



July 14, 2022

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

Dear Chair Gensler:

We write concerning the U.S. Securities and Exchanges Commission’s (SEC) proposed rule titled, The Enhancement and Standardization of Climate-Related Disclosures for Investors,<sup>1</sup> and in particular the impact the rule would have on small, private firms.

The proposed rule would require publicly traded companies to disclose enhanced climate-related information, including greenhouse gas (GHG) emissions as part of their Scope 1 and Scope 2 disclosures, respectively. The proposed rule goes one step further by requiring registrants to disclose Scope 3 emissions which would include “all indirect GHG emissions not otherwise included in a registrant’s Scope 2 emissions, which occur in the upstream and downstream activities of a registrant’s value chain.”<sup>2</sup>

Scope 3 emission information requirements threaten to extend GHG disclosures well beyond the SEC registrants to nearly every privately owned entity in the country, including countless small firms who often do not have the necessary resources to comply with the significant demands of scope 1 and 2 disclosures. For example, any manufacturer in the country who supplies parts to a publicly traded company would be required to supply GHG emission disclosures as part of the Scope 3 emission requirements of the publicly traded company. In addition, any farm that supplies feed to a publicly traded company would similarly be required to supply GHG emissions information to comply with the scope 3 requirements as a part of the “value chain” of a publicly traded company.

These real-world examples are just a fraction of the many instances where small businesses and private entities will be forced to determine GHG emissions as part of their business relationships with publicly traded companies. However, the impact of the SEC’s proposed rule is considerably broader when you take into account the impact of scope 3 emission on the value chain of financial institutions.

Under the proposed rule, value chain is defined as “the upstream and downstream activities related to a registrant’s operations.”<sup>3</sup> For financial institutions participating in small business lending, this definition would include the countless small businesses who have received financing from a publicly traded financial institution. Publicly traded banks often have numerous and abundant relationships with small business customers, with some financial institutions having more than one million small business customers. As a result, this rule could have a significant impact on privately owned businesses and access to capital.

---

<sup>1</sup> The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334 (Apr. 11, 2022).

<sup>2</sup> *Id.* at § 229.1500(r).

<sup>3</sup> *Id.* at (t).

The inability of small firms to produce this data and the wide reach of the proposed rule would not only burden small businesses, but also financial institutions. In public comment letters to the SEC multiple banking organizations pointed out their inability to collect GHG emission information from privately held companies. Furthermore, the lack of available data from private firms makes it nearly impossible for financial institutions to establish a comprehensive risk analysis.

The Small Business Administration Office of Advocacy (Advocacy) was established by Congress to represent the views of small entities before Federal agencies and Congress. In fulfilling this duty, Advocacy submitted a comment letter to the proposed rule which directly states, “The climate disclosure rules impose fixed costs that will fall disproportionately on small entities” and “Advocacy is concerned about the widespread economic impacts of the proposed climate disclosure rules on both public and privately owned small businesses.”<sup>4</sup>

Not only does Advocacy highlight the dramatic impact on small firms, but it also highlights how the SEC failed to conduct an adequate Initial Regulatory Flexibility Analysis (IRFA) as statutorily required under the Regulatory Flexibility Act (RFA).<sup>5</sup> Specifically, Advocacy states “the IRFA in the proposed rules lacks essential information required under the RFA,”<sup>6</sup> and even more alarming, “the proposal does not consider indirect impacts to privately owned businesses that are not generally subject to SEC regulation.”<sup>7</sup> Considering the importance of small businesses to the U.S. economy, the failure of the SEC to consider the impact of this rule on privately owned businesses and small firms is egregious.

With 32.5 million small businesses operating in the United States,<sup>8</sup> small firms have an oversized impact on the economy by creating roughly two thirds of net new jobs since 1995<sup>9</sup> and representing 39.7 percent of private sector payroll.<sup>10</sup> Currently, small businesses are facing extreme challenges under the Biden Administration through disconnected supply chains and inflation reaching 8.6 percent in May.<sup>11</sup> Thus, it is no surprise that small business optimism is at its lowest point in 48 years.<sup>12</sup>

As the U.S. economy struggles to recover, unleashing a devastating and an unrealistic climate disclosure regime that goes well beyond the publicly traded companies, impacting nearly every small business, is irresponsible. Small firms simply cannot afford the additional burdens of the proposed rule. It is for this reason and the reasons outlined in this letter, that we ask that you rescind this proposed rule to protect small businesses and allow them to drive the U.S. economy.

Sincerely,



Barry D. Haugen, President  
Independent Community Banks of North Dakota  
PO Box 6128  
Bismarck, ND 58506

---

<sup>4</sup> OFFICE OF ADVOCACY, U.S. SMALL BUS. ADMIN. COMMENT LETTER, “The Enhancement and Standardization of Climate-Related Disclosures for Investors – File Number S7-10-22”.

<sup>5</sup> Pub. L. No. 96-354, 94 Stat. 1164.

<sup>6</sup> *Supra* note, 5.

<sup>7</sup> *Id.*

<sup>8</sup> OFFICE OF ADVOCACY, U.S. SMALL BUS. ADMIN., 2021 Small Business Profile, available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143723/Small-Business-Economic-Profile-US.pdf>.

<sup>9</sup> OFFICE OF ADVOCACY, U.S. SMALL BUS. ADMIN., Frequently Asked Question (Dec. 2021) available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/12/06095731/Small-Business-FAQ-Revised-December-2021.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> Consumer Price Index, U.S. Bureau of Labor Statistics (June 10, 2022), available at <https://www.bls.gov/cpi/>.

<sup>12</sup> National Federation of Independent Business, Small Business Economic Trends (May. 2022).