



**INSTITUTE FOR REGULATORY ANALYSIS
AND ENGAGEMENT**
EST. 2021

M E M O R A N D U M

To: Hon. Gary Gensler, Chairman, Securities and Exchange Commission
From: Andrew Langer, Chairman, Institute for Regulatory Analysis and Engagement
Date: June 15, 2022
Re: Proposal Regarding Enhancement and Standardization of Climate-Related Disclosures for Investors – RIN 3235-AM87

Chairman Gensler:

The Institute for Regulatory Analysis and Engagement (IRAE) is a recently-created, non-partisan academic public policy organization assessing the impacts of proposed rules and other regulatory proceedings on individual sectors of the economy and the economy as a whole, as well as assessing the efficacy of these proposals, and whether these proposals comply with federal laws requiring the examination of regulatory burdens on small business, federal laws regarding the minimization of paperwork, and whether they comply with executive orders on property rights, transparency, and accountability.

While many entities submitting comments will focus on assessments of direct regulatory costs, and some will also focus on indirect regulatory costs as well, IRAE also looks at lost opportunity costs from regulatory and paperwork burdens as well—since time and capital directed towards fulfilling a government mandate not only presents a direct cost, but that lost productive time and capital also represents an opportunity cost to a regulated entity.

We are deeply troubled that the SEC is undertaking this rulemaking—we believe, like others have commented to the SEC—that this massive rulemaking is outside the scope of the SEC’s delegated authority.

As our colleagues at the Competitive Enterprise Institute have said:

“The current proposal goes beyond the agency’s legitimate powers and is a dramatic change to its standard operating procedure. The SEC’s existing authority to require public companies to make disclosures of financially material information does not extend to environmental and social topics like climate change. Congress has acted multiple times since the SEC was created to give it additional authority to require

disclosures on additional specific topics. It has done this because the SEC does not have plenary authority to make such additional demands on its own. Congress can act at any time to legislate further on climate change and on the financial system, but it has not done so in this case.

The need for clear, specific legislative authority for agency action is not merely a case of bureaucratic box-checking that can be covered with boilerplate references to “the public interest.” While many contemporary legal scholars have criticized excessive delegation of authority from Congress to executive agencies,¹¹ at least authority in those cases was actually delegated. It is far more alarming and subversive to the rule and law and public confidence in the constitutional order for agencies to redefine their own mandate without any input from Congress at all.”¹

Like many of our colleagues, IRAE has serious concerns regarding the scope and implementation of this disclosure proposal. Even using the SEC’s own estimates of direct regulatory costs (a burden of \$6.4 billion for publicly traded companies – an estimate we suspect, given the experience of regulatory agencies massively underestimating burden costs in regulatory proposals), the opportunity costs are massive.

In their 2013 paper, “Federal Regulation and Aggregate Economic Growth”², authors Dr. John W. Dawson and Dr. John J. Seater, both professors of economics, demonstrated the lost economic opportunities from regulation by looking at the direct impact of regulation on the US economy and assessing how these costs impede economic growth.

This is a straightforward concept. The time spent addressing a regulatory mandate is time that is not directed at the productive enterprise of the business. Capital that is spent complying with that mandate is capital that cannot be directed at the productive enterprise of the business. Assuming a full-time-equivalent year of 2000 hours, every 8 hours spent complying with federal mandates is roughly one-half of one-percent of an employee’s productive time.

Based on our assessment of Dr. Seater and Dr. Dawson’s research, IRAE has concluded that for every dollar in direct regulatory cost, there is ***a \$19 multiplier in lost opportunity cost.***

In other words, the potential economic impact of this proposal is not \$6.4 billion, as the SEC suggests (and, again, we think is a serious underestimate of the direct costs). The potential economic impact is really ***\$121.6 billion per year!*** Over the course of a decade (assuming the costs don’t grow with inflation), this means an opportunity cost to the US economy of just over ***\$1.2 trillion!***

Moreover, the timing of this proposal could not be any worse for the American economy. While we are seeing the worst overall inflation the nation has seen in more than 4 decades, gas prices for consumers at the pump are the highest they have ever been—and experts are predicting that this problem is going to get worse before it gets better. The implementation of regulatory proposals such as this will only exacerbate these problems, and serve to undercut the essential

¹ June 2022 Comment Letter from the Competitive Enterprise Institute, et al, to the SEC

² <https://www.jstor.org/stable/42635321>

confidence America's small business and entrepreneurial sectors need to engage in long-range planning.

The Research Center of the National Federation of Independent Business (NFIB) does a monthly survey of small businesses regarding their optimism for the future of the US economy. In their May 2022 survey, they found small business confidence at a **48 year low!**³ Ninety-six percent of those surveyed felt that the current economic climate was **not** a good time to expand their business!

Conclusion

This proposal, which the government's own estimates show would be hugely costly to the American economy, could not come at a worse time. As our colleagues have demonstrated, the proposal would have marginal benefits, have a dubious legal justification, and our own assessment demonstrates that the long term opportunity costs are substantial.

The SEC should abandon this proposal entirely and focus on its core mission, ensuring that investors (and those who rely on the investment world) are protected from real threats and real criminal activity.

³ <https://assets.nfib.com/nfibcom/SBET-May-2022.pdf>