Congress of the United States
Washington, D.C. 20515

May 23, 2022

Chair Gary Gensler
U.S. 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 require the disclosure of standardized data of race, ethnicity, gender, sexual orientation, and disability status. As the SEC continues to update its disclosure rules to ensure today's investors have reliable data to make informed investment decisions, such data should be included in all future rulemaking related to human capital management and diversity.

The SEC's recent update[1] to employee and workforce disclosure in Regulation S-K was a helpful step beyond the longstanding requirement that companies disclose only the number of persons employed for the fiscal year. [2] While some companies supplied additional information about workers following the 2020 revisions to Regulation S-K, those disclosures were generally minimal and idiosyncratic from firm to firm.[3]

As you are aware, shareholder proposals are increasingly demanding more data on human capital and diversity, equity and inclusion (DEI). To this end, we would like to highlight certain disclosures that are essential in any SEC rule addressing Environmental, Social and Governance (ESG), and in particular DEI, key components of "S" and "G" in ESG.

To be effective, disclosures should include corporate board, executive leadership and workforce diversity data. The SEC recently approved a "comply or explain" rule regarding corporate board diversity for those listed on the NASDAQ. Research confirms that diverse boards lead to improved financial results, indeed companies with the highest percentages of women board directors outperformed those with the least by 53% when it comes to return on equity. You cannot fix what you cannot or do not measure. Having a diverse workforce is equally as important; and sharing such data is essential in closing decades-old employment gaps among men and women, as well as people of color.

There is a growing number of requests for companies to publicly release data reported to the Equal Employment Opportunity Commission ("EEOC"), or their EEO-1 filings. Many large firms and trade groups, including the Investment Company Institute have submitted comment supporting the required disclosure of EEO-1 filings.

[1] 17 C.F.R. 229.101(c)(2)(ii); Modernization of Regulation S–K Items 101, 103, and 105, Release Nos. 33–10825; 34–89670; File No. S7–11–19] RIN 3235–AL78 (Oct. 8, 2020).
[2] 17 C.F.R. 229.101(c)(1)(xiii) (2019).
[3] Gibson Dunn, Discussing Human Capital: A Survey of the S&P 500's Compliance with the New SEC Disclosure Requirement One Year After Adoption (Nov. 10, 2021).

While there is precedent of gathering voluntarily supplied data on race, ethnicity and gender through the EEO-1 filing, featuring individuals with disabilities in human capital reporting requirements would align with the SEC's core mission of protecting investors, ensuring fair, orderly, and efficient markets, and facilitating capital formation. Collecting and publicly reporting data on disability status is key to closing the employment gap facing individuals with disabilities in the workforce. Recently, a group of investors with over $2.8 trillion in assets under management – including Bank of America, Voya Financial, TD Bank, the California State Teachers' Retirement System, and New York State Comptroller Thomas DiNapoli – signed a joint letter calling on the companies they invest in to take steps to create an inclusive workplace for people with disabilities.[4] Importantly, people with disabilities have long been recognized by Congress, the courts, and executive agencies as a minority group.[5]

Disclosures should include how firms choose to spend their money or not. Supplier diversity and procurements should be tracked and shared with shareholders, so the company and its shareholders know how their investments are being spent and with whom. In the recent report released by the House Financial Services Committee and the Diversity and Inclusion subcommittee, **Diversity and Inclusion: Holding America's Largest Investment Firms Accountable**, it was found that of the firms that responded to the request, just half actually reported spend with a women- or minority-owned firm, while almost two-thirds reported having a policy.

Required disclosures on actual spend and hiring is essential to ensuring firms are accountable and transparent to their current shareholders and potential investors. In April 2021, the House Financial Services Committee passed the ESG Disclosure Simplification Act. This bill would require the Securities and Exchange Commission to issue rules for publicly traded companies to define environmental, social, and governance performance metrics, climate change-related risks, workforce management policies and practices, and require publicly traded companies to disclose materially important information on how those metrics affect their business strategy to shareholders, investors, and the SEC. Providing guidance on human capital reporting is a priority for Congress and shareholders. It is the time now for the SEC to respond to the call for greater data disclosure and clarity.

Sincerely,

Maxine Waters
Chairwoman Maxine Waters
Committee on Financial Services

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

[4] Joint Investor Statement on Corporate Disability Inclusion, Disability:In (July 2019).
[5] See 42 U.S.C §12101(a)(2); *Tennessee v. Lane*, 541 U.S. 509, 516 (2004); 29 CFR Part 1630 (App'x).