

## 15<sup>th</sup> Annual Private Foundations Executive Symposium

December 7, 2022

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## ESG: Challenges facing Private Foundations

Liz Gousse Ballotte

December 7, 2022

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## About the Speaker

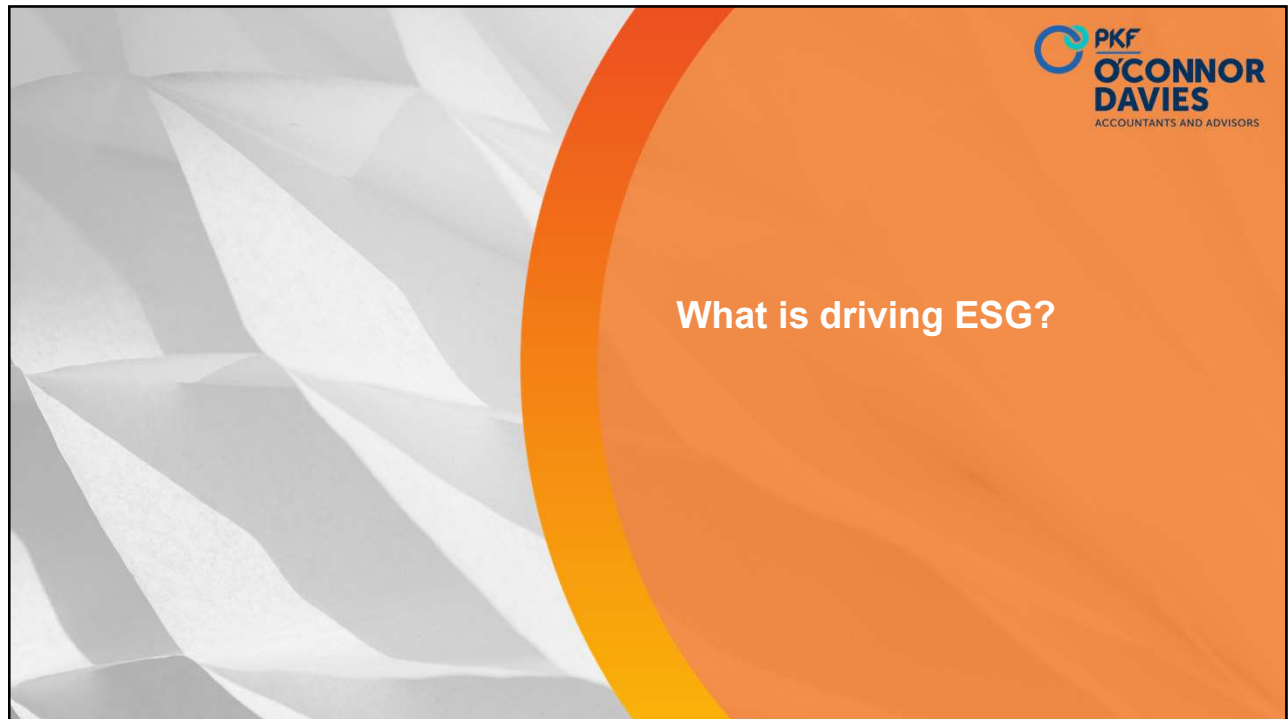


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What is driving ESG?

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## Drivers of ESG adoption

Private Foundations face a **growing demand from numerous sources** to disclose their ESG performance quickly and accurately



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## ESG expectations are growing fast



Organizations must shift from qualitative claims to quantitative measurement of performance & progress against holistic ESG metrics

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## Global ESG regulatory environment

### HR 1187

Corporate Governance Improvement and Investor Protection Act

### NY Fashion Act

Mandated GHG disclosure and supply chain mapping

### UK

Climate Disclosure Law / Taskforce on Climate-Related Financial Disclosures (TCFD)

### Germany

Supply Chain Due Diligence Law

### EU Taxonomy Regulation

Classification system defining which activities are sustainable, triggering disclosure obligations

### SEC Climate Disclosures

Mandatory climate disclosures: Scope 1, 2, & 3 GHG emission and climate risk measuring and reporting

### ISSB (IFRS, SASB and CDP)

Prototype climate and general disclosure requirements

### HR 1155

Uyghur Forced Labor Prevention Act

### Climate Corporate Accountability Act (CA)

Emerging requirements on climate disclosure

### COP26 Just Transition Declaration

"Just Transition as the new Net Zero"



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Background

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## What is ESG?

Working backwards from what we're most familiar with...



### Governance

Corporate governance and corporate behavior



### Social

Human capital, product liability, stakeholder opposition, and social opportunities



### Environmental

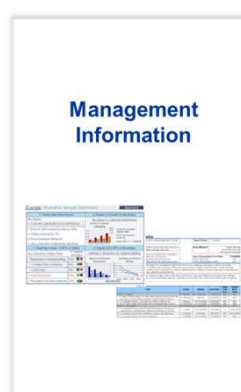
Climate change, natural resources, pollution and waste and environmental opportunities

Source: MSCI definition of ESG risks and opportunities

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## What is ESG Reporting?

Providing relevant information to internal and external stakeholders...



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## ESG reporting challenges



Source: AICPA

- Multiple standards and frameworks
- Inadequate technology
- Lack of available company-wide data
- Lack of processes and controls in place for data gathering, validation, and reporting
- Inadequate staffing levels to accommodate increased workload
- Lack of cross-functional ESG working groups
- Inability to get buy-in from board and management

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## How can Private Foundation's and their Grantees create more of an ESG specific Impact?



- Align your grantees with your ESG initiatives
- Assist your grantees with building their ESG framework
- Engage Board of Directors and employees across PF and Grantee
- Signaling other funders in alignment with ESG strategies
- Advance the state of knowledge and practice
- Improve performance of grant recipients

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## Solutions

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## Solutions to support your needs



### Advisory

- ESG Framework development
- System selection
- Policy & procedure development
- E, S, & G framework enhancement
- Project management
- Training



### Risk & Compliance

- Pre- and post-implementation review
- Review of policy documents
- Review monitoring of goals & metrics
- Review accuracy and completeness of reporting
- Risk assessment
- Investment diligence



### Outsourced ESG Office

- Collect data in framework for reporting and measurement
- Write annual ESG report
- Keep current on changing trends
- Ongoing training



### Assurance

- Readiness diagnostic
- Independent verification of internal & external reporting

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## Client engagement case study



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## Questions



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# **Elections 2022: Outcomes and Impact on Donors and Foundations**

Presented By Sandra Swirski



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## **Overview**

- Election Impact on Politics
- What We Can Expect in 118th Congress' First Few Months
- What 2022 Might Mean for 2024
- Election Impact on Public Policy



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## Midterms: What Happened?

- GOP flipped the House of Representatives, in part bc of redistricting in NY, FL
- Dems helped by split-ticket voting & candidate quality
- Biden's poor favorability didn't rub off on candidates as much as past cycles
- Incumbents won
  - 27/28 incumbent Governors won
  - 28/28 Senate incumbents won (27 if GA flips)
  - 94.5% of House incumbents won
  - 17/17 Trump states elected a Republican Senator | 15/16 Biden states elected a Democratic Senator (14 if GA flips)



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## Political Landscape

- Divided government
- Slim majorities
- Many freshman and sophomore members
  - 17 Senators
  - 136+ Representatives



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## Impact on the House



- Leader McCarthy (R-CA) faces a tough but navigable path to Speakership
- Will be difficult to manage a slim majority
  - Will moderates or conservatives catch the Speaker's ear?
- 3-Way Fight for Chairman of Key Tax/Tax-Exempt Committee



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## Impact on the House



Minority Whip Katherine  
Clarke (D-MA)



Minority Leader Hakeem  
Jeffries (D-NY)



Democratic Caucus Chair  
Pete Aguilar (D-CA)



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## Impact on the Senate



Sen. Joe Manchin (D-WV)

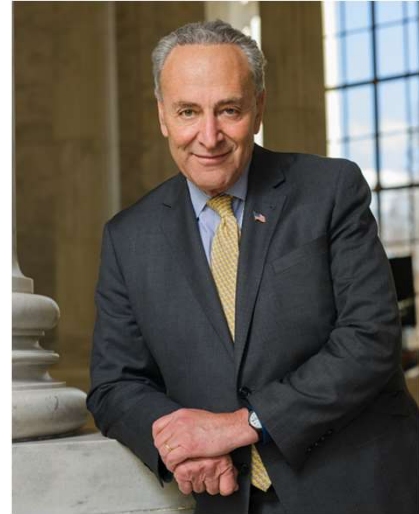
Sen. Angus King (I-ME)



Sen. Kyrsten Sinema (D-AZ)



Sen. Jon Tester (D-MN)



Majority Leader Chuck Schumer (D-NY)

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## Impact on the Senate



Minority Leader Mitch McConnell (R-KY)



Sen. Tim Scott (R-SC)



Sen. Mitt Romney (R-UT)



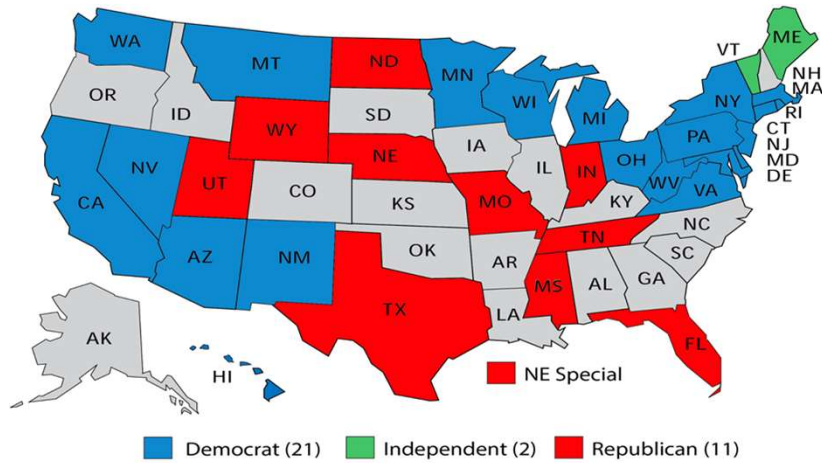
Sen. Lisa Murkowski (R-AK)



Sen. Susan Collins (R-ME)

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## 2024 Senate map



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## Impact on the Administration



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## 2024 – candidates



Transportation Sec.  
Pete Buttigieg (IN)



Vice President Harris



Gov. Gretchen Whitmer (MI)



Gov. Gavin Newsom (CA)

## 2024 – candidates



Gov. Ron DeSantis (FL)



Gov. Larry Hogan (MD)



Former Gov. Nikki Haley (SC)



Gov. Glenn Younkin (VA)



Former Secretary of State Mike Pompeo



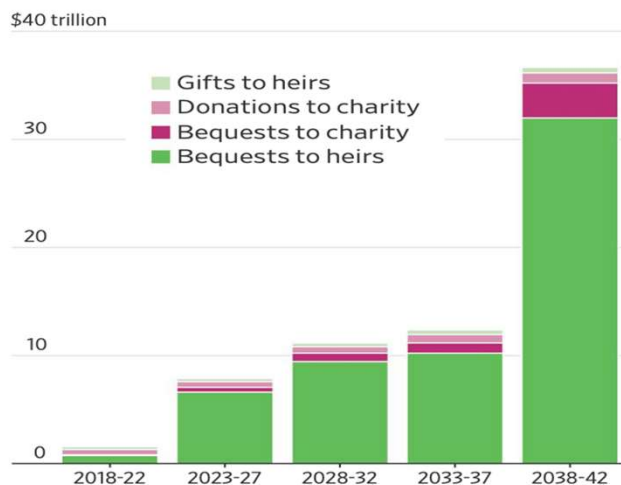
## Election Impact on Public Policy

- Looming Wealth Transfer
- Charitable Giving Vehicles as a Target
- Regulating Crypto and Blockchain



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## \$70 Trillion Wealth Transfer



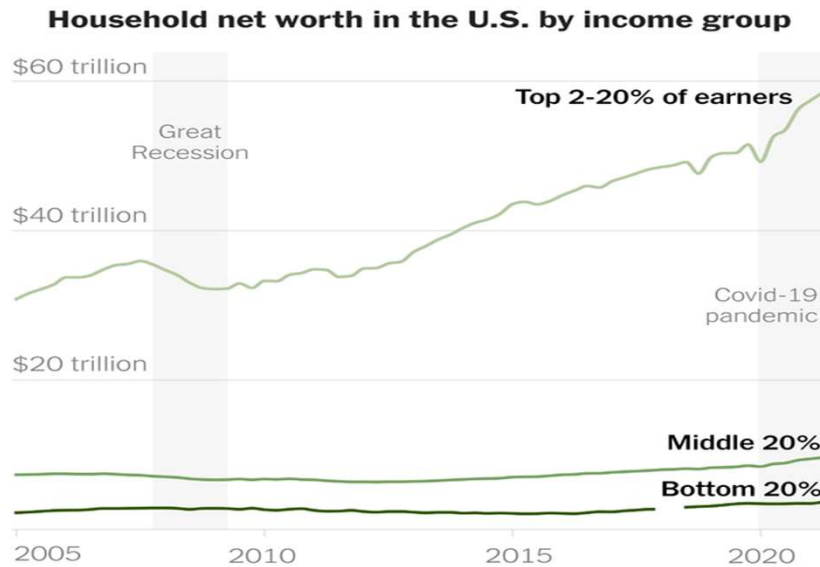
- Estimated \$61T to heirs over the next 20 years
- \$9T to charity

Figures in 2018 dollars. Totals represent the transfer for the five-year increment indicated (not cumulative).  
Sources: Federal Reserve (net worth); U.S. Bureau of Economic Analysis (GDP); Cerulli Associates (wealth transfer)



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## Wealth & Estate Taxes



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## ACE Act (S. 1981 | H. 6596)

- **Governance Risk** – Bill discriminates against family members as employees and board members
- **Operational Risk** – PFs won't be able to use DAFs
- **Unlikely to pass in a divided government, but provisions could be folded into larger bills**



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## DAF Regulations

Awaiting new rules from Treasury on five topics:

- Bifurcation
- Pledges
- How DAFs are used for public support test
- How private foundations use DAFs in support of their purpose
- Whether a contribution to a DAF should only count toward 5% payout if it is granted out of the DAF in a certain timeframe



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## Crypto Facts & Figures

- Investors are young
  - 1/3 of those under 30 own crypto
  - 8% of those 50-64 own
  - 3% over 65 own
- Younger crypto donors -- 23% Asian; 21% Hispanic; 18% Black; 13% White
- Men are 2x more likely to own
- Current downturn: where's the bottom?



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## Crypto Donations

- In 2016 -- \$7 million
- In 2021 -- \$331 million
- Almost half of crypto investors want to give but have trouble finding charities that accept it  
*(Fidelity Charitable)*



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## Crypto Policy – Open Questions

- Gifts of crypto to charities require a third-party valuation
- Transfers of \$10K or more of crypto trigger disclosures
- Anyone who “facilitates” a crypto transaction is defined as a “broker”
- Will different digital assets be treated the same?



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## Takeaways

- Donors love DAFs, but Congress is lukewarm
- Congress is skeptical of family foundations
- Some donors love being anonymous, but Congress is nosy
- Crypto donations are increasing; so is regulation



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## Questions? Please Reach Out!



Integer, LLC



Sandra Swirski



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# Tax Compliance Considerations in a Post-Pandemic World and Increased Funding for the IRS

Garrett Higgins, CPA

December 7, 2022

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## Compliance Considerations for Foundation Leaders



Past - Legislative Acts you may have missed worth mentioning



Present - Emerging Issues and Priority Guidance Initiatives



Future - Focus Areas

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## The Bipartisan Budget Act



Signed into Law 2018

Created exception to excess business holdings

Exclusion must meet three criteria to qualify:

- The foundation owns 100% of the voting stock at all times throughout the year, and the foundation acquired it by means other than purchasing
- All profits go to charity
- The foundation is an independent operation in terms of board, employee, or trustee positions

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## The Taxpayers First Act

Legislation enacted 2019

Mandatory electronic filing

- Form 990-PF
- Form 990-T
- Form 4720

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## The Accelerating Charitable Efforts Act (“ACE Act”)

Legislation introduced 2022 not enacted into law

Bipartisan support

Proposed changes to MDR calculation to exclude:

- Distributions to Donor Advised Funds
- Salaries and Travel expenses paid to foundation

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## IRS 2022 / 2023 Priority Guidance Plan For Private Foundation



- IRS utilizing technology to drive compliance
  - Electronic filing
  - Creating programs to identify non-compliance
- Issue guidance under §4941 regarding a private foundation's investment in a partnership in which disqualified persons are also partners.
- Approve regulations under §512 regarding the allocation of expenses in computing unrelated business taxable income and addressing how changes made to §172 net operating losses by section 2303(b) of the CARES Act apply for purposes of §512(a)(6).

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## Emerging Tax Compliance Issues

- IRS issued Technical Guide TG 58 – Excise Tax on Self-Dealing
  - Detail on self-dealing transactions
  - Specific Examples of direct and indirect self-dealing transactions and exceptions
  - Taxes Imposed
  - Enforcement
  - Examination audit tips for agents
  
- EFTPS Deactivation for inactive accounts

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## Emerging Tax Compliance Issues

- Cryptocurrency
  - Property for US tax purposes
  - Requires a valuation
    - IRC Section 170(f)(11)(E)(ii)(I) criteria for a valid deduction requires that the individual have verifiable education and experience in valuing the type of property for which the appraisal is performed.
  
- Increased focus on exams of high-income taxpayers with tax-exempt entity issues, including foundations' tax filings being pulled into examinations of estates and high-income individual tax return filings due to large charitable contribution deductions.

## Workforce-related compliance issues



Organizations now have an increased remote workforce in numerous states

- State tax withholding regulations
  - Home state regulations vs. other states where employees are working
- Working with your payroll service providers
- Establishing HR policies

## Workforce-related compliance issues



International employees and independent contractors

- Individuals telecommuting from abroad
- Rise of Global PEOs
- Foreign workers - employee vs. independent contractor determination
- Independent contractors:  
U.S. Withholding rules and IRS Forms



## The Inflation Reduction Act

Signed August 2022

Increased hiring of agents may result in uptick in compliance audits

Provided funding to enhance technology for enforcement

Clean energy tax credits

- Could benefit Foundation's making investments in clean energy technologies

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## Increased Federal Funding to IRS

As part of the Inflation Reduction Act

- \$80 billion to the IRS for staffing and technology over the next 10 years.
- \$46 billion to be spent on IRS enforcement over the next 10 years.
  - Roughly double the current budget / larger than the Pentagon
  - Will likely be used to hire IRS enforcement staff at all levels.
  - More important than additional staff will be IRS investments in technology that will allow enforcement to be more efficient.

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## What could an IRS expansion mean?

- Increased Compliance Activities
  - Unrelated Business Income
    - Silo Rule enforcement
  - Excise Taxes
    - Self-Dealing
  - Employment Taxes
  - ERC reviews

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## What could an IRS expansion mean?

- Greener IRS Workforce
  - Retrain agents
  - Less experienced
  - Longer examinations

## What can a Foundation do to prepare?



- Prepare a complete and accurate return
- Review alternative investments and properly report unrelated business income under the new silo rules
- Maintain a current disqualified person list and review transactions / investments for self-dealing
- Keep up to date on the latest guidance issued by the IRS
- Maintain good records that support positions taken

## Questions?



## Cybersecurity *Maintaining an Effective Program*

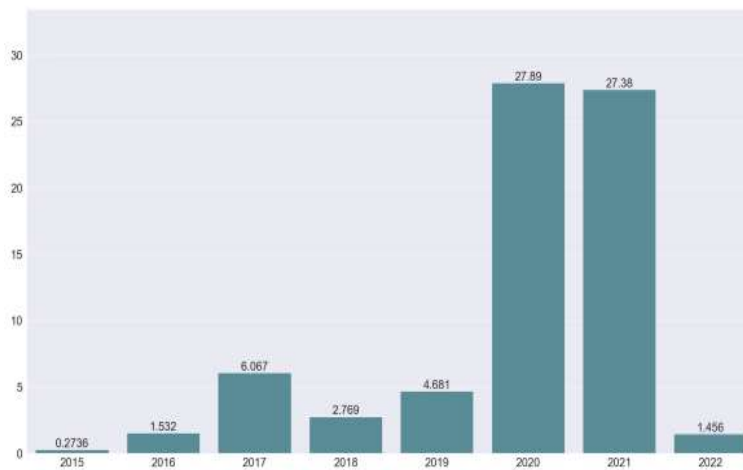
Carolyn Wendrowski, The Mellon Foundation  
Thomas DeMayo, Principal  
December 7, 2022

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## Data Breach Trends

Total Records Breached H1 2022 (Billions)



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## Data Breach Trends

Breaches by attack vector H1 2022

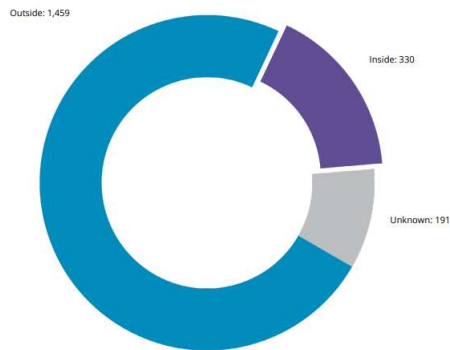


Figure 5a: Number of breaches by attack vector, reported by 2022 H1

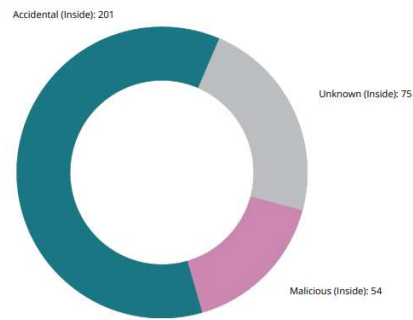


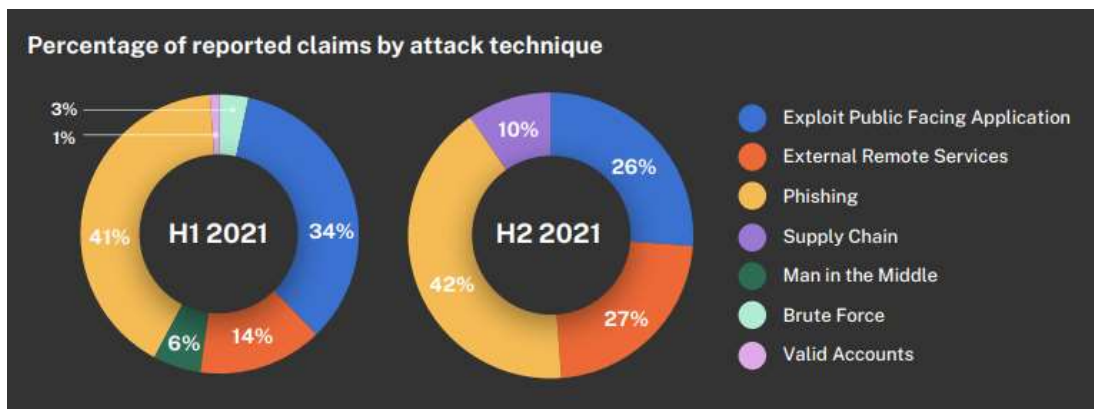
Figure 5b: Breakdown of "Inside" breaches, reported by 2022 H1

Src: riskbasedsecurity.com

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## Attack Techniques

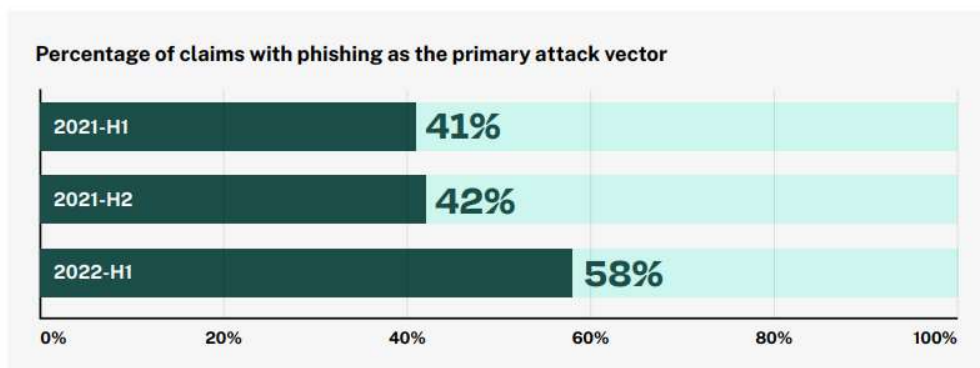
Percentage of reported claims by attack technique



Src: coalition

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## Attack Techniques



Src:coalition

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## General Statistics

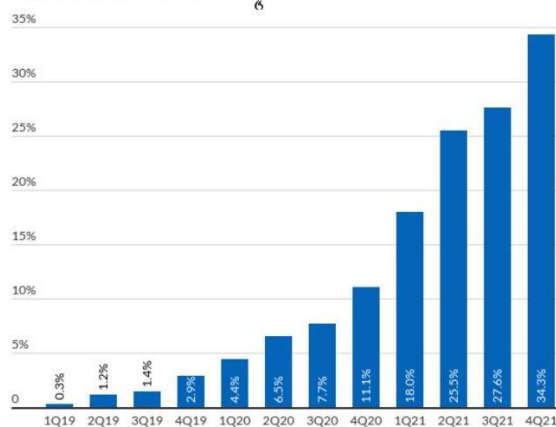
- Cybercrime will cost companies worldwide an estimated \$10.5 trillion annually by 2025, up from \$3 trillion in 2015 (Source: Cybersecurity Ventures)
- Average ransomware demand increased to \$1.8 million in 2021. (Source: Coalition)
- Average ransomware downtime increased from 6.2 days in 2018 to 22 days in 2022. (Source: Coveware)
- Funds Transfer Fraud increased 69% from 2020 to 2021 with an average loss of \$388,000. (Source: Coalition)
- From 2016 – 2021 Business Email Compromise losses total \$43 Billion. (Source: FBI)

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## Cyber Insurance

Cyber Insurance Renewal Premium Rates QoQ Change

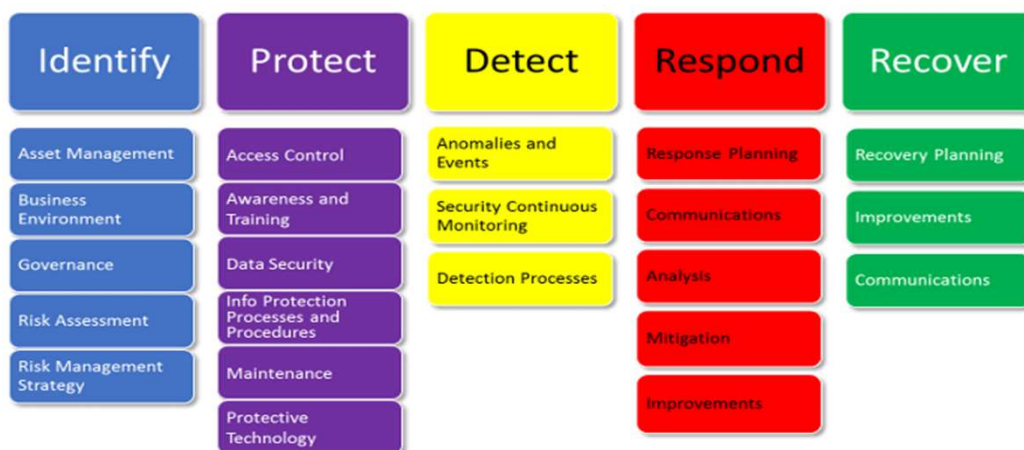
4Q21 Rates Increased 34%



Source: Fitch Ratings, Council of Insurance Agents & Brokers.

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## NIST Cyber Security Framework



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## Questions



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