Corporate Sustainability Financial Disclosures

Issue

Governments in the U.S. and abroad are increasingly considering requirements on companies to publicly disclose how their operations impact the environment and in particular, how they are affected by climate change.

- In spring 2024, the U.S. Securities and Exchange Commission ("SEC") is expected to finalize a first-ever federal rule for registered companies to disclose, and report in 10-Ks and other filings, "physical" and "transitional" financial risks they confront due to climate change. Disclosures are intended to cover information that is "material" to investors. The SEC's proposed rule from 2022 generated a record number of stakeholder comments. The proposal recommended that companies must quantify and verify Scope 1, 2, and (to a lesser degree) Scope 3 emissions—with a "safe harbor" afforded to Scope 3 estimates. The SEC's anticipated final rule in 2024 could differ significantly from what the Commission originally proposed in 2022.
- In summer 2023, the California legislature beat the SEC to the punch. It enacted the first laws in the U.S. (S.B. 253 and S.B. 261) that require companies doing business in the state to report on their global Scope 1, 2, and 3 emissions. Rules are in development by the California Air Resources Board (CARB) to implement the climate law passed in Sacramento. Other states could follow California's lead and pass similar laws.
- 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-regulated markets. The European Commission made CRSD effective in January 2023; EU member states have until July 2024 to incorporate CSRD's standards into national law. CRSD's reporting topics are much broader in scope that the regimes proposed by the SEC and enacted in California. They go beyond GHG emissions and climate risks to address a spectrum of biodiversity and other environmental, social, and governance topics.

The Roundtable's Position

- Data is key. Real estate companies should not be required to report on climate and other impacts if they do not have high-quality and credible underlying data to support those disclosures.

Corporate Sustainability Financial Disclosures

- Reporting cycles should be consistent, based on when companies actually collect and verify valid data within a reporting year. No regime should require companies to issue a report based largely on estimates, and then another report based on collected and verified data, within the same reporting year.
- Data reliability issues are pronounced when it comes to indirect Scope 3 “value chain” emissions. Governments enacting climate disclosure laws must develop complementary policies for real estate companies to capture valid data from their Scope 3 sources.
- For example, agencies should develop like-kind requirements on utilities and tenants to provide emissions and energy use information for “downstream” leased spaces. Similarly, data on embodied carbon in construction and other materials should be provided to real estate owners and developers from the “upstream” manufacturers who produce those items.
- Compliance deadlines for Scope 3 reporting must be on a later timetable relative to Scopes 1 and 2. More time is needed for companies to develop internal reporting infrastructure and coordinate with accountants and their third-party verifiers to assure remote and indirect “value chain” estimates.

Additional Resources

RER fact sheets with more details

- *The SEC’s Proposed Rule on Climate-Related Disclosures for Investors (April 2022)*
- *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, and other "clean energy" technologies sited at buildings and other facilities (Section 48);
- A credit to incentivize the installation of EV charging stations (Section 30C); and
- A credit to incentivize energy-efficient new residential construction, including multifamily (Section 45L).

The Real Estate Roundtable (RER) has encouraged Congress for a number of 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 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 on building owners who are not generally the "direct" employers of subcontractor laborers and mechanics who work on clean energy building projects.
- The IRA's best opportunities for clean energy deployment are probably the Section 48 investment tax credit 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 IRA's provisions that allow certain credits to be "transferred" to independent third parties have great potential 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 benefits of credit transfer for mixed

partnerships with for-profit and not-for-profit owners.

- The 179D deduction is the tax code's primary incentive intended to support energy efficiency projects in commercial buildings. The IRA made some key improvements to 179D, particularly for existing building retrofits. However, more changes are necessary for 179D to have real impact in the marketplace. Congress should:
    - Either 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 179D to be transferred or "allocated" to architects or engineers—as the law currently allows for government, tribal, and non-profit building owners.

Additional Resources

RER fact sheets with more details:

- 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 comments 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)

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Energy and Climate

Building Performance and Electrification - Standards and Guidelines

Issue

Congress has not granted authority to U.S.-EPA, U.S.-DOE, or any other federal agency to implement a national building performance standard ("BPS") that imposes mandatory limits on private sector real estate assets to lower energy use, reduce greenhouse gas emissions, or install heat pumps and other electrification equipment.

- However, this federal regulatory vacuum has prompted a number of cities and states (map) to enact mandatory BPS requirements—with potential fines and penalties if buildings do not reach their emissions or electrification "targets" by certain compliance deadlines. To enable this trend, the Biden-Harris administration has launched a National BPS Coalition of numerous localities that have enacted, or committed to enact, BPS laws within their jurisdictions by Earth Day 2024.
- Meanwhile, non-governmental organizations (NGOs) are developing their own BPS-type standards that have international influence across global real estate markets. Chief among these are the World Resources Institute's Greenhouse Gas (GHG) Protocol and the Science Based Targets Initiative (SBTi). These NGOs have developed complex and technical regimes aimed at measuring, accounting for, and lowering building emissions. 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 help meet their own ESG investment principles.
- The complex and varying patchwork of state, city, and NGO building standards have made compliance difficult if not impossible for real estate owners with nationwide and international asset portfolios. The Roundtable has thus turned to the White House and federal agencies to collaborate on a voluntary set of national standards, protocols, and tools—developed with our industry's input—that might level-set and bring consistency to the confusing nature of cross-border BPS programs.

The Roundtable's Position

- Voluntary federal guidelines—such as U.S.-DOE's proposed national definition for a Zero Emissions Building (ZEB), and U.S.-EPA's "NextGen" label for low carbon buildings—have great promise to bring consistency and rationality to BPS mandates enacted by localities and encouraged by influential organizations. These federal initiatives can help establish ambitious—but realistic and achievable—emissions targets.

- A "zero emissions" building is an aspirational goal over time. ZEB's attainment horizon must be grounded in realistic expectations and a business case to invest in electrification when gas-fired boilers and other fossil fuel-based building systems reach the end of their useful lives.
- DOE's "zero" emissions ZEB definition should work in tandem with EPA's "low" carbon certification. Striving for NextGen certification should be acknowledged as the key intermediate step on the path to attaining ultimate 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 key its measurement and reporting requirements to the pace at which Portfolio manager evolves to capture those emissions.
- A building will not reach "low" or "zero" carbon levels unless the electric grid and district thermal systems that serve those assets are also at "zero" or "low" carbon levels. It is thus crucial to provide real estate portfolios with opportunities for market-based clean power procurements—such as purchases of Renewable Energy Certificates (RECs)—to meet aspirations that a building is powered by 100% renewable energy.
- Market-based carbon accounting must be supported by guidelines to ensure their high quality and avoid the appearance of "greenwashing." For example, EPA's Green Power Partnership criteria for RECs and the Commodity Future Trading Commission's imminent guidelines for carbon offsets should become industry standards for BPS compliance.

Additional Resources

RER fact sheets with more details:

- U.S.-DOE's Draft Voluntary Zero Emissions Building "ZEB" Definition
- Science-based Targets Initiative (SBTi) (Aug. 2023)
- "NextGen" EPA Label for Low-Carbon Buildings (March 2023) Clean Energy Tax Incentives Relevant to U.S. Real Estate (July 2023)
- Section 48 Investment Tax Credit: "Base" and "Bonus" Rate Amounts (May 2023)

Building Performance and Electrification - Standards and Guidelines

- *Inflation Reduction Act* Revenue Provisions (Aug. 2022)

RER comments letters:

- 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)