American Federation of Labor and Congress of Industrial Organizations
815 16th St. NW
Washington, DC 20006
202-637-5000
aflcio.org

AFL-CIO
AMERICA'S UNIONS

June 14, 2021

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Public Input Welcomed on Climate Change Disclosures

Dear Chair Gensler:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I am writing to provide comments to the U.S. Securities and Exchange Commission in response to Commissioner Allison Lee's March 15, 2021 request for public input on climate change disclosure. The AFL-CIO is a federation of 55 national and international labor unions that represent 12.5 million working people. Union members participate in the capital markets as individual investors as well as participants in pension and employee benefit plans. We appreciate the opportunity to share our views on the important questions that Commissioner Lee has put forward for comment. We respectfully note that the request for information appears to overlook the important topic of how climate change will affect the workforce, and we strongly urge the Commission to include a workforce just transition disclosure framework in any future climate change disclosure rules.

As a general matter, AFL-CIO strongly supports the recommendations of the SEC Investor Advisory Committee for the Commission to update the reporting requirements for issuers on environmental, social, and governance ("ESG") factors.[1] Investors need consistent, comparable, and reliable information on ESG issues to make informed investment decisions as asset allocators as well as informed proxy voting decisions as asset owners. One of the great strengths of the U.S. capital markets has been the Commission's longstanding rules-based disclosure requirements that complement principles-based disclosure. Uniform disclosure rules promote comparability and reliability of disclosed information by all corporate issuers. But the Commission's disclosure rules have not kept up with investor demand for ESG information.

[1] Recommendation of the SEC Investor Advisory Committee Relating to ESG Disclosure, May 21, 2020, https://www.sec.gov/spotlight/investor-advisory-committee-2012/esg-disclosure.pdf.

In recent years, many corporate issuers have voluntarily provided investors with supplemental disclosure on a variety of ESG issues including on climate change. At least 90 percent of S&P 500 companies and 65 percent of Russell 1000 companies have issued corporate sustainability reports.[2] Much of this voluntary ESG disclosure has been provided in response to requests by investors in the form of Rule 14a-8 shareholder proposals. While this voluntary ESG disclosure through private ordering shows that ESG information is material to investors, the lack of uniform disclosure rules makes it difficult for investors to locate and compare this information. Moreover, corporate sustainability reports are not filed with the SEC and therefore are not subject to enhanced liability for material misstatements or omissions.

In its rulemaking, the Commission should recognize that uniform ESG disclosure rules are likely to benefit investors far more than the cost of compliance by corporate issuers. The economically optimal level of disclosure is far higher than the legally required minimum level of disclosure to prevent fraud under the *TSC Industries, Inc. v. Northway, Inc.* and *Basic v. Levinson* definition of materiality. This antifraud definition of materiality sets the floor, not the ceiling for disclosure. And as Commissioner Lee recently noted, the SEC has "full rulemaking authority to require disclosures in the public interest and for the protection of investors. That statutory authority is not qualified by 'materiality.'"[3] Investors need structured and comparable ESG disclosures just as disclosure is mandated for other specific items. Accordingly, the Commission should seek to craft ESG disclosure rules that further its mission to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.

Regarding climate change disclosures, the AFL-CIO urges the Commission to require that corporate issuers disclose their plan for providing a just transition for their workforces. The United Nations' Paris Agreement calls on its signatories to take "into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities."[4] As explained by the International Labour Organization, "a just transition for all towards an environmentally sustainable economy…needs to be well managed and contribute to the goals of decent work for all, social inclusion and the eradication of poverty."[5] Effective responses to climate change will not be possible without social dialogue and cooperation between companies and their workforces. In other words, "there will be a just transition to a low carbon economy or there won't be a transition at all."[6]

---

[2] 2020 Flash Report Russell 1000: Trends on the Sustainability Reporting Practices of the Russell 1000 Index Companies," Governance and Accountability Institute, Inc., 2020, available at https://www.ga-institute.com/research-reports/flash-reports/2020-russell-1000-flash-report.html.

[3] SEC Commissioner Allison Herren Lee, "Living in a Material World: Myths and Misconceptions about 'Materiality,'" May 24, 2021, https://www.sec.gov/news/speech/lee-living-material-world-052421.

[4] Paris Agreement, United Nations, 2015, https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

[5] "Guidelines for a just transition towards environmentally sustainable economies and societies for all," International Labour Organization, 2015, https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_432859.pdf.

[6] AFL-CIO President Richard Trumka, "We'll Either Have a Just Transition or No Transition at All," May 20, 2020, https://aflcio.org/speeches/trumka-well-either-have-just-transition-or-no-transition-all.

Investors are increasingly recognizing that workforce just transition concerns related to climate change are material considerations for their investment decisions. For example, institutional investors representing $10.2 trillion in assets have endorsed the Statement of Investor Commitment to Support a Just Transition on Climate Change which states that the "responsible management of workforce and community dimensions of climate change are increasingly material drivers for value creation."[7] Investors need information about how companies are planning to navigate their workforces through the economic and technological changes that climate change requires. Companies that provide for a just transition for their workforce will be more likely to succeed in achieving sustainable financial performance. Requiring disclosure of workforce-related climate change issues will facilitate capital formation for these companies.

Given the importance of a company's workforce to overall company performance, companies should be required to disclose how they are managing their workforces when responding to climate change. As an initial starting point, we recommend that the Commission adopt new rules for workforce disclosure as requested by the Human Capital Management Coalition's petition for rulemaking.[8] The Human Capital Management Coalition petition identifies several key workforce indicators that are broadly applicable to all companies, including 1) workforce composition between full time, part-time and contingent labor; 2) workforce cost including wages and benefits, 3) workforce retention and turnover, and 4) workforce diversity, equity and inclusion. These fundamental workforce metrics should be subject to uniform and quantitative disclosure by all corporate issuers to ensure consistency and comparability.

In addition to requiring universal disclosure of these fundamental workforce metrics, the Commission should also include workforce-related disclosure as part of any climate change disclosure requirements. Requiring a workforce just transition disclosure framework for climate change will elicit a more meaningful discussion of company approaches to climate-related risks and opportunities. In contrast to simply disclosing greenhouse gas emissions or reduction targets, a workforce just transition disclosure framework will provide substantive information regarding how companies will actually address climate change. Because climate change impacts industries and economic sectors differently, the Commission may wish to consider adopting a principles-based regime for a workforce just transition disclosure framework. A workforce just transition disclosure framework for climate change should include the following items:

- Does the company engage in social dialogue with its workers and their unions regarding the company's business plan to manage and respond to climate change;

- Has the company committed to respect internationally recognized workers' rights in its global operations and supply chains as it adapts its operations to address climate change;

[7] "Statement of Investor Commitment to Support a Just Transition on Climate Change," UN Principles on Responsible Investment, 2020, https://www.unpri.org/download?ac=10382.

[8] Rulemaking Petition to Require Issuers to Disclose Information About Their Human Capital Management Policies, Practices And Performance, Human Capital Management Coalition, July 6, 2017, File No. 4-711, https://www.sec.gov/rules/petitions/2017/petn4-711.pdf.

- Does the company have responsible contractor policies to ensure that its contracted workforce receives fair treatment such as defined by prevailing wage standards;

- What percentage of the company's workforce is classified as employees versus independent contractors as defined by state ABC tests for employment status;[9]

- Are the workforce compensation and benefits for new jobs that are to be created in response to climate change comparable to jobs that are lost due to climate change;

- Is the company fulfilling its social protection obligations, including providing pension benefits and health care for workers whose jobs are impacted by climate change;

- Does the company have a business plan for workforce retention and redeployment of workers whose jobs are eliminated in response to climate change;

- What skills training is provided as the workforce transitions in response to climate change such as the use of registered apprenticeship programs,

- Has the company implemented occupational safety and health protocols to protect its workforce from climate change related risks such as exposure to heat stress; and

- Is the company subject to legal and regulatory requirements, or does it receive subsidies and tax incentives, to provide for a climate change workforce just transition?

We urge the Commission to require these disclosures for domestic and foreign corporate issuers as well as for investment managers and private funds that are subject to SEC registration requirements under the Investment Advisers Act of 1940 and Title IV of the Dodd-Frank Act. Requiring these workforce-related disclosures as part of any new climate change disclosure rules will align corporations and the capital markets on a high road trajectory for successfully addressing the climate change crisis. Addressing climate change should not require choosing between good jobs and green jobs or corporate profits and environmental sustainability. Rather, sustainable climate change business strategies must provide for a workforce just transition as the most effective way to maximize long-term financial performance. Effective disclosure of how companies are managing their workforces to address climate change will provide investors with material information that will enhance their investment and proxy voting decisions.

---

[9] See e.g. *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903 (Cal. 2018).

For these reasons, we urge the Commission to require disclosure of a workforce just transition framework as part of any new climate change disclosure requirements. We also urge the Commission to update its disclosure rules more generally on ESG issues given the overwhelming investor interest in this information. A modernized workforce disclosure rule is particularly needed given the growing importance of human capital to overall company performance. Thank you for the opportunity to share our views on these important disclosure topics. If the AFL-CIO can be of further assistance, please contact me at [redacted] or [redacted].

Sincerely,

Brandon J. Rees
Deputy Director, Corporations and Capital Markets