

June 15th, 2021

Security and Exchange Commission
100 F Street NE
Washington, DC 20549

Attn: Public Input Welcomed on Climate Change Disclosures

The Center for Law and Social Policy (CLASP) and A New Deal for Youth are pleased to provide comments to the Security and Exchange Commission's request for comments on climate change disclosures.

CLASP is a national, nonpartisan anti-poverty nonprofit based in Washington, D.C., advancing policy solutions for people living in low-income households. CLASP strives to reduce poverty, promote economic security, and advance racial equity. We work at federal, state, and local levels, supporting policy and practice that impacts people living in conditions of poverty.

A New Deal for Youth is a youth-led, youth-centered effort advocating for the creation of new systems, policies, investments, and structures that reimagine life for young people in America. Environmental Justice is one of our core issue areas, with a focus on Indigenous self-determination, shifting power to impacted communities, moving towards a regenerative economy, investing in the green economy, and access to culturally responsive health care.

Introduction

The Securities and Exchange Commission (SEC) has not updated regulations for climate change disclosures in over a decade. In that decade, many communities have seen and felt the detrimental impacts of climate change, specifically Black communities, Indigenous communities, and other communities of color. As the SEC begins their periodic evaluation of regulations for climate change disclosures, they must acknowledge the disproportionate environmental burden that marginalized communities bear, including but not limited to the harmful effects of climate change, urban planning, and the desecration of sacred land. New disclosure requirements should center environmental justice, which works towards the just distribution of decision-making power and resources to foster authentic, community-oriented solutions.¹ Specifically, the SEC should focus on:

- The creation of new decision-making structures that shifts power to Indigenous and other marginalized communities by ending racial capitalism and holding corporations accountable.
- Access to healing centered, culturally responsive physical and mental health care that responds to the health impacts of climate change, ensuring that new policies don't create or exacerbate health inequities.

The New Deal for Youth² would like to offer the SEC recommendations on how new disclosure requirements can work towards environmental justice, specifically through answering questions 6, 12, and 15.

Question 6: Disclosure requirements can be improved by authentically consulting Indigenous communities and other frontline communities.

The SEC plays a critical role in holding corporations accountable for their environmental impacts. In recent years, many corporations have begun voluntarily pledging to reduce their emissions. Despite this, the average company spends a miniscule amount, only 0.13 percent of its revenue, on corporate social responsibility (CSR).³ Meanwhile, corporations significantly contribute to environmental degradation and global climate change. One report found that 70 percent of the world's historical GHG emissions can be attributed to only 100 investor and state-owned fossil fuel companies.⁴ However, energy companies are not the only polluters. Nearly 630 million metric tons of GHG are generated every year by the top 15 U.S. food and beverage companies.⁵ Corporations will not hold themselves accountable and their actions will continue to disproportionately harm BIPOC communities.

To move towards environmental justice, the SEC should empower these communities to hold corporations accountable by creating standardized audited ESG metrics for large public companies in consultation with communities most impacted by climate change and environmental racism. These metrics should respond to the harms frontline communities are facing and work to mitigate those harms moving forward. Creating a standardized metric that responds to community needs will prevent companies from “greenwashing” their environmental commitments. Targets should be mandated, not voluntary. Specifically, the SEC should:

- Authentically consult feedback from Indigenous communities and other communities that have been disproportionately impacted by climate change before releasing a new disclosure document by creating an advisory board composed of impacted community members, including Tribal leaders, environmental justice advocates, young people living in frontline communities, and workers earning low wages. All advisory board members should be compensated for their time and lived experience and their suggestions should be listened to and implemented with fidelity.
- Ensure that revenue companies spend on environmental protection goes directly to the communities most impacted by their past harmful practices and ensure that new practices don't exacerbate existing harms or create new harms for different communities, including global communities.
- Consider how corporate emissions contribute to global climate change patterns that force people off their land, creating a climate refugee crisis. In 2018, the World Bank estimated that Latin American, sub-Saharan Africa and Southeast Asia will generate 143 million more climate refugees by 2050.⁶
- Recognize the full life cycle of products by creating standards around percent reduction in emissions that accounts for scope 1, scope 2, and scope 3 emissions.⁷
- Require reporting on the community health impacts of corporate emissions, particularly in communities already experiencing health inequities.
- Encourage disaggregated data to better understand which communities are being disproportionately harmed by corporate emissions, and which communities are being supported through CSR.
- Implement consequences for corporations that exceed carbon emissions and do not create plans to eradicate carbon emissions.
- Ensure disclosures are available and accessible to the public.

Question 12: If implemented, “comply and exchange policies” must center environmental justice to be equitable.

“Comply and explain” policies have the potential to worsen environmental degradation for marginalized communities by allowing corporations to not comply with stated regulations if they offer an explanation. However, if equitably implemented, “comply and explain” policies could be one mechanism through which corporations are held accountable.

“Comply and explain” should not be the only mechanism through which companies are held accountable, nor should all disclosures follow a “comply or explain” policy. As stated above, certain targets should be mandated. “Comply and Explain” policies often work better for principle-based reporting, compared to rules-based reporting.⁸ Further, “comply and explain” policies could be used to pilot new metrics and best practices, giving corporations time to adjust to new best practices and the SEC the opportunity to revise best practices based on adequate explanations, before mandating compliance.

The SEC should consider the following principles if they institute comply and explain policies:

- **Environmental Justice Principles:** The SEC should develop best environmental justice practices for corporations to either comply with or explain their lack of compliance. These principles should be created by Indigenous communities and other communities impacted by environmental racism and informed by a variety of EJ stakeholders. Best practices should focus on shifting power to communities, including by respecting Indigenous self-determination and treaty rights; undertaking a reparative approach to past harms; disaggregating environmental impact data; and mandating worker representation on corporate boards.
- **Adequate Explanations:** One common issue with “comply or explain” policies is inadequate explanations for failure to comply. The SEC should ensure explanations are adequate including by requiring an explanation of alternative practices the companies plan on undertaking. The SEC should require community buy-in for these alternative practices. Impacted communities should also be allowed to respond to the corporation’s explanation and must accept their alternative practices. If the community does not accept the explanation, corporations should be required to comply with the original practice.
- **Accountability:** The SEC must be willing to pursue litigation against those who do not comply and whose explanation is inadequate, with funds going towards impacted communities harmed by their failure to comply.

Question 15: Climate change disclosures should be part of a broader ESG disclosure framework, that includes health disclosures.

For centuries, Black and brown communities have been plagued and continue to be plagued by environmental racism. Black and brown communities are exposed to higher levels of air, noise, and water pollution and toxic substances such as lead, industrial chemicals, poisonous heavy metals, and pathogens.^{9,10,11} These communities are also more affected by natural disasters such as hurricanes, tornadoes, and wildfires, which are made worse by climate change.¹²

These communities experience environmental racism not by coincidence, but by design – industries often target minority and low-income neighborhoods for environmentally hazardous infrastructure, including hazardous waste facilities and pipelines.^{13,14} These communities are deemed “the path of least resistance.”

Exposure to increased levels of toxins and pollution contributes to health inequities. For example, air pollutants can often lead to hypertension, heart disease, deterioration of the immune system, asthma, diabetes, and mental health challenges.¹⁵ These communities also often lack reliable and affordable access to hospitals and health care, further exacerbating health inequities. Just in the last year, the world endured a pandemic, resulting in more than 600,000 deaths in the United States, with people of color accounting for more than half of those deaths. Studies show that Black people are 1.9 times more likely to die than white people, Latino and Hispanic people 2.3 times more likely, and Native American and Alaskan native 2.4 times more likely to die than white people.¹⁶ While there

is still so much to learn about Covid-19, many knew early on those people with preexisting health conditions were more likely to die.¹⁷

Climate change is also a contributing factor to severe mental health conditions, such as anxiety, depression, post-traumatic stress disorder, and substance use disorders. As more people across the country continue to experience extreme weather conditions, it amplifies and exacerbates their stress levels and leads to more serious mental health symptoms.¹⁸ As climate change continues to worsen, more people will have to migrate to other parts of the world or country to stay safe which can lead to grief and a sense of loss.

ESG disclosures should account for all these factors, recognizing that environmental degradation impacts overall health, wellbeing, economic opportunity, and safety. The SEC should create an ESG disclosure framework that accounts for all these factors.

Conclusion

SEC climate change disclosure requirements can help work towards shifting power to Indigenous communities and other marginalized communities by holding corporations accountable, as they significantly contribute to environmental degradation and global climate change. Environmental justice requires corporations to not just report their carbon emissions and how they are planning to alleviate the risk of high carbon emissions, but also holding them accountable to those commitments. There must be consequences for corporations that do not comply with environmental justice goals – the SEC should pursue litigation against non-complaint corporations and support additional accountability measures, including through financial actions like taxes, and through new legislation. Disclosures should work to ensure corporations and companies are not building or adding air pollutants and other toxins in communities. Additionally, the SEC should ensure that the communities most impacted by climate change have access to healing-centered, culturally responsive physical and mental health care and encourage investments in Black and Brown communities to provide them necessary physical and mental health care to maintain their well-being and live full and healthy lives.

To move towards environmental justice, we need a whole government approach to not just tackling the climate crisis but furthering environmental justice. We appreciate the SEC's commitment to this issue.

If you require additional information about the issues raised in these comments, please contact Kayla Tawa (ktawa@clasp.org) or Whitney Bunts (wbunts@clasp.org)

Sincerely,

Kayla Tawa and Whitney Bunts

¹ <https://newdealforyouth.org/our-issues/>

² [Newdealforyouth.org](https://www.vox.com/21509913/climate-change-bp-microsoft-investors-shareholders-accountability)

³ <https://www.vox.com/21509913/climate-change-bp-microsoft-investors-shareholders-accountability>

⁴ <https://www.nrdc.org/experts/josh-axelrod/corporate-honesty-and-climate-change-time-own-and-act>

⁵ *ibid*

⁶ <https://www.brookings.edu/research/the-climate-crisis-migration-and-refugees/>

⁷ <https://www.nrdc.org/experts/josh-axelrod/corporate-honesty-and-climate-change-time-own-and-act>

⁸ <https://law.lclark.edu/live/files/24227-212article2harperhopdf>

⁹ <https://www.theatlantic.com/politics/archive/2018/02/the-trump-administration-finds-that-environmental-racism-is-real/554315/>

¹⁰ <https://theconversation.com/urban-noise-pollution-is-worst-in-poor-and-minority-neighborhoods-and-segregated-cities-81888>

¹¹ <https://pubmed.ncbi.nlm.nih.gov/31970715/>

¹² <https://tcf.org/content/commentary/environmental-racism-left-black-communities-especially-vulnerable-covid-19/?agreed=1>

¹³ <https://news.umich.edu/targeting-minority-low-income-neighborhoods-for-hazardous-waste-sites/>

¹⁴ <https://abcnews.go.com/US/environmental-racism-black-community-memphis-resists-proposed-crude/story?id=76628841>

¹⁵ <https://www.nature.com/articles/d41586-020-01453-y>

¹⁶ <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>

¹⁷ *Ibid*

¹⁸ <https://www.psychiatry.org/patients-families/climate-change-and-mental-health-connections>