PUBLIC CITIZEN

215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

June 14, 2021

The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorbale Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Securities and Exchange Commission
100 F St. NE
Washington, DC 20549

Re: Public Statement: Public Input Welcomed on Climate Change Disclosures, March 15, 2021.

Dear Chair Gensler and Commissioners,

Public Citizen appreciates the opportunity to comment on the above referenced Request for Input by the Securities and Exchange Commission (the "SEC" or the "Commission") which rightly identified the urgent need for mandatory climate and environmental, social, and governance (ESG) disclosures. These comments are supplementary to other joint comments submitted in coalition with other organizations. Public Citizen urges the Commission to move quickly to propose, adopt, implement, and enforce detailed climate and other ESG disclosure requirements for all issuers.

Public Citizen has been deeply involved in efforts to improve the quality and quantity of ESG disclosure and to demonstrate the importance of these disclosures for the full range of market participants. This letter is intended to address areas where we have specific expertise in climate disclosure, political activity disclosure, and tax disclosure. It is a complement to other submissions, such as a climate disclosure letter signed by Public Citizen and 58 organizations submitted on June 14, 2021, a political activity disclosure letter signed by Public Citizen and 32 organizations submitted on June 7, 2021 and a securities regulation letter submitted by Public Citizen and Americans for Financial Reform Education Fund (AFREF) on June 14, 2021. This letter reinforces those views and should be read as an additional submission to the other letters described in this paragraph.

Given the physical and transition risks inherent to the ongoing climate crisis and the shift away from fossil fuels and carbon-intensive industry, investors need more information about companies' growing climate financial risk, their contribution to climate change, and their plans for remaining viable in a low-carbon future economy. Investors are thus reasonably seeking information that allows them to better assess the climate risks and opportunities of individual issuers. At the same time, it is important to remember that climate change is not just an environmental crisis, but one of social justice, wealth distribution, equity and human rights. It is vitally important that disclosures from issuers include elements of environmental and climate justice, as well as other ESG issues like political activity; tax; diversity, equity, and inclusion; human capital management practices; and human rights risks to allow investors to make a holistic assessment of an issuer's overall sustainability and make more informed investment decisions.

Mandating such climate and ESG disclosures falls squarely within the SEC's mission to protect investors; ensure fair, orderly, and efficient markets; and facilitate capital formation.[1] ESG considerations are already an important part of global capital allocation decisions: About 75 percent of professional investors say they incorporate ESG factors into their investment practices.[2] Further, 90 percent of issuers on the S&P 500 already make some form of ESG disclosures.[3] ESG factors are also positively correlated with firms' financial performance and investment portfolio performance. A recent review of 1000 studies published in the last five years found that a higher ESG rating for an individual company was associated with higher corporate financial performance (e.g., return on equity or assets, or stock performance) in 58 percent of the studies, and a higher ESG rating for a portfolio of stocks was associated with better investment returns in 59 percent of the studies.[4] For low carbon ratings in particular, the climate-friendly companies and portfolios performed better 57 percent and 65 percent of the time, respectively.

Climate and ESG-related disclosures are also critical for continued robust functioning of the U.S. capital markets. If the U.S. disclosure requirements fall behind the rest of the world, our funds will be at a competitive disadvantage. In contrast, if the U.S. takes the lead in this space, it will attract global capital from investors who increasingly rely on access to robust ESG information to make investment decisions.

Despite many firms reporting some ESG data, the 2010 SEC climate disclosure guidance[5] has not satisfied the needs of investors because it essentially allows firms to self-determine and report which climate risks are material. Many firms provide only vague, boilerplate disclosures or do not address climate risk at all.[6] Management is often overly optimistic about a firm's climate resilience, may not fully understand what investors actually believe is material or want to know, and may have an interest in obscuring parts of the picture, leading to drastic under-reporting of risks. The International Organization of Securities Commissions (IOSCO) recently found that investor demand for sustainability-related information is currently not being properly met.[7]

A range of voluntary standards have been developed to meet this need, the biggest of which include the Task Force on Climate-Related Financial Disclosures (TCFD), the Sustainability Accounting Standards Board (SASB), the Carbon Disclosure Standards Board (CDSB), and the

---

[1] https://www.sec.gov/about/reports/sec-fy2014-agency-mission-information.pdf
[2] https://www.businesswire.com/news/home/20210422005347/en/ESG-Investing-Reaches-Critical-Mass-Ongoing-Momentum-Depends-on-What's-Driving-the-Demand-Finds-Natixis-Investment-Managers-Survey
[3] https://www.globenewswire.com/news-release/2020/07/16/2063434/0/en/90-of-S-P-500-Index-Companies-Publish-Sustainability-Reports-in-2019-G-A-Announces-in-its-Latest-Annual-2020-Flash-Report.html
[4] https://www.stern.nyu.edu/sites/default/files/assets/documents/NYU-RAM_ESG-Paper_2021%20Rev_0.pdf
[5] https://www.sec.gov/rules/interp/2010/33-9106.pdf
[6] https://climatedisclosurelab.duke.edu/wp-content/uploads/2020/10/Climate-Risk-Disclosures-and-Practices.pdf
[7] https://www.iosco.org/news/pdf/IOSCONEWS594.pdf

Global Reporting Initiative (GRI). But the proliferation of differing frameworks has increased compliance complexities and costs for companies. While these standards are now incorporating more forward-looking risk management and governance disclosures that many stakeholders are seeking, investors and issuers both complain that the information provided under voluntary frameworks is not adequate for a variety of reasons,[8] including:

- The lack of comparability among issuers using the same framework,
- The omission of material disclosures - or even whole areas of material disclosures - from a framework's requirements,
- The ability for firms to 'shop' around for the framework and disclosures which cast them in a favorable light, and
- The massive amount of incongruent sustainability data that makes it hard to form an accurate picture of a firm's performance and risk management.

In 2018, investors representing more than $5 trillion in assets under management submitted a new petition for a rulemaking to the SEC that would create a standard disclosure framework on all ESG issues. The rulemaking petition spoke to the need for a set of disclosures that are comparable and comprehensive and highlighted the history of rulemaking requests on various ESG issues from investors.

To meet investor and issuer needs, the SEC must move swiftly to finalize mandatory disclosure rules for climate risk; stewardship of a just and equitable transition to a low carbon economy; human capital management; racial, economic, environmental, and climate justice; taxes; human rights; and political activity to avoid untenable growth of climate and ESG risk within our markets that harms investors, spurs the improper allocation of capital, and may increase the cost of capital for U.S. companies.

I. General Principles for Disclosures

All large companies and large offerings of securities should disclose ESG metrics.[9]

As soon as possible, the SEC should require all public companies to disclose a standardized set of climate-and ESG-related metrics and the relevant context for those metrics. The SEC must also work to reverse the movement of capital out of public equity markets through regulatory exemptions, as climate financial risk is increasing with little scrutiny in the private markets. Climate and ESG disclosures for private debt offerings in particular are important to assessing risks to the banking and financial system, as without information from issuers, banks, and funds, regulators may be unable to fully and accurately assess their portfolio risks. To reverse this migration, the SEC should revise its rules to push all large companies (including the many large private companies owned by private equity firms and hedge funds) and large offerings of securities into the public market reporting regime[10] and consider conditioning any remaining registration exemptions upon the disclosure of ESG details of the securities.

---

[8] See, e.g., https://assets.bbhub.io/company/sites/60/2020/09/2020-TCFD_Status-Report.pdf
[9] RFI Questions 14.
[10] Tyler Gellasch and Lee Reiners, *From Laggard to Leader: Updating the Securities Regulatory Framework to Better Meet the Needs of Investors and Society*, Global Financial Markets Center at Duke University School of Law, Feb. 2021, *available at* https://web.law.duke.edu/sites/default/files/centers/gfmc/From-Laggard-to-Leader.pdf.

Disclosures should be mandatory, standardized and decision-useful to all investors across different levels of sophistication.[11]

Disclosures are most useful to investors and registrants if they are mandatory and standardized in a way that makes them comparable across firms within an industry and across sectors. They should be easily accessible, machine-readable, transparent, clear, and decision-useful to all investors across different levels of sophistication. Such requirements will also eliminate confusion among registrants regarding what to disclose. In contrast, industry-led, voluntary standards development would be subject to the challenges that existing standards-setting bodies face, and it would not generate the information that investors need on the timelines that they need it. Similarly, current trends show that a "comply or explain" framework would perpetuate the status quo of uneven disclosures. Some firms would ignore the voluntary standards; others would comply; and variation among complying firms would frustrate investors' ability to compare among them.

Disclosures should include both qualitative disclosures, such as the requirements in TCFD and specific, line-item, quantitative disclosures. To make this information easily accessible to investors, disclosures should be in specified sections of annual and quarterly SEC filings, and to the extent possible, should be included in the audited financial statements. To encourage honest assessment of risks, all disclosures should be subject to review by the Chief Financial Officer (CFO) and Audit Committee, and subject to attestation by the CFO.

II. Climate-Related Disclosures

The SEC should require disclosure of climate-related risk and impact information, including greenhouse gas emissions for Scopes 1, 2, and 3.[12]

The SEC has a broad authority to require disclosures that promote fair and efficient markets, protect investors, or serve the public interest. It should not limit disclosure requirements based on quantitative definitions of financial materiality that have no basis in law or Commission practice.[13] Disclosures are not just used by purchasers of securities, but also creditors, suppliers, customers, and other parties that must be informed to ensure smooth functioning of the capital markets. There is no statutory requirement that any disclosure, by itself, be quantitatively "material" to the issuer; the SEC currently requires disclosures of many items that are not financially "material" to issuers.

That said, climate and ESG information *is* material to the reasonable investor and the public. The breadth of topics and disclosure requirements developed by voluntary and external standard-setters, as well as those under development by governments in other jurisdictions, shows the range of items that matter to investors. This includes both quantitative metrics and qualitative information about governance, strategy, and risk management. In particular, investors want climate-related and ESG disclosures that cover both physical risks and transition risks that affect enterprise value, and also that indicate the impacts that issuers have on society, the global financial system, and investors as a whole.

---

[11] RFI Question 1, 3, 7, 11, 12
[12] RFI Questions 2, 4, 8
[13] See https://web.law.duke.edu/sites/default/files/centers/gfmc/From-Laggard-to-Leader.pdf

With respect to climate risk, issuers ***must*** report on total greenhouse gas emissions (Scopes 1, 2, and 3 as defined by the Greenhouse Gas Protocol).[14] They should also provide a qualitative discussion of risk management and a firm's business model and strategy under various climate-related scenarios, including a 1.5 degree warming scenario consistent with science-based emissions targets and a 2 degree scenario, a 3 degree scenario, and a catastrophic 4 degree warming scenario, and the extent to which the firm's decarbonization goals and climate strategy depend on the availability of carbon offsets. Importantly, Scope 3 emissions must also include greenhouse gas emissions resulting from real economy activities that issuers finance or underwrite, using an established carbon accounting method such as that developed by the Partnership for Carbon Accounting Financials (PCAF). Climate and ESG disclosure rules should also cover at least the essential items listed in Appendix B.

The disclosure regime must incorporate and center intersectional issues like racial, economic, environmental, and climate justice.[15]

The climate crisis is not just a problem of parts per million carbon dioxide, but one of social justice, wealth distribution, equity, and human rights. It is vitally important that disclosures from public companies include elements of environmental and climate justice, because investors care about whether vulnerability to climate impacts, climate mitigation collateral harms, and lack of adaptation and resilience resources and capabilities fall unevenly on low income communities of color or the global south. Investors are demanding more information related to racial, economic, environmental, and climate justice and using this information to make investment decisions, to vote proxies, to file shareholder proposals, and to engage with issuers in other ways.

Because climate change, social justice, and inequality are inextricably linked, reporting on only one dimension will not satisfy the sustainability concerns of investors, just as improving on only one dimension does not adequately improve the overall sustainability or financial performance of an issuer, or fully mitigate the risks they present to the financial system and investors as a whole.

Decades of racist housing and siting policies have yielded disproportionate harm to communities that live near toxic power plants and manufacturing sites.[16] Increasing recognition of these issues is exposing companies engaged in these harmful activities to reputational and liability risks that will only grow in the future. To allow investors to understand the long-term risk profile the relevant companies face, they should be required to disclose how they have contributed to environmental and climate injustice in the past and present, and their efforts and strategy to correct those disparities.

---

[14] https://ghgprotocol.org/corporate-standard

[15] RFI Questions 1, 2, 3, 8, 11, 13, 15

[16] See, e.g., Rachel Morello-Frosch and Bill M. Jesdale, "Separate and unequal: residential segregation and estimated cancer risks associated with ambient air toxics in U.S. metropolitan areas," Environmental Health Perspectives 114 (3) (2006): 386–393, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1392233/pdf/ehp0114-000386.pdf; Jasmine Bell, "5 Things to Know About Communities of Color and Environmental Justice," Center for American Progress, April 25, 2016, available at https://www.americanprogress.org/issues/race/news/2016/04/25/136361/5-things-to-know-about-communities-of-color-and-environmental-justice/.

Similarly, communities around the globe have lost valuable natural resources, ecosystems, and biodiversity due to extractive industries that permeate global supply chains. Increasing recognition of these harms and efforts to address them means that investors need to know how entangled issuers are with these destructive practices. Companies must disclose their methods for evaluating and measuring ecological and economic impacts of corporate activities in the land sector. The growing corporate reliance on carbon offsets to meet net zero commitments presents a particular threat to these communities that issuers must address.[17] Related to climate change are a host of other environmental justice disclosures regarding water, natural resource use, and pollution. Specifically, pollution into air, land, and water bodies must be disclosed, as well as use of natural resources and a company's track record of compliance with environmental laws and regulations. Information about these practices is valuable to investors assessing risks and performance prospects or seeking to allocate their funding in accordance with their values.

As society reorients around a low-carbon economy, investors also need to understand whether issuers are promoting a just and equitable transition for affected workers and communities. For example, many electric utilities have committed to realizing net-zero emissions by 2050 and have released energy portfolio trajectories with interim targets. But issues such as plant closures, differential economic impacts, and racial, environmental, and public health harms are typically not part of those decarbonization plans, even though they are crucial for investors to assess a plan's likelihood of success, as well as to decide whether the plan meets their criteria for investment. Further, governments are now recognizing the importance of a just transition and considering public policy changes that would create financial incentives or penalties to promote fair treatment for affected workers and communities. Investors need adequate disclosure of firms' strategies around a just transition to predict performance amid likely upcoming policy changes. To meet this investor need, the SEC should require all companies to disclose how they are incorporating elements of a just transition into their overall decarbonization strategy.

III. Political Activity Disclosures[18]

Public Citizen urges the Commission to also require corporations to disclose their political activity. This disclosure is critical for investors on its own, but it is also inextricably linked to climate disclosures. Investors cannot truly have a complete picture of a company's climate-related risk if they are not also able to assess how or whether the company is engaging in political influence activity related to climate change.

Since the U.S. Supreme Court's decision in *Citizens United v. FEC* in 2010, corporations have been allowed to spend unlimited undisclosed amounts of money to influence American elections and in turn affect policy outcomes. In his majority opinion in *Citizens United*, Justice Kennedy assumed that with this new paradigm of spending, there would at least be robust disclosure so that shareholders could assess whether the political activity of their companies presented significant risk.[19] This robust disclosure regime did not exist then and it does not exist now. The SEC should require corporate political activity disclosure because it mitigates risk, investors have been asking for this information for a decade, and the change to existing corporate operations will be minimal.

---

[17] https://www.foei.org/resources/publications/chasing-carbon-unicorns-carbon-markets-net-zero-report
[18] RFI Question 15
[19] Paul Blumenthal, *Anthony Kennedy's Citizens United Disclosure Salve 'Not Working,'* HUFFPOST (Nov. 2, 2015), https://bit.ly/3hYBcYY.

Political activity disclosure mitigates risk.

A company's political activity—both its election spending and lobbying—is relevant to its shareholders because it can present significant reputational risk if not disclosed and managed properly. Many customers and the purchasing public are paying close attention to whether a company's political activity lines up with its corporate values. If there is a disconnect, companies can face bad press, boycotts, or targeted social media campaigns.

Following the attack on the U.S. Capitol on January, 6th 2021, many large corporations made the decision to suspend donations from their political action committees (PACs). The Conference Board surveyed corporations to learn more about their responses to the insurrection. Of the 84 firms that responded, "46% cited the belief that a stable democracy is necessary for a stable business environment," and 44.94% cited concerns about the company's reputation.[20]

Understanding corporate political activity is essential to understanding corporate climate risk. A corporation can make every effort to manage its climate impact and disclose that effort to investors. However, that effort is deeply undermined if the corporation is also funneling money to a trade association like the U.S. Chamber of Commerce that works to actively undermine climate change mitigation policies without disclosing those payments to investors. Additionally, corporations in the energy and utilities sectors put their investors at particular risk if they engage in undisclosed political activity that worsens the climate crisis and in turn jeopardizes the company's viability over the long term.

There are many examples of situations where disclosure would have provided investors with information needed to avoid losses and reputational harm, such as bribery[21] and pay-to-play[22] scandals, impropriety in political influence campaigns,[23] and other allegations of wrongdoing that pose risk to companies' value.

Investors are already successfully pushing some companies to shine a light on their political spending. For example, Exxon's investors have argued that the company faces reputational risk from undisclosed political activity and that "the concern for investors is Exxon has a large lobbying footprint, yet a complete picture of its spending to influence public policy, including payments to third-party groups and unreported grassroots lobbying, is unavailable for shareholders."[24] Demonstrating the importance of this issue to investors, shareholders at Exxon approved two proposals at the company's 2021 annual meeting, one about Exxon's general lobbying activity and a second "asking the company to account for if and how its lobbying aligns with the Paris Agreement."[25]

Investors demand political activity disclosure.

Corporate political activity remains a top priority for investors. According to the Proxy Preview report for 2021, "concern about undue corporate political influence remains the biggest single

---

[20] Press release, The Conference Board, *Survey: Corporate PACs Took Unprecedented Action by Broadly Suspending Political Contributions Following Capitol Riot* (Feb. 12, 2021), https://bit.ly/3uBtIOl.
[21] *Take Our Power Back*, ILLINOIS PIRG, https://bit.ly/2SzxPNc (viewed on May 27, 2021).
[22] The Associated Press, *Angry shareholders pile into lawsuits that could cost FirstEnergy millions of dollars,* PITTSBURGH POST- GAZETTE (Jan. 1, 2021), https://bit.ly/3vzcQJm.
[23] *Id.*
[24] *Id.*
[25] Katherine Dunn and Sophie Mellor, *ExxonMobil faces historic loss in proxy shareholder battle over future of its board,* FORTUNE (May 26, 2021), https://bit.ly/2RQljZU.

issue of concern for shareholder proponents, even though total filings are down from their 2014 apex. Proponents have filed more than 1,000 proposals over the last 10 years."[26] The most recent proxy season has demonstrated continued investor interest in this issue. As of May 27, 2021, five election spending disclosure proposals have received average support of 47.2% and twenty lobbying disclosure proposals have received average support of 39.9%.[27]

In 2011, a bipartisan committee of leading law professors filed the first petition requesting a rulemaking at the SEC requiring all public companies to disclose their political expenditures. The petition has received more than 1.2 million comments—the most in the agency's history—from diverse stakeholders including the late founder of Vanguard, John Bogle, five state treasurers, a bi-partisan group of former SEC chairs and commissioners, Members of Congress, and investment professionals representing $690 billion in assets. Additional comments have come in to the agency in support of this rule following the launch of the "Disclosure Effectiveness" review[28] and the Regulation S-K concept release.[29] Nearly 10,000 comments have come in to each of those opportunities to address the agency's questions about corporate political spending disclosure and highlighting its materiality and importance to investors.

The benefits of political activity disclosure outweigh the cost.

One argument often made against increased disclosure assumes that the cost to comply would be high for companies. In fact, many of the country's largest companies are already disclosing some or all of their political activity. The number of companies that fully or partially disclosed their election spending in 2020 or that prohibited at least one type of spending was 332, up from 304 in 2016.[30] Additionally, an independent cost benefit analysis of a potential political spending disclosure rule found that that "the range of economic benefits of this disclosure rule would greatly outweigh the nominal costs imposed on corporations for compliance."[31]

Issuers should be required to disclose the policies and procedures regarding their political activity as well as a description of management's and the Board's decision-making process and oversight for making payments. Issuers should also be required to disclose itemized expenditures for both direct and indirect election spending and lobbying, including payments to trade associations, politically active nonprofits, and party committees.

In 2016, Congressional Republicans inserted a policy rider into the FY 2016 budget negotiations that stopped the SEC from finalizing the rulemaking on corporate political spending disclosure. The language in the rider does not stop the agency from working on this critical rule,[32] and it should take up the charge immediately. Additionally, the rider was removed from the House-side version of the Financial Services and General Government Appropriations subcommittee bill with subcommittee Chairman Quigley recently saying about the issue, "I am also a firm

---

[26] *Corporate Political Activity,* PROXY PREVIEW, https://bit.ly/3vx4YYO.
[27] Calculated based on published vote results.
[28] *Comments on Disclosure Effectiveness*, SECURITIES AND EXCHANGE COMMISSION, https://bit.ly/3yM3E67 (viewed on May 27, 2021).
[29] *Comments on Concept Release: Business and Financial Disclosure Required by Regulation S-K*, SECURITIES AND EXCHANGE COMMISSION, https://bit.ly/3fObQdr (viewed on May 27, 2021).
[30] THE CENTER FOR POLITICAL ACCOUNTABILITY, 2020 CPA- ZICKLIN INDEX OF CORPORATE POLITICAL DISCLOSURE AND ACCOUNTABILITY, at 8 (October 2020), https://bit.ly/3hXFzDr.
[31] *A Cost-Benefit Analysis of Corporate Political Spending Disclosure,* SECURITIES AND EXCHANGE COMMISSION, https://bit.ly/3bZYKZt.
[32] Press release, Public Citizen, *CORPORATE REFORM COALITION: Corporate Political Spending Disclosure Rule Can Proceed Despite Omnibus Rider* (Dec. 22, 2015), https://bit.ly/3ftKTN6.

advocate for increased political disclosures and will continue my work to provide the SEC the resources and authorities it needs to address this pressing issue."[33]

IV. Tax Disclosures[34]

The SEC should require multinational corporations to disclose their financial data and economic activity (particularly taxes paid to all the countries in which the company operates) publicly on a country-by-country basis. This disclosure is essential for investors, but also inseparably linked to climate disclosures. As this nation seeks solutions to grapple with climate and transfer to a more sustainable economy, more government revenues must be garnered to tackle this undertaking. Closing tax loopholes and ensuring corporations pay their fair share of corporate taxes would help provide the crucial resources to take on climate change.[35] We are living through a global "race to the bottom" in corporate taxation—where multinational companies use accounting maneuvers to book their profits in low- or no-tax jurisdictions, or "tax havens." A recently released government report found that the average domestic corporate rate for multinationals was only 7.8% in 2018.[36] The main cause of the drop from 16% to 7.8% was the 2017 tax giveaway law, the Tax Cuts and Jobs Act's, slashing of the corporate rate from 35% to 21%. Tax haven abuse is responsible for part of the gap between respectively 35% and 16% in 2017, and 21% and 7.8% in 2018. What's more, a report from the Financial Accountability and Corporate Transparency (FACT) Coalition found that investors are increasingly facing risks due to corporations' secretive tax practices and lack of disclosure. The report further found that multinational companies have become more dependent on offshore tax avoidance practices to enhance short-term earnings in recent years, all while disclosure requirements failed to kept pace with this changing global economy.[37]

As the world continues to grapple with the COVID-19 pandemic and economic collapse, countries are scrambling to find additional sources of revenue and nations are further incentivized to eradicate tax avoidance practices of corporations. Mandating public country-by-country reporting would help the investors and the public at large determine whether or not corporations are profit shifting to tax havens. Momentum for global tax transparency is ramping up in conjunction with the fight for a global minimum tax through the OECD (Organization for Economic Co-operation and Development), where member countries are working in concert to address tax avoidance of multinational entities.[38] Furthermore, Congress is working to demonstrate to the Commission the deep and broad support for tax transparency through the "Disclosure of Tax Havens and Offshoring Act" (H.R. 3007 / S. 1545), which would require the SEC to implement public country-by-country reporting. [39]

---

[33] *The Honorable Mike Quigley, Committee on Appropriations Subcommittee on Financial Services and General Government, Securities and Exchange Commission Oversight Hearing Opening Statement,* HOUSE COMMITTEE ON APPROPRIATIONS, https://bit.ly/3crqPJt.

[34] RFI Questions 6 and 15

[35] Ian S. Gary and David Waskow, Fair Tax Systems Are Vital for Strong Climate Action, THE HILL (April 28, 2021).

[36] JOINT COMMITTEE ON TAXATION STAFF, U.S. INTERNATIONAL TAX POLICY: OVERVIEW AND ANALYSIS, at 58 (Self Published) (2021)

[37] FACT COALITION, A TAXING PROBLEM FOR INVESTORS: SHAREHOLDERS INCREASINGLY AT RISK FROM LACK OF DISCLOSURE OF CORPORATE TAX PRACTICES (2016).

[38] OECD, *Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project,* OECD PUBLISHING, (October 2020) https://tinyurl.com/4xnypcb7

[39] Press Release, Senator Chris Van Hollen, *Van Hollen, Axne Introduce Bicameral Legislation To Provide Transparency On Corporate Use Of Tax Havens, Offshoring Of Jobs (*May 11, 2021) https://tinyurl.com/3mm9myxh

Public country-by-country financial reporting is very much in line with the agency's three-part mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation, [40] since many market participants in addition to investors use and depend upon disclosures to foster an environment that makes the markets fairer and more efficient. More specifically, credit rating agencies, index providers, lenders, suppliers, workers, executives, and customers all read current public company disclosures and carry out business decisions based on that useful information. Increased disclosures will provide even better information for investors and these other entities that ensure healthy and thriving markets in the U.S. Further, tax transparency through public country-by-country reporting is aligned with the SEC's disclosure regime to protect the "public interest." State and foreign governments also read and rely on companies' disclosures and public country-by-country tax reporting could be useful for tax authorities to ensure compliance with tax laws.

Tax disclosure mitigates risk.

A company's economic activity, aggregated country-level data (revenue, profits, tangible assets and employee numbers) can help investors decipher if a company indeed operates in tax havens and is practicing tax avoidance strategies.[41] Public education and accountability campaigns highlighting companies that don't pay their fair share of taxes expose those tax avoider companies to reputational risk. There is also financial risk to companies should a tax authority find that avoidance strategies were not done legally, or if a tax haven jurisdiction's lax rules are overruled through oversight by an applicable governing body.

Investors demand disclosure.

Recently, nearly 70 investment groups that collectively manage assets of $2.9 trillion, penned a sign-on letter to congressional leadership urging Congress to support tax transparency and pass the Disclosure of Tax Havens and Offshoring Act.[42] The investor groups assert that the legislation would require vital disclosures of material information to equip investors with tools to evaluate risks and assess value, strengthen the current state of esoteric tax reporting by corporations, and meet the needs of a global economy. The legislation has a great amount of momentum and has been introduced in the House of Representatives and the Senate, and was passed by the House Financial Services Committee and expected to soon have a vote before the full House. Furthermore, there are increasing developments worldwide to adopt public country by-country standards, which should be very relevant to this agency. The Global Reporting Initiative has implemented its GRI Tax Standard this year, as the first globally applicable public reporting standard that embraces tax transparency and mandates public country-by-country reporting. [43] Additionally, on June 1, 2021, the European Parliament also passed public country-by-country reporting measures which require large multinational corporations (whether headquartered in the European Union or not) to disclose income tax information.[44]

---

[40] *Securities and Exchange Commission,* ABOUT US SECTION (Viewed on June 10, 2021). https://tinyurl.com/ejymws
[41] PRINCIPLES FOR RESPONSIBLE INVESTMENT, EVALUATING AND ENGAGING ON CORPORATE TAX TRANSPARENCY: AN INVESTOR GUIDE, at 22 (2018).
[42] FACT COALITION, 66 INVESTORS WITH $2.9 TRILLION IN ASSETS UNDER MANAGEMENT SHOW SUPPORT FOR THE DISCLOSURE OF TAX HAVENS AND OFFSHORING ACT (2018).
[43] GRI STANDARDS, A NEW GLOBAL STANDARD FOR PUBLIC REPORTING ON TAX,(2021)
[44] Keith O'Donnell and Marie Bentley, *"European Union: New Step Towards The Adoption Of The Public Country-By-Country Reporting (CBCR) Directive"*, MONDAQ (June 8, 2021) https://tinyurl.com/8rf7jabj

The benefits of tax disclosures outweigh the cost.

According to a study by the Centre for International Corporate Tax Accountability and Research, aggressive tax avoidance practices of corporations are causing an estimated global revenue loss of $500 billion per year.[45] Detractors of more disclosures, particularly of public country-by-country reporting, insist that the task to comply would be too burdensome and inefficient. However, in the U.S., companies already disclose this information to the Internal Revenue Service privately through the Form 8975. All companies would have to do to comply with required tax disclosures is make the information public. The benefits of providing investors and other market participants (e.g., credit rating agencies, index providers, lenders, customers) this vital information is immeasurable regarding whether companies are engaging in risky behavior.

Further, disclosure brings about accountability and other countries have seen benefits of increased tax transparency. For example, the European Union introduced public country-by-country reporting for financial institutions and according to a report, there was significant changes in tax behavior of those banks and they paid more taxes than before public country-by-country reporting measures were introduced.[46] And, another study had similar findings, and it concluded that banks that previously operated in tax haven countries saw an even greater increase in tax payments after the measure passed.[47]

V. Conclusion

The SEC has not only the authority, but the obligation to require disclosure of climate risks and opportunities and a broader regime of ESG disclosures. Failing to mandate such disclosure would deny investors the information they need and threaten the continued health of the capital markets. We thank the SEC for seeking public input on this important issue, and we look forward to engaging with any forthcoming rulemakings to implement a robust mandatory climate and ESG disclosure regime for the U.S. markets. If you have any questions, please contact Yevgeny Shrago (yshrago@citizen.org), Rachel Curley (rcurley@citizen.org) and Rob Stewart (rstewart@citizen.org).

Sincerely,

Public Citizen

---

[45] CENTRE FOR INTERNATIONAL CORPORATE TAX ACCOUNTABILITY AND RESEARCH, WHY INVESTORS CARE? GRI GLOBAL REPORTING STANDARDS AND TAX TRANSPARENCY (2019).

[46] Michael Overesch, and Hubertus Wolff, 'Does Country-by-Country Reporting Alleviate Corporate Tax Avoidance? Evidence from the European Banking Sector' (2018). Available at SSRN: https://ssrn.com/abstract=3075784 or http://dx.doi.org/10.2139/ssrn.3075784

[47] K. Habu.,'How aggressive are foreign multinational companies in reducing their corporation tax liability?', Oxford University Centre for Business Taxation working paper WP 17/13 (2017),: http://eureka.sbs.ox.ac.uk/6810/1/WP1713.pdf.

Appendix A – Selected Research and Comments on Political Activity Disclosure

<u>Selected research</u>

To support the original political activity rulemaking petition, key stakeholders have also conducted research to demonstrate the viability and necessity of this rulemaking. Most notably, experts released reports on the constitutionality and materiality of increased disclosure, a preemptive cost benefit analysis of the rulemaking to assist the agency, and the precedent for a move like this from the SEC.

Constitutionality: *Has the Tide Turned in Favor of Disclosure? Revealing Money in Politics after Citizens United and Doe v. Reed* by Ciara Torres-Spelliscy, Stetson University College of Law.

"The Supreme Court was very sympathetic to disclosure and disclaimers in *Citizens United*, saying, '[W]e reject [the] contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy.' Instead, Citizens United gave a full-throated endorsement of disclosure based on both the voters' informational interest as well as, in the case of corporations, the shareholders' interest in holding corporations accountable for their political spending. The Supreme Court also upheld disclosure information about ballot measure petition signatories in *Doe v. Reed* in 2010. The key state interest that campaign finance disclosure laws serve is informing the average voter who paid for a given political ad so that the voter can take that information into account while assessing the ad and its argument about the upcoming election."

Materiality: *In search of El Dorado: The Elusive Financial Returns on Corporate Political Investments* by Michael Hadani, Long Island University, and Douglas A. Schuler, Rice University.

"Although many believe that companies' political activities improve their bottom line, empirical studies have not consistently borne this out. We investigate the relationship between corporate political activity (CPA) and financial returns on a set of 943 S&P 1500 firms between 1998 to 2008. We find that firms' political investments are negatively associated with market performance and cumulative political investments worsen both market and accounting performance. Firms placing former public officials on their boards experienced inferior market performance and similar accounting performance than firms without such board members. We find, however, that CPA is positively associated with market performance for firms in regulated industries. Our results challenge the profit-maximizing assumptions underlying CPA research and focus on agency theory to better understand CPA."

Cost- Benefit Analysis: *A Cost-Benefit Analysis of Corporate Political Spending Disclosure* by Susan Holmberg, Roosevelt Institute.

"Existing evidence on both the dynamics of corporate political spending and the costs and benefits of SEC mandatory disclosure in general, as well as the use of agency theory, an economic framework that highlights the asymmetric interests and knowledge between corporate managers and shareholders, indicate that the range of potential benefits of corporate political spending disclosure – to shareholders and the market – vastly outweigh the possible costs of compliance to public corporations."

Precedent: *The SEC and Dark Political Money: An Historical Argument for Requiring Disclosure* by Ciara Torres-Spelliscy, Stetson University College of Law.

"The SEC has already been regulating corporate money in politics in various guises for the past forty years, and so its jurisdiction on this matter is well established. Furthermore, unlike other nations, such as the United Kingdom, the United States is uniquely ill-equipped to deal with the new and growing phenomenon of corporate political spending, unleashed by the Supreme Court's *Citizens United v. Federal Election Commission* decision in 2010. Much of corporate political spending had simply not been allowed in the US until recently, and thus there are no federal laws or regulations in place to ensure responsible corporate governance will be in place to cope with this type of political spending."

In addition to these and multiple additional research papers, Stetson University professor, Ciara Torres-Spelliscy wrote a book outlining the journey of corporate speech in American politics entitled *Corporate Citizen?: An Argument for the Separation of Corporation and State*.

Selected comments

Below is a sample of comments from the original political activity rulemaking petition submitted by a diverse group of stakeholders including:

- John C. Bogle, founder and former CEO of the Vanguard Group [48]
- Reps. Mike Capuano (D-Mass.), Chris Van Hollen (D- Md.) and 68 other members of the U.S. House of Representatives [49]
- Sens. Elizabeth Warren (D-Mass.), Robert Menendez (D-N.J.), Jeff Merkley (D-Ore.), and 15 other U.S. Senators [50]
- Five state treasurers including Janet Cowell, North Carolina State Treasurer; Seth Magaziner, Rhode Island State Treasurer; James McIntire, Washington State Treasurer, Beth Pearce, Vermont State Treasurer; and Ted Wheeler, Oregon State Treasurer [51]
- The Maryland State Retirement Agency [52] and the New York State Comptroller [53]
- US SIF: The Forum for Sustainable and Responsible Investment and a group of investment professionals, including mutual fund and other institutional asset managers, foundations, religious investors, and financial planners from organizations managing more than $690 billion in assets [54]

---

[48] Comments of John C. Bogle to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 http://bit.ly/2cGv5rs.

[49] Comments of 70 members of the U.S. House of Representatives to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 http://bit.ly/2c8XK5K.

[50] Comments of 17 U.S. Senators to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 http://bit.ly/2c1vHGq.

[51] Comments of the North Carolina, Rhode Island, Washington, Vermont, and Oregon State Treasurers to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 http://bit.ly/2cmcdyG.

[52] Comments of the Maryland State Retirement Agency to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 http://bit.ly/2cGC9V4.

[53] Comments of the New York State Comptroller to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 http://bit.ly/2cdnaQf.

[54] Comments of organizations representing $690 billion in assets to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 http://bit.ly/2cm8FMG.

- 79 foundations including the Carnegie Corporation of New York, Rockefeller Brothers Fund, Ford Foundation, and the Nathan Cummings Foundation [55]
- Amalgamated Bank [56]
- Major unions including the AFL- CIO, [57] AFSCME, [58] and the International Brotherhood of Teamsters [59]
- Professors Lucian Bebchuk and Robert Jackson, Jr., submitting their Georgetown Law Journal article entitled "Shining Light on Corporate Political Spending" [60]
- A bipartisan group of two former SEC Commissioners and Chairs. [61]

---

[55] Comments of 79 foundations to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 http://bit.ly/2bZjsMk.
[56] Comments of Amalgamated Bank to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 http://bit.ly/2cdcWwZ.
[57] Comments of the AFL- CIO to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 http://bit.ly/2cFJYY4.
[58] Comments of AFSCME to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 http://bit.ly/2codKTu.
[59] Comments of the International Brotherhood of Teamsters to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 http://bit.ly/2bW0ZuZ.
[60] Comments of Lucian Bebchuk and Robert Jackson, Jr. to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 https://bit.ly/2RkHHu5.
[61] Comments of William Henry Donaldson, Arthur Levitt, and Bevis Longstreth to the U.S. Securities and Exchange Commission regarding the rulemaking petition 4-637 https://bit.ly/3g8jmA7.

Appendix B – Essential Line Item Disclosures

<u>Climate and Environmental Impact</u>

1. Total annual emissions of carbon dioxide, hydrofluorocarbons, chlorofluorocarbons, perfluorocarbons, pure methane, natural gas, nitrous oxide, sulfur hexafluoride, and nitrogen trifluoride (in CO2e) disaggregated by U.S. zip code and/or country (i.e., location of point source, land area, or the final point of sale for solid and liquid fuels sold to consumers.)
    a. Scope 1 - direct emissions from the issuer
    b. Scope 2 - emissions from energy, heat, and steam purchased by the issuer
    c. Scope 3 - emissions within the issuer's value chain, total and disaggregated by:
        i. From combustion emissions from point sources
        ii. From combustion emissions from nonpoint sources
        iii. From land-use change
        iv. From activities the issuer has provided financing for; and
        v. From activities the issuer has insured.
2. Total annual expenditures on greenhouse gas emissions reductions equipment, technologies, programs, and initiatives; and percent change in total greenhouse gas emissions (in CO2e) from the previous year.
3. The potential amount of direct and indirect GHG emissions embedded in proved and probable hydrocarbon reserves owned or operated by the issuer (in CO2e), categorized by fuel type, and percent change over the previous year.
4. Price sensitivity analysis for all proved and probable reserves owned or operated by the issuer (as outlined as an optional reporting component in the 2011 Modernization of Oil and Gas Reporting Rule) using 1.5 and 2 degree warming scenarios.
5. Total annual expenditures on carbon offsets, resultant estimated total avoided emissions, and resultant estimated total carbon dioxide equivalent stored (with third-party verification).
6. Total annual Scope 1 fuel consumption broken down by country, activity, and type of fuel.
7. Significant fines and non-monetary sanctions for non-compliance with environmental laws and regulation, including a) the total monetary value of significant fines, b) the total number of non-monetary sanctions, and c) number of cases brought through dispute resolution mechanisms.
8. A description of any plans to reduce GHG emissions in alignment with science based targets, including target setting, internal metrics, details of the climate scenarios and long term assumptions considered, expected actual emissions reductions, and expected reliance on carbon offsets or carbon removal (or other technologies to avoid or remove emissions) to reach emissions reduction targets. Additionally, describe whether carbon offsets are being used in a way consistent with the sector specific scenarios that are the basis for emission reduction targets, or as a way to reduce emissions *above and beyond* those required by the chosen scenario. Include all assumed values and formulae used in climate scenario and risk management analyses that supports the organization's qualitative disclosure, risk identification, and risk analysis including:

a. The value used for the social cost of carbon (the value tied to liability cost per ton of emissions) with the minimum value equivalent to that currently used for cost-benefit analysis for federal government regulations
b. Time frames considered in scenario analysis (2030 and 2050 required, with recalibration every five years)
c. Climate scenarios used (baseline, a 1.5 degree scenario, 2 degrees, 3 degrees, 4 degrees, and any others deemed useful)
d. Future fossil fuel price projections through 2050 where relevant to core business
e. Assumptions about development of new/competing technologies, timing of deployment, and market penetration and scalability of benefits
f. Assumptions of policy changes
g. Assumptions around differences in input parameters across regions, countries, asset location, and/or markets
h. Resilience and sensitivity of risk when changing these assumptions
i. Efforts so far to substantiate assumptions and climate targets through internal and external verifiers.

<u>Climate Financial Risk Management</u>

9. Total value at risk of all physical assets for 3, 5, and 10 year time frames for 50, 80, and 99 percentile global warming scenarios.
10. Identification and evaluation of potential financial impact and risk-management strategies related to all climate-related physical risks and transition risks; short, medium and long-term.
    a. Physical risks are financial risks to long-lived fixed assets, locations, operations, or value chains that result from exposure to physical climate-related effects, including:
        i. Increased average global temperature and increased frequency of temperature extremes
        ii. Increased severity and frequency of extreme weather events
        iii. Increased flooding
        iv. Sea level rise
        v. Ocean acidification
        vi. Increased frequency of wildfires
        vii. Decreased arability of farmland
        viii. Decreased availability of freshwater
        ix. Other climate-related issues that could affect:
            1. Products and services
            2. Supply chain and/or value chain
            3. Adaptation and mitigation activities
            4. Investment in R&D
            5. Operations
    b. Transition risks are risks that are attributable to climate change mitigation and adaptation including costs or asset depreciation related to:

i. International treaties and agreements
ii. Federal, state, and local policy
iii. New technologies
iv. Changing markets
v. Reputational impacts relevant to changing consumer behavior and civil society and labor activism
vi. Litigation
vii. Reduced availability of critical insurance products.

11. A description of any established corporate governance processes and structures to identify, assess, and manage climate and other ESG risks, including:
    1. A description of the board's oversight of climate risks and opportunities
        a. How often does the Board or board committees (audit, risk, or others) analyze climate-related issues?
        b. Is climate included when reviewing and guiding strategy, major plans of action, risk management policies, annual budgets, business plans, overseeing major capital expenditures, acquisitions, and divestitures?
        c. Is there a board member responsible for climate-related issues?
    2. A description of management's role in assessing and managing climate and other ESG risks and opportunities
        a. Are there climate-related responsibilities assigned to management-level positions or committees? What is the organization structure?
        b. How is management informed about climate-related issues and how do they monitor them?
        c. Is climate included in criteria determining executive compensation? For instance, are senior executives rewarded for decisions that increase the climate resiliency of the firm or conversely, do current compensation structures incentivize the opposite?

<u>Climate and Environmental Justice</u>

12. A description of the organization's strategy around promoting climate and environmental justice, racial and economic equity, human rights, responsible stewardship of land, natural resources, and local economies, including:
    a. How has your organization historically impacted frontline and fenceline communities, including through pollution and your contribution to climate change? How have you incorporated cumulative effects, to which your organization has contributed in whole or in part, when considering your impact on these communities?
    b. What actions has your organization taken to address environmental and climate injustice, and what were the results of those actions?
    c. What specifically has your organization done to reduce the ecological impacts of corporate activities in the land sector, including through rights-based regenerative practices like soil regeneration, landscape

restoration, and biodiversity enhancement that improves local economies?

d. Describe your outreach and engagement efforts toward members of affected communities in examining your corporate impact and performance on climate and environmental justice.

13. Total annual area of forest land deforested within the issuers value chain.
14. Total annual air emissions disaggregated for the following pollutants: NOx (excluding N2O), SOx, particulate matter (PM10), dioxins/furans, volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons, and heavy metals.
    a. Scope 1 - direct emissions from the issuer
    b. Scope 2 - emissions from energy, heat, and steam purchased by the issuer.
    c. Scope 3 - emissions within the issuer's value chain
    d. From activities the issuer has provided financing for
    e. From activities the issuer has insured
    f. Emitted from point sources within 20 miles of low-income zip codes
    g. Emitted from point sources within 20 miles of zip codes with density over 500 people per square mile or in which Black, Latinx, Indigenous, AAPI, and other residents of color make up over 50 percent of the population
    h. Emitted from end-use activities from products sold to final consumers at locations within 20 miles of low-income zip codes
    i. Emitted from end-use activities from products sold to final consumers at locations within 20 miles of zip codes with density over 500 people per square mile or in which Black, Latinx, Indigenous, AAPI, and other residents of color make up over 50 percent of the population.
15. Percentage of new suppliers that were screened using environmental impact; racial, economic, and environmental justice; and human rights criteria.
16. For any plans to reduce emissions in accordance with science-based targets and the Paris agreement, how the company plans to ensure a just transition for affected workers and communities, including:
    a. Descriptions of job location, job quality, racial composition of workforce, economic development and tax base within the local community, and the racialized effects of the transition on communities
    b. The human rights issues that have emerged due to the low-carbon transition, efforts to mitigate these issues, and plans to manage them moving forward
    c. How the organization has engaged its workers, their communities, shareholders, and stakeholders in pursuit of a fair and equitable transition for your business.

<u>Human Capital Management</u>

17. A description of an organization's strategy towards human capital management; workers' rights and benefits; diversity, equity, and inclusion; employee engagement; talent attraction, development, and retention. Include a description of established grievance

redress mechanisms, the number of grievances received through those mechanisms in the past year, and the nature of the grievances.

18. Number of employees, average annual pay, average annual value of compensation and benefits, and average tenure for each category of employee:
    a. Total
    b. CEO
    c. Senior executive level
    d. Full-time
    e. Part-time
    f. Seasonal
    g. Contract
    h. Represented by a union.
19. Demographic data for the total workforce and for the Board of Directors, broken down by race, gender, and age.
20. Number of worker-related violations, fines, settlements, and work stoppages.
21. Total recordable incident rate (TRIR), fatality rate, and near miss frequency rate for occupational health and safety exposure for direct employees, seasonal, and migrant workers.
22. A description of how the organization through its core business activities has impacted and continues to impact marginalized communities with respect to racial and economic inequality.

<u>Political, Lobbying, and Tax</u>

23. A description of the organization's participation in public policy development, its public policy positions, itemized lobbying expenditures, and any key differences between its lobbying position, the lobbying position of trade groups it participates in, and any stated policies, goals, or other public positions the organization has taken.
    i. A description of the issuer's internal policies and procedures regarding their political activity, including management's and the Board's decision-making process and oversight for making payments.
24. Total monetary value of financial and in-kind political contributions made directly or indirectly, broken down by country and recipient/beneficiary.
25. For each jurisdiction in which an issuer does business: the names of all subsidiaries operating in the jurisdiction, the main activity of each subsidiary, revenue, profit, total value of tax paid, number of employees, stated capital, accumulated earnings, and tangible assets.