

ENERGY BENCHMARKING AND DISCLOSURE FOR COMMERCIAL REAL ESTATE

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BACKGROUND:

Increasingly, states, counties and cities nationwide are continuing to implement enabling legislation that mandates energy usage benchmarking and disclosure for commercial real estate. Benchmarking is the process of measuring energy usage and comparing it to that of similar buildings in similar geographic locations.

According to the Institute for Market Transformation (IMT), the building sector (think: office buildings, schools, homes, etc.) accounts for about 40 percent of the country's total energy usage, making it the largest consumer of energy in the country. The theory behind benchmarking and disclosure of the relevant energy usage data is that by measuring the consumption of energy, real estate owners can thereafter improve their buildings' efficiency, reduce their energy usage, cut energy costs, minimize harmful emissions and make their properties more attractive to potential financiers, buyers and tenants.

ENERGY STAR:

To aid in energy efficiency efforts, the Environmental Protection Agency (EPA) created ENERGY STAR®, which allows building owners and operators to measure and record energy use data online, for free, using the Portfolio Manager system. Using the energy usage data inputted, Portfolio Manager assigns each building an efficiency rating on a scale of one to 100. A higher score reflects a building's scoring better in efficiency than a set of similarly situated buildings. For instance, a score of 90 would mean that the building scores better than 90 percent of the buildings in the applicable data set; similarly, a building with a score of 30 would be only 30 percent better than similar buildings (or put another way, the 30 score would be 70 percent worse off efficiency-wise than its competitive set buildings). A building receiving a score of 75 or higher is eligible for an Energy Star designation and decal to be displayed in the lobby, demonstrating its commitment to energy efficiency and reduced consumption.

Currently, about 40 percent of total commercial building space nationwide utilizes the Portfolio Manager system for measuring energy efficiency. This includes more than half of the Fortune 100 companies' campuses, many colleges and universities, professional sports arenas, healthcare organizations and more. The number of buildings utilizing Energy Star and Portfolio Manager is steadily rising as more cities, counties and states introduce required benchmarking and disclosure policies.

Using the Portfolio Manager, building owners and operators can track their properties' energy and water performance, as well as their greenhouse gas emissions. With this information, they can compare their properties' performance to other, similar properties, set efficiency goals, track improvement, design space to attempt to fit a specific efficiency profile, share performance results and verify a return on their invested energy dollar vis-à-vis energy efficiency. Studies have shown that just benchmarking consistently is likely to lead to a 6 to 9 percent reduction in consumption, which, if energy costs held steady, would result in cost savings.

Additional information can be found on the [Energy Star website](#).

ENERGY DISCLOSURE POLICIES ENACTED:

To date, two states, two counties and 24 cities across the United States have enacted energy disclosure policies for commercial buildings. The adoption of such policies is rising as the environmental benefits and cost-saving

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opportunities they create become more evident. The data from benchmarking may also be, and is sometimes required to be, disclosed to the public or potential partners in transactions. “We believe that sharing this data can ... drive the market to recognize and reward energy efficiency and create a continuous cycle of improvement and demand for high-performing buildings,” says the IMT. The theory of benchmarking and reporting is to attempt to level the playing field and operate as a quasi-miles per gallon equivalent to tenants when they are trying to understand the energy characteristics of similar building within a given submarket.

Implementing benchmarking and disclosure policies can increase market knowledge and competition, foster job creation (via energy efficiency upgrades) and, of course, create energy and cost savings. The IMT conducted studies and published a fact sheet demonstrating the positive effects of benchmarking and disclosure. It found that when comparing similar properties with like features including rental rate, age and amenities, energy-efficient properties have seen a 10 percent better occupancy rate on average as compared to less efficient buildings. Similarly, properties that are more efficient demand approximately 9 percent higher rental premiums than less efficient properties. In certain areas of the country, properties that utilize benchmarking to inform their energy performance choices have enjoyed sales prices up to 25 percent higher than those of less efficient properties. Finally, an average 2.4 percent reduction in energy usage for buildings using benchmarking to set efficiency goals has equated to hundreds of thousands of dollars in savings each year for the buildings focusing on energy consumption reduction through efficiency.

The states, counties and cities that mandate commercial building benchmarking are:

California and Washington state

Cook County, Illinois, and Montgomery County, Maryland

Atlanta; Austin; Berkeley; Boston; Boulder; Cambridge; Chicago; Denver; Evanston; Kansas City; Los Angeles; Minneapolis; New York City; Orlando; Philadelphia; Pittsburgh; Portland, ME; Portland, OR; Salt Lake City; San Francisco; Seattle; South Portland; St. Louis; and Washington, D.C.

[View a map depicting this information.](#)

[Aaron R. Feinblatt contributed to the preparation of this Alert.]

Below is a more detailed look at the benchmarking and disclosure requirements in areas of particular interest

CALIFORNIA

In 2015, California enacted Assembly Bill 802, which repealed a previous commercial building energy disclosure law and introduced new standards. Under the old law, owners of commercial properties had to disclose energy use data to prospective buyers, lessees and lenders. They had difficulty, however, obtaining tenants' energy consumption records, as tenants had to grant prior authorization of such disclosure. Now, California utilities are required to keep benchmarking data on commercial properties in excess of 50,000 square feet that use their services. Upon request by a building owner or operator, the utility must disclose that data to the owner or operator. This streamlines the benchmarking and disclosure process and ensures greater access to information about energy usage. Furthermore, building owners and operators must now disclose the data publicly on an annual basis, rather than only to prospective

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partners in a transaction.

NEW YORK CITY

In New York City, commercial buildings 50,000 square feet and larger must benchmark via the Portfolio Manager. Starting on May 1, 2018, this requirement will extend to buildings of 25,000 square feet and larger. Furthermore, the city will disclose the information gathered through benchmarking publicly on the internet each year. This will allow prospective buyers, renters and lenders to understand better the energy performance of properties they consider buying, renting or financing. It will also prevent building owners and operators from obscuring inefficient energy usage, while instead allowing them to make smart, effective changes to reduce energy costs and output. Benchmarking and public disclosure for a large number of commercial properties are intended to aid the city in reaching its goal of reducing emissions by 80 percent from 2005 levels by 2050. In addition, the city has recently passed Local Law 33, which requires beginning in 2020, that many buildings prominently post their Energy Star scores along with a letter grade (e.g., A, B, C, etc.) in their lobby, much like restaurants do throughout the city for health inspection scores.

BENCHMARKING AND DISCLOSURE REQUIREMENTS IN SELECT CITIES

[Atlanta](#), [Austin](#), [Boston](#), [Chicago](#), [Los Angeles](#), [New York City](#), [Orlando](#), [Philadelphia](#), [Pittsburgh](#), [San Diego](#) and [San Francisco](#)

FOR FURTHER INFORMATION

If you have any questions about this Alert, please contact [Brad A. Molotsky](#); any of the [attorneys in our Real Estate Practice Group](#); any of the attorneys in our [Energy, Environment and Resources Practice Group](#); or the attorney with whom you are regularly in contact.

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