment rulemaking) to achieve alignment.

VIII. Ceres' Recommendations to the Council on Environmental Quality for Strengthening Implementation

Implementation of the Proposed Rule would be greatly strengthened through actions taken outside of the FAR. We recommend the following actions by the Council of Environmental Quality (CEQ), and especially its Office of the Federal Chief Sustainability Officer, to maximize the effectiveness of the Proposed Rule in achieving its climate risk reduction objectives.

1. Maximize impact of disclosures on spending decisions

a. Issue guidance on how disclosures will be used in modernizing procurement programs and strategies

When engaging in acquisition planning, bid solicitations, source selection and post-award contract management, program managers and contracting officers must evaluate information on a wide range of topics beyond the potential contractors' company-wide handling of climate risk. CEQ should issue guidance, separate from this rulemaking, on how the company-level disclosures required by this rule will be used in conjunction with other information collection to modernize and strengthen procurement programs and strategies.²²

Of particular importance will be guidance on what climate risk information will likely be required beyond company-level disclosures. For example, in many procurements, the federal government will have a strong interest in evaluating potential contractors' capabilities to address the risks of extreme weather and other climate change impacts to delivery of the product or service that is the focus of the procurement ("project-level" climate risk disclosures). In some procurements the government may have an interest in promoting decarbonization of particular industry sectors and will be seeking "product-level" disclosures of embodied carbon and related climate information. The latter type of disclosure includes facility-specific Environmental Product Declarations (EPDs), a key feature of the Administration's Buy Clean initiative to accelerate decarbonization of the steel, concrete, cement, flat glass, and other industrial sectors.

Addressing all of the information that a contracting officer will need is outside the scope of the Proposed Rule. However, CEQ should issue guidance on how all levels of specificity of climate information will be integrated into contracting decisions. Such guidance will be essential for contractors and other stakeholders seeking to engage effectively with the government in its efforts to reduce supply chain climate change risk.

²² The FAR Council also should provide an update on FAR Case No. 2021-016. In its October 2021 Advanced Notice of Proposed Rulemaking, the FAR Council indicated that a rule would be forthcoming under this case that would integrate considerations of the social cost of GHG emissions in procurement decisions and that, where appropriate and feasible, would give preference to bids and proposals from suppliers with a lower social cost of GHG emissions. A [report is due](#) on this case on February 22, 2023.

b. Issue guidance on how disclosures will inform decisions on grants, loans, and other non-procurement spending

Disclosures of climate risk assessments and science-based targets resulting from this Proposed Rule will have benefits to many stakeholders beyond federal procurement agencies and officials. In particular, federal agencies and officials engaged in non-procurement spending would benefit from the information and insights about climate risk in the federal supply chain. CEQ should therefore consider issuing guidance to federal agencies on how they can seize the opportunity to leverage the standards and disclosures required by the Proposed Rule in areas of federal spending outside of the procurement, such as grants and loans. For example, federal and state agencies receiving funding under the IRA for grants and loans to decarbonize key industrial sectors would benefit enormously from the standardized disclosures flowing from this rulemaking.

The Biden Administration has already issued [guidance](#) on how programs authorized by the IRA will help the nation achieve its goal of net-zero federal procurement while building the market for low-carbon construction materials and other advanced technologies. It also has begun work on integrating procurements and grant spending through its Buy Clean initiative, where the [U.S. Department of Transportation \(DOT\) is working with the states to ensure that the \\$120 billion in infrastructure funds appropriated in FY2022](#) are distributed with an eye toward reducing embodied carbon in industrial materials. Working with DOT and other agencies, CEQ should now issue guidance on how the standards and disclosures resulting from the Proposed Rule will accelerate integration of climate risk considerations into all areas of federal spending.

c. Establish a Center for Management of Supply Chain Climate Risk to accelerate learning

The Biden Administration has embarked upon an array of [exciting initiatives](#) aimed at measuring, managing and reducing climate risk in the federal supply chain. To ensure the effectiveness of these initiatives, and outside the technical scope of this Proposed Rule, Ceres urges the CEQ to consider creating a hub that accelerates learning in the public and private sectors. We recommend establishment of a *Center for Management of Supply Chain Risk* at either the General Services Administration's Federal Acquisition Institute or the Department of Treasury's Office of Financial Research. The center would

adopt many of the features of [Defense Acquisition University](#), providing information, tools and training, but its primary mission would be reducing climate risk through federal procurement policies and best practices. Its secondary mission would be seizing climate-related economic opportunities through procurement.

Most procurement officials and contracting officers in the federal government are trained in procurement, not climate risk, and so the Center would serve as an invaluable forum for them to learn how best to integrate climate change considerations into procurement. Numerous stakeholders would benefit as well, ranging from contractors and subcontractors to state and local procurement officers to private standard-setters and NGO and university researchers and advocates.

The Center should be designed to encourage participation by those in private sector companies that have been innovating on reducing climate risk. Potential partners could include the [Sustainable Purchasing Leadership Council](#) which, as noted earlier, works closely with large corporate customers on developing best practices for achieving sustainability goals through supply chain innovations. The Center should collaborate with other federal entities focused on climate accounting, such as the [Federal LCA Commons](#), the interagency community of practice for Life Cycle Assessment (LCA) research methods. The Center also should tap into the supply chain risk management expertise of those working outside of the climate risk arena, such as of the Director of National Intelligence's [National Counterintelligence and Security Center](#) and Department of Homeland Security's [Cybersecurity Infrastructure and Security Agency](#)

The Center should prioritize training and technical assistance for small- and medium-sized enterprises, so that the federal government can expand and diversify its supplier base and develop climate risk reduction approaches that are tailored for this critically important segment of the economy.

Finally, the Center should prioritize learning about the Proposed Rule, both in its early stages prior to implementation and as lessons are learned during implementation. It should make accessible all disclosures made pursuant to the Proposed Rule (i.e., the representations and emissions disclosures made on the SAM website and the more detailed disclosures made by Tier 3 contractors on public websites) as well as climate risk disclosures made by federal contractors that were excused from rule compliance due to pre-existing disclosure obligations (such as M&O contractors). Summaries and evaluations of these disclosures and the Proposed Rule's overall performance (discussed below) should be prominently featured on the Center's website.

It should be noted that company climate disclosures required under the 2016 climate disclosure regulation are not currently reviewable by the public, and no summaries or evaluations of that regulation's effectiveness appear to have been published.²³ Existing databases of federal procurements such as the [Federal Procurement Data System \(FPDS\)](#) website are poorly designed for analyzing the effectiveness of this or any other procurement policy. The Center will provide a critical public service by demonstrating how to present procurement data in a format useful to analysts and that encourages public engagement. Based on public input on its summaries and evaluations, the Center could make recommendations to the FAR Council on how to strengthen climate risk disclosures for the benefit of contracting officials, contractors, and stakeholders.

Ceres has supported other organizations in the implementation of TCFD-related climate risk reports. For example, we have produced [ten hours of training materials](#) for insurance companies seeking to address climate risk. We would be pleased to explore offering similar support for the Center's important work.

2. Conduct rigorous program oversight and evaluations and solicit public comment on needed improvements

We recommend that CEQ put in place a framework to ensure that robust oversight of program implementation is carried out, accompanied by regular program evaluations that incorporate public input. A key focus should be ensuring that the rule is resulting in accurate climate risk information. Regular evaluations should be performed regarding the accuracy and completeness of contractors' representations and GHG inventories reported on the SAM website as well as the Tier 3 contractors' disclosures on public websites.

Under the Proposed Rule, the FAR Council has not imposed responsibilities on CDP or SBTi for ensuring the accuracy and completeness of disclosures made to them, and no third-party attestations are required to ensure the reliability of emissions inventories. Moreover, because the representations required by the Proposed Rule would not serve as the basis of contracting decisions, the False Claims Act is unlikely to serve as an enforcement tool. This is a reasonable approach for the early phase of the program

²³ The FAR Council briefly discusses disclosures made pursuant to this rule in its Proposed Rule but does not analyze the rule's effectiveness.

when a significant number of contractors will be using the approaches of the four private standard-setters in a comprehensive way for the first time. However, leading experts on corporate climate disclosure have expressed serious concerns about the prevalence of greenwashing and related forms of deception. In a [November 2022 report](#), the UN High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities stated that “[I]f greenwash premised upon low-quality net zero pledges is not addressed, it will undermine the efforts of genuine leaders, creating both confusion, cynicism and a failure to deliver urgent climate action. Which is why, ultimately, regulations will be required to establish a level playing field and ensure that ambition is always matched by action.”

With careful oversight of implementation and rigorous program evaluations, the federal government will ensure that the ambition reflected in contractors’ science-based targets for emissions reductions, and reflected in the Proposed Rule’s overarching disclosure framework, is matched by action.