SEC EMISSIONS REPORTING & THE CONSTRUCTION INDUSTRY

Oppose Regulatory Mandates to Report Carbon Emissions throughout the Supply Chain

Action Needed:

Tell House Members to protect small businesses and privately held companies from mandatory reporting of greenhouse gas emissions by cosponsoring the Scope 3 Act (H.R. 3057)

Tell Senators to introduce companion/similar legislation to the Scope 3 Act.

Background:

In March 2022, the Securities and Exchange Commission (SEC) proposed a new rule to greatly increase the amount of information that publicly traded companies would be required to disclose about their greenhouse gas (GHG) emissions and climate-related risks. As drafted, the proposed rule would require most publicly traded companies to disclose their so-called "Scope 3 emissions." Scope 3 emissions include a company's "upstream" and "downstream" emissions, including all emissions associated with construction, such as on-site emissions and the embodied carbon of building materials.

As drafted, this rule would thus require *private contractors* to report their GHG emissions for any construction work performed for publicly traded companies subject to the Scope 3 reporting, despite the SEC having no authority to regulate private companies in this manner.

This GHG reporting mandate would be extremely costly to the construction industry, and potentially unobtainable, as the technology and tools to accurately track and report GHG emissions are still developing. It would also place publicly traded construction firms at a competitive disadvantage relative to their privately held peers. It could also conflict with other regulatory goals, such as increased hiring of disadvantaged business enterprises (DBEs) or women-owned or minority-owned business enterprises (MWBEs).

AGC Message:

- **Assert Congressional authority.** The SEC's legal authority to regulate the tracking and disclosure of GHG emissions, as outlined in the proposed rule, is tenuous, especially after recent Supreme Court decisions. Congress should reassert its role in legislating an appropriate GHG disclosure framework, rather than outsourcing it to the SEC.
- **Support flexibility in carbon reporting.** Supply chain (or Scope 3) emissions reporting should be optional for publicly traded companies. To the extent a publicly traded company elects to disclose their Scope 3 emissions, allow them to disclose only the Scope 3 categories they deem material to investors.
- **Support practical application of the materiality standard.** The proposed regulations would exponentially increase the amount of information publicly traded companies are required to disclose to investors, potentially burying important and relevant "material" information under a mountain of "immaterial" information. The materiality framework has guided information disclosure for publicly traded companies well, and to the extent a company's GHG emissions are material to investors, they are already required to be disclosed—which many companies already elect to do.

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