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CHAIRWOMAN

ONE HUNDRED SEVENTEENTH CONGRESS

JAMES COMER, KENTUCKY
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

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December 4, 2022

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

Dear Chair Gensler:

Committee Republicans are continuing oversight of the Securities and Exchange Commission's (SEC) proposed rule entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors" ("Climate Disclosure Rule"). On May 4, 2022, Committee Republicans wrote the SEC raising concerns about the scope of the proposed Climate Disclosure Rule and the troubling implications it presents for companies and consumers.[1] In October 2022, the SEC announced it lost public comments for the Climate Disclosure Rule and other proposed rules.[2] The SEC office charged with implementing the Climate Disclosure Rule is suffering from growing staff shortages.[3] Under your tenure, the agency has lost public comments for several proposed rules and is facing an exodus of staff. Even more troubling, if promulgated, the Climate Disclosure Rule will have enormous consequences for America's businesses and retirement accounts.[4] Therefore, we are reiterating our previous requests and requesting additional documents and information.

In October 2022, the SEC announced a technical glitch resulted the loss of public comments for multiple rulemakings.[5] Among the 11 affected rule releases are several controversial proposed rules, including the Climate Disclosure Rule.[6] The error affected comments submitted from June 2021 until August 2022, leading to an unknown number of comments being omitted from the rulemaking process during that time.[7] Altough the agency

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[1] Letter from James Comer, Ranking Member, H. Comm. On Oversight and Reform, et al. to Gary Gensler, Chair, U.S. Securities and Exchange Comm'n (May 4, 2022).
[2] Securities and Exchange Comm'n, Press Release, *SEC Reopens Comment Periods for Several Rulemaking Releases Due to Technological Error in Receiving Certain Documents* (Oct. 7, 2022).
[3] Andrew Ramonas, *SEC Struggles to Stem Staff Losses as Disclosure Workload Grows,* BLOOMBERG LAW (Oct. 3, 2022).
[4] *See* Liz Hoffman, *Washington regulators are backing off a plan to make corporations disclose carbon emissions,* SEMAFOR (Oct. 20, 2022).
[5] *Supra,* n.2.
[6] *Id.*
[7] *Id.*

reopened the comment periods through November 1, 2022,[8] an incomplete account of public views over a 14-month period calls into question the overall process and more specifically, why the comments cannot be recovered and what impact the lost comments may have on the rulemaking.

As we wrote in May 2022, the Climate Disclosure Rule reaches far beyond the intended authority of the SEC to exercise undue surveillance of entities outside the agency's purview.[9] Rather than dedicating resources to fulfilling the SEC's objective to "protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation,"[10] the Rule would impose burdensome and unnecessary requirements on businesses of all sizes, including disclosure requirements of direct and indirect carbon emissions of third-party entities involved in a company's operations—commonly referred to as "Scope 3."[11] Even if Scope 3 was dropped in the final version, the Rule would still constitute a major overstep.[12] The recent Supreme Court ruling in *West Virginia v. EPA* underscores the limits to agencies' rulemaking power.[13] The role of the SEC is to ensure a level financial playing field, not to be the political instrument by which the Biden Administration picks winners and losers.

Further, the SEC is currently operating with a staffing shortage, exacerbated by the agency's uptick in rulemaking activity. The Division of Corporation Finance—the arm that would be responsible for ensuring Climate Disclosure Rule compliance—has lost almost a quarter of its workforce since 2017.[14] However, the same division is also tasked with overseeing corporate filings—the number of which has quadrupled in the last five years.[15] Industry experts estimate anywhere from 18-39 percent of the already-understaffed office would be needed to work on the Climate Disclosure Rule alone.[16] Additionally, the SEC personnel set to oversee Climate Disclosure Rule compliance do not have experience working with environmental and climate-related data.[17] Your agency is losing staff while potentially increasing the workload. This trend will jeopardize the SEC's efficacy and compromise the agency's ability to safeguard investors.

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[8] Baker & Hostetler LLP, Michael Moyer, et al., *SEC Reopens Comment Period for Certain Comments Submitted Between June 2021 and August 2022, Including on Climate-Related Disclosure* (Oct. 20, 2022).
[9] *Supra*, n.1.
[10] Securities and Exchange Comm'n, *About the SEC* (last visited Oct. 25, 2022).
[11] Bill Flook, *Scope 3 Emissions Disclosure Emerges as Top GOP Target in SEC Climate Risk Rules,* THOMPSON REUTERS (Aug. 24, 2022).
[12] *See Supra*, n.1.
[13] *West Virginia v. EPA*, 597 U.S. __(2022); *See* David McIntosh & Mary Thomas, *Club for Growth Foundation to SEC: Pump the Brakes on ESG*, REALCLEAR POLICY (Oct. 7, 2022).
[14] Andrew Ramonas, *SEC Struggles to Stem Staff Losses as Disclosure Workload Grows,* BLOOMBERG LAW (Oct. 3, 2022).
[15] *Id.*
[16] David Burton's Comment for *The Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities and Exchange Commission*, Proposed Rule, Fed. Reg. No. 33-11042 (June 17, 2022), at 8, 9.
[17] *Id.* at 20.

Nearly five months have passed since Committee Republicans requested documents and information about the Climate Disclosure Rule.[18] To date, the SEC has failed to provide any documents. Given the recent announcement that the SEC lost comments from multiple rulemakings, we reiterate our May 2022 request and ask that you provide additional information on the technical glitch leading to the loss of public comments and the SEC's significant staffing turnover. It is important that we better understand the scope of the technical error's effect on the rulemaking process and the prevalence of the staffing issues at the SEC. Please provide the following documents and information as soon as possible, but no later than December 19, 2022:

1. All documents and communications, from January 20, 2021, to present, between or among SEC staff tasked with identifying and remedying the aforementioned technical glitch and its resulting loss of public comments on SEC rules;

2. All documents and communications, from January 20, 2021, to present, referring or relating to the technical glitch and its resulting loss of public comments on SEC rules;

3. All documents and communications, from January 20, 2021, to present, between or among SEC staff responsible for human resources referring or relating to staff shortages;

4. All documents and communications, from January 20, 2021, to present, referring or relating to exit interviews with departing SEC Staff.

Additionally, on or before December 19, 2022, please make arrangements to schedule a staff level briefing with the SEC staff tasked with identifying and remedying the technical glitch.

To schedule delivery of responsive documents and the briefing or to ask any follow-up or related questions, please contact the Committee on Oversight and Reform Republican staff at (202) 225-5074. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,

James Comer
Ranking Member
Committee on Oversight & Reform

cc: The Honorable Carolyn B. Maloney, Chairwoman
Committee on Oversight and Reform

[18] *Supra*, n.1.