

THE SEC'S PROPOSED **CLIMATE DISCLOSURE RULES**

AUGUST 1, 2022

COMMENT LETTER STATS

By the time the comment period on the SEC's proposed climate disclosure rules closed, the SEC had received approximately 14,000 comment letters. Over 1,000 of these letters were substantive, an extraordinarily high number. In this analysis, we provide statistics on the comment letters and note some of the many significant comment letters submitted.

THE COMMENT PERIOD

In March, the SEC proposed rules that would mandate enhanced climate-related disclosures by public companies. As discussed in our prior client [alert](#), the proposed rules are arguably the most significant new public company disclosure and compliance requirements in a generation. In contrast to the current principles-based approach to climate disclosure, the proposed rules, which are set out and discussed in a 500-plus-page proposing release, take a different tack. They would require specific and detailed disclosures relating to climate matters, including requiring public companies to report at least some emissions data.

The SEC initially provided a two-month comment period on the proposed rules. Following widespread complaints that the comment period was insufficient, including a letter from 28 congressional Democrats and 19 Republicans encouraging extension of the comment period, the SEC extended the comment period to 90 days. The extended comment period ended on June 17.

By the close of the comment period, the SEC had received roughly 14,000 letters—both from erudite commenters and the general public. This is significantly more public input

than is typically received on proposed SEC rules. As a comparison, earlier this year, the SEC received approximately 90 comment letters on its proposed special purpose acquisition company rules and approximately 350 comment letters in response to proposed amendments to Rule 10b5-1. Although a large percentage—more than 70%—of the comment letters on the climate disclosure rules are form letters, that still leaves an extremely large number that are unique and in many cases substantive, as further discussed below.

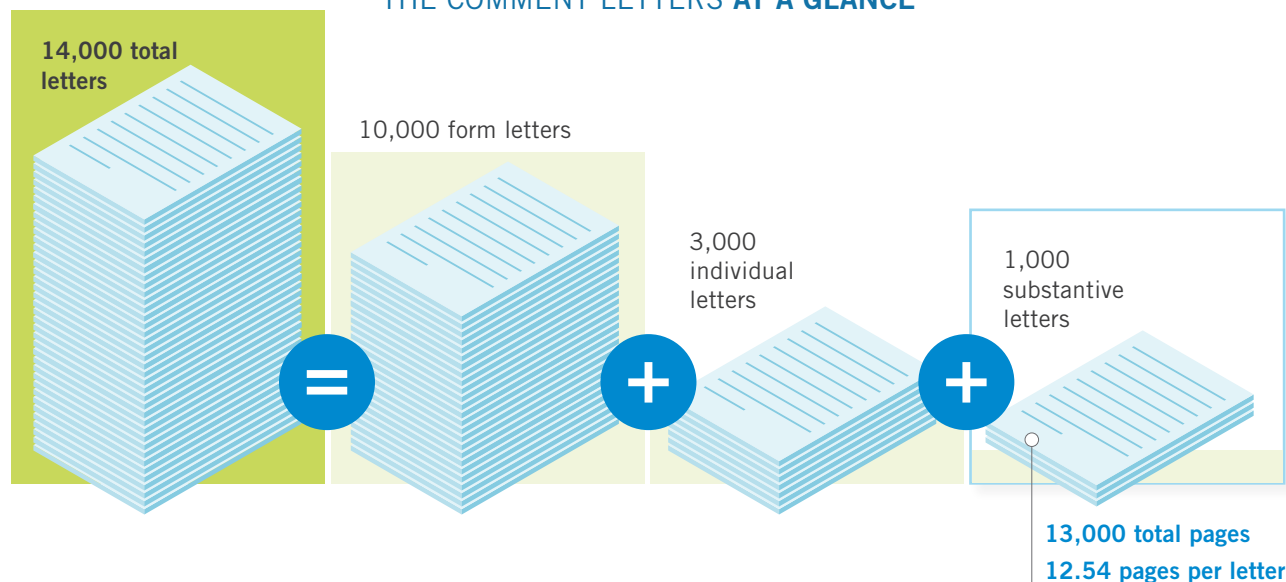
The SEC's analysis of the comments is underway. This is a big job. The substantive comment letters total more than 13,000 pages, averaging out to 12.54 pages per letter. In its Spring 2022 Regulatory Agenda, the SEC targeted October for adopting final rules, although many commentators expect this timing to slip, in part due to the Herculean task of reviewing the comments received on the proposed rules.

BREAKING DOWN THE SUBMISSIONS¹

As noted above, approximately 14,000 comment letters were submitted. Approximately 10,000 of these were form letters, submitted on 28 different forms. Of the remaining submissions, approximately 3,000 were made by individuals. These submissions—some as short as a few sentences—generally note the importance of addressing climate change or advocate for SEC rules addressing climate risk as a part of the societal response to climate change, but do not address the specifics of the proposal. The remaining approximately 1,000 letters generally were more substantive in nature. In this alert, we focus on that last category of submissions.

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THE COMMENT LETTERS AT A GLANCE



NOTE: TOTALS ARE APPROXIMATE

In our review, we broke out the approximately 1,000 substantive comment letter submissions into eight broad categories, as indicated below:

WHO WROTE THE SUBSTANTIVE LETTERS?



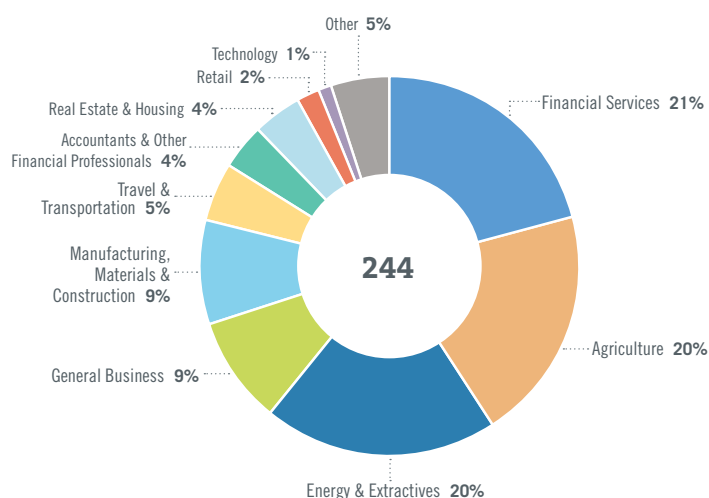
This breakdown, in some cases, is more art than science. It involved judgment calls as to how best to cat-

egorize some letters, based on the topics addressed and how the commenter described itself in its letter and/or on its website. In each category, we also note some of the significant comment letters as a guide to readers who would like to do a deeper dive into the comments (we note that Ropes & Gray attorneys, including the authors of this alert, advised on some of the listed letters). However, keep in mind that this is not an exhaustive list of the thoughtful, substantive letters submitted.

Due to the confluence of the societal importance of climate change, the broad impact of the proposed rules and the substantial compliance costs that would result, comments came from many industries and stakeholder constituencies and from across the political spectrum. Not surprisingly, they ranged from full-throated support for the rules (and in some cases made arguments that the proposed rules do not go far enough) to calls for the SEC to scrap the proposal in its entirety. Since the likely threshold challenges to the rules and the items most at play have been widely written on, including in our earlier alerts, we do not address them here.

Trade Associations/Trade Groups/Industry Groups

Comment letters submitted by industry trade associations, other commercial trade groups and other similar types of organizations came from most industries that would be significantly impacted by the proposed rules. The 244 comment letters we include in this category break down by industry as follows:



Some of the significant comment letters in this category, broken down by industry, are listed below.

Accountants and Other Financial Professionals

- [Association of Chartered Certified Accountants](#)
- [Center for Audit Quality](#)
- [Institute of Chartered Accountants in England and Wales](#)

Agriculture

- [International Dairy Foods Associations](#)
- [National Agricultural Associations](#)
- [National Milk Producers Federation](#)
- [United States Cattlemen's Association](#)

- 28 state farm bureaus, including the [California Farm Bureau](#), [Michigan Farm Bureau](#), [Oklahoma Farm Bureau](#), [Pennsylvania Farm Bureau](#) and [Tennessee Farm Bureau Federation](#)

Energy and Extractives

- [American Fuel & Petrochemical Manufacturers](#)
- [American Petroleum Institute](#)
- [National Mining Association](#)
- [Western Energy Alliance and U.S. Oil & Gas Association](#) (joint letter)

Financial Services

- [American Bankers Association](#)
- [American Council of Life Insurers](#)
- [American Securities Association](#)
- [Bank Policy Institute](#)
- [Council of Institutional Investors](#)
- [Financial Services Forum](#)
- [Independent Community Bankers of America](#)
- [Institute of International Bankers](#)
- [Institute of International Finance](#)
- [Investment Adviser Association](#)
- [Investment Company Institute](#)
- [Securities Industry and Financial Markets Association](#)
- [Securities Industry and Financial Markets Association, Asset Management Group](#)

General Business (Not Industry-Specific)

- [Business Roundtable](#)
- [National Investor Relations Institute](#)
- [Society for Corporate Governance](#)
- [U.S. Chamber of Commerce](#)
- Five state and local chambers of commerce, including the [Greater North Dakota Chamber](#), [Idaho Association of Commerce & Industry](#), [Indiana Chamber of Commerce](#), [North Carolina Chamber](#) and [Salt Lake Chamber](#)

Manufacturing, Materials and Construction

- [American Chemistry Council](#)
- [American Forest & Paper Association](#)
- [Associated General Contractors of America](#)
- [National Association of Manufacturers](#)

Real Estate and Housing

- [Commercial Real Estate Finance Council](#)
- [Nareit](#)
- [National Association of Home Builders](#)
- [National Multifamily Housing Council and National Apartment Association](#) (joint letter)

Retail

- [National Association of Convenience Stores](#)
- [National Restaurant Association](#)
- [National Retail Federation](#)
- [Retail Industry Leaders Association](#)

Technology

- [Electronic Transactions Association](#)
- [Information Technology Industry Council](#)

Travel and Transportation

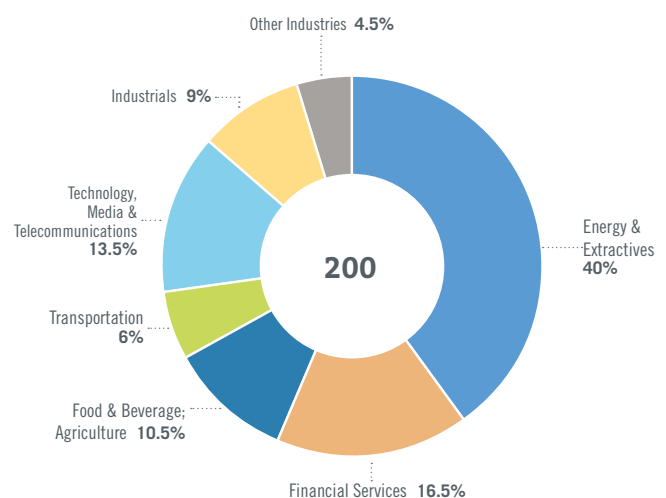
- [Airlines for America](#)
- [American Automotive Leasing Association](#)
- [American Hotel and Lodging Association](#)
- [Association of American Railroads](#)

Other Associations and Groups

- [America's Communications Association](#)
- [Association of Magazine Media](#)
- [Biotechnology Innovation Organization](#)
- [Healthcare Distribution Alliance](#)

Corporates

This category includes U.S. and foreign corporations and other for-profit business enterprises (excluding climate service providers, which are included in a separate category). There are 200 comment letters in this category. The letters come from a wide range of industries. They include some of the largest publicly traded companies, but also privately held companies that would indirectly be impacted by the rules.



Energy and Extractives

- [Barrick Gold Corporation](#)
- [Chevron Corporation](#)
- [ConocoPhillips](#)
- [Dominion Energy](#)
- [Energy Transfer](#)
- [Eni](#)
- [Marathon Oil Corporation](#)

Financial Services

- [The Allstate Corporation](#)
- [Bank of America](#)
- [BNP Paribas](#)
- [Citigroup](#)
- [Deutsche Bank](#)
- [Nasdaq](#)
- [Travelers Companies](#)
- [Wells Fargo & Company](#)

Food and Beverage; Agriculture

- [Diageo](#)
- [Impossible Foods](#)
- [McCormick & Company](#)
- [Performance Food Group Company](#)
- [Tyson Foods](#)
- [Unilever](#)

Industrials

- [Air Products and Chemicals](#)
- [CEMEX](#)
- [Construction Partners](#)
- [Dow](#)
- [Holcim](#)
- [MRC Global](#)

Technology, Media and Telecommunications

- [Alphabet, Autodesk, Dropbox, eBay, Hewlett Packard Enterprise, HP, Intel, Meta, PayPal and Workday](#) (joint letter)
- [Dell Technologies](#)
- [Microsoft](#)
- [Salesforce](#)
- [SAP](#)
- [TELUS](#)
- [Vodafone Group PLC](#)
- [Warner Music Group](#)

Transportation

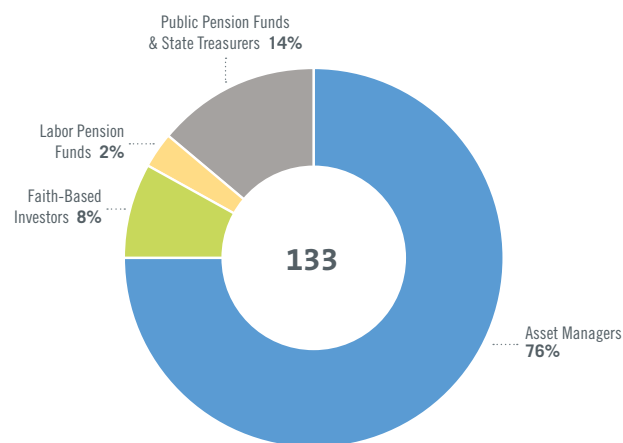
- [FedEx Corporation](#)
- [General Motors Company](#)
- [Schneider National](#)
- [Uber Technologies](#)
- [United Airlines Holdings](#)
- [United Parcel Service](#)

Other Industries

- [Amazon.com](#)
- [Etsy](#)
- [Gilead](#)
- [Walmart](#)

Institutional Investors

This category includes letters from asset managers, labor pension funds, public pension funds and faith-based investors. We include 133 comment letters in this category. Within asset managers, we have included university endowment managers. Within public pension funds, we also have included letters from state treasurers.



Selected letters in this category include the following:

Asset Managers

- [Allianz Group](#)
- [BlackRock](#)
- [Calvert Research and Management](#)
- [Fidelity Investments](#)
- [Harvard Management Company](#)
- [Impax Asset Management](#)
- [Mirova US](#)
- [PIMCO](#)
- [State Street Corporation](#)
- [T. Rowe Price](#)
- [Vanguard](#)
- [Wellington Management Company](#)

Faith-Based Investors

- [Christian Brothers Investment Services](#)
- [Friends Fiduciary Corporation](#)
- [Mercy Investment Services](#)

Labor and Public Pension Funds and State Treasurers

- [AFL-CIO](#)
- [California Public Employees' Retirement System](#)
- [Illinois State Treasurer Michael W. Frerichs](#)
- [Teachers Insurance and Annuity Association of America](#)
- [Washington State Investment Board](#)

Consultants and Other Service Providers

This category includes consultants and other service providers that support sustainability management and disclosure. Although these businesses also may be directly or indirectly impacted by the SEC's rules, they are included in this category if their comment letter appeared to be submitted in their advisory capacity.

The 116 letters in this category are from technology providers, assurance providers and consultants across a range of disciplines. A majority of the letters are from environmental or ESG-related consultants. Thirteen accounting firms, including all of the "Big Four," submitted comment letters.

Selected letters in this category include:

- | | |
|--|---------------------------------------|
| ▪ Actual Systems | ▪ Anthesis Group |
| ▪ Bloomberg | ▪ Climate Advisors |
| ▪ CoreLogic | ▪ Deloitte |
| ▪ ERM CVS | ▪ EY |
| ▪ Jupiter Intelligence | ▪ KPMG |
| ▪ PwC | ▪ Rho Impact |
| ▪ RSM US | ▪ SCS Global Services |
| ▪ WSP USA | |

Academia

The proposal received an especially large number of letters from academia. Seventy submissions are included in this category.

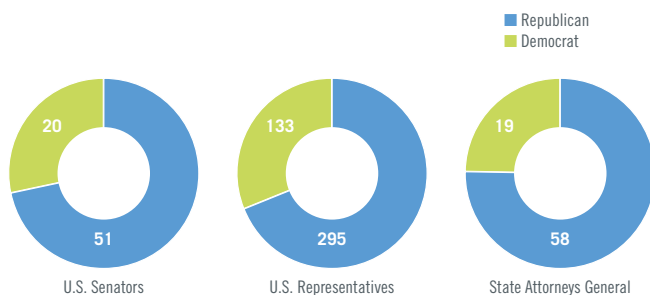
- [John C. Coates \(Harvard Law School\)](#)
- [Lawrence A. Cunningham \(George Washington University\), Corresponding Author, on Behalf of Twenty-Two Professors of Law and Finance](#)
- [Jill E. Fisch, George S. Georgiev, Donna M. Nagy & Cynthia A. Williams, on Behalf of Thirty Securities Law Scholars](#)
- [Sarah Hann \(Washington & Lee School of Law\)](#)
- [Scott Hirst \(Boston University School of Law\)](#)
- [Impact-Weighted Accounts Project \(Harvard Business School\)](#)
- [Daniel Taylor \(The Wharton School, University of Pennsylvania\)](#)

Government

This category includes government agencies, current and former government officials (including, as noted below, prominent former SEC officials), and federal and state legislators. Forty-one comment letters are included in this category.

- *Federal agencies.* Two letters were submitted by federal government agencies: [Environmental Protection Agency](#) and [U.S. Small Business Administration](#).
- *Former government officials.* Four letters were submitted by former government officials. These include a [letter](#) co-signed by 15 former SEC chairs, commissioners and senior SEC staff and a [letter](#) from a former chief of staff of the Environmental Protection Agency.
- *Federal legislators.* Thirteen letters were submitted by federal legislators, which included 499 co-signers in total from Democratic and Republican members of the House of Representatives and Senate. Most of these letters are along party lines.
- *State letters.* Sixteen letters were submitted by state agencies, officials or legislators.

Four of these letters were submitted by groups of state attorneys general. Three of the state attorneys general letters were co-signed by 26 Republican attorneys general in total. The remaining letter was co-signed by 18 Democratic attorneys general and a lone Republican signatory.



*Several legislators and attorneys general signed on to multiple comment letters, as reflected in total count

Two letters were submitted by state governors, with all 17 co-signers being Republican. One letter was submitted by 125 Democratic and Republican state legislators in Kansas. Separate letters were submitted by individual Republican state legislators in North Carolina, Texas and West Virginia.

Letters from state treasurers are instead included in the Institutional Investor category.

Standards Bodies and Ratings Firms

This category includes 36 letters submitted by standard-setting bodies and ratings firms. Letters in this category include the following:

- [Institutional Shareholder Services](#)
- [International Corporate Governance Network](#)
- [International Organization for Standardization](#)
- [Moody's Corporation](#)
- [Morningstar](#)
- [MSCI](#)
- [Value Reporting Foundation](#)
- [World Benchmarking Alliance](#)
- [XBRL US](#)

Other ".orgs"

This category includes 212 letters. Approximately 48% of letters in this category come from environmental-focused advocacy organizations. The other 52% come from think tanks, public policy organizations, advocacy groups and faith-based organizations not solely focused on environmental issues. Comment letters in this category range from short expressions of support or disapproval to hundreds of pages of substantive commentary and supporting materials.

Some of the significant comment letters included in this category are listed below. Letters from trade associations, trade groups and similar organizations are included in a separate category. Placement between these two categories involved the most judgment calls. In many cases, a letter could have been included in either category.

Environmental-Focused Advocacy Groups

- [Americans for Financial Reform Education Fund, Public Citizen, Sierra Club, Ocean Conservancy and Sunrise Project](#) (joint letter)
- [Center for Climate and Energy Solutions](#)
- [Center for International Environmental Law](#)
- [Ceres](#)

Other Advocacy Groups

- [American Enterprise Institute](#)
- [American Investment Council](#)
- [Center for American Progress](#)
- [Consumer Federation of America](#)
- [Financial Executives International](#)
- [Government Accountability & Oversight](#)
- [Interfaith Center on Corporate Responsibility](#)
- [International Federation of Accountants](#)
- [Oxfam America](#)
- [Principles for Responsible Investment](#)

LEARN HOW WE CAN HELP

We would be delighted to speak with you. For further information on our ESG, CSR and business and human rights practice, please contact:



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ABOUT ROPES & GRAY'S PRACTICE

Ropes & Gray has a leading ESG, CSR and business and human rights compliance practice. We offer clients a comprehensive approach in these subject areas through a global team with members in the United States, Europe and Asia. In addition, senior members of the practice have advised on these matters for more than 30 years, enabling us to provide a long-term perspective that few firms can match.

For further information on the practice, click [here](#).

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