

Issue

A wave of regulations in the U.S. and abroad are requiring companies to publicly disclose climate change impacts on their finances, operations, and assets.

- **Federal Rules:** The [U.S. Securities and Exchange Commission \(“SEC”\)](#) released final rules on March 6, 2024, for registered companies to disclose “material” climate-related financial risks. The SEC’s rules are the subject of multiple lawsuits now [consolidated](#) in federal court. If the SEC’s rules take effect and are not delayed, the largest registrants (in terms of “public float”) must include certain climate-related disclosures starting with annual Form 10-Ks filed in March 2026. Additional disclosures ramp-up over time and phase-in to reach smaller registered companies. Key disclosures include:
 - Form 10-K’s audited financial statement must set out expenses, losses, and capitalized costs incurred in the prior fiscal year to address extreme weather and natural conditions related to climate change—where “aggregated amounts” have a 1% or greater financial impact.
 - Scope 1 and 2 GHG emissions assured by a third-party “attestation report.” The SEC rules do *not* require registrants to report Scope 3 emissions from sources in a company’s supply chain.
 - Any voluntary climate target or goal established by the registrant, even if it includes Scope 3 emissions.
 - Expenditures from “physical risks” to buildings such as equipment replaced due to a storm or insurance coverage affected by rising sea levels.
 - Expenditures from “transition risks” to address adaptation to a warming planet such as cap ex plans to install more energy efficient equipment, purchases of renewable energy certificates (RECs), or fines paid to comply with local climate laws.
- **State Rules:** California enacted [S.B. 253](#) and [S.B. 261](#) in 2023. These laws require companies doing business in the state to report on global Scope 1, 2, and 3 emissions. Rules are in development by the California Air Resources Board (CARB) to implement these laws. Their legal status is uncertain because they are [challenged in court](#). Nonetheless, other states are following California’s lead and considering similar laws (e.g., [Senate Bill 897A](#) pending in New York).
- **International Rules:** The European Union’s [Corporate Reporting Sustainability Directive \(CRSD\)](#) applies to U.S. companies with EU subsidiaries, and U.S. companies with listed securities on EU exchanges. The European Parliament has [delayed](#) CRSD implementation by two years (until June 2026) to give companies more time to prepare. CRSD’s reporting topics are much broader than those covered by the SEC and California laws. They go beyond GHG emissions and climate risks to address biodiversity and a range of other environmental, social, and governance topics.

The Roundtable's Position

- Real estate companies do not own or control sources in their supply chains. Thus, they should not be required to publicly report Scope 3 emissions.
- For example, real estate owners and developers do not control operations in tenant spaces. Nor do they control manufacturing processes for construction materials and other goods used in buildings. Accordingly, owners and developers should be under no mandate to quantify and report Scope 3 tenant-based emissions, or embodied emissions that occur in factories during product manufacturing.
- Policymakers can encourage voluntary reporting by helping building owners and developers capture valid and reliable data from Scope 3 sources. For example, governments should develop policies for utilities to provide building owners with anonymized, aggregated data from tenants who pay leased space energy bills directly to the utility. Similarly, government agencies should create a uniform system of “product declarations” for manufacturers to disclose voluntarily embodied carbon in materials purchased by developers and owners.
- Governments and NGOs should strive for consistent climate reporting rules across their respective frameworks. For example, disclosures that satisfy any federal SEC disclosures that take effect should be deemed compliant by states and cities that may develop their own similar GHG reporting laws.
- Reporting cycles should be consistent across varying disclosure regimes, based on when companies collect and verify valid climate-related data within a fiscal year. No framework should require companies to issue a report based largely on estimates, and then another report based on collected and verified data, within the same fiscal year.

Additional Resources

RER fact sheets

- [The SEC's Climate Disclosure Rules: What CRE Should Know](#) (March 12, 2024)
- [California's Climate Disclosure Package: Summary of SB 253 and SB 261](#) (Sept. 2023)

RER comment letters

- [Comments to SEC on proposed climate risk disclosure rule](#) (June 2022)
- [Real estate coalition “joint trades” letter to SEC on climate disclosure](#) (June 2022)
- [Initial comments to SEC on climate reporting](#) (June 2021)

Clean Energy Tax Incentives

Issue

President Biden signed the [Inflation Reduction Act of 2022 \(IRA\)](#) into law on August 16, 2022. The legislation will invest almost \$370 billion over 10 years to tackle the climate crisis.

A number of the IRA's changes to the federal tax code may help the U.S. real estate sector reduce its carbon footprint, particularly:

- A deduction to help make commercial and multifamily buildings more energy efficient (Section 179D);
- A credit to encourage investments in renewable energy generation, storage, grid interconnection, and other “clean energy” technologies sited at buildings and other facilities (Section 48);
- A credit to incentivize EV charging stations (Section 30C); and
- A credit to incentivize energy-efficient new residential construction and major rehabs, including multifamily (Section 45L).

The Real Estate Roundtable (RER) has [encouraged Congress](#) for [years](#) to make clean energy tax incentives more usable for building owners, managers, and financiers—and more impactful to help meet national GHG reduction goals.

The Roundtable's Position

- Davis-Bacon prevailing wage and registered apprenticeship (PW/RA) requirements are a major barrier for real estate companies to access the IRA's clean energy “bonus” tax credits. These labor standards hinder the deployment of energy-efficient and renewable energy construction in buildings.
- If Congress does not eliminate PW/RA barriers, Treasury/IRS should at least enact rules that streamline paperwork and compliance obligations. Building owners are not the “direct” employers of laborers and mechanics on clean energy building projects. They should be able to rely on certifications supplied by contractors who hire these workers, stating that all PW/RA requirements are met.
- The IRA's best opportunities for clean energy deployment are probably the Section 48 investment tax credit (ITC) for solar, wind, and associated storage projects. If those projects generate under 1 MW of electricity, they qualify for a 30% tax credit—and do not have to comply with PW/RA requirements.
- The ITC already covers geothermal and groundwater heat pumps. It should be amended to also cover air source heat pumps and thereby support investments in building electrification.

Energy and Climate

Clean Energy Tax Incentives

- New IRA provisions allow taxpayers to “transfer” certain credits to unrelated third parties. This is an important policy change to enable more clean energy deployment by REITs and other real estate owners who generally have no appetite to benefit from tax incentives. Treasury/IRS should enact rules to optimize the credit “transfer” benefits for mixed partnerships with for-profit and not-for-profit owners.
- The 179D deduction is the tax code’s primary incentive for energy efficiency projects in commercial buildings. The IRA made key improvements to 179D to make it more usable for existing building retrofits. However, more changes are necessary for 179D to have real impact in the marketplace. Congress should:
- Convert 179D to a tax credit *or* eliminate 179D’s current language that reduces property basis by the amount of the deduction. Either change will help make 179D a net benefit to lower tax liability, as opposed to simply providing a timing benefit akin to accelerated depreciation.
- Allow private sector building owners to transfer or “allocate” 179D to architects or engineers—as the law currently allows for government, tribal, and non-profit building owners.

Additional Resources

RER fact sheets

- [Clean Energy Tax Incentives Relevant to U.S. Real Estate](#) (July 2023)
- [Section 48 Investment Tax Credit: “Base” and “Bonus” Rate Amounts](#) (May 2023)
- [Inflation Reduction Act Revenue Provisions](#) (Aug. 2022)

RER comment letters on Treasury/IRS notices and proposed rules:

- [Prevailing Wage and Apprenticeship Requirements Under the IRA](#) (Oct. 2023)
- [Monetizing Energy Credits: Transfer and Direct Pay](#) (July 2023)
- [Clean Energy Tax Credits for Low-Income Communities, Housing](#) (June 2023)
- [Comments on Notice for Section 30C Tax Credits for EV Charging Stations](#) (Dec. 2022)
- [Comments on Notices for 179D Deduction for Energy Efficient Buildings, Section 48 Investment Tax Credit, and Section 45L Tax Credit for Residential Construction](#) (Nov. 4, 2022)

Issue

No federal agency has authority from Congress to regulate private sector buildings through a national building performance standard (“BPS”). A number of cities and states ([map](#)) have filled this federal regulatory vacuum by enacting BPS mandates in their jurisdictions to lower energy use, reduce GHG emissions, or install heat pumps and other electrification equipment.

Failure to meet local BPS requirements can result in fines and penalties if buildings do not reach emissions or electrification “targets” by certain deadlines.

The Biden-Harris administration has enabled this state/city trend by launching a [National BPS Coalition](#) that convenes numerous localities committed to enacting BPS laws. The U.S. Department of Energy will make federal funds available to state agencies which can then dole out loans and grants to help owners that apply for financial support to comply with local BPS laws. The Roundtable has developed a policy guide for state and local real estate advocates on the key issues and talking points that should be raised before city council and statehouses as they develop climate-related performance mandates on buildings.

Although the federal government cannot *mandate* standards for building performance, the U.S. Environmental Protection Agency (EPA) and Department of Energy (DOE) are developing *voluntary* programs for buildings to reduce GHG emissions. EPA and DOE guidelines may establish more achievable and straightforward criteria for building owners compared to the complex patchwork of state/local BPS that have emerged.

Meanwhile, non-governmental organizations (NGOs) have developed their own BPS-type standards and climate accounting frameworks. Some have international influence across global markets.

Chief among these are the Science Based Targets Initiative (SBTi) and World Resources Institute’s Greenhouse Gas (GHG) Protocol. Government bodies increasingly incorporate GHG Protocol and SBTi standards in their policies. Likewise, major real estate lending and equity institutions have also adopted these NGO frameworks to align with their ESG investment principles.

The Roundtable's Position

- As discussed in RER's new BPS policy guide, BPS laws can create complex challenges for real estate stakeholders to navigate, and the U.S. Department of Energy (DOE) has an important role to play in ensuring BPS laws are fair and effective. DOE officials, along with state and local lawmakers, should use the policy guide to shape how BPS laws are designed and implemented. Key points from the policy guide include: develop science-based and data-driven standards, align standards across jurisdictions, and provide clear compliance resources and fair remedies.
- Voluntary federal guidelines—such as DOE's National Definition of a Zero Emissions Building ([ZEB](#)), and EPA's "[NextGen](#)" label for low-carbon buildings—provide consistent and rational standards for local jurisdictions and NGOs that create BPS frameworks.
- Cities, states, and NGOs should rely on federal DOE and EPA policies before re-inventing the wheel with their own building emissions programs that impose unattainable standards and punitive fines.
- A "zero emissions" building is generally a long-term aspirational goal. DOE's ZEB attainment horizon must be grounded in a business case for life-cycle investments to install electrification equipment only when oil, gas, or steam-fired boilers become functionally obsolete. It is worse for the environment to rip out working systems that are still useful to heat and cool buildings for years to come.
- DOE's "zero" emissions ZEB definition should work in tandem with EPA's "low" carbon Next Gen certification. The agencies should recognize that satisfying NextGen criteria is a key intermediate signal to the marketplace that a building is on the path toward ZEB status.
- EPA's [Portfolio Manager](#) provides the industry-wide, standard tool to measure a building's energy use and carbon emissions. Any BPS program should rely on Portfolio Manager as the evolving tool to capture climate-related metrics for real estate.
- Some localities and NGOs want CRE owners to use 100% clean power at their buildings. This is impossible to achieve unless electric grids, district steam systems, and other offsite energy infrastructure are also 100% clean. Yet, a decarbonized grid remains a distant aspiration according to [EPA's eGRID data](#).
- If policymakers want to drive in the direction of decarbonized buildings then they must also impose measures to decarbonize the power grid at the same pace. Until both buildings and the grid are fully decarbonized, policymakers must provide real estate portfolios with opportunities for off-site market-based clean power procurements—such as purchases of Renewable Energy Certificates (RECs)—to meet renewable energy goals.

Building Performance and Electrification

- Market-based clean power purchases must be supported by guidelines to ensure high quality and avoid the appearance of “greenwashing.” For example, the [EPA’s Green Power Partnership](#) criteria for RECs, the Biden-Harris Administration’s [joint principles](#) to support voluntary carbon markets, and the [Commodity Future Trading Commission’s](#) proposed guidelines for carbon offsets should become industry standards for BPS compliance.

Additional Resources

RER policy guide:

- [Lessons Learned to Shape Fair and Reasonable Building Performance Standards \(BPS\) 20-Point Guide](#) (Oct. 2024)

RER fact sheets and newsletter articles:

- Fact Sheet: Building Performance Standards (Oct. 2024)
- Roundtable Weekly, [“White House Announces Guidelines for a ‘Zero Emissions Building’](#) (June 7, 2024)
- Roundtable Weekly, [“Administration Unveils Principles for Carbon Offset Markets”](#) (May 31, 2024)
- Roundtable Weekly: [“EPA Releases ‘Next Gen’ Criteria for Low-Carbon Buildings”](#) (March 22, 2024)
- Roundtable Weekly: [“Roundtable and Nareit Comment on National Definition for a Zero Emissions Building”](#) (Feb. 2, 2024)
- Roundtable Weekly: [“CRE Coalition Asks EPA to Help Standardize Conflicting State, Local Building Emission Laws”](#) (Sept. 15, 2023)
- Fact sheet: [Science-based Targets Initiative \(“SBTi”\)](#) (Aug. 9, 2023)

RER comment letters:

- [RER letter to US-DOE regarding Inflation Reduction Act Support for BPS – Round 1 Grants](#) (Oct. 2024)
- RER and Nareit joint [letter](#) and [technical comments](#) on US-DOE’s ZEB definition (Feb. 2024)
- [Real estate coalition “joint trades” letter to EPA supporting Portfolio Manager](#) (Sept. 2023)
- [RER/Nareit supplemental letter to SBTi](#) (Aug. 2023)
- [RER/Nareit comments to SBTi on building sector guidance](#) (July 2023)
- [RER comments to EPA on proposed “Next Gen” criteria](#) (March 2023)
- [RER comments on EPA’s use of Inflation Reduction Act funds](#) (Jan. 2023)
- [RER comments to Institute for Market Transformation \(IMT\) on “model” BPS law](#) (April 2021)

Installation Building HVAC – Federal Regulations

Issue

The U.S. Environmental Protection Agency (EPA) is accelerating the phasedown of hydrofluorocarbons (HFCs), commonly used in air conditioning and refrigeration systems, with significant impacts on real estate owners and developers.

Hydrofluorocarbons (HFCs) are a class of greenhouse gases widely used as refrigerants in air conditioning (AC) equipment like chillers and heat pumps, as well as cold storage equipment installed in residential, commercial, and industrial buildings. Many HFCs have a very high global warming potential (GWP), allowing them to trap significantly more heat in the atmosphere than carbon dioxide. About [20%](#) of global electricity consumption in buildings is from space cooling, which often uses high-emissions refrigerants. This makes HFCs a major contributor to climate change, despite their ozone-friendly properties.

In 2020, the U.S. Congress passed the American Innovation and Manufacturing (AIM) Act, requiring the phasedown of HFCs and a transition to new technologies with lower emissions impacts. The AIM Act requires that the production and consumption of HFCs in the U.S. be reduced by 85% by 2036; and that building owners transition to low-GWP technologies when old equipment reaches the end of its lifecycle and when new buildings are constructed.

On June 26, 2024, the EPA published [proposed rules](#) on the HFC phasedown and technology transition, and on October 11, 2024, the EPA published [final rules](#) governing leak detection and repair of equipment that uses HFCs. These new rules will require the adoption of new technologies and refrigerants that reduce greenhouse gas emissions, affecting the design, installation, and management of AC systems. Key deadlines for installation start in 2026 and 2027.

The Roundtable's Position

- While the new rules may help lower emissions, they pose key challenges to the real industry that, if left unaddressed, may impose severe costs and regulatory burdens. The EPA should work in partnership with real estate stakeholders to resolve these issues.
- The quickly approaching installation deadlines do not address the challenges associated with permitting and construction timelines. Ongoing developments often require approved permits years before construction starts. The 2026 installation deadline could force developers to repeat or restart lengthy design, contracting, and permitting processes. The EPA should extend installation deadlines to provide a fair HFC transition for real estate assets.

Installation Building HVAC – Federal Regulations

- AC and refrigeration equipment is governed by mechanical, fire, and other building codes, which must be navigated alongside the HFC phasedown and technology transition. The rules do not address the alignment of AIM Act deadlines with state laws and building codes at the local level, posing a significant challenge for compliance.
- The EPA should publicize and track all of the residential and commercial building code updates across the U.S. needed to allow use of A2L and other refrigerants with low global warming potential. The EPA should also develop a holistic building code amendment strategy with model code bodies, state legislatures, and the buildings sector.
- Once existing systems reach the end of their useful life, buildings will need to be retrofitted to accommodate new AIM Act-compliant technologies. However, this can involve considerable costs, including changing building designs, floorplates, and layouts; and getting retrofits approved by local permitting and zoning bodies. The rules do not address the cost-effectiveness of retrofits, potentially leaving some buildings stranded in noncompliance.
- The EPA should clarify what, if any, regulatory impact will arise on existing buildings' AC and chiller systems when they reach the end of their "useful lives." Guides and resources to assist property owners with capital expenditure budgeting to support life-cycle investments in building AC and cooling equipment should also be provided.

Additional Resources

RER fact sheets and newsletter articles:

- Fact Sheet: EPA Rules on HFC Phasedown and Transition (Nov. 2024)
- Roundtable Weekly, "[EPA Issues New Rules Impacting Building Air Conditioning Systems](#)" (Sept. 27, 2024)

RER comment letters:

- [RER comments on EPA's proposed rules regarding the Phasedown of HFCs Under the AIM Act](#) (Sept. 2024)