

Congress of the United States

Washington, DC 20515

November 2, 2022

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

Dear Chairman Gensler:

We are writing to request information regarding multiple troubling issues with the Securities and Exchange Commission's (SEC) rulemaking process that the SEC Inspector General (IG) identified in a recent report (October 2022 IG report).¹ The report, which focuses on the most serious management and performance challenges facing the SEC, raises significant concerns that the agency is trying to enact too many rules, too quickly—in some cases using temporary staff with little or no rulemaking experience—to the detriment of investors, businesses, and American capital markets.

From January to August 2022, the SEC proposed twenty-six new rules, which was more than twice as many new rules as it proposed during all of 2021 and more than it had proposed in each of the prior five years.² SEC managers have raised concerns with the IG about the increased number and rushed pace of rulemakings. According to the October 2022 IG report, some managers “believed that the more aggressive agenda—particularly as it relates to high-profile rules that significantly impact external stakeholders—potentially (1) limits the time available for staff research and analysis, and (2) increases litigation risk.”³ In addition, some managers told the IG that “they may not have received as much feedback during the rulemaking process, either as a result of shortened timelines during the drafting process or because of shortened public comment periods.”⁴ This is no way to run an agency. Agency rulemakings should be the product of a deliberative process that involves thorough research, analysis, and feedback, especially from the public. In January, we warned the SEC that its unreasonably short comment periods would harm the quality of public comments.⁵ Unfortunately, the October 2022 IG report demonstrates that this is precisely what has happened.

¹ Office of Inspector General, Report, The Inspector General's Statement on The SEC's Management and Performance Challenges, U.S. Securities and Exchange Commission (Oct. 13, 2022) (hereinafter, “October 2022 IG Report”).

² *Id.* at 2.

³ *Id.* at 3.

⁴ *Id.*

⁵ Letter from Ranking Member Patrick McHenry, U.S. House Committee on Financial Services, and Ranking Member Pat Toomey, U.S. Senate Committee on Banking, Housing, and Urban Affairs, to Chairman Gary Gensler,

To make matters worse, the October 2022 IG report indicates that, to expedite the rulemaking process, your office severely limited the ability of the SEC's advocates for investors and small businesses to review and comment on draft rules. Specifically, your office modified the SEC's internal review process for draft rules by only providing the Office of Investor Advocate (OIAD) and the Office of the Advocate for Small Business Capital Formation (OASB) with fatal flaw drafts for "a brief period of time."⁶ As the October 2022 IG report explains, a fatal flaw draft is "the last draft circulated before the [SEC] votes on a proposed rule, often only a few days before the vote. It is typically the final version of the rule, to be reviewed only for critical issues, and will not incorporate policy revisions."⁷ By largely cutting these offices out of the rulemaking process, your office has restricted their opportunity to provide important and meaningful feedback about the impact of draft rules on investors and small businesses.

In addition to these deficiencies in the SEC rulemaking process, the October 2022 IG report indicates that SEC managers have relied upon temporary staff from outside their organizational areas, including some with little or no experience in rulemaking, to work on rules.⁸ They were forced to use staff that lack the necessary subject matter and rulemaking expertise due to the SEC's increase in staff attrition and difficulties in hiring individuals with rulemaking experience.⁹ Specifically, the October 2022 IG report notes the attrition rate of SEC staff has increased from 3.8 percent in fiscal year 2020 to 6.4 percent in fiscal year 2022—the highest attrition rate in 10 years.¹⁰ In addition, the report projects the attrition rates for senior officers and for attorneys will be 20.8 percent and 8.4 percent, respectively, for fiscal year 2022.¹¹ Unfortunately, the SEC's issues with workforce management are not new. In February 2022, the IG issued a report (February 2022 IG report) raising concerns about the SEC's hiring process that recommended several areas for improvement.¹²

Overall, the October 2022 IG report paints a troubling picture of an SEC that is rushing to enact too many rules, too quickly and without sufficient research, analysis, and feedback—in some cases using temporary staff with little or no rulemaking experience. In light of these concerning revelations, we request that you provide written answers to the following questions by no later than November 16, 2022:

1. What changes to the SEC's rulemaking process do you commit to make in response to the issues identified by the October 2022 IG report?
 - a. Do you commit to extend the comment periods for the SEC's proposed rules of significance to at least 60 days?

U.S. Securities and Exchange Commission (Jan. 10, 2022), https://republicans-financialservices.house.gov/uploadedfiles/2022-01-10_pmc_toomey_letter-gensler_sec_comment_period.pdf.

⁶ October 2022 IG Report at 4.

⁷ *Id.*

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Id.* at 21.

¹¹ *Id.*

¹² Office of Inspector General, *Report No. 572: The SEC Can Improve in Several Areas Related to Hiring*, U.S. Securities and Exchange Commission (Feb. 28, 2022).

- b. Do you commit to provide SEC staff with more time to conduct more research and analysis on draft rules?
 - c. Do you commit to extend the SEC's internal timelines for the rule drafting process?
 2. Why did your office restrict the OASB and OIAD involvement in the rulemaking process?
 3. Did the SEC consider restricting any other offices from their current role in the rulemaking process prior to restricting OASB and OIAD? If so, which offices were considered?
 4. What steps have been taken to ensure that the analysis required by the OASB and OIAD in the rulemaking process is compliant with the SEC Small Business Act of 2016 and Section 915 of Dodd-Frank?
 5. Has the SEC completed its own analysis of whether restrictions on the analysis of the OASB and OIAD would have negative effects on small businesses and investors? If so, what were the SEC's findings on this matter?
 6. The SEC has historically provided commissioners with detailed summaries of public comments received in connection with rules proposed by the SEC before voting on the proposed rules. However, in a recent rulemaking, the SEC failed to provide commissioners with a detailed summary of such comments.¹³
 - a. Why did the SEC abandon its practice of providing detailed summaries of public comments for this rulemaking?
 - b. Do you commit to restoring this practice for all future rulemakings?
 7. Did the SEC offer training regarding the rulemaking process to temporary and newly hired staff prior to their involvement in the rulemaking process? If so, please provide the dates of training and the training materials.

¹³ Commissioner Mark T. Uyeda, U.S. Securities and Exchange Commission, *Statement on the Final Rule: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers* (Nov. 2, 2022) (“In this case, in an apparent rush to approve this rulemaking, I have received the most bare-bones summary – all of two pages long. It provided minimal detail on the comments received and did not even identify commenters by name. It did not respect the important contributions of the 58 commenters, who have taken time and resources to contribute their perspectives. . . . If we are not willing to prepare a detailed comment summary for this rulemaking, then what does it mean for other rulemakings, such as climate disclosure and fund names that have far larger numbers of public comments? The decision not to prepare a detailed comment summary is simply unacceptable.”).

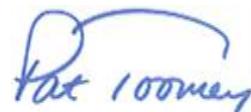
8. Have the SEC's rulemaking teams borrowed staff from other organizational areas or other federal agencies to assist with rulemaking activities?
 - a. If so, how many total staff have been borrowed from other organizational areas or other federal agencies to assist with these rulemaking activities?
 - b. How many total staff have been borrowed from other organizational areas to assist with the SEC's proposed climate disclosure rule?¹⁴
9. What steps has the SEC taken to implement the recommendations for workforce management made in the February 2022 IG report?
10. What steps has the SEC taken to improve workforce management outside of the recommendations made in the February 2022 IG report?
11. The U.S. Office of Personnel Management administers a Federal Employee Viewpoint Survey (FEVS) annually. The FEVS is “an organizational climate survey and assesses how employees jointly experience the policies, practices, and procedures characteristic of their agency and its leadership.”¹⁵ Why has the SEC failed to make public its FEVS 2021 survey results? Please provide a copy of the results.

Thank you for your attention to this important matter.

Sincerely,



Patrick McHenry
Ranking Member
House Committee on Financial Services



Pat Toomey
Ranking Member
Senate Committee on Banking,
Housing, and Urban Affairs

cc: The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
Mr. Nicholas Padilla, Acting Inspector General

¹⁴ *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Proposed Rule of the Securities and Exchange Commission (proposed Mar. 21, 2022), <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.

¹⁵ U.S. Office of Personnel Management, Office of Personnel Management Federal Employee Viewpoint Survey (accessed Nov. 1, 2022), <https://www.opm.gov/fevs/about/>.