

December 14, 2023

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

Dear Chair Gensler:

We write to urge the Securities and Exchange Commission (SEC) to act quickly to issue new rules to improve disclosure of human capital information by public companies. We have previously written to encourage the SEC to pursue rulemaking on this critical issue,¹ and we recently reintroduced S.2751, the *Workforce Investment Disclosure Act*, which would require issuers to disclose information on workforce management policies, practices, and performance.²

We were disappointed to see that the SEC's recently released fall 2023 regulatory agenda suggests the release of a proposed rule on "Human Capital Management Disclosure" is likely to be delayed.³ We urge you to act expeditiously to bring an improved human capital management disclosure proposal to a vote before the full Commission. We also ask you to ensure that the proposal requires disclosure of companies' use of temporary and contract workers, employee turnover data, information on employee compensation and benefits, workforce health and safety information, and demographic data. The disclosure of this data is vital to help investors understand how companies treat their most critical asset – the workers.

When you testified before the Committee on Banking, Housing, and Urban Affairs in September, you indicated that a revised human capital disclosure rule was still in development, but that it was necessary to first thoroughly examine the data from the 2020 human capital disclosure rule⁴ issued under the preceding SEC Chair, and to ensure that any proposed requirements on workforce and turnover data are properly targeted. But most public companies have now filed annual reports under the 2020 rule for three years. These filings provide sufficient data to determine how companies have responded to the current human capital disclosure rules, and it is clear that those rules are not working. A survey of 2022 company annual reports found that only:

¹ https://www.warner.senate.gov/public/_cache/files/0/8/086745ee-753c-4f89-a328-ae45d9f19a/38A3722493464A747E5B2E44439DDD5B.human-capital.pdf;

<https://www.warner.senate.gov/public/index.cfm/2022/6/warner-brown-urge-sec-to-implement-improvements-to-their-human-capital-disclosure-rules>.

² <https://www.warner.senate.gov/public/index.cfm/2023/9/warner-brown-reintroduce-legislation-to-shed-light-on-workforce-management-policies-and-practices>.

³ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=3235-AM88>.

⁴ 17 CFR § 229.10 *et seq.*

- 17% of companies included a quantitative breakdown of the number of full-time versus part-time employees the company employed;
- 23% of companies included data on employee turnover rates; and
- 12% of companies provided quantitative data on the pay gap between employees in different demographic groups.⁵

The requirements of the current rule are too limited and vague to produce informative, material disclosure on companies' workforce investment. These shortcomings must be addressed in the upcoming proposal, which should be issued without further delay.

As the Commission moves forward, we ask you keep in mind that a robust human capital disclosure rule must require companies to release information regarding the numbers of full-time, part-time, and contingent workers, as well as the compensation provided to each of these groups. Investors deserve transparency about whether corporations choose to invest in their people, or rely on underpaid contingent workers in pursuit of quick profits. Short-term thinking hinders workforce investment, increases rates of turnover, and negatively impacts long-term productivity. Honoring the dignity of employees' work is not just a moral imperative, it also has material implications for companies' bottom lines.

Likewise, requiring companies to disclose key workforce management metrics, including investment in skills training, workforce safety, and employee retention, would provide investors with a clearer picture of how public companies are managing, supporting, and investing in their workers – factors that significantly influence a company's ability to innovate and compete in the long-term.

American workers and investors both deserve complete and transparent disclosure on these issues. We ask that the SEC move forward with a revised human capital disclosure rule as quickly as possible.

We thank you for your attention to this important matter.

Sincerely,



Sherrod Brown
Chairman
Senate Committee on
Banking, Housing, and Urban
Affairs



Mark R. Warner
United States Senator

⁵ <https://www.gibsondunn.com/wp-content/uploads/2023/01/evolving-human-capital-disclosures.pdf>.