



How Electric and Gas Utilities Can Prepare for Three Distinct Policy Futures

FTI Consulting's Power, Renewables and Energy Transition ("PRET") practice and the Strategic Communications — Energy and Natural Resources practice have collaborated to outline three distinct federal energy policy scenarios and offer our insights to electric and gas utilities making critical investments in an uncertain policy future.

Introduction: Why should utilities prepare for three different policy futures?

Climate policy in the United States has been volatile and unpredictable for the past decade. Nowhere is turbulent climate policy more evident than in the utility sector.

President Biden pledged a 100 percent carbon pollution-free power sector by 2035 and a net-zero economy by no later than 2050.¹ The passage of massive infrastructure and energy bills, coupled with a divided Congress after the 2022 midterm elections, improves the outlook for clean energy targets. But electric and gas utilities still lack regulatory certainty about the permanence of these targets, which can change as the political winds blow.

House Republicans had vowed in midterm campaign promises to walk back the progressive architecture of the Inflation Reduction Act ("IRA"). The House ultimately passed legislation that would repeal both the IRA's methane emission reduction program and the \$27 billion greenhouse gas reduction fund for low- and zero-emission technology deployment, but this bill, H.R. 1², is unlikely to pass the Democratically-controlled Senate.

The authors will examine three distinct possible climate policy scenarios that may occur through 2030. Utilities are required to make prudent and reasonable expenditures, and investments can become stranded or politically unpopular when the planned-for scenario does not come to pass. These scenarios can serve as starting points for conversations with state regulators about how best to help a utility serve customers, inform policy conversations with stakeholders and prevent stranded assets.

¹ "President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies." The White House, April 22, 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>

² 118th Congress (2023-2024). "H.R.1 - Lower Energy Costs Act," introduced March 14, 2023. <https://www.congress.gov/bill/118th-congress/house-bill/1/text>

Scenario 1: Aggressive Climate Action

Domestic Target Alignment: 50 percent carbon emission reduction below 2005 levels by 2030 (Biden Administration current target)

Party Leadership: A Democratic majority driving the Administration and the Senate

The 2022 midterm elections saw the Democratic Party cement control of the Senate but lose control of the House. If, in the 2024 election, the Democratic Party retains the White House and regains full control of Capitol Hill, there would be ample time and resources committed to implementation of the climate and energy priorities in the Infrastructure Investment and Jobs Act (“IIJA”) and the IRA. However, many important judicial panels, including the U.S. Supreme Court, will continue to lean conservatively, giving climate-change policy opponents a venue to fight the Administration’s priorities.

Scenario Outcomes: This scenario is unlikely but possible. Should the Aggressive Action outcome emerge, U.S. policy would align or exceed current international targets. Even if no federal carbon-pricing policy is passed in an Aggressive Action scenario, cumulative taxes from the private sector and states will mimic the effect of a carbon tax. The most climate-friendly states will also align or exceed international targets, while once-inactive states improve. By mid-decade, carbon markets with strong price signals will be established in the private sector, most consumers will gravitate towards green products and both corporate lobbying and stock performance will be largely aligned with climate action.

Risks and Opportunities in the “Aggressive Climate Action” Scenario

Two big risks to utilities remain, even under an Aggressive Climate Action scenario:

The National Environmental Policy Act of 1970 (“NEPA”) could be subject to significant revision

NEPA, a powerful environmental law, requires all federal agencies to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment (Environmental Impact Statements, or the less stringent Environmental Assessments).³ NEPA is one of the few mechanisms that localities can use to trigger federal scrutiny of future public health consequences, including the impact of greenhouse gas emissions. Historically, this has made NEPA a significant hindrance to fossil fuel development⁴, and that role could feasibly expand under a Democratic control scenario. But clean energy developers are increasingly vocal about the roadblocks they too face from the law. Lengthy environmental reviews can prevent clean energy developers from maximizing the benefits of the IRA.

A Democratic Congress would probably attempt to carve out some kind of “fast-track” process for clean energy resources while preserving the spirit of NEPA, which is staunchly defended by progressives and their environmental allies. Any significant changes to NEPA would be likely to result in significant infighting within the Democratic Party, but tweaks to implementation rules to hinder fossil fuel projects and accelerate clean energy are possible and could accelerate utilities’ ability to build major clean energy projects.



³ “National Environmental Policy Act. National Institutes of Health (last accessed April 14, 2023). <https://nems.nih.gov/NEPA/Pages/default.aspx#:~:text=The%20National%20Environmental%20Policy%20Act,health%20and%20welfare%20of%20man>

⁴ 42 USC 4321: Congressional Declaration of Purpose (last accessed April 14, 2023). [https://uscode.house.gov/view.xhtml?req=\(title:42%20section:4321%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:42%20section:4321%20edition:prelim))

The Federal Energy Regulatory Commission (“FERC”) expands its role in blocking fossil fuel projects

FERC currently faces a 2-2 split between Democratic and Republican-appointed members. A new commissioner or two will probably be appointed this year, but that hinges largely on approval from moderate Senate Energy and Natural Resources Chair Joe Manchin (D-WV). Manchin would probably demand significant assurances from any future commissioner that FERC would not act too aggressively against fossil fuel projects. Pressure from Manchin played an outsized role in dooming the renomination of former Chair Richard Glick and other Biden Administration nominees. However, under a scenario of full Democratic control, FERC would face immense pressure to deploy its regulatory power to block major natural gas projects. Depending on the magnitude of the leftward shift, FERC could resurrect previous attempts to block gas pipeline development or move more aggressively to mandate climate impact evaluations of fossil projects broadly, creating serious risks for utilities that are already struggling to secure adequate fuel supplies for gas plants.

Broader permitting-changes remain possible to aid clean energy and transmission

Senator Joe Manchin (D-WV) attempted to pass permitting legislation last Congress, but the effort failed to gather consensus.⁵ The Chair of Senate Energy & Natural Resources is not budging from that framework as negotiations on permitting-reform continue into the current Congress. Manchin’s bill, as drafted, had significant implications for electric and gas utilities. The bill would have allowed FERC to expedite review of up to 25 strategically important energy projects.⁶ Clean electricity and hydrogen could be deployed faster across the grid. However, Republicans and Democrats were united in opposition to passing the bill, albeit for different reasons. For instance, Senator Tim Kaine (D-VA) opposed Manchin’s proposal for the Mountain Valley Pipeline: that certain permits be waived and that the legal venue be moved from a Virginia Circuit Court to the D.C. Circuit Court.⁷

Republicans made it clear at the time that they were unwilling to support what they saw as a half-measure, instead backing Sen. Shelley Moore Capito’s (R-WV) Simplify Timelines and Assure Regulatory Transparency (“START”) Act, which would have gone further in limiting environmental reviews. Rep. Garret Graves (R-LA) also introduced similar legislation that formed the basis for H.R. 1.⁸

With the House now in Republican hands, the Manchin bill as originally drafted is effectively dead, but negotiations continue with respect to alternatives. House Natural Resources Chair Rep. Bruce Westerman (R-AR) has raised the prospect of cooperating with Manchin on a bill this Congress that would focus on easing NEPA requirements, but the specifics remain hazy. Westerman previously introduced a bill in September 2022 to reduce NEPA requirements significantly for building energy transmission projects.⁹

Democratic Senate leaders have signaled an eagerness to pursue legislation easing permitting requirements for clean energy and transmission projects this year. If some sort of legitimate permitting-reform is not enacted, Senate leaders know many of the projects funded through the IRA — many in utilities’ bailiwick — will not come to fruition. While the outcome of those legislative efforts is highly uncertain, that may change. If Democrats retake the House and retain control elsewhere in 2024, utilities can expect to see continued tweaks to permitting-laws to favor clean energy fuels, technologies, and transmission but without the equivalent carve-outs for fossil fuels expected under divided control.



5 “Manchin Permitting Bill Faces Difficult Path Forward.” CQ Roll Call, September 22, 2022. <https://rollcall.com/2022/09/22/manchin-permitting-bill-faces-difficult-path-forward/>

6 Ibid.

7 “Kaine Statement on Vote to Exempt the Mountain Valley Pipeline from Normal Permitting Rules.” Tim Kaine, United States Senator from Virginia, September 27, 2022. <https://www.kaine.senate.gov/press-releases/kaine-statement-on-vote-to-exempt-the-mountain-valley-pipeline-from-normal-permitting-rules>

8 “Graves Statement on U.S. House Natural Resources Committee Advancing the TAPP Act.” Congressman Garret Graves, March 10, 2023. <https://garretgraves.house.gov/media-center/press-releases/graves-statement-us-house-natural-resources-committee-advancing-tapp-act>

9 “Westerman Won’t Be ‘Boxed In’ by Climate at Natural Resources.” CQ Roll Call, December 1, 2022. <https://rollcall.com/2022/12/01/westerman-wont-be-boxed-in-by-climate-at-natural-resources/>

Scenario 2: Delayed Climate Action

Domestic Target Alignment: 40 percent carbon-emission reduction below 2005 levels by 2030

Party Leadership: In this scenario, majorities in the federal legislature and executive leadership oscillate between Democratic and Republican control. This could take several forms: either the Biden Administration transitions to a Republican Administration in 2024, and a Democratic Administration regains control in 2028, or the Biden Administration retains control in 2024 but Republicans gain a strong and lasting majority in the Senate. An unusually favorable 2024 Senate map for Republicans makes this scenario likely even if Democrats have a strong showing in the House and retain the presidency.

Scenario Outcomes: Mixed political control and lack of bipartisan action on climate change until after mid-decade result in a domestic carbon-reduction trajectory of 40 percent reduction below 2005 levels by 2030. In the late 2020s, federal action could increase sharply if a significant event occurs — for example, a series of profound natural disasters or international pressure. Before the late-decade mark, progress will be driven by a blend of politically stable federal institutions, leadership from climate-friendly states, growing (but still not commonplace) green markets, and interstate competition for low-carbon business and industry. The private sector will set ambitious climate targets to gain and maintain competitive advantage, but effective action may lag targets. Frequent shifts in political control, both domestically and internationally, require strong corporate disclosure and risk-mitigation strategies to drive climate action.



Risks and Opportunities in the “Delayed Climate Action” Scenario

Absent a consistent federal mandate, what can/should utilities do? An unfavorable economic situation would not help in this scenario, but the authors see gradual forward momentum from the utility sector. First, utilities will continue to pursue emissions reductions and investments that adhere to their climate goals, many of which match those of the Biden Administration. This will include taking advantage of the recently passed IIJA, as well as the further provisions to clean energy in the IRA. Even in red states, utilities will be expected to seek federal funding to offset customer expenses.

Second, states will continue to play a major role, using utilities as enablers towards their policy agendas especially as IRA dollars and clean energy mega-projects continue to flow heavily to red states. Third, customers and key stakeholders will continue to make their voices heard in each state — leaving states that cover a larger, more diverse territory struggling to find common ground. This also includes political skirmishes about the role of Environmental, Social, and Governance (“ESG”) corporate frameworks and investors within state borders. Utilities will need to be mindful of political realities but remain responsive to the various stakeholders here.

Hydrogen could be a popular middle ground that aligns the natural gas industry with net zero targets, but opposition to this “bridge fuel” is already becoming apparent.

Natural gas utilities, many of which are already diversifying their product with renewable natural gas, are looking at the economic, safety, and environmental ramifications of hydrogen. Buildout of pipelines and “Hydrogen Hubs,” or regional centers of hydrogen infrastructure and production, could enable a zero-carbon revitalization of America’s manufacturing sector — a tough sector of the economy to decarbonize or electrify. A hydrogen economy may seem appealing on both sides of the aisle, however, not all hydrogen is viewed equally, and there is growing opposition to the use of hydrogen not derived from renewable electricity sources.

Solar and offshore wind continue to boom via extra-governmental market forces.

For example, since 2009, the unsubsidized levelized cost of wind turbines has decreased 72 percent and the levelized cost of solar photovoltaics has decreased 90 percent through improved efficiencies and technological advances.¹⁰ According to American Clean Power's 2021 Annual Market Report,¹¹ wind and solar energy are now the most affordable forms of electricity generation and, in 2021, amounted to 73 percent of new utility-scale capacity. A robust supply chain highlighted by economies of scale, cheap labor, and low cost of capital portends solar and wind industries that can stand on their own two feet, although this supply chain faces growing pressure from both sides to restore operations and meet domestic content requirements.

Nuclear and Carbon Capture will continue to see support from both sides of the aisle.

Nuclear energy, particularly in the form of small modular reactors ("SMR"s) and other "next-generation" technologies, are likely to see continued financial support from the federal government under a divided scenario. The nuclear industry has strong champions in both Democratic and Republican ranks¹² and is viewed with increasing positivity by both the public and environmental groups that have traditionally been skeptical.¹³ Direct subsidies for existing nuclear plants remain more vulnerable politically than support for emerging technologies but will likely persist at the state and federal levels. Carbon Capture and Storage ("CCS"), along with companion technologies like Direct Air Capture ("DAC") and Carbon Capture Utilization and Storage ("CCUS"), will also see continued support, especially from the Republican side and moderate Democrats. While these technologies face some skepticism¹⁴ from the progressive wing of the Democratic Party and Environmental Justice ("EJ") watchdogs, they have sufficient support among moderate Democrats to play a key role in any compromise legislation.



¹⁰ "Lazard's Levelized Cost of Energy Analysis — Version 15.0." Lazard (last accessed April 14, 2023). <https://www.lazard.com/media/sptlfats/lazards-levelized-cost-of-energy-version-15-0-vf.pdf>

¹¹ "Clean Power Annual Market Report 2021, Executive Summary." American Clean Power (last accessed April 14, 2023). https://cleanpower.org/wp-content/uploads/2022/05/2021-ACP-Annual-Report-Final_Public.pdf

¹² "Why Permitting Debate May Go Nuclear." Environment & Energy News, February 15, 2023. <https://www.eenews.net/articles/why-permitting-debate-may-go-nuclear/>

¹³ "Why Even Environmentalists are Supporting Nuclear Power Today." National Public Radio, August 30, 2022. <https://www.npr.org/2022/08/30/1119904819/nuclear-power-environmentalists-california-germany-japan>

¹⁴ "Over 500 Organizations Call on Policymakers to Reject Carbon Capture and Storage as a False Solution." Center for International Environmental Law, July 19, 2021. <https://www.ciel.org/organizations-demand-policymakers-reject-carbon-capture-and-storage/>

Scenario 3: Climate Policy Stagnation

Domestic Target Alignment: 30 percent carbon-emission reduction below 2005 levels by 2030

Party Leadership: Majority Republican seats in the executive and legislative branches and conservative-leaning judicial appointments inhibit aggressive climate legislation

Scenario Outcomes: Legislative and executive control by the Republican Party occurs after the 2024 elections and most of the decade will result in a domestic carbon reduction trajectory of 30 percent reduction below 2005 levels by 2030, which is comparable to President Obama’s target under the embattled Clean Power Plan.¹⁵ International pressure fails to drive domestic policy change, but it does drive corporate action. Cost considerations continue to drive adoption of wind and solar power, but the pace of this change stalls. Conservative judicial appointments preclude major climate policies proposed by the Democratic Party, and states that are not already climate leaders remain inactive. Green consumerism remains rare, and the United States does not engage in meaningful international climate collaboration on emissions targets. The engagement that does occur is likely to happen in the context of supply chain and energy security issues — particularly around critical minerals and domestic oil and gas production.

The direction of the Republican Party itself also plays a more significant role in this scenario, with twin possibilities of an outward-looking Republican Party engaged with allies on energy security issues, mineral supply-chains and emerging technologies like CCS and SMRs, or a more isolationist and populist party that aggressively deploys protectionist measures like tariffs to unpredictable effect.

Risks and Opportunities in the “Climate-Policy Stagnation” Scenario

Absent any federal mandate, what can/should utilities do? Utilities and their regulators ought not to write off this scenario. Much like the Delayed Climate Action scenario, utilities will be led by their own policies and those of their states. While utilities will have more flexibility in this scenario, balance will remain key. Utilities should expect an aggressive tug-of-war between states and the federal government coupled with the likelihood of a strong political reversal by end of the decade and leading to regulatory scrutiny for long-term investments.

In a more politically polarized environment, the authors have seen heavily scrutinized utility advocacy on climate policy regardless of the direction, especially when that advocacy trends towards ESG concerns. Economic considerations will play an outsized role if the U.S. is contending with a stagnant or low-growth economy. However, relaxed permitting-rules could accelerate buildouts of some clean energy technologies.

Clean energy tax credits such as those for renewable resources and carbon capture are relatively stable politically regardless of the party in power. The addition of direct pay and transferability of those credits changes the market positively.

Clean-energy tax credits are both powerful and popular on both sides of the aisle. The Investment Tax Credit (“ITC”)¹⁶ and Section 45Q of the U.S. Internal Revenue Code¹⁷ reduce the upfront-capital costs of capital-intensive clean energy projects, while the Production Tax Credit (“PTC”) rewards clean electricity output.¹⁸ The IRA extended the ITC and PTC for 10 years, giving utilities and developers certainty in long-term planning and time to site projects thoughtfully where the need is greatest. The inclusion of direct pay and transferability gives taxpayers the ability to monetize these tax credits — changing the overburdened, less-efficient tax equity financing regime.

¹⁵ “Climate Change and President Obama’s Action Plan.” Obama White House Archives, December 12, 2015. <https://obamawhitehouse.archives.gov/president-obama-climate-action-plan>

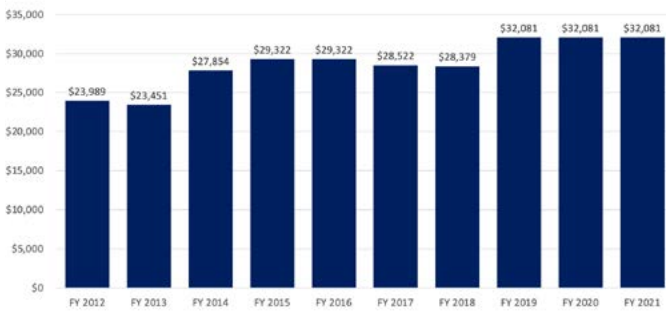
¹⁶ “Solar Investment Tax Credit: What Changed?” U.S. Department of Energy, September 8, 2022. <https://www.energy.gov/eere/solar/articles/solar-investment-tax-credit-what-changed>

¹⁷ “Section 45Q Credit for Carbon Oxide Sequestration.” International Energy Agency, November 4, 2022. <https://www.iea.org/policies/4986-section-45q-credit-for-carbon-oxide-sequestration>

The Department of Energy Loans Program, and Department of Energy funding in general, is fairly immune to the instability of a Delayed Climate-Action scenario.

The Department of Energy has issued loan guarantees for decarbonization projects transitioning from the pilot phase to commercial maturity. Funding for the DOE Loans Program has remained steady over the past decade.¹⁹

Figure 1 - DOE Loan Program Office, Funds Obligated (\$ Millions)



Source: Department of Energy Loan Programs Office

Oversight will play a larger role.

Although federal funding for clean energy projects is significantly expanded through the IRA and IIJA, legislators previously not in favor of these bills will use an opportunity in the majority to call oversight hearings to examine whether the funds are following the statutory prescriptions. Likewise, if the agencies find fraud or abuse of these funds, there will be investigations that divert staff time and resources. A similar exercise is unfolding on the Securities and Exchanges Commission’s (“SEC”) proposed rules on Climate-Related Disclosures, with Republicans challenging the agency’s authority to demand climate disclosure reports. In more aggressive climate policy scenarios, businesses would still be driven to exceed federal targets because of increased ESG scrutiny by the SEC and investors. However, under climate policy stagnation, ESG requirements will probably loosen, and companies will be less willing to deviate far from the middle of the road.



Summary

The three scenarios the authors developed are not mutually exclusive or exhaustive. The authors recognize that, in reality, the future could consist of elements from each one. Utilities should take these scenarios as well as potential permutations into consideration as they prepare for the future. Based on our deep knowledge and experience, FTI Consulting can assist utilities with tailored planning for a range of policy scenarios and outcomes.

How FTI Consulting can help

Power, Renewables and Energy Transition (“PRET”) Practice

FTI Consulting’s [PRET practice](#) offers a team of highly experienced economists, industry specialists, former utility executives, regulators and accountants to serve the regulatory and strategic needs of our power and utility clients. Whether they be incumbent investor-owned utilities, municipalities, cooperatives, private developers or regulators, the PRET team provides our clients with holistic and actionable strategies, pertinent analysis and approaches to compete across the energy-value chain. Our services include:

-  Financial and Operational Strategy and Business Transformation
-  Utility Rate Case-Advisory and Rate Design
-  Management-Auditing and Capital-Project Planning
-  Regulated and Unregulated Asset M&A
-  Power-Market Price Forecasts
-  Policy Evaluation
-  Safety and Reliability Compliance
-  Financial and Operational Compliance

Strategic Communications, Energy and Natural Resources Practice

FTI Consulting boasts the largest dedicated Energy and Natural Resources practice in the world. FTI Consulting is regularly called upon by large firms involved in nearly all aspects of the energy industry to develop and execute strategies around the most complex, high-stakes communications challenges imaginable. Our team includes former industry journalists, buy-and-sell-side analysts, corporate-investor relations and public, government and media affairs managers, and senior policy and communications professionals from relevant government agencies in Washington, Brussels, London and beyond.

The Public Affairs team helps clients manage and mitigate political risk. The escalating tension between governments, civil-society organizations and multinational institutions has significant implications for publicly traded and privately held companies. Current crises have intensified government scrutiny in an already heavily politicized environment, altering competition and anti-trust regulatory frameworks and requiring businesses to demonstrate strong governance and contribute to environmental and societal goals. From increased market-pressure to tech disruption and public scrutiny, challenges that can hinder growth abound. With 500+ experts in every major financial and political market, our practice helps management teams, boards of directors, and their legal, financial and public affairs advisors navigate the demands of this ever-changing political landscape. The world’s biggest names in the energy sector rely on the deep subject matter-expertise and sprawling network of third-party relationships that our global team brings to the table.



Endnotes

- ¹ “President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies.” The White House, April 22, 2021. [Link](#)
- ² 118th Congress (2023-2024). “H.R.1 - Lower Energy Costs Act,” introduced March 14, 2023. [Link](#)
- ³ “National Environmental Policy Act. National Institutes of Health (last accessed April 14, 2023). [Link](#)
- ⁴ 42 USC 4321: Congressional Declaration of Purpose (last accessed April 14, 2023). [Link](#)
- ⁵ “Manchin Permitting Bill Faces Difficult Path Forward.” CQ Roll Call, September 22, 2022. [Link](#)
- ⁶ Ibid.
- ⁷ “Kaine Statement on Vote to Exempt the Mountain Valley Pipeline from Normal Permitting Rules.” Tim Kaine, United States Senator from Virginia, September 27, 2022. [Link](#)
- ⁸ “Graves Statement on U.S. House Natural Resources Committee Advancing the TAPP Act.” Congressman Garret Graves, March 10, 2023. [Link](#)
- ⁹ “Westerman Won’t Be ‘Boxed In’ by Climate at Natural Resources.” CQ Roll Call, December 1, 2022. [Link](#)
- ¹⁰ “Lazard’s Levelized Cost of Energy Analysis — Version 15.0.” Lazard (last accessed April 14, 2023). [Link](#)
- ¹¹ “Clean Power Annual Market Report 2021, Executive Summary.” American Clean Power (last accessed April 14, 2023). [Link](#)
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- ¹⁵ “Climate Change and President Obama’s Action Plan.” Obama White House Archives, December 12, 2015. [Link](#)
- ¹⁶ “Solar Investment Tax Credit: What Changed?” U.S. Department of Energy, September 8, 2022. [Link](#)
- ¹⁷ “Section 45Q Credit for Carbon Oxide Sequestration.” International Energy Agency, November 4, 2022. [Link](#)
- ¹⁸ Renewable Electricity Production Tax Credit Information.” Environmental Protection Agency (last accessed April 14, 2023). [Link](#)
- ¹⁹ Department of Energy Loan Programs Office, Annual Portfolio Status Report Fiscal Year 2021 (last accessed April 14, 2023). [Link](#)

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