CALIFORNIA
BANKERS
ASSOCIATION

March 21, 2025

California Air Resources Board
Submitted via portal: https://ww2.arb.ca.gov/public-comments/public-comments-california-climate-disclosure-information-solicitation

RE: Responses to CARB Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as Amended by SB 219

Dear Chair Randolph:

The California Bankers Association (CBA) appreciates the opportunity to submit comments in response to the information solicitation by the California Air Resources Board (CARB) to inform the board's rulemaking to implement Senate Bill 253 (Weiner 2023) and SB 261 (Stern 2023). CBA is one of the largest banking trade associations in the United States advocating on legislative, regulatory, and legal matters on behalf of banks doing business in California.

Many of CBA's banks have considerable experience with climate-related disclosures emanating from the Task Force on Climate-related Financial Disclosures (TCFD), the European Union Corporate Sustainability Reporting Directive (CSRD), the International Sustainability Standards Board (ISSB), and the Securities and Exchange Commission (SEC).

As CARB prepares to issue regulations to implement these new California laws, we appreciate the opportunity to provide preliminary input.

Key Recommendations

Flexibility – Implementation of both SB 253 and SB 261 should prioritize flexibility. Maintaining the adaptability embedded in frameworks like the GHG Protocol and the TCFD will help ensure the disclosures are feasible to implement.

Avoid New "Standardization" – CARB should not standardize an approach to Scope 1, 2 and 3 emission disclosures, as doing so would eliminate the adaptability of the GHG protocol and fail to account for sector-specific differences.

Enforcement -- CBA acknowledges CARB's enforcement Notice published on December 5, 2024, and agrees that companies may require lead time to establish and refine data collection processes for comprehensive Scope 1 and Scope 2 emissions reporting. However, this same consideration applies to other aspects of SB 253 and SB 261. SB 261 will require companies to assess climate-related financial risks and produce extensive disclosures, necessitating new data collection and reporting frameworks. CARB should clarify that it will take a consistent enforcement approach under SB 261, mirroring the flexibility outlined in the Enforcement Notice for SB 253. Under SB 253 reporting entities are protected from administrative penalties for Scope 3 misstatements made in good faith and with a reasonable basis. Similarly, for at least the initial reporting periods, CARB should exercise enforcement discretion for Scope 1 and Scope 2 reporting, recognizing that GHG emissions disclosure remains a developing field. Many companies will be engaging in mandatory reporting for the first time under SB 253, and a measured enforcement approach will encourage good-faith efforts to produce reliable, high-quality disclosures while allowing companies time to refine their methodologies.

General: Applicability

Question 1.a. Should CARB adopt the interpretation of "doing business in California" found in the Revenue and Tax Code section 23101?
<u>CBA Response:</u> Yes. This interpretation is well-established, widely understood, and provides a consistent framework for which entities are subject to the reporting requirement.

General: Standards in Regulation

Question 3.a. How do we ensure that CARB's regulations address California-specific needs and are also kept current and stay in alignment with standards incorporated into the statute as these external standards and protocols evolve?
<u>CBA Response:</u> Regarding SB 253, the applicable version of the GHG Protocol should be the version that was in effect as of the enactment date of the statute. Companies should be permitted to use new or modified reporting standards, such as updates to the GHG Protocol, as they are adopted. Requiring companies to continue reporting under older standards when updated frameworks have become available may result in outmoded disclosure that does not conform to emerging best practices and deprives stakeholders of important information.

However, it would be inappropriate to <u>require</u> companies to adopt new or modified reporting standards without undertaking a formal notice and comment rulemaking process (or legislation) with respect to the adoption of the new standards. CARB should not impose new obligations on companies without an analysis by CARB of the costs and benefits of those obligations, and a period during which companies and other stakeholders could provide feedback on those standards to CARB. Mandating the use of new standards, may result in companies needing to produce duplicative disclosures to conform with both California's requirements and those of any other jurisdictions that have not updated their requirements. To address evolving standards, CARB should establish a formal and transparent process for any future transition to updated versions of the GHG Protocol, including adequate lead time (e.g., 2-3 years) and stakeholder engagement to determine the feasibility and impact of aligning with newer standards.

Regarding SB 261: The statute is clear that entities may align with the 2017 TCDF recommendations.

Question 3.b. How could CARB ensure reporting under the laws minimizes a duplication of effort for entities that are required to report GHG emissions or financial risk under other mandatory programs and under SB 253 or 261 reporting requirements?

<u>CBA Response:</u> CARB should clarify that compliance with other disclosure frameworks is permitted under both bills, including both voluntary reports and mandatory reports required by other regulatory regimes.

CARB should allow disclosures prepared in accordance with climate-related disclosure requirement in the home jurisdictions of responding entities to satisfy the requirements of SB 253 and SB 261, including any modifications or phase-ins home jurisdictions have permitted to the disclosures.

SB 261 explicitly acknowledges flexibility for entities already subject to similar reporting requirements in Section 38533(b)(4). SB 253 implicitly incorporates this through the statutes emphasis on minimizing duplication of effort, and Section 38352(c)(1)(D)(i) permits entities to submit emissions reports prepared for other regulatory programs.

Question 3.c. To the extent the standards and protocols incorporated into the statute provide flexibility in reporting methods, should reporting entities be required to pick a specific reporting method and consistently use it year-to-year?

<u>CBA Response:</u> Reporting entities should not be required to apply the same methodology year-to-year and instead should have the flexibility to adjust their methodologies to reflect improvements in data availability, reporting processes, or evolving best practices, provided they clearly disclose and explain the reasons for these changes. The GHG Protocol recognizes the need to allow entities to refine their approaches. For example, improved data quality or availability may allow entities to enhance the accuracy of their estimates, and updates to industry standards or sector-specific guidance may necessitate adjustment to remain aligned with best practices.

General: Data Reporting

Question 4. To inform CARB's regulatory processes, are there any public datasets that identify the costs for voluntary reporting already being submitted by companies? What factors affect the cost or anticipated cost for entities to comply with either legislation? What data should CARB rely on when assessing the fiscal impacts of either regulation?
CBA Response: Financial institutions will face higher cost burdens compared to other reporting entities. First, most Scope 3 emissions belong to customers, not suppliers, and financial institutions must understand and calculate these customer emissions. Further, syndicated loans are the dominant way large corporations receive loans from banks, finance companies, and institutional investors; slices of one loan (and its related emissions) may need to be reported on the climate disclosures of every lender who participated in the syndication.

SB 253: Climate Corporate Disclosure Accountability Act

Question 7. Entities measure and report their emissions of greenhouse gases in conformance with the GHG Protocol, which allows for flexibility in some areas (i.e., boundary setting, apportioning emissions in multiple ownerships, GHGs subject to reporting, reporting by sector vs business unit, or others). Are there specific aspects of scopes 1, 2, or 3 reporting that CARB should consider standardizing?
CBA Response: CARB should incorporate the GHG Protocol by reference, including its established standards, guidance, and built-in flexibilities, rather than creating a unique California specific reporting standard, and allowing companies to apply the methodologies in a manner that works for their business. In addition to being mandated by the statute, allowing reporting in accordance with the GHG Protocol will allow many companies to leverage their existing voluntary reporting efforts more readily when complying with SB 253 – reducing costs of compliance and duplication of efforts.

The GHG Protocol is a globally recognized framework that offers methodologies for measuring and reporting GHG emissions. Its design balances the need for standardization with the practical challenges entities face in collecting and disclosing emissions data, making it an important tool for achieving transparent disclosure. Importantly, the GHG Protocol allows for fully disclosed and justified exclusions when data is unavailable, infeasible to collect, or when certain emissions categories are irrelevant or insignificant to a company's overall footprint. This approach ensures that disclosures remain both meaningful and feasible, prioritizing the most relevant emissions data while maintaining public accountability. CARB should ensure that entities retain the ability to utilize these flexibilities while requiring transparent disclosure and explanation of any exclusions. Aligning with the established GHG Protocol approach will promote consistent and reliable emissions reporting while preventing unnecessary compliance burdens and costs.

The flexibilities embedded in the GHG Protocol are particularly important for addressing the complexities of emissions reporting, specifically, the challenges with Scope 3 emissions. The GHG Protocol allows for fully disclosed and justified exclusions when data is unavailable, infeasible to collect, or when certain emissions categories are irrelevant or insignificant to a company's overall footprint. Importantly, this balances public accountability while focusing disclosures on the most significant and insightful categories of emissions. For example, the GHG Protocol Corporate Value Chain (Scope 3) Standard provides clear guidance on these flexibilities in the following sections:

- Section 6.2 – Data Availability: This section allows companies to exclude categories where data cannot reasonably be obtained, provided the exclusions are disclosed and explained.
- Section 6.3 – Disclosing and justifying exclusions: This section permits exclusions where emissions are deemed insignificant in the context of the company's overall footprint.

Financial institutions face unique challenges in reporting Scope 3 emissions. Many counterparties operate in jurisdictions without robust sustainability reporting requirements, and data availability can vary significantly across industries and sectors. Specifically:

- Scope 3 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 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. For example, it is widely accepted across the financial services industry that a financial institution's Scope 3 financed emissions calculation for fiscal year 2024 would entail 2024 exposure data and either 2022 or 2023 emissions data (based on the latest emissions data available from each of the external data vendors).

- 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. Financial institutions must often 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. While 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.

Question 8.a. For entities required to report under SB 253, what options exist for third-party verification or assurance for scope 3 emissions?
CBA Response: Entities required to report may engage boutique firms that specialize in ESG assurance or entities may choose to work with ESG assurance providers that are part of the same firm as their financial auditor. The choice of assurance provider will depend on the entity's specific needs, such as the complexity of their emissions profile and the available data.

Question 8.b. For purposes of implementing SB 253, what standards should be used to define limited assurance and reasonable level of assurance? Should the existing definition for "reasonable assurance" in MRR be utilized, and if not why?
CBA Response:
CARB should adopt definitions for limited assurance and reasonable assurance that align with established international and professional standards. For example, CARB could rely on the terminology and frameworks outlined by assurance providers under the American Institute of Certified Public Accountants (AICPA) assurance standards or the International Standards on Assurance Engagements (ISAE). Additionally, CARB should consider the adoption of the International Standard on Sustainability Assurance (ISSA) 5000, or similar standard, which aims to provide specific guidance tailored to assurance engagements for sustainability-related disclosures. Aligning with globally recognized standards ensures consistency with the practices of professional assurance providers, avoids unnecessary duplications, and facilitates integration into entities existing assurance processes.

It is not current industry practice to obtain "reasonable assurance" on emissions calculations; CARB should adopt "limited assurance" (accounting standard) or "limited verification" (in line with other standards such as ISO) for the foreseeable future.

On assurance timeline, SB 253 provides CARB with discretion regarding the application of assurance requirements. We recommend that CARB clarify that reasonable assurance for Scope 1 and Scope 2 emissions will be required when reporting on information for fiscal year 2030, not for fiscal year 2029. Similarly, limited assurance for Scope 3 emissions should be required when reporting on information for fiscal year 2030, not reporting for fiscal year 2029 or any earlier periods. This approach aligns with international practices and provides companies with the necessary lead time to adapt to heightened assurance standards.

Further, with the challenges identified related to Scope 3 disclosures, Scope 3 disclosure made with a reasonable basis and disclosed in good faith should not incur administrative penalties.

Question 9.c. What frequency (annual or other) and time period (1 year or more) are currently used for reporting?
CBA Response: Financial institutions typically report emissions data annually at the enterprise level, covering a one-year period compared against a designated baseline year. This annual frequency aligns with standard reporting practices and allows entities to track progress over time in a consistent manner. By maintaining an annual reporting cycle, institutions can ensure that their disclosures remain relevant and timely, reflecting the most current data and developments in their operations and the broader market. This approach also supports the preparation of comprehensive and reliable disclosures as it allows sufficient time to collect and verify emissions data from the prior year. Additionally, assurance is typically conducted only on the annual emissions measurement, further reinforcing the need for a reporting cycle that is not shorter than an annual reporting cycle.

CBA urges CARB to utilize the discretion granted under follow up bill SB 219 (Wiener 2024) to provide companies with sufficient time to prepare and publish disclosures, as well as to obtain necessary assurance. It is crucial that reporting deadlines align with the operational realities and reporting cycles of the entities involved to ensure the production of reliable and meaningful data.

CARB should require that disclosures under SB 253 for any fiscal year be published no later than the last day of the subsequent fiscal year, unless disclosed earlier pursuant to a different reporting regime. For example, disclosures for a fiscal year ending December 31, 2024, should be due by December 31, 2025. This timeline provides companies with adequate time to gather data, perform necessary analyses, and obtain assurance, thereby ensuring the accuracy and reliability of the information disclosed.

Question 9.d. When are data available from the prior year to support reporting?
CBA Response: Financial institutions generally require a reporting lag of at least six months for Scope 1 and 2 emissions reporting. This period allows sufficient time to collect and verify Scope 1 and 2 emissions data. The lag also supports the preparation of comprehensive and reliable disclosures. It is widely accepted across the financial services industry that a financial institution's Scope 3 financed emissions calculation for fiscal year 2024 would entail 2024 exposure data and either 2022 or 2023 emissions data (based on the latest emissions data available from each of the external data vendors).

Further, CARB should note that an entity's period end may differ from the calendar period, and regulations should allow sufficient time to report.

Question 9.e. What software systems are commonly used for voluntary reporting?
CBA Response: Software systems used for voluntary reporting vary across institutions and include both third-party platforms and proprietary systems. Many institutions utilize third-party platforms for emissions measurement and reporting, while others rely on proprietary systems tailored to their specific needs. CARB should not mandate the use of any particular software platform, as this would impose significant compliance burdens and costs on institutions that have already developed systems for gathering and reporting data. Allowing flexibility in software choice ensures that institutions can continue to use systems that best suit their reporting requirements and integrate seamlessly with other reporting frameworks.

SB 261 Climate Related Financial Risk Disclosure

Question 11. Should CARB require a standardized reporting year (i.e., 2027, 2029, 2031, etc.), or allow for reporting any time in a two-year period (2026-2027, 2028-2029, etc.)?
CBA Response: CARB should allow entities the flexibility to report at any time during a two-year reporting period. Flexibility in the reporting period allows entities to align disclosures with the most reliable and up-to-date data, enhancing the accuracy and usefulness of reports.

Question 13.f. What other types of existing climate financial risk disclosures are entities already preparing?
CBA Response: CARB should minimize duplicative reporting burdens for entities already subject to robust disclosure requirements and harmonize with other frameworks.

To minimize duplication of effort, CARB should allow disclosures prepared in accordance with climate-related disclosure requirements in the home jurisdictions of responding entities to satisfy the requirements of SB 253 and SB 261, including any modifications or phase-ins home jurisdictions have permitted to the disclosures.

A few examples of other types of climate financial risk disclosures entities may already be preparing include:

- Voluntary sustainability reports. Many financial institutions already produce annual sustainability and climate disclosures aligned with voluntary climate disclosure frameworks, like the Taskforce on Climate-related Financial Disclosures (TCFD), which SB 261 references.

- European Union Corporate Sustainability Reporting Directive (CSRD). Financial institutions with significant operations in Europe are required to comply with CSRD, which mandates detailed disclosures on climate risks and opportunities. Depending on the size or location of the entity, compliance years start FY2024 through FY2028.

- Canadian Office of the Superintendent of Financial Services (OFFI) Guideline B-15. This guideline sets out expectations for the sound management of climate-related risks for federally regulated financial institutions (FRFIs) in Canada. Under Chapter 2 of Guideline B-15, federally regulated banks in Canada must make certain climate-related financial disclosures. Annex 2-2 aligns with the International Sustainability Standards Board's final IFRS S2 Climate-related Disclosures standard. This streamlines climate disclosures and promotes transparency of climate-related risks. OSFI plans to review and amend the Guideline as practices and standards evolve.

  - International Sustainability Standards Board (ISSB). Many entities disclose climate-related information in alignment with the ISSB standards, particularly IFRS S2 climate-related disclosures. More than 20 jurisdictions are considering adopting the standards and global entities may already be required to disclose under these frameworks in other jurisdictions. Unlike the TCFD, the ISSB standards were designed to be incorporated into corporate financial reporting and integrate with the broader IFRS and IASB frameworks. The ISSB standards build on and go beyond the TCFD in several areas, making it more detailed and challenging for companies to comply with.

Question 13.g. For covered entities that already report climate related financial risk, what approaches do entities use?
CBA Response: Banks may disclose their approach to managing climate-related financial risks in voluntary disclosures typically aligned with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). The TCFD framework is divided into four pillars focused on how a firm addresses climate-related risks and opportunities to its business. The TCFD framework was developed for corporate entities more broadly, and there are specific considerations for banks particularly with respect to the third pillar focused on risk management:

- TCFD Pillar 1: Governance and oversight. Disclosure of a bank's governance and oversight of climate-related risks, including with respect to senior management and board oversight as applicable.

- TCFD Pillar 2: Business strategy. Disclosure of a bank's business strategy to address strategic risks and opportunities to its business.

- TCFD Pillar 3: Risk management. Disclosure of how a bank addresses climate-related financial risk within its financial risk management framework. Climate risk is a driver of the financial risk types that a bank manages, including credit risk, market risk, liquidity risk, operational risk, etc. Banks may use climate scenario analysis to assess the range of potential climate-driven paths and outcomes as applied to their internal risk processes. Banks may voluntarily disclose the scenarios used but typically do not disclose the results of scenario analysis exercises. Disclosure of results may be misleading to market participants given the level of assumptions involved in scenario analysis exercises and the level of uncertainty underpinning the results. Additionally, scenario analysis disclosures are not likely to be comparable across institutions or consistent over time. Each bank's scenario analysis depends on unique portfolio compositions, assumptions, and modeling approaches, leading to significant variability in outcomes. Furthermore, the data informing this analysis, such as counterparty emissions and long-term climate projects, is often incomplete or unreliable. This lack of consistency and data quality diminishes the usefulness of the disclosed results and raises concerns about potential liability if stakeholders perceive the results as speculative or inadequately supported. These challenges underscore why banks typically limit public disclosure of scenario analysis outcomes.

- TCFD Pillar 4: Metrics and targets. Disclosure of any climate-related targets.

It is important to note that GHG emissions targets – such as reducing the carbon intensity or absolute emissions of financed portfolios – are not risk-based but reflect broader business strategy decisions related to climate and sustainability goals.

Some banks are members of the Partnership for Carbon Accounting Financials (PCAF), a global partnership of financial institutions that work together to develop and implement a harmonized approach to assess and disclose the greenhouse gas emissions associated with their loans and investments. PCAF has developed an open-source global GHG accounting standard for financial institutions, the Global GHG Accounting and Reporting Standard for the Financial Industry.

Question 13.h. In what areas, if any, is current reporting typically different than the guidance provided by the Final Report of Recommendations of the Task Force on Climate- related Financial Disclosures?

CBA Response: Current reporting often differs from the TCFD's guidance, particularly in implementing the enhanced requirements of the 2021 TCFD, which were later integrated into the ISSB standards. While many companies base their voluntary disclosures on TCFD's principles, the 2021 updates present significant challenges in areas not typically included in voluntary reporting practices. Challenges include:

- Financial impacts and potential impacts tied to climate-related risks and opportunities. The 2021 TCFD introduced detailed requirements for disclosing financial impacts and potential financial impacts tied to climate-related risks and opportunities. However, isolating financial impacts solely attributable to climate-related risks is difficult, as outcomes like credit losses often stem from a combination of factors, including economic, regulatory, and climate-related drivers. Adding to the complexity is the requirement to assess *potential* financial impacts, which could be interpreted to include opportunity costs related to "what-if" scenarios (e.g., deals that did not materialize). This type of analysis is speculative, requiring significant assumptions and estimates that lack precision. For instance, the introduction of a new regulation might lead to shifts in market behavior and investment priorities, but attributing these changes directly to climate-related factors is highly uncertain. Incorporating such speculative information into disclosures risks misleading stakeholders, which is why financial institutions often do not disclose this information in the manner the 2021 TCFD recommends. The SEC's proposed corporate climate disclosure rule included similar provisions on disclosures of financial impacts tied to climate-related risks, which were removed from the final rule to address concerns from market participants that these disclosure provisions were larger inoperable. See p. 422-424 and 446 at https://www.sec.gov/files/rules/final/2024/33-11275.pdf.

- Transition plans. The 2021 TCFD also includes the recommendation for companies to disclose transition plans, but many companies do not disclose these plans for several reasons. Transition plans are often considered internal business strategy documents, and disclosing them could reveal sensitive competitive information, such as client engagement approaches, financial investments, or sectoral strategies. Additionally, there is skepticism about the usefulness of publishing these plans because their success depends on factors outside the company's control, such as regulatory developments, technological advancements, and broader market conditions. Even when disclosed, transition plans present significant challenges. These documents outline how a company plans to navigate the net-zero transition, but their publication does not guarantee delivery of the objectives. Achieving these targets is heavily reliant on real economic conditions – such as the availability of enabling technologies, supportive regulations, and market dynamics – that may not align with the company strategy. Transition plans may also need to evolve as external conditions change, creating potential liability risks if companies disclose plans that later require substantial revisions. These challenges result in highly variable levels of detail among companies when disclosing transition plans, with many opting not to disclose them at all, barring a regulatory or legal requirement to do so.

- Time horizon. The TCFD also recommends disclosures across short-, medium-, and long-term horizons, but many financial institutions and companies do not report in this way. Additionally, the long-term uncertainty inherent in climate risk projections, such as regulatory changes or technological advancements, makes it difficult to quantify potential financial impacts with any precision. These factors create significant operational and methodological hurdles that limit financial institutions' ability to align fully with TCFD's requirements.

Thank you again for the opportunity to offer preliminary comments. We welcome any questions you may have regarding our letter.

Sincerely,

C Shultz

Chris Shultz
Vice President, Government Relations

CS:ec