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Please see attached our letter on the Proposed California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Initial Regulation.



February 6, 2026

Via Electronic Submission

Clerks' Office
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Proposed California Corporate Greenhouse Gas Reporting and Climate-Related
Financial Risk Disclosure Initial Regulation

Ladies and Gentlemen:

The Bank Policy Institute¹ appreciates the opportunity to comment on California Air Resources Board's ("CARB") Proposed California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Initial Regulation, published on December 23, 2025 (the "Proposed Initial Regulation"), which implements California Senate Bill ("SB") 253 (2023) and SB 261 (2023), each as amended by SB 219 (2024) (such bills, as amended, "SB 253" and "SB 261," respectively, and collectively, the "Climate Laws" or "Laws").²

¹ The Bank Policy Institute (BPI) is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ nearly 2 million Americans, make nearly half of the nation's small business loans and are an engine for financial innovation and economic growth.

² BPI previously submitted a comment letter, dated March 21, 2025, in response to CARB's information solicitation seeking feedback to inform its implementation of the Climate Laws. See BPI, *Information Solicitation to Inform Implementation of California Climate Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219* (Mar. 21, 2025), available at <https://bpi.com/wp-content/uploads/2025/03/BPI-CARB-Comment-Letter-March-2025.pdf>. BPI also submitted a comment letter, dated September 11, 2025, following CARB's August 2025 public workshop regarding its implementation of the Climate Laws. See BPI, *SB 253/261/219 Public Workshop: Regulation Development and Additional Guidance (August 21, 2025)*, available at <https://bpi.com/wp-content/uploads/2025/09/BPI-CARB-Comment-Letter-September-2025.pdf>. BPI recognizes that there is ongoing litigation regarding the Climate Laws. BPI is submitting this letter to provide

I. Executive Summary

Our members actively evaluate climate-related financial risks and their potential impacts and are developing resources to develop risk management capabilities to identify, measure and mitigate these risks. In the context of general corporate disclosures, many of our members already publish extensive climate-related information, including with respect to certain greenhouse gas (“GHG”) emissions and climate risk management.

We appreciate the CARB staff’s continued efforts to solicit feedback to help inform, and to provide guidance regarding, CARB’s implementation of the Climate Laws, including through the Proposed Initial Regulation, as well as an anticipated subsequent rulemaking to address SB 253 reporting requirements applicable in 2027 and beyond (the “Subsequent Regulation”).³ Although we recognize that the Proposed Initial Regulation only proposes August 10, 2026 as the first-year reporting deadline under SB 253, with future reporting deadline under SB 253 to be established in the Subsequent Regulation, we continue to be deeply concerned about the annual reporting deadline under SB 253, because of the complexity and challenges associated with GHG emissions reporting, particularly scope 3 emissions, as well as related assurance requirements.

To address this significant concern, certain ambiguities in the Proposed Initial Regulation, as well as the uncertainty related to the first-year reporting timeline under SB 261, and to ensure that meaningful climate-related information is provided to California consumers, investors and members of the public without undue burdens on reporting entities⁴, we urge CARB to consider the following recommendations in connection with its implementation of the Climate Laws:

- CARB should establish December 31 as the annual deadline for GHG emissions reporting under SB 253, starting with the first-year report due in 2026.
- CARB should provide reporting entities with maximum flexibility with respect to the reporting period covered by reports under SB 253.
- CARB should clarify that the proposed definition of “revenue” incorporates the relevant

comments on the Proposed Initial Regulation in connection with CARB formal rulemaking process and is not expressing any view on the litigation. In addition, this letter does not take a position on or otherwise waive potential arguments relating to the authority of a state regulator to require reporting of information and payment of a fee in connection with such reporting from a national bank under applicable law, including 12 U.S.C. § 484.

³ CARB, *Staff Report: Initial Statement of Reasons* (Dec. 9, 2025), available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/sb253-261/isor.pdf> (the “Staff Report”); CARB, *California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs: Frequently Asked Questions Related to Regulatory Development and Initial Reports* (Nov. 17, 2025), at 2-3 (item 3) available at https://ww2.arb.ca.gov/sites/default/files/classic/FAQs%20Regarding%20California%20Climate%20Disclosure%20Requirements_Nov.pdf (the “FAQs”).

⁴ We use the term “reporting entities” to generally refer to both “reporting entities” as defined in SB 253 and “covered entities” as defined in SB 261 for purposes of this letter, unless otherwise specified with respect to a particular Climate Law.

regulations and interpretations regarding the definition of “gross receipts” under the California Revenue and Taxation Code (“RTC”) and that an entity’s gross receipts amount as reported in its tax filings with the California Franchise Tax Board (“FTB”) is determinative of the entity’s revenue for purposes of determining its “revenue” under the Climate Laws.

- CARB should clarify that the proposed definitions of “doing business” and “doing business in California” incorporate the relevant regulations and interpretations regarding the definitions of “doing business” and the relevant prongs of “doing business in this state” under the RTC and an entity’s in-state sales amount as reported in its tax filings with the FTB is determinative of the entity’s in-state sales for purposes of determining whether the entity is “doing business in California” due to its in-state sales under the Climate Laws.
- CARB should clarify certain aspects of the fee proposal to reduce uncertainty and increase efficiency in the implementation of the fee determination, invoice and payment processes.
- We continue to urge CARB to permit maximum flexibility under the evolving GHG Protocol standards and guidance and avoid prescriptive reporting format in connection with its implementation of the Climate Laws.
- To reduce the uncertainty arising from the pending litigation regarding the Climate Laws and related burdens on reporting entities, we urge CARB to clarify now that it will provide a grace period of 90 days for submitting the initial SB 261 reports should reporting obligations resume under SB 261.

II. CARB should establish December 31 as the annual deadline for GHG emissions reporting under SB 253, starting with the first-year report due in 2026.

In the Proposed Initial Regulation, CARB proposes a reporting deadline of August 10, 2026 for the first-year report under SB 253. The CARB staff noted that this proposed first-year reporting deadline matches the verification deadline under CARB’s Mandatory Reporting Regulation (“MRR”) program, with “the goal of streamlining GHG reporting responsibilities and timing for entities reporting under [SB 253] and MRR.”⁵ For the reasons discussed below, CARB should not use the verification deadline under MRR program as the basis for establishing a reporting deadline under SB 253. Instead, we urge CARB to establish December 31 as the annual deadline for GHG emissions reporting under SB 253, starting with the first-year report due in 2026.

A. CARB should not use the verification deadline under the MRR program as the basis for establishing a reporting deadline under SB 253.

The reporting deadline under SB 253 should not be tied to the reporting timeline under the MRR program, because the reporting entities, the reporting content, and the users of the information reported under SB 253 differ from those under the MRR program.

First, MRR requires data reporting and third-party data verification from the largest GHG emitters (*e.g.*, certain facilities and suppliers that have covered emissions greater than a certain

⁵ Staff Report, at 15.

threshold and electric power entities importing power into California).⁶ In contrast, subject to limited exceptions, *all* U.S. entities “doing business in California” with “total annual revenues” in excess of \$1 billion, regardless of their industry sector and level of emissions, are subject to reporting under SB 253.

Second, as to the reporting content, unlike SB 253, the MRR program does not require scope 3 emissions reporting. As outlined below, one of the pertinent reasons that a deadline earlier than December 31 is impractical for SB 253 reporting is because of the complexities associated with collecting and reporting scope 3 emissions data, particularly for financial institutions.

Finally, MRR data supports California’s Cap-and-Trade Program,⁷ whereas the stated goal for the reporting programs under the Climate Laws is to “help ensure that accurate, comparable, and decision-useful climate information is made available to inform investors, lenders, insurers, consumers, and other stakeholders in the state”.⁸

Because many reporting entities under SB 253 are not subject to the MRR, the reporting content is different even for entities that are subject to both the MRR and SB 253, and the users of the information reported under SB 253 and the MRR are also different, aligning the SB 253 reporting deadline with the MRR verification deadline would not lead to increased efficiency.

B. CARB should establish December 31 as the single annual reporting deadline for all required GHG emissions data under SB 253, because the complexity and challenges associated with GHG emissions reporting, particularly scope 3 emissions, and related assurance requirements make an earlier deadline impractical.

We urge CARB to establish December 31 as the single annual reporting deadline for all required GHG emissions data, starting with the first-year report due in 2026, in light of the complexity and challenges associated with GHG emissions reporting and related assurance requirements.

Although we recognize that the Proposed Initial Regulation only proposes a first-year reporting deadline under SB 253, with future reporting deadline under SB 253 to be established in the Subsequent Regulation, it is important to look at the complete picture of how GHG emissions reporting, including scope 3 reporting, should be addressed in connection with the finalization of the Proposed Initial Regulation.

A single annual reporting timeline for all required GHG emissions data is consistent with the statutory requirements of SB 253,⁹ and is more efficient for both the reporting entities and CARB. This is how GHG emissions data is generally reported today, either voluntarily or pursuant to reporting

⁶ CARB, *Mandatory Greenhouse Gas Reporting: 2022 Emissions Year Frequently Asked Questions* (Nov. 6, 2023), available at, <https://ww2.arb.ca.gov/sites/default/files/classic/cc/reporting/ghg-rep/reported-data/2022mrrfaqs.pdf>; CARB, *Reporting Guidance for Determining Rule Applicability for California’s Mandatory GHG Reporting Program* (Feb. 1, 2019) available at, <https://ww2.arb.ca.gov/sites/default/files/classic/cc/reporting/ghg-rep/guidance/applicability-general.pdf>

⁷ CARB, *Mandatory Greenhouse Gas Reporting: 2022 Emissions Year Frequently Asked Questions* (Nov. 6, 2023)

⁸ Staff Report, at 3.

⁹ Cal. Health & Safety Code § 38532(c)(1); (G)(i).

requirements in other jurisdictions. Further, a single annual report under SB 253 with all required GHG emissions data is more useful for users of the information and supports CARB's goal of providing accurate, comparable, and decision-useful climate information to investors, lenders, insurers, and the public in California. On the contrary, staggered deadlines would create inefficiencies and confusion for investors by forcing companies to prepare multiple reporting and assurance cycles in the same year. Even though scope 1 and 2 data are separate from scope 3 data, many of the same systems and controls apply, and assurance providers would need to repeat walkthroughs, control testing and methodological explanations if there are different reporting timelines for scope 1 and 2 reporting versus scope 3 reporting. This adds cost and burden without improving disclosure quality. More importantly, publishing scope 1 and 2 data months ahead of scope 3 data from the same reporting period creates an incomplete and potentially misleading picture of a reporting entity's emissions profile. For financial institutions, scope 3 represents the vast majority of their emissions. Aligning all scopes on the same annual deadline ensures efficiency, lowers costs, and provides stakeholders with a clear, integrated view.

As discussed in BPI's prior comment letters to CARB, we believe the single annual reporting deadline should be December 31 for all required GHG emissions data. This is because collecting, reconciling, and obtaining assurance for global emissions data are complex, challenging, and time-consuming, particularly with respect to scope 3 emissions data.

For large financial institutions, scope 1 and 2 emissions data is sourced from hundreds of offices and subsidiaries across multiple jurisdictions. Each local office relies on utility providers, landlords, or facility managers to supply energy use and fuel consumption data, and bills and records may not be finalized until months after year-end. Finalizing this information requires multi-step internal controls, including reconciliation with utility invoices, cross-checks against internal systems, and validation by sustainability and finance teams.

Furthermore, Financial institutions face unique challenges in reporting scope 3 emissions, which make a deadline earlier than December 31 impractical.

- *Data collection challenges.* Financial institutions calculate scope 3 emissions—driven primarily by financed emissions—by aggregating data from a wide range of counterparties, including borrowers, investees, and other third parties. This data is often sourced through external data vendors that collect information from publicly available disclosures, private reporting, and estimates. This process typically results in a 12-month to 18-month time lag in emissions data, which presents significant challenges, as the emissions data used for reporting may not reflect the most current operational activities of counterparties.
- *Availability and quality of data.* The availability and quality of data required for scope 3 emissions vary widely. Many counterparties operate in jurisdictions without robust sustainability reporting requirements, leading to data gaps. Even when emissions data is available, the quality and consistency of that data can vary significantly across industries. Established sectors such as utilities tend to provide relatively reliable and standardized data, while other sectors are still in the process of developing comprehensive reporting frameworks and robust processes to measure and disclose their emissions. As a result, financial institutions often must rely on estimates or proxy data, which complicates assurance and comparability and may lead to volatility in year-over-year reporting as estimates and proxy methodologies are refined over time.

- *Lack of universally accepted methodologies.* Although the GHG Protocol provides a foundation for emissions accounting, there are no universally accepted methodologies for calculating scope 3 emissions across all asset classes. Asset classes such as loans to small businesses, private equity investments, asset management, or sovereign debt often lack specific guidance for calculating emissions.

Because of these unique challenges, we believe that a 12 month-period after the end of the reporting period covered by the report (e.g., a December 31 deadline for a company reporting on its fiscal year ended on December 31 of the prior year) is the minimum period feasible for financial institutions to report meaningful scope 3 emissions data required by SB 253, albeit there may still be a significant time lag (e.g., one year or more) for the scope 3 emissions data reported.

If a reporting entity cannot assemble complete and verified data by the reporting deadline, it may have to rely on estimates, proxies, or incomplete information. This could limit the ability to complete internal controls and assurance reviews and may result in disclosures that need to be revised after more accurate data becomes available. Such outcomes would reduce comparability across entities and risk undermining confidence in the reporting process.

Additionally, given that assurance by an independent third-party assurance provider is required under SB 253, beginning with “limited assurance” in 2027¹⁰ and escalating to “reasonable assurance” in 2030, reporting entities will need additional time to work with their assurance providers to complete the assurance process. Assurance providers often work across multiple clients and need sufficient time to conduct testing, sampling and quality checks. Limited assurance itself is not a “light touch,” as it requires evidence-based testing, sampling of invoices, and a demonstration of internal controls. This assurance process will take even longer as more stringent assurance requirements come into effect (e.g., transitioning from “limited assurance” to “reasonable assurance”). Reasonable assurance requires significantly more evidence, a broader audit scope, and more extensive testing. Rushing the assurance process may undermine the credibility of California’s climate reporting program.

C. CARB should establish December 31, 2026 as the reporting deadline for the first-year report under SB 253 to align with our recommended subsequent annual reporting deadline under SB 253 and to avoid any unnecessary burdens on reporting entities to establish separate reporting procedures only for the first-year report under SB 253.

For all the reasons discussed above, CARB should establish December 31 as the single annual reporting deadline for all required GHG emissions data under SB 253. Although we recognize that CARB will exercise enforcement discretion for the first-year report due in 2026 such that reporting entities will be allowed to submit scope 1 and 2 emissions for their prior fiscal year based on information they already have or were collecting as of December 2024, whether or not the data received limited

¹⁰ Although the text of SB 253 states that assurance is required beginning in 2026, CARB has provided additional guidance stating that assurance is *not* required for first-year reports in 2026. See FAQs, at 10 (Item 20) (“For 2026 reporting under [SB 253], CARB will exercise enforcement discretion for the first report due in 2026, allowing reporting entities to submit Scope 1 and Scope 2 emissions for their prior fiscal year based on information they already have or were collecting when this Notice was issued, whether or not the data received limited assurance.”)

assurance,¹¹ we nevertheless urge CARB to establish December 31, 2026 as the reporting deadline for the first-year report under SB 253 to align with our recommended subsequent annual reporting deadline under SB 253 and to avoid any unnecessary burdens on reporting entities to establish separate reporting procedures only for the first-year reports under SB 253.

However, if CARB nevertheless determines to establish August 10, 2026 as the first-year reporting deadline under SB 253, CARB should establish December 31 as the single annual reporting deadline for all required GHG emissions data under SB 253 starting in 2027 in the Subsequent Regulation.

Finally, if CARB determines that it must collect information from reporting entities earlier than December 31 in order to calculate and collect the annual fees to support the administration of the reporting programs under the Climate Laws, CARB should bifurcate the annual deadline for collecting information on reporting entities, which may be earlier than December 31, and the annual deadline for GHG emissions reporting, which should be December 31.

III. CARB should provide reporting entities with maximum flexibility with respect to the reporting period covered by reports under SB 253.

In proposing the definition of “applicable preceding fiscal year”, CARB proposes to use February 1 as the date for determining which fiscal year’s data should be covered in a reporting entity’s first-year report under SB 253 due by August 10, 2026, including flexibility to allow for more recent fiscal year data if available.¹² In proposing this definition, CARB appropriately recognizes that many reporting entities have fiscal years that differ from the calendar year. However, CARB should also recognize that some reporting entities may collect and report GHG emissions data for a 12-month period that does not match their fiscal years.

In determining the definition for “applicable preceding fiscal year” in connection with the

¹¹ CARB, *The Climate Corporate Data Accountability Act, Enforcement Notice* (Dec. 5, 2024), available at <https://ww2.arb.ca.gov/sites/default/files/2024-12/The%20Climate%20Corporate%20Data%20Accountability%20Act%20Enforcement%20Notice%20Dec%2024.pdf>; FAQs, at 10 (Item 20); CARB, *SB 253/261/219 Public Workshop: Update on California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs* (Nov. 18, 2025), at 12, available at <https://ww2.arb.ca.gov/sites/default/files/classic/SB%20253%20261%20Nov%20Workshop%20slides%20%28Updated%29.pdf> (the “November Presentation”) (“For 2026 reporting, limited assurance is not required for data submission”).

¹² Proposed Initial Regulation § 96076, available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/sb253-261/reg%20text.pdf> (“For purposes of this section, the “applicable preceding fiscal year” shall be determined as follows: (1) If the reporting entity’s fiscal year ends on or before February 1 in a calendar year, the applicable preceding fiscal year shall be the fiscal year ending in the current calendar year. (2) if the reporting entity’s fiscal year ends after February 1 in a calendar year, the applicable preceding fiscal year shall be the fiscal year ending in the previous calendar year. However, reporting entity may choose to report their Scope 1 and Scope 2 emissions from their most recent preceding fiscal year notwithstanding their fiscal year ending after February 1, where that data is available.”).

finalization of the Proposed Initial Regulation and in the Subsequent Regulation, CARB should afford reporting entities maximum flexibility with respect to the reporting period covered by reports under SB 253, considering all relevant factors that may affect a reporting entity's timeline for collecting, reconciling and obtaining assurance for the GHG emissions data required under SB 253. These factors include, but are not limited to, the annual reporting deadline under SB 253 established by CARB, a reporting entity's fiscal year (which may not match the calendar year), and a reporting entity's reporting cycle for GHG emissions data (which may not match its fiscal year).

This flexibility is even more necessary with respect to scope 3 emissions reporting because of the unique challenges financial institutions face in reporting scope 3 emissions data. As discussed in detail above, the process for collecting scope 3 emissions data typically results in a 12-month to 18-month time lag. In addition, it is widely accepted across the financial services industry that financed emissions calculations inherently involve a timing mismatch between exposure data and client emissions data. For example, a financial institution's scope 3 financed emissions calculation for fiscal year 2024 would typically rely on 2024 exposure data combined with client emissions data from fiscal year 2022 or 2023, based on the most recent emissions data available from external data providers. As a result, even where reporting entities are afforded up to 12 months to report, this mismatch will persist. Providing flexibility to use best available data is therefore critical to producing high-quality financed emissions disclosures under SB 253.

We believe providing reporting entities maximum flexibility with respect to the reporting period covered by reports under SB 253 will support reporting entities' efforts to apply reporting methodologies in a manner that is best suited for their businesses and circumstances and avoid potentially restricting reporting entities' ability to apply industry standards that supplement the GHG Protocol to address industry-specific issues.

IV. CARB should clarify that the proposed definition of "revenue" incorporates the relevant regulations and interpretations regarding the definition of "gross receipts" under the RTC and that an entity's gross receipts amount as reported in its tax filings with the FTB is determinative of the entity's revenue for purposes of determining its "revenue" under the Climate Laws.

The Proposed Initial Regulation states that "revenue" has the same meaning as "gross receipts" under Section 25120(f)(2) of the RTC.¹³ We recommend CARB to clarify that the definition of "revenue" incorporates the relevant regulations and interpretations regarding the definition of "gross receipts" under the RTC to further align these definitions and avoid any discrepancies in how these definitions are interpreted and applied in practice.

For example, although the definition of "gross receipts" under Section 25120(f)(2) of the RTC

¹³ Gross Receipts is defined under Section 25120(f)(2) of the RTC as "[t]he gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest, and dividends) in a transaction that produces business income, in which the income, gain, or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code, as applicable for purposes of this part. Amounts realized on the sale or exchange of property shall not be reduced by the cost of goods sold or the basis of property sold."

does not include an explicit carve out for intercompany transactions, intercompany receipts from unitary group members would generally be excluded from taxable income for California income tax purposes under § 25106.5-1 of Title 18 of the California Code of Regulations. Without our recommended clarification, there would be ambiguity as to whether intercompany receipts from unitary group members would be required to be included as “revenue” for purposes of the Climate Laws, when they are generally excluded for corporate income tax purposes.

In addition, to provide further certainty to entities determining whether they exceed the revenue thresholds under the Climate Laws, CARB should clarify that an entity’s gross receipts amount as reported in its tax filings with the FTB is determinative of the entity’s revenue for purposes of determining its “revenue” under the Climate Laws. During CARB’s Third Public Workshop held on November 18, 2025, CARB staff noted that gross receipts are verifiable in FTB filings, referencing specific line items of entities’ California tax filings (*i.e.*, Schedule F, Line 1a of corporations’ and S-corporations’ tax filings on Form 100 and Form 100S, respectively, Line 1a of partnerships’ tax filings on Form 565, and Schedule B, Line 1a of LLCs’ tax filings on Form 568) as showing the amount of “total revenue.”¹⁴ Our recommended clarification is consistent with the approach announced at the workshop and provides entities further clarity and certainty in determining whether they exceed the revenue thresholds under the Climate Laws.

V. CARB should clarify that the proposed definitions of “doing business” and “doing business in California” incorporate the relevant regulations and interpretations regarding the definitions of “doing business” and the relevant prongs of “doing business in this state” under the RTC and an entity’s in-state sales amount as reported in its tax filings with the FTB is determinative of the entity’s in-state sales for purposes of determining whether the entity is “doing business in California” due to its in-state sales under the Climate Laws.

Under the Proposed Initial Regulation, “doing business” “shall have the same definition as set forth in section 23101(a) of the [RTC]”, whereas “doing business in California” means “doing business and meeting either of the criteria set forth in subsections 23101(b)(1) or 23101(b)(2) of the [RTC]”, subject to certain exceptions.¹⁵ Section 23101(a) of the RTC defines “doing business” as “actively engaging in any transaction for the purpose of financial or pecuniary gain or profit”.¹⁶ Subsection 23101(b)(1) of the RTC provides that a taxpayer is doing business in California for a taxable year if the taxpayer is organized or commercially domiciled in California.¹⁷ Subsection 23101(b)(2) of the RTC provides that a taxpayer is doing business in California for a taxable year if sales, as defined in Section 25120(e) or (f) of the RTC as applicable for the taxable year, of the taxpayer in California “exceed the lesser of five hundred thousand dollars (\$500,000) or 25 percent of the taxpayer’s total sales.”¹⁸

¹⁴ November Presentation, at 21.

¹⁵ Proposed Initial Regulation § 96072(a)(8).

¹⁶ Cal. Rev. & Tax. Code § 23101(a).

¹⁷ Cal. Rev. & Tax. Code § 23101(b)(1).

¹⁸ Cal. Rev. & Tax. Code § 23101(b)(2) (“For purposes of this paragraph, sales of the taxpayer include sales by an agent or independent contractor of the taxpayer. For purposes of this paragraph, sales in this state shall be

We recommend CARB to clarify that the definitions of “doing business” and “doing business in California” incorporate the relevant regulations and interpretations regarding the definitions of “doing business” and the relevant prongs of “doing business in this state” under the RTC to further align these definitions and avoid any discrepancies in how these definitions are interpreted and applied in practice.

For example, subsection 23101(c)(1) requires the FTB to annually revise the \$500,000 threshold for in-state sales to adjust for inflation.¹⁹ The in-state sales dollar threshold for 2025 is \$757,070.²⁰ Without our recommended clarification, there will be discrepancies between how the same term or phrases will be interpreted and applied under the Climate Laws and the RTC.

In addition, to provide further certainty to entities determining whether they are deemed to be “doing business in California” under the Climate Laws, CARB should clarify that an entity’s in-state sales amount as reported in its tax filings with the FTB is determinative of the entity’s in-state sales for purposes of determining whether the entity is “doing business in California” due to its in-state sales under the Climate Laws. During CARB’s Third Public Workshop held on November 18, 2025, CARB staff noted that whether a company has sufficient in-state sales to be deemed to be “doing business in California” can be verified in California FTB filings, referencing Schedule R-1, column (b) of entities’ California tax filings (i.e., Form 100, Form 100S, Form 565 and Form 568 for corporations, S-corporations, partnerships and LLCs, respectively) for the amount of in-state sales.²¹ Our recommended clarification is consistent with the approach announced at the workshop and provide entities further clarity and certainty in determining whether they are deemed to be doing business in California due to its in-state sales under the Climate Laws.

VI. CARB should clarify certain aspects of the fee proposal to reduce uncertainty and increase efficiency in the implementation of the fee determination, invoice and payment processes.

The Proposed Initial Regulation imposes a flat fee structure on reporting entities under the Climate Laws. CARB proposes providing a written fee determination notice to each reporting entity of the amount due on or by September 10, beginning in fiscal year 2026 and for each year thereafter. We recommend CARB to consider the following clarifications to help reduce uncertainties in the implementation of the fee determination, invoice and payment processes.

A. CARB should clarify that it is responsible for determining the reporting entities under the Climate Laws.

Under the Proposed Initial Regulation, CARB is responsible for issuing fee determination notices to reporting entities, while entities are required to maintain records demonstrating whether they meet the applicable revenue and “doing business in California” thresholds and to provide such records upon

determined using the rules for assigning sales under Sections 25135 and 25136 and the regulations thereunder, as modified by regulations under Section 25137.”).

¹⁹ Cal. Rev. & Tax. Code § 23101(c)(1).

²⁰ State of California Franchise Tax Board, *Doing Business in California*, available at <https://www.ftb.ca.gov/file/business/doing-business-in-california.html>.

²¹ November Presentation, at 21.

request.²² Accordingly, we believe it is implied that CARB is also responsible for determining which entities are reporting entities and the number of reporting entities under each Climate Law; however, the proposed regulatory text is ambiguous in this regard. Clarifying that CARB is responsible for determining which entities are in scope of the Climate Laws would help avoid confusion and would support more efficient and consistent compliance with the fee provisions, especially for parent companies reporting on behalf of many reporting entity subsidiaries under one consolidated, parent-level report.

If, on the other hand, CARB intends to rely on information submitted by entities to determine the total number of reporting entities for purposes of determining the per-entity fee under each Climate Law, CARB should propose the information required to be submitted by reporting entities and the timeline for submitting such information. Because the fees are assessed on an individual reporting entity basis²³ and because companies may rely on consolidated reporting as permitted under the Climate Laws, solely relying on the number of entities submitting reports under each Climate Law would not provide CARB with an accurate total number of reporting entities for purposes of the fee calculation.

Furthermore, as discussed in Section II.C above, if CARB determines that it must collect information from reporting entities earlier than December 31 in order to calculate and collect the annual fees to support the administration of the reporting programs under the Climate Laws, CARB should bifurcate the annual deadline for collecting information on reporting entities, which may be earlier than December 31, and the annual deadline for GHG emissions reporting, which should be December 31.

B. CARB should clarify the definition of “Debt” to avoid including the same debt in the fee calculation multiple times.

In the Proposed Initial Regulation, “Debt,” which is a component of the Total Required Revenue definition, is defined as “those loans obtained by CARB, and required by the Legislature to be repaid, to carry out sections 38532 and 38533 of the Health and Safety Code.”²⁴ In the Staff Report, CARB staff explains that Debt is included to “ensure that CARB fully reimburses any loans obtained to fund the program as required by the Legislature.”²⁵ We recommend CARB to clarify that the same Debt should only be included in the Total Required Revenue once.

C. CARB should allow a consolidated fee invoice and payment process to increase efficiency.

Although the Proposed Initial Regulation establishes fee liability at the reporting entity level, it does not address how CARB intends to invoice and collect fees where a parent company submits consolidated reporting on behalf of multiple subsidiaries.

To reduce administrative burden and improve payment efficiency, CARB should clarify that it will

²² Proposed Initial Regulation § 96074(d).

²³ FAQs, at 9 (Item 18).

²⁴ Proposed Initial Regulation § 96072(a)(6).

²⁵ Staff Report, at 12.

permit a consolidated invoice and payment option under which CARB will issue a single fee determination notice to a parent entity that itemizes the fees attributable to each reporting entity within the corporate group, and allow the parent entity to remit a single payment on behalf of all reporting entities within the corporate group.

We believe the recommended approach is consistent with CARB's prior guidance. In the FAQs, CARB noted that "[f]ees may be paid by the parent company level".²⁶ To provide certainty and further increase efficiency, we recommend CARB to explicitly provide for a consolidated fee invoice and payment process in the implementing regulations.

D. CARB should provide a process for resolving disputes regarding reporting entity status and reconciling any change to per entity flat fee.

The Proposed Initial Regulations are silent on how to resolve any disputes between CARB and an entity. For example, if there are disputes between CARB and entities regarding whether such entities are reporting entities and therefore should pay fees, it is unclear how such disputes would be resolved between CARB and the entities or how any resolution of such disputes would affect the other reporting entities in light of the per entity flat fee structure.

Accordingly, CARB should propose a process for resolving fee-related disputes for public comment, which should, at a minimum, address (1) the process and timeline for resolving a dispute between CARB and an entity as to whether the entity is a reporting entity under the relevant Climate Law, and (2) the process for reconciling any change to per entity flat fee under the relevant Climate Law after resolving disputes relevant to the determination of the number of total reporting entities under the relevant Climate Law.

VII. We continue to urge CARB to permit maximum flexibility under the evolving GHG Protocol standards and guidance and avoid prescriptive reporting format in connection with its implementation of the Climate Laws.

Although we recognize that the scope of the Proposed Initial Regulation is limited, considering the other guidance CARB has issued, and the Subsequent Regulation CARB plans to promulgate, in connection with its implementation of the Climate Laws, we wish to reiterate a critical overarching principle discussed in BPI's prior comment letters to CARB. We continue to believe that permitting maximum flexibility under the evolving GHG Protocol standards and guidance and avoiding prescriptive reporting formats should be key considerations in CARB's implementation of the Climate Laws. To achieve the goal of better informing the decision-making of California consumers, investors and members of the public, it is critical for reporting entities to be able to provide the context in relation to the climate-related data and information required under the Climate Laws, including the relevant metrics and calculation methodologies used. A prescriptive approach to reporting format is also inconsistent with the general disclosure approach under the external climate reporting standards or protocols mandated by the Climate Laws, which focus on the substance, rather than the form, of climate-related disclosures.

Requiring reporting entities to provide climate-related data and information pursuant to

²⁶ See FAQs, at 9 (Item 18).

prescriptive reporting format (such as the Draft Scope 1 and 2 GHG Reporting Template CARB issued on October 10, 2025²⁷) without the ability or with limited ability to provide the necessary context would be counterproductive to the goal of providing meaningful information, could potentially result in incomplete or misleading data and information, and would significantly hinder reporting entities' ability to rely on substituted compliance.

VIII. To reduce the uncertainty arising from the pending litigation regarding the Climate Laws and related burdens on reporting entities, we urge CARB to clarify now that it will provide a grace period of 90 days for submitting the initial SB 261 reports should reporting obligations resume under SB 261.

On November 18, 2025, the Ninth Circuit Court of Appeals issued an order temporarily enjoining enforcement of SB 261 until an appeal challenging SB 261 is resolved.²⁸ In both the Staff Report and the Notice of Public Hearing issued accompanying the Proposed Initial Regulation, CARB acknowledges the injunction and notes that “[i]n light of this order, CARB will not enforce SB 261 until the injunction is lifted” and that “CARB will continue this rulemaking to consider the Proposed Initial Regulation for adoption”.²⁹ On December 1, 2025, CARB also issued an Enforcement Advisory, noting that “CARB will provide further information – including an alternate date for reporting, as appropriate – after the appeal is resolved.”³⁰

We appreciate CARB’s efforts to acknowledge and provide guidance on this issue. However, providing further information, including an alternate date for reporting, as appropriate, after the appeal is resolved does not provide reporting entities with the clarity they need to prepare for a potential resumption of reporting obligations under SB 261. Without clear guidance on the alternative date for initial reporting under SB 261 now, reporting entities may need to continue to prepare and obtain internal approval for their initial SB 261 reports despite the injunction in order to prepare for a potential immediate resumption of reporting obligations under SB 261 if the injunction is lifted.

To reduce the uncertainty arising from the pending litigation and related burdens on reporting entities, we urge CARB to clarify now that it will provide a grace period of 90 days for submitting the

²⁷ CARB, *SB 253 Scope 1 and Scope 2 Greenhouse Gas (GHG) Emissions Draft Reporting Template* (Oct. 10, 2025), available at https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fww2.arb.ca.gov%2Fsites%2Fdefault%2Ffiles%2F2025-10%2FSB253_Draft_Scope1_2_GHG_Template.xlsx&wdOrigin=BROWSELINK; CARB, *California Corporate Greenhouse Gas Reporting Program: Scope 1 and Scope 2 Emissions Draft Reporting Template Memo* (Oct. 10, 2025), available at https://ww2.arb.ca.gov/sites/default/files/2025-10/Draft%20Memo_Scope1%262TemplatePublicRelease.pdf (“Reporting entities are not currently required to use the template; its use is voluntary for the 2026 reporting cycle.”).

²⁸ *See Chamber of Commerce of the United States of America et al. v. California Air Resources Board et al.*, Case No. 25-5327 (9th Cir.).

²⁹ Staff Report, at 5; Notice of Public Hearing, at 3.

³⁰ CARB, *Enforcement Advisory: Climate-Related Financial Risk Reporting (SB 261)* (Dec. 1, 2025), available at <https://ww2.arb.ca.gov/sites/default/files/2025-12/Dec%201%20SB%20261%20Enforcement%20Advisory.pdf>

initial SB 261 reports, should reporting obligations resume under SB 261.

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BPI appreciates the opportunity to provide feedback to CARB regarding the Proposed Initial Regulations and the implementation of the Climate Laws. We thank CARB for its continued efforts seeking public feedback to inform its implementation of the reporting programs under the Climate Laws, and look forward to an ongoing dialogue. If you have any questions, please contact the undersigned by phone at (202) 589-2406 or by email at sam.riley@BPI.com.

Respectfully Submitted,

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