

February 13, 2023

Department of Defense
General Services Administration
National Aeronautics and Space Administration

Via Electronic Submission

RE: Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk (FAR Case 2021-015; Docket No. FAR-2021-0015; Sequence No. 1)

The American Council on Renewable Energy (“ACORE”) respectfully submits these comments in response to the proposed amendments to the Federal Acquisition Regulation (“FAR”) for Federal contractors to disclose their greenhouse gas (“GHG”) emissions and set science-based targets. ACORE is a national nonprofit organization dedicated to advancing the renewable energy sector through market development, policy changes, and financial innovation. ACORE’s membership includes renewable energy developers, institutional investors, corporate buyers, electric power generators, retail energy providers, and other stakeholders. ACORE member companies collectively hold \$23 trillion in assets. In 2022, 90 percent of the booming utility-scale U.S. renewable growth was financed, developed, owned, or contracted for by ACORE members.

ACORE supports the Department of Defense, General Services Administration, and National Aeronautics and Space Administration’s (“the Agencies”) objectives to analyze and mitigate climate risks by requesting disclosures from “Major” and “Significant” Federal contractors, while expressing some caution that the nature and extent of information and analyses that must be reported do not inadvertently drive suboptimal financial, climate, or environmental results.

Enhanced climate disclosures can reduce the nation’s exposure to climate risks.

Companies are adopting aggressive sustainability targets and considering environmental, social and governance (“ESG”) criteria to better evaluate the impact of their investments and business activities on climate change. However, sustainability-focused intentions do not always result in GHG emission reductions. If we intend to achieve the significant declines in GHG emissions scientists say are needed by 2050, the business community must quickly adopt a standardized, transparent, and forward-looking approach that more effectively measures the climate impact of sustainability actions and investments. Federal regulation of climate disclosures will help lead to meaningful corporate climate information, reduce the nation’s exposure to climate risks, and help lead to greater GHG emissions reductions.

Climate risk and GHG disclosure regulations should be consistent across Federal agencies. Misalignment could increase costs to companies and hinder progress on achieving climate targets.

We urge uniformity among all Federal rules that would require companies to disclose climate-related information or seek to define corporate sustainability or ESG behaviors. Misalignment among Federal agencies could substantially increase the costs for companies that are subject to multiple requirements. The standardization and clarification of key concepts in Federal regulations is particularly important.

For example, CDP’s online response system typically opens annually in the spring and closes in the summer.¹ As a result, companies subject to the FAR proposed rule and the Securities and Exchange Commission (“SEC”) proposed rule may have the undue administrative burden of reporting similar climate-related information twice in the same year. We recommend the final rule allow flexibility of GHG disclosure submission, including allowing companies to submit emissions disclosures that have been submitted for compliance to other similar Federal regulatory requirements.

Another prime example is the need to set a Science-Based Targets initiative (“SBTi”)-validated climate goal in the FAR, which is not required in the proposed SEC climate disclosure rule. The science on target setting is evolving rapidly, and standard methods do not yet exist for every sector. Additionally, the limited number of target-setting tools currently prescribed by SBTi may not work for some companies. If SBTi-validated goals are required by the FAR, this could result in many current Federal contractors no longer qualifying to be Federal contractors. Allowing for decentralized development and validation of science-based targets (e.g., alternative sources of validation or use of other third-party companies), would enable more companies to meet the intent of the proposed rule in a meaningful way and may accelerate the standardization of more refined science-based methodologies across complex industry sectors.

Furthermore, more than ten international jurisdictions have implemented or are in the process of implementing sustainability disclosure regimes.² Companies that operate in international markets are subject to multiple, sometimes conflicting requirements. To hedge against major discrepancies, ACORE has encouraged the SEC to work collaboratively with the jurisdictional working group set up by the International Sustainability Standards Board (“ISSB”) to facilitate the development of a global baseline for climate disclosures.³

In the following sections and the Appendix, we share recommendations derived from our comments to the SEC on June 15, 2022, regarding the suggested treatment of renewable energy information in climate-related financial disclosures,⁴ which should be considered by the

¹ Approximately April through August

² “Status Report”. Task Force on Climate-Related Financial Disclosures. <https://assets.bbhub.io/company/sites/60/2022/10/2022-TCFD-Status-Report.pdf>

³ “Public Comment on Enhancement and Standardization of Climate-Related Disclosures for Investors Proposed Rule”. Value Reporting Foundation. <https://www.sec.gov/comments/s7-10-22/s71022-20127884-289400.pdf>

⁴ <https://acore.org/wp-content/uploads/2022/06/ACORE-SEC-Comments-on-Climate-Disclosures-6-15-22.pdf>

Agencies in the FAR amendments. ACORE’s comments primarily focus on the disclosures of Scope 1-2 GHG emissions and of climate-related financial risks.

Federal climate disclosure rules should be modeled from established voluntary standards but still be subject to cost-and-benefit analyses.

The alignment of Federal climate disclosure regulations with the Task Force for Climate-Related Financial Disclosures (“TCFD”), CDP, SBTi, and GHG Protocol is prudent, as these organizations have become the most used and trusted voluntary frameworks for companies to disclose climate information and set climate goals. Many companies already have internal processes to disclose climate information and set climate goals based on their recommendations and standards.

However, these organizations have processes to periodically update their guidance to reflect changing market conditions. For example, the GHG Protocol announced an effort to determine the need and scope for additional guidance for its Scope 1-3 emissions disclosure standards.⁵ There is a risk of relying on the future decisions and interpretations of non-government organizations without Federal review. As these frameworks are updated, Federal agencies should, in accordance with many existing Federal laws, perform cost-and-benefit analyses prior to adopting them.

The Agencies, in coordination with the SEC, should consider a schedule to regularly review and update any climate disclosures and climate goal setting in response to changes by the TCFD, CDP, SBTi, and GHG Protocol. If changes are considered, the Agencies should issue a public notice for comment and make changes after performing a cost-and-benefit analysis.

Renewable energy plays a vital role in achieving decarbonization objectives. Federal climate disclosure regulations should encourage, and not inhibit, renewable purchasing or investment.

Renewable energy stands at the heart of efforts to address climate change. The International Energy Agency (“IEA”) has stated we will not achieve net zero objectives without doubling the global rate of renewable energy installation. Two-thirds of electricity generation must come from renewable energy sources, and investment in renewable energy needs to triple by 2030 to meet the 2050 Paris Agreement target.^{6,7} Renewable energy generation, use, provision, and investment are thus material considerations and strategic business decisions in company climate transition and net-zero plans, as companies contribute to meeting global climate targets while also reducing their exposures to GHG emissions-intensive activities; improving their long-term financial performance; complying with climate-related policies; and responding to customer demand for less carbon-intensive energy.

⁵ “Survey on Need for GHG Protocol Corporate Standards and Guidance Updates”. Greenhouse Gas Protocol. <https://ghgprotocol.org/survey-need-ghg-protocol-corporate-standards-and-guidance-updates>

⁶ “Renewable Power: More efforts needed”. IEA. <https://www.iea.org/reports/renewable-power>

⁷ “World must triple clean energy investment by 2030 to curb climate change -IEA”. World Economic Forum. <https://www.weforum.org/agenda/2021/10/iea-international-energy-markets-environment-renewables>

Net-zero commitments now cover one-fifth of the world’s largest corporations. However, common net-zero activities such as purchasing carbon- or nature-based offsets may not have the same impact as actions that more directly drive decarbonization. According to a report by the Organisation for Economic Co-operation and Development (“OECD”), investing in renewable energy and low-carbon products can present opportunities through the formation of green-aligned markets, products and innovations; contribute to “climate-resilient growth;” while reducing stress on the financial system. Furthermore, the OECD has estimated that “achieving the 2 degree [C] scenario by 2050 could have a net positive effect on global GDP of up to 5%.”⁸

Companies that purchase and/or invest in renewable energy are vitally important actors in achieving our nation’s climate objectives. It is important that climate disclosure and climate goal-setting regulations not unduly inhibit their participation in the renewable sector.

Notably, if voluntary standard organizations were to reform or eliminate the option for market-based accounting in Scope 2 emissions reporting, the market for voluntary renewable energy purchasing would be adversely impacted. Federal climate disclosures should preserve market-based accounting in Scope 2 GHG emissions disclosures. Descriptions of voluntary renewable purchasing options and their role in the renewable energy market are detailed in the Appendix.

Furthermore, renewable energy investments extend beyond the operational carbon footprint of the investing company and contribute to GHG reductions in other sectors of the economy. The downstream impacts of their investment activity could provide tremendous future GHG savings in the form of avoided carbon emissions. Investors in renewable energy projects should be permitted to disclose renewable energy investment as a climate opportunity. Investors should also have the option to separately disclose the avoided emissions associated with their investments in renewable energy while avoiding concerns around double counting. Other investors could benefit from avoided emissions information if they seek to invest in companies that are driving capital to renewable energy. Details on renewable investment strategies are also detailed in the Appendix.

In summary, in support the Agencies’ objectives to mitigate the intensifying impacts of climate change, we recommend that Federal regulations around climate-related financial disclosures be consistent among Federal agencies, use established sustainability standards as a framework and conduct cost-benefit analyses before adopting any new or updated standards, and preserve the market-based accounting of Scope 2 GHG emissions.

We appreciate this opportunity to provide comments on the proposed FAR amendments. Please do not hesitate to contact Lesley Hunter at hunter@acore.org with any additional questions you may have.

Sincerely,
/s/ Lesley Hunter
Lesley Hunter
Senior Vice President of Programs & Sustainable Finance

⁸ “ESG Investing and Climate Transition”. OECD. <https://www.oecd.org/finance/ESG-investing-and-climate-transition-market-practices-issues-and-policy-considerations.pdf>

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Appendix

Renewable procurement strategies

Driven by investors and customers demanding less carbon-intensive energy, commercial and industrial (“C&I”) offtakers are dramatically transforming the grid by creating demand for GHG emissions-free renewable power to meet internal sustainability goals. Seventy-five percent of Fortune 100 companies now have some form of renewable energy or sustainability target.⁹ As of December 2022, C&I offtakers accounted for over 16 percent of total clean power operating capacity in the U.S.,¹⁰ including through corporate renewable PPA procurement which in 2022 reached a record 20 gigawatts (“GW”).¹¹

Renewable energy certificates (“RECs”) are a legal instrument that represent the environmental and nonpower attributes of renewable energy generation. One REC represents one megawatt-hour (“MWh”) of renewable energy generation. REC ownership is how companies in the U.S. make credible and verifiable renewable energy usage claims,¹² and may currently be used to address Scope 2 GHG emissions associated with purchased electricity.^{13,14}

RECs are distinct from carbon offsets and have different uses and impacts. Whereas a REC is an accounting instrument that relates to a company’s electricity use and its Scope 2 GHG emissions, a carbon offset is a verified emission reduction subtracted from a company’s gross emissions to determine its net emissions. An offset can be applied to an organization’s Scope 1, 2 or 3 emissions,¹⁵ but may encourage a company to put off more direct decarbonization actions. Conversely, REC purchasing can directly allocate capital to renewable energy projects to help fund their continued operations and can lead to the development of new projects.

⁹ Fortune 100 sustainability reports.

¹⁰ “Clean Energy Powers American Business”. American Clean Power Association. <https://cleanpower.org/clean-energy-powers-american-business/>;

¹¹ “1H 2023 Corporate Energy Market Outlook”. BloombergNEF. <https://www.bnef.com/insights/30725/view>; PPAs are not the only means by which C&I entities acquire or support renewable energy as part of their sustainability programs.

¹² “Power Purchase Agreements”. BloombergNEF. <https://www.there100.org/sites/re100/files/2021-02/RE100%20Making%20Credible%20Claims.pdf>

¹³ Jurisdictions outside the U.S. have other contractual instruments to document renewable energy use, such as Guarantees of Origin in the E.U. or through contractual arrangements between electricity generators and users in regions without established markets for renewable energy attributes.

¹⁴ “Offsets and RECs: What's the Difference?” U.S. Environmental Protection Agency (EPA). https://www.epa.gov/sites/default/files/2018-03/documents/gpp_guide_recs_offsets.pdf

¹⁵ Ibid.

Revenues from RECs can provide anywhere between 10-100 percent of a project’s revenues during the underwriting period. Moreover, the existence of voluntary RECs is an important assumption in project financing and drives investment in new projects.¹⁶

Companies have various options available to procure RECs, as described in the table below.¹⁷

<p>Power Purchase Agreements</p>	<p>A multi-year contract in which an entity sells electricity and RECs to another party, often at a fixed price. In a <i>physical</i> PPA, the offtaker receives the electricity generated from a renewable power plant and its RECs. A <i>virtual</i> PPA is a contract in which an offtaker agrees to purchase electricity and RECs from a renewable developer at a set fixed price, but continues to buy physical electricity from its local electricity provider. In this scenario, the developer sells the renewable power into the wholesale electricity market and does not deliver electricity to the buyer, and the parties agree on a financial settlement on the difference between the market price of the electricity and the stated contract price. Renewable energy projects often do not receive financing until a PPA with an offtaker is signed. An offtaker that has signed either a physical or virtual PPA is thus at least partly responsible for helping to bring a new renewable energy project to the power grid.</p>
<p>Renewable Energy Investments</p>	<p>Certain investments in renewable energy projects can be structured so that the investor can claim RECs for the renewable energy produced. Certain large technology companies and retailers, for example, have invested in renewable energy tax credits (also known as a “tax equity” investment) and receive RECs generated from those projects.</p>
<p>Unbundled REC Purchasing</p>	<p>RECs can be purchased without the underlying electricity from REC retailers. However, unbundled REC purchasing can provide an important revenue stream for renewable projects and remains important to how the U.S. renewable energy market functions.</p>
<p>Green Pricing Programs and Green Tariffs</p>	<p>Companies and households in certain electricity markets may purchase renewable power and RECs from their utility, competitive supplier, or community choice aggregator, through green power pricing programs or green tariffs. The buyer does not generally control where the renewable energy is sourced in green pricing programs, nor is the market price of electricity relevant to what the buyer pays. In a green tariff, the buyer pays a bundled price stated in the tariff or negotiated with the utility, and the rules of the utility’s green tariff assure that the utility has procured</p>

¹⁶ “Primer on REC Financing Mechanics for Renewable Energy Projects.” Environmental Markets Association. https://www.enviromarkets.org/resources/2023-01-09_EMA%20Primer%20on%20REC%20Financing%20Mechanics%20for%20Renewable%20Energy%20Projects.pdf

¹⁷ “4 Ways to Get Renewable Energy Certificates”. LevelTen Energy. <https://www.leveltenenergy.com/post/ways-to-get-renewable-energy-certificates>

	energy from a renewable source and that the renewable attributes of generation from that source may only be claimed once by the green tariff customer.
Onsite Generation	A company may also choose to own a renewable energy generation facility and retire the generated RECs to meet its renewable energy goals.
24/7 Purchasing	Some companies have committed to purchasing 24/7 clean energy to ensure their electricity consumption is matched by carbon-free energy generation on an hourly basis. ¹⁸ Companies currently use different time-based energy tracking certificates, as the industry works on a more widely accepted standard that could effectively time stamp the hour electricity is produced on a REC. 24/7 purchasing is intended to have a larger impact on reducing carbon emissions, and to incentivize suppliers to locate renewable energy in regions with more fossil fuel generation.

Renewable investing strategies

Companies that invest in renewable energy projects are also responsible for bringing new GHG emissions-free electricity to the power grid. The U.S. renewable energy sector has attracted over \$448 billion in investment over the last decade.¹⁹ Debt and equity providers continue to show strong confidence in the renewable energy sector even as financing mechanisms have evolved to meet the capital requirements of renewable energy projects.

Financial institutions and other corporations with large tax capacities provide renewable energy tax equity in support of U.S. renewable energy development and the clean energy transition. In addition to the environmental benefits, these investments compare favorably to other financial products in risk and return profiles. Many financial institutions also offer sustainable finance and other climate-related financial products and services that can direct funding to renewable energy.²⁰ Chief among them are sustainable financing product options and client services that assist in the transition to green portfolios.

Sustainable debt options include green bonds and loans, social bonds, sustainability bonds, sustainability-linked loans and bonds, and transition bonds.²¹ As the energy transition accelerates, financial institutions are stepping up the issuance of these products and increasing

¹⁸ “Can 24/7 carbon-free energy become a global standard?” Canary Media.

<https://www.canarymedia.com/articles/corporate-procurement/can-24-7-carbon-free-energy-become-a-global-standard>

¹⁹ “Clean Energy Investment Trends”. BloombergNEF. <https://about.bnef.com/>

²⁰ “Transition bonds” finance projects that are considered as interim steps toward a low-carbon economy, such as the development of a gas power plant in place of coal, which may still retain climate risks.

“Climate Transition for Financials: Bankers and Brokers”. BloombergNEF.

<https://www.bnef.com/insights/26637/view>. p. 12-23

²¹ “Climate Transition for Financials: Bankers and Brokers”. BloombergNEF.

<https://www.bnef.com/insights/26637/view>. p. 16

the underwriting of sustainable debt for renewable energy firms. In 2022, global green and sustainability bonds exceeded \$730 billion.²² Many financial institutions disclose impact reports on issued bonds reviewed by third-party opinion providers and may attach metrics to their sustainability-linked bonds and transition bonds, such as an ESG score, to increase transparency to investors. Green bonds can also be linked to specific environmental targets, such as an increase in the share of renewable energy generation and consumption, to enhance their climate impact. Financial institutions can also create ESG-related derivatives products, including renewable energy purchasing instruments such as PPAs, proxy revenue swaps, RECs, wind index futures, renewable identification numbers (“RINs”) futures, and low-carbon fuel standard futures. These efforts enhance the liquidity and deployment of green investment and can be verified to demonstrate the veracity and impact of investments.

²² “1H Sustainable Finance Market Outlook”. BloombergNEF. <https://www.bnef.com/insights/30681/view>