

Congress of the United States
Washington, DC 20515

February 22, 2023

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

Dear Chair Gensler:

We are writing to request information regarding the Securities and Exchange Commission’s (“SEC’s”) proposed rule on “The Enhancement and Standardization of Climate-Related Disclosures for Investors” (the “climate disclosure rule”).¹ This sweeping rule exceeds the SEC’s mission, expertise, and authority and, if finalized in any form, will unnecessarily harm consumers, workers, and the U.S. economy.

Congress created the SEC to carry out the mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation—not to advance progressive climate policies. Instead of pursuing its clear statutory mission, the SEC, under your leadership, has chosen to flout the democratic process and pursue its progressive social agenda through the promulgation of this extraordinarily expansive climate disclosure rule.²

We remind you of the limitations on your statutory authority, particularly following the Supreme Court’s recent ruling in *West Virginia v. EPA*.³ In that case, the Court held that under the major questions doctrine, a government agency must point to clear congressional authorization for its actions; it cannot simply create new interpretations of existing law to justify far-reaching policy changes that Congress never intended.⁴ Congress did not intend for the SEC to be an arbiter of business strategies, much less the determining body for climate policies. This abuse of the rulemaking process, and blatant partisan efforts to circumvent the legislative process, are outside the bounds of the SEC’s mission and authority.

¹ *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Proposed Rule of the Securities and Exchange Commission (proposed Mar. 21, 2022), <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.

² In addition to pursuing this proposed climate disclosure rule, the SEC, under your leadership, has been focused on other climate-related endeavors outside of the SEC’s mission as well, including, but not limited to, launching an SEC task force focused on climate and environmental, social, and governance (ESG) issues and announcing an “enhanced focus” on climate-related risks in the SEC’s examinations work. *See e.g.*, SEC press release: *SEC Announces Enforcement Task Force Focused on Climate and ESG Issues* (Mar. 4, 2021); SEC press release: *SEC Division of Examinations Announces 2021 Examination Priorities* (Mar. 3, 2021). Rather than suddenly viewing itself as a climate change regulator, the SEC should return to focusing on its clear statutory mission.

³ *West Virginia v. EPA* 597 U.S. __ (2022).

⁴ *Id.*

Under your leadership, the SEC has shifted away from its principles-based disclosure regime to a partisan, activist, and prescriptive approach. This includes implementing a climate agenda that is outside the scope of its mission and which will have significant economic and political consequences for the Nation and our capital markets. These efforts far exceed the SEC's authority, jurisdiction, and expertise. Recently, it has been reported that you and other SEC officials have acknowledged this concern and are now weighing the impact of the inevitable legal challenges the SEC will face with this proposal once it is finalized.⁵ This aggressive, overly broad approach to controversial rulemaking is particularly concerning in a time where prices are skyrocketing—harming consumers, workers, and the entire U.S. economy.

Numerous members of Congress, in both the House and the Senate, have sought information from the SEC pertaining to this proposed rule, but the SEC thus far has failed to comply with these requests.⁶ Consequently, we are renewing several of those information requests outlined below, as well as a series of new information requests pertaining to this flawed rule. We are deeply concerned with the SEC's lack of transparency and disregard for legitimate Congressional oversight inquiries, and call on you to be more responsive to Congressional information requests going forward.

Accordingly, to allow the Congressional committees with jurisdiction over the SEC to fully examine the SEC's proposed rule and the SEC's actions related to it, particularly after the Supreme Court's ruling in *West Virginia v. EPA*, we request that you provide answers to the following questions no later than March 8, 2023:

1. Has the SEC considered the impact that the proposed climate disclosure rule would have on energy prices and any other costs associated with the rule?
 - a. If so, what costs, such as higher energy prices, has the SEC identified? Please provide all analyses pertaining to any such costs that the SEC has considered.
2. The proposed climate disclosure rule raises First Amendment concerns because it would appear to compel speech. What efforts, if any, has the SEC made to minimize any First Amendment concerns associated with this proposed rule?
 - a. Please provide any legal memoranda that the SEC is relying on to justify the constitutionality of this proposed rule with respect to the First Amendment.

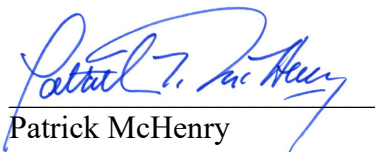
⁵ Declan Harty, *SEC's Gensler weighs scaling back climate rule as lawsuits loom*, POLITICO (Feb. 4, 2023), <https://www.politico.com/news/2023/02/04/sec-climate-rule-scale-back-00081181>.

⁶ See e.g., Letter from Reps. McHenry, Kay Granger, and James Comer to the Hon. Gary Gensler, Chair, Securities and Exchange Commission (Sept. 30, 2022); Letter from Rep. Patrick McHenry and 128 other House members to the Hon. Gary Gensler, Chair, Securities and Exchange Commission (Jun. 15, 2022); Letter from Sen. Tim Scott and all Senate Banking Republicans members to the Hon. Gary Gensler, Chair, Securities and Exchange Commission (Jun. 15, 2022); and Letter from Sen. Tim Scott and all Senate Banking Republicans members to the Hon. Gary Gensler, Chair, Securities and Exchange Commission (Jul. 21, 2022).

3. Has the SEC coordinated with any other Federal agencies or any non-governmental organizations on the policies contained in the proposed climate disclosure rule?
 - a. If so, with which agencies or non-governmental organizations has the SEC coordinated, and with respect to which policies contained in the proposed rule? Please provide a comprehensive list.
4. Has the SEC coordinated with the White House Climate Policy Office or any other components or offices of the Executive Office of the President on the policies contained in the proposed climate disclosure rule?
 - a. If so, with which components or offices of the Executive Office of the President has the SEC coordinated, and with respect to which policies contained in the proposed rule? Please provide a comprehensive list.
5. Have you or any SEC employees in the Office of the Chairman or the Office of the General Counsel received or considered any legal advice or analyses (either internal or external to the SEC) regarding whether the SEC lacks the statutory authority to promulgate any portions of the proposed climate disclosure rule?
 - a. If so, please provide any such legal analyses.
6. Which SEC officials or employees have worked on the proposed climate disclosure rule to date? Please provide a comprehensive list of all such employees (both former and current), to include each employee's name, title, division, and duties with respect to the proposed climate disclosure rule.
7. Have any SEC officials or employees carried out any SEC business related to the proposed climate disclosure rule on a private, nongovernmental device?
 - a. If so, which SEC officials or employees have carried out such SEC business on a private device? Please provide a comprehensive list.

In addition, we request that you promptly preserve all records related to the proposed climate disclosure rule and produce all records identified in the attached schedule by no later than March 8, 2023. Thank you for your attention to this important matter.

Sincerely,

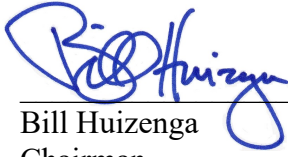


Patrick McHenry
Chairman
House Committee on Financial Services



Tim Scott
Ranking Member
Senate Committee on Banking,
Housing, and Urban Affairs

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Bill Huizenga
Chairman
Subcommittee on Oversight and Investigations
House Committee on Financial Services

ATTACHMENT

Produce the following records in unredacted form as soon as possible, but no later than March 8, 2023:

Schedule of Records

1. All records and communications referring or relating to the proposed rule⁷ that were sent between and among Gary Gensler, Allison Herren Lee, and/or any SEC official or employee since January 20, 2021.
2. All records and communications referring or relating to the proposed rule that were sent between and among any relevant SEC person⁸ and any official or employee of the Executive Office of the President since January 20, 2021.
3. All records and communications referring or relating to the proposed rule that were sent between and among any relevant SEC person and any official or employee of the Environmental Protection Agency since January 20, 2021.
4. All records and communications referring or relating to the proposed rule that were sent between and among any relevant SEC person and any federal government official or employee associated with the Financial Stability Oversight Council since January 20, 2021.
5. All records and communications referring or relating to the proposed rule that were sent between and among any relevant SEC person and any other federal agencies (not identified in items 2-4 above) since January 20, 2021.
6. All records and communications referring or relating to the proposed rule that were sent between and among any relevant SEC person and any individual or entity outside the executive branch of the federal government since January 20, 2021.
7. All records referring or relating to the proposed rule that were created or generated by any relevant SEC person since January 20, 2021.

⁷ For purposes of this request, the “proposed rule” refers to the March 21, 2022, proposed rule of the Securities and Exchange Commission (SEC) entitled “The Enhancement and Standardization of Climate-Related Disclosures for Investors.” Securities Exchange Comm’n, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334 (April 11, 2022).

⁸ The term “relevant SEC person” means an (1) SEC official, employee, contractor, academic or professional fellow, or intern who has served at any point between January 20, 2021 and the present (i) in the Office of the Chairman (during the tenure of Chairman Gensler and/or Acting Chair Allison Herren Lee), including, but not limited to, Chairman Gensler and Acting Chair Lee; or (ii) in the Office of Commissioner Lee, including, but not limited to, Commissioner Lee; and/or (2) any SEC official, employee, contractor, academic or professional fellow, or intern who worked on the proposed climate disclosure rule in the Division of Corporation Finance, the Division of Economic and Risk Analysis, the Office of the General Counsel, or the Office of the Chief Accountant.

8. All records and communications referring or relating to the SEC's legal authority to promulgate the proposed rule that were sent or received by Chairman Gensler and/or any SEC official or employee in the Chairman's office or the General Counsel's Office since January 20, 2021.
9. All records and communications referring or relating to the major questions doctrine and/or the case of *West Virginia v. EPA* that were sent or received by Chairman Gensler and/or any SEC official or employee in the Chairman's office or the General Counsel's Office since January 20, 2021.
10. All calendar entries of any relevant SEC person referring or relating to the proposed rule that were created or generated since January 20, 2021.
11. All records sufficient to show the analysis of the costs that are expected to occur in connection with the proposed climate disclosure rule, including, but not limited to, the impact that the proposed rule is expected to have on energy prices and any other anticipated economic impact.
12. All records sent, received, or created by any relevant SEC person since January 20, 2021, that contain any of the following key words or key word combinations:
 - a. "climate" & "disclos!";
 - b. "sustain!" & "disclos!";
 - c. "climate justice";
 - d. "global warming";
 - e. "green new deal";
 - f. "climate" & "close hold";
 - g. "sustain!" & "close hold"; or
 - h. "climate" & "policy".⁹
13. Unredacted copies of all records responsive to any request made to the SEC pursuant to the Freedom of Information Act since Jan 20, 2021, that refer or relate to:
 - a. the proposed rule;
 - b. any climate-related policy or proposal;
 - c. climate change;
 - d. climate-related disclosures;
 - e. the calendar entries of any SEC official or employee; or
 - f. the use of private, nongovernmental devices by any SEC official or employee to conduct SEC business.

⁹ The symbol "!" denotes a root expander.