SEIU
Stronger Together

October 22, 2019

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Re: ***Modernization of Regulation S-K Items 101, 103, and 105 (File No. S7-11-19)***

Dear Ms. Countryman:

I am writing on behalf of the Service Employees International Union ("SEIU") to submit this comment in response to the U.S. Securities and Exchange Commission's (SEC or Commission) proposed rule, "Modernization of Regulation S-K Items 101, 103, and 105," (the "Proposed Rule"). SEIU's two million members participate in over 45 public pension funds with a combined $900 billion assets under management. In addition, SEIU's own family of funds have combined assets of $2.4 billion and cover roughly 120,000 participants.

We appreciate the opportunity to share our views on the Proposed Rule. Our comments below focus on proposed changes to reporting rules governing Item 101(c) in Regulation S-K regarding the Narrative Description of Business, and on human capital-related disclosures in particular. In this regard and as detailed below, we believe that a combination of rules-based disclosures with numeric metrics that allow for comparability and more open-ended principles-based disclosures that allow for differences in industry and individual company practices are necessary to provide investors with the most valuable information about human capital management and reflects investors' stated preferences. We appreciate the SEC's focus on ensuring investors get the information they need to make the best decisions on behalf of their beneficiaries.

We offer our thoughts on specific questions in the Commission's release below:

12. Should we shift to a more principles-based approach for Item 101(c), as proposed? Would registrants find it difficult to apply the principles-based requirements?

In our view, it is unlikely that a strictly principles-based disclosure regime would result in information that is consistent, comparable, or efficient for investors to collect and digest. Absent well-defined rules (guardrails) on reporting key human capital information, companies that have suboptimal human capital performance may be incentivized to choose metrics that paint their performance in the best possible light or omit critical information altogether. Or, alternatively, companies that have a strong performance one year, but suboptimal performance another year, may choose to only report certain metrics on years where the results are the best (or reconfigure metrics to present the data in the best possible light), leading to holes in data and reducing comparability.

These potential issues are precisely the types of problems disclosure laws were enacted to address. The purpose of securities disclosure regulation is to narrow information asymmetries between issuers and investors by providing investors with the information they need to make informed decisions about a company's business, risks, and prospects for investment. Not only do prescriptive disclosure requirements create a baseline of visibility into issuers' businesses but they enhance comparability, which allows investors to make rational choices about allocating capital across many different issuers.

Consistency and comparability in reporting promotes efficiency, both for issuers who would have concrete guidance on what to report and how, and for investors who would no longer need to pore through reams of documents to find basic information on the workforce. It allows investors to easily and efficiently compare companies and benchmark performance. Consistency and comparability also levels the playing field between large institutional investors who can demand (and afford) more data from companies on human capital, and smaller retail investors who, on a practical basis, often cannot.

There are also tangible financial benefits to enhanced disclosure – recent research from Embankment Project on Inclusive Capitalism (EPIC) linking financial value to human capital reporting found that firms that disclose data on their ability to create value by leveraging human capital perform better than non-disclosers. In the UK, where issuers are required to report detailed human capital information, firms with stronger human capital reporting show a return on invested talent (ROIT) – defined as the dollar return per one dollar invested in talent – that is nearly 3 times higher than the ROIT of non-disclosers and operating margins that are 33 percent higher than those of non-disclosers.[2]

13. Would the proposed principles-based requirements elicit information that is material to an investment decision? If not, how might Item 101(c) be further improved? Are there any additional disclosure topics that we should include in Item 101(c) to facilitate disclosure? Alternatively, should we exclude any of our proposed disclosure topics?

The proposed principles-based requirements alone are unlikely to yield the more robust human capital information investors need to make well-informed investment decisions. Given the importance of human capital management to business performance, a "hybrid" approach would be more appropriate, where the SEC establishes a limited set of well-defined, baseline disclosure standards for information that is of particular interest to investors and universally-applicable across issuers, regardless of industry or business strategy. These metrics should include the number of full time, part time and contingent workers; workforce costs; workforce diversity; and employee turnover (or comparable workforce stability metric). Mandatory information would be provided in addition to other information on material aspects of human capital resources management which a company would report based on its industry and business strategy. The SEC should provide a list of potentially material factors such as worker recruitment, employment practices and hiring practices, employee benefits and grievance mechanisms, investment in

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[2] Embankment Project for Inclusive Capitalism. (2018). *The 2018 EPIC Report*, 42. Retrieved from: https://www.epic-value.com/#report.

employee training, workplace health and safety, strategies and goals related to human capital management, legal or regulatory proceedings related to employee management, and coverage by collective bargaining agreements.

21. Should disclosure regarding human capital resources, including any material human capital measures or objectives that management focuses on in managing the business, be included under Item 101(c) as a listed disclosure topic, as proposed? Should we define human capital? If so, how?

Yes, disclosure of human capital resources should include material human capital management measures or objectives that management focuses on in managing the business. All human capital-related disclosures, including the baseline metrics we propose above as well as other information material to a company's operations, should be provided in a way that helps investors understand the workforce strategy and how it relates to the company's business strategy. This discussion should also include risks and opportunities related to the workforce strategy.

24. Should we retain an explicit requirement for registrants to disclose the number of their employees? Alternatively, should we permit registrants to disclose a range of the number of its employees and/or a range for certain types of employees?

We believe the SEC should enhance the requirement for registrants to disclose the number of their employees to make it more useful to investors. The current reporting requirement (requiring only the # of employees) is alone insufficient in providing investors with a full picture of the workforce. Given change and disruption in labor markets, we believe that the lack of detailed workforce disclosure may become a material omission. We believe the data should be expanded, as suggested by the IAC in its March 2019 recommendation to the SEC,[3] to include a breakdown of the numbers of full time, part time, and contingent workers. As the IAC notes, these three categories "have distinct implications for the cost and value of a company's workforce." For example, reporting on contingent workers is important as companies increasingly use contingent workers in their operations for various reasons, including flexibility and cost considerations. Investors also need to be able to understand any changes in business strategy and industry trends as companies continue to shift operations toward automation. As part of their reporting, companies should include how they are defining of FT, PT, and contingent employees when providing data.

Since the passage of the '33 and '34 Acts, the SEC has repeatedly revisited disclosure standards/requirements to ensure that they remain useful for investors, including ensuring they are sufficiently robust to allow investors to continue to make well-informed decisions. These disclosures – like other baseline workforce composition data – need not be burdensome to collect: many U.S. public companies already track basic workforce data like headcount and labor costs for administrative purposes such as processing payroll and complying with mandatory DOL reporting requirements. Human resources analytic tools are commonly utilized to assist

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[3] https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac032819-investor-as-owner-subcommittee-recommendation.pdf

with data collection, and firms could leverage the human resources tools and services they already use to satisfy new human capital reporting requirements.

Thank you for the opportunity to share our thoughts on the proposed rule. We are happy to answer any questions or provide additional information that may be useful to the Commission on these issues.

Sincerely,

Renaye Manley
Director of Capital Stewardship
Service Employees International Union