



Americans for Financial Reform Education Fund

February 22, 2024

Chair Gary Gensler
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Human Capital Management Disclosures

Dear Chair Gensler:

The undersigned organizations urge you to propose a rule requiring public companies to make human capital management disclosures as soon as possible. Investors are in desperate need of consistent, comparable, and decision-useful workforce information.

Investors with a vested interest in the creation and protection of long-term shareholder value have been formally sounding the alarm on the need for a human capital management disclosure rule since 2017. At that time, the Human Capital Management Coalition (a group of institutional investors) filed a rulemaking petition because “[d]espite the importance of human capital management to company performance, human capital is nearly invisible in the Commission’s disclosure rules.”¹

As was noted in many comment letters submitted by investors during its comment period, the disclosure framework created in 2020 by the Modernization of Regulation S-K Items 101, 103, and 105 is woefully inadequate and does not meet the needs of investors. The SEC Investor Advisory Committee noted in a recent recommendation to the SEC that “the 2020 rule offers virtually no guidance or prescription about what information should be disclosed.”² Similarly, in a recent letter, Senator Brown, Chairman of the Senate Committee on Banking, Housing, and Urban Affairs, and Senator Warner noted that the “requirements of the current rule are too limited and vague to produce informative, material disclosure on companies’ workforce

¹ Human Capital Management Coalition, “Rulemaking Petition to Require Issuers to Disclose Information About Their Human Capital Management Policies, Practices and Performance,” 11, Jul. 6. 2017, *available at* <https://www.sec.gov/files/rules/petitions/2017/petn4-711.pdf>.

² SEC Investor Advisory Committee, Recommendation Regarding Human Capital Management Disclosure, 1, Sept. 14, 2023, *available at* <https://www.sec.gov/files/20230914-draft-recommendation-regarding-hcm.pdf>.

investment” and argued “[t]hese shortcomings must be addressed in the upcoming proposal, which should be issued without further delay.”³ In support of this, the senators cited results from a survey of company annual reports by law firm Gibson Dunn that found that only small percentages of the S&P 100 provided disclosures on some of the key metrics proposed by the Human Capital Management Coalition and many others, such as turnover rates and a breakdown of the number of full-time versus part-time employees.⁴ Additionally, the report found that only 37% of companies disclose diversity data by seniority,⁵ another key metric identified by the Human Capital Management Coalition.⁶

Because of the inadequacy of current disclosures to meet investors’ needs, we were heartened to see that the SEC included a human capital management disclosure rule in its spring 2021 unified regulatory agenda, projecting that a rule would be proposed in October 2021.⁷ Unfortunately, more than two years later, the SEC has yet to propose a rule.

The continuing opacity of public companies’ human capital management practices puts investors — including workers saving for retirement — at risk. Effective human capital management is essential to long-term value creation and therefore material to evaluating a company’s prospects. With 90% of S&P 500 value attributed to intangibles⁸ (the majority of which include and/or are derived from human capital), investors are lacking information critical to their ability to make informed decisions about their investments. This may be why the Human Capital Management Coalition, which was composed of institutional investors with \$2.8 trillion in assets under management at the time it filed the rulemaking petition in 2017, has since grown to a group of asset owners with over \$9 trillion in assets under management.

We thank you for your attention to this matter and hope to see a human capital management disclosure rule proposed in the very near future. For further discussion, please contact Natalia Renta at natalia@ourfinancialsecurity.org.

Sincerely,

³ Chairman Sherrod Brown & Senator Mark R. Warner, Letter to SEC on Human Capital Disclosures, Dec. 14, 2023, available at

https://www.banking.senate.gov/imo/media/doc/brown_warner_letter_to_sec_workforce_disclosure.pdf.

⁴ *Id.* at 2 (citing Gibson Dunn, “Evolving Human Capital Disclosures: A Survey of Disclosures from the S&P 100 During the Two Years Following Adoption of the Securities and Exchange Commission Rule,” Jan. 9, 2023, available at <https://www.gibsondunn.com/wp-content/uploads/2023/01/evolving-human-capital-disclosures.pdf>).

⁵ Gibson Dunn, “Evolving Human Capital Disclosures: A Survey of Disclosures from the S&P 100 During the Two Years Following Adoption of the Securities and Exchange Commission Rule,” 3, Jan. 9, 2023, available at <https://www.gibsondunn.com/wp-content/uploads/2023/01/evolving-human-capital-disclosures.pdf>.

⁶ Human Capital Management Coalition, “Foundational Human Capital Reporting: Taking a Balanced Approach,” available at <https://www.hcmcoalition.org/foundational-reporting>.

⁷ Office of Information and Regulatory Affairs, “Human Capital Management Disclosure,” Spring 2021, available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM88>.

⁸ Ocean Tomo, “Intangible Asset Market Value Study,” available at <https://oceantomo.com/intangible-asset-market-value-study/>.

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American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Better Markets
Communications Workers of America (CWA)
Consumer Federation of America
Illinois State Treasurer Michael W. Frerichs
Interfaith Center on Corporate Responsibility
Majority Action
Oxfam America
People Power United
Public Citizen
Seventh Generation Interfaith Coalition for Responsible Investment
United Food and Commercial Workers International Union (UFCW)
United for Respect
Utility Workers Union of America (UWUA)

cc:

Commissioner Hester M. Peirce
Commissioner Caroline A. Crenshaw
Commissioner Mark T. Uyeda
Commissioner Jaime Lizárraga