United States Senate

WASHINGTON, DC 20510–4606

February 4, 2022

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

Dear Chairman Gensler:

We are writing to urge the Securities and Exchange Commission (SEC) to ensure that, as part of its agenda to improve human capital disclosure, companies report on the numbers of their workers who are not classified as full-time employees, including independent contractors, as well as the entire workforce that is material to the company and its investors (the "material workforce") such as subcontracted workers. We believe that the disclosure of this data is critical to fully capture companies' human capital management.

We applaud the SEC for focusing on strengthening human capital disclosures as part of its regulatory agenda.[1] It is clear that investors need more information to understand how companies treat people, the most critical asset of any company. We agree that investors need disclosures that include quantifiable and comparable datasets that clearly articulate a company's human capital management, such as metrics on turnover, skills and development training, compensation, benefits, workforce demographic, and health and safety.[2] As you have indicated in prior remarks, "Large and small investors, representing literally tens of trillions of dollars, are looking for consistent, comparable, and decision-useful disclosures in these areas to determine whether to invest, sell, or make a voting decision one way or another."[3]

That picture would be wholly incomplete, however, if companies are not required to disclose information about the number of independent contractors they use on a regular basis and the entire workforce that is material to their business strategy. Examples of subcontracted out workers that should be considered part of the material workforce include security personnel, janitors, food service workers, housekeepers for hotels and lodging real estate investment trusts (REIT), and custodial workers. In recent decades, companies have replaced in-house operations with contracting, on-demand work, or other forms of independent and contracted work that lower short-term costs for the business but come at the expense of workers, who receive fewer benefits, lower wages, and have less upward mobility within the organization. This is one of the defining tensions that has emerged as companies have prioritized short-term profits at the expense of investments in their workforce and long-term productivity.[4] As you know, these decisions have material effects on a business' financial performance.

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[1] "SEC Announces Annual Regulatory Agenda, June 11, 2021, https://www.sec.gov/news/press-release/2021-99.
[2] Chairman Gary Gensler remarks from "Prepared remarks at London City Week," June 23, 2021, https://www.sec.gov/news/speech/gensler-speech-london-city-week-062321.
[3] "Remarks before the Investor Advisory Committee," December 2, 2021, https://www.sec.gov/news/statement/gensler-iac-statement-120221.
[4] "Toward a New Capitalism," 2016, https://www.aspeninstitute.org/wp-content/uploads/2017/01/New_Capitalism_Narrative.pdf?_ga=2.67732241.1643886158.1599629662-591143721.1594754367.

We appreciate the SEC is working towards the shared goal of ensuring that investors and shareholders have the information they need to understand companies' human capital management, a critical piece of understanding a company's performance as well as potential long-term, systemic risks to the U.S. economy. We urge you to ensure that future SEC rulemaking captures this long-term trend of companies' increasing use of outsourcing, independent contractors, and subcontracting, which will be a critical data point in understanding companies' human capital management.

Thank you for your attention to this important matter.

Sincerely,

Mark R Warner

Mark R. Warner
United States Senator

Sherrod Brown

Sherrod Brown
United States Senator