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# FEI Annual Accounting and Tax Update

February 13, 2023

# 2022 AICPA/CIMA conference highlights

# Top takeaways from the 2022 AICPA & CIMA Conference

## The SEC's primary focus is investors and it expects registrants to focus on providing decision-useful information to investors.

### Quality amidst economic uncertainty

### Transparency through disclosure

### The reporting landscape is changing

### Emerging areas remain in the spotlight



## Talent was also a pervasive theme

We are united in a desire to grow the accounting profession – to maintain and enhance quality.

We are committed to attracting, nourishing and retaining diverse talent. And seeing our professionals grow and mature to become our future leaders.

We invite you to join the conversation and contribute to our growth as a purpose-driven organization.

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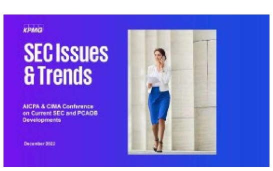
# 2022 AICPA & CIMA Conference

The highlights you need from the AICPA & CIMA Conference on Current SEC and PCAOB Developments




### Highlights from the 2022 AICPA & CIMA Conference

An easy-to-digest snapshot of the key insights from the conference and key themes for year-end reporting

Download now >

### 2022 AICPA & CIMA Conference blogs

Our daily blogs from the Conference summarizing key themes and top takeaways

Read more >

# Economic uncertainty

## Accounting areas impacted by economic uncertainty

### 01 Nonfinancial asset impairment

- Goodwill & indefinite-lived intangible assets – Tested annually, or more frequently.
- Long-lived assets – Triggering events

### 02 Credit impairment

- Considerations under Topic 326 (credit losses)

### 03 Fair value measurement

- Monitor for a decrease in volume or level of activity
- Principal (or most advantageous) market determination

### 04 Debt arrangements

- Modifications
- Balance sheet classification of debt as current/noncurrent

# Accounting areas impacted by economic uncertainty

**05**

### Revenue recognition

- Credit risk
- Timing and amount of revenue to be recognized in the future

**06**

### Income taxes

- Realizability of deferred tax assets

**07**

### FS disclosures

- Subtopic 205-40 (going concern)
- Subtopic 220-20 (unusual items)
- Topic 275 (risks/ uncertainties)
- Topic 855 (subsequent events)

**08**

### SEC registrants

- Additional disclosure considerations





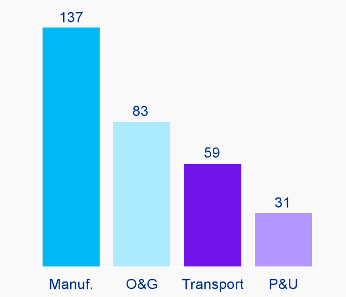
# The latest on ESG

# SEC staff comment letters on climate risk

**>65**
Issuers questioned

**>450**
Total comments

**96%**
Qs about physical risks




**54%**
Follow-ups

## In 2022

- **> 90%** questioned on CSR report
- Seeking more information (quantification) about **carbon credits and offsets**
- Lots of follow-up on **transition risks**
- Lots of follow-up on **business trends**
- **Decrease** in questions on regulatory risk
- **Capex and compliance costs** 'immaterial' or couldn't be bifurcated

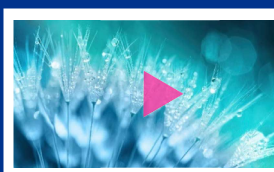



# ESG resources


**LATEST ANALYSIS!**
**Defining Issues**
Sustainability reporting directive adopted by the EU; now pending transposition into law by member states
**Read** here >

**KPMG Financial Reporting View**


**OUR ANALYSIS!**
**Podcast and talkbook**
we explore themes emerging from responses to the SEC.
**KPMG comment letter to the SEC:** here



**Environmental, Social and Governance reporting**
KPMG guidance and articles for financial reporting professionals

**KPMG ESG**
With KPMG, you can expect an experience that's better for your team, organizations and the capital markets. An experience that's built for a world that demands agility and integrity.

# SEC update

## Non-GAAP Compliance & Disclosure Interpretations (C&DIs)

### How prominent is presentation?

- Most comparable GAAP measure presented with equal or greater prominence
- Reconciliations should start with GAAP measure
- Applies to presentation as well as discussion and analysis

### Is the measure misleading?

- What is normal, or recurring?
- Are measures described and labeled appropriately?
- Are tailored accounting principles being used?

Extensive and detailed disclosure doesn't necessarily prevent a non-GAAP measure from being otherwise misleading

# Other headlines and reporting reminders

## ASU 2021-10, Disclosures by business entities about government assistance

### What

Created new Topic 832 (government assistance)

Requires business entities to disclose information about certain government assistance that they receive in their annual financial statements

Applies to entities that account for government assistance under a
- (1) grant model (e.g. IAS 20) or
- (2) contribution model (e.g. Subtopic 958-605)

### Why

Lack of guidance on the accounting for and disclosure of government grants in US GAAP

**Effective** for all entities in **2022**

# ASU 2022-04, Disclosure of supplier finance program obligations

## What

**Headline:** Enhances the transparency of supplier finance programs so that users can better understand the effect of those programs on an entity's working capital, liquidity and cash flows

## Why

No existing US GAAP guidance/lack of transparency in the financial statements concerning these programs

## Effective

for all entities in

**2023**

except for the roll-forward disclosure, which is effective in 2024.




# Other standards effective in 2022

| ASU | Summary |
| --- | --- |
| **2021-05, Lessors—Certain leases with variable lease payments** | Requires lessors to classify as operating leases those leases with variable lease payments that do not depend on an index or rate if another classification (i.e. sales-type or direct financing) would result in a commencement date selling loss |
| **2021-04, Warrant modifications** | Clarifies an issuer's accounting for certain modifications or exchanges of freestanding equity-classified written call options (e.g. warrants) that remain equity-classified after modification or exchange |
| **2020-06, Convertible debt and contracts in own equity** | - Reduces the number of accounting models for convertible instruments<br>- Makes targeted changes to the disclosure requirements for convertible instruments<br>- Removes some of the conditions that preclude a freestanding contract from being classified in equity (or preclude an embedded derivative from meeting the derivative scope exception)<br>- Simplifies the earnings per share calculation for convertible instruments |

# FASB proposals – In summary

| Proposal | Summary | Comment deadline |
|---|---|---|
| **Common control lease arrangements** | As a practical expedient, **private entities** may use written terms/conditions without having to determine legal enforceability<br>All lessees (**public or private**) in a common control lease would amortize related leasehold improvements that it owns for accounting purposes over their estimated economic life (regardless of the ASC 842 lease term) as long as the lessee controls the use of the underlying (leased) asset. | **January 16** |
| **Accounting for joint venture (JV) formations** | Would require a JV to measure net assets contributed to it in a formation transaction at fair value (with certain exceptions) at the formation date using the business combinations guidance in Subtopic 805-20, regardless of whether a venturer contributes a business. | **Ended December 27** |




# FASB proposals – in summary

| Proposal | Summary | Comment deadline |
|---|---|---|
| **Segment disclosures** | Would enhance segment reporting under Topic 280 by expanding the breadth and frequency of segment disclosures.<br>Would allow public entities to disclose more than one measure of segment profit or loss if the chief operating decision maker (CODM) regularly reviews multiple measures. | **Ended December 20** |
| **New Conceptual Framework chapters** | Chapter 2: The reporting entity<br>Chapter 5: Recognition and derecognition | **January 16; February 21** |
| **FORTHCOMING (early 2023)** | Income tax disclosures | |

Other priority projects for early 2023 include **income statement disaggregation** and the **accounting for and disclosure of crypto assets**.


Topic 848
sunset date
deferral


Sales and Use
Tax in a
Post-*Wayfair*
World

# What has happened since *Wayfair*

**All states have economic nexus standards for remote sellers**

—The large majority of economic nexus standards mirror South Dakota’s, but some differ in important ways (e.g., higher threshold, no transactions threshold, etc.)

—Missouri was the last state to adopt; Missouri’s law became effective January 1, 2023

—All states have laws requiring marketplace facilitators to collect for sales facilitated through a marketplace

**Massachusetts and Ohio had standards before the *Wayfair* decision requiring economic nexus plus a software-related presence (e.g., cookies, apps)**

—In *U.S. Auto Parts*, the Massachusetts Supreme Judicial Court held that the presence of cookies and apps on customer devices and the use of content distribution networks with servers in Massachusetts did not constitute sufficient physical presence under *Quill*

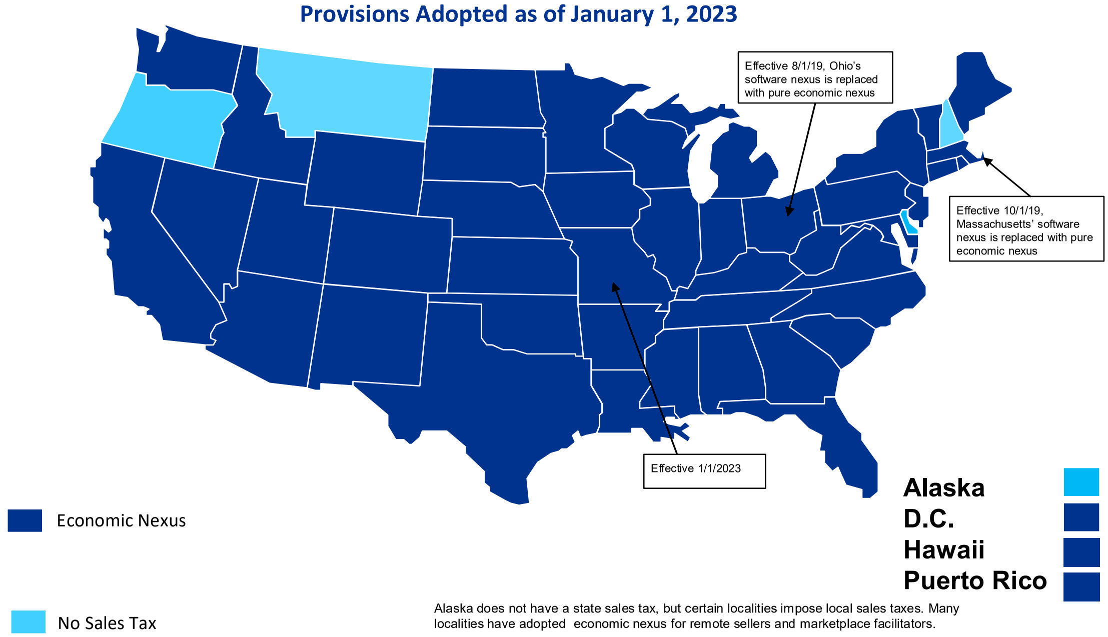
—As such, the Commissioner could not enforce its 2017 “cookie nexus” regulation for pre-*Wayfair* periods





# Economic nexus – Sales and Use Tax

**Provisions Adopted as of January 1, 2023**




Alaska does not have a state sales tax, but certain localities impose local sales taxes. Many localities have adopted economic nexus for remote sellers and marketplace facilitators.

# Issues

## Remote Sellers

- Determining taxability of goods in new states where the seller has a collection obligation
- Determining the tax base upon which sales tax is charged

## Foreign Sellers

- Wayfair does not provide different rules or carve-out foreign sellers making sales to customers in the U.S.
- Note that economic nexus thresholds in many states apply to gross sales, not just taxable sales

## Technology Companies

- Because of how technology-related services are delivered, many technology companies likely contained their nexus footprint to a few jurisdictions
- Determining the taxability of Internet-based/technology-related services can be challenging





# Income tax consequences

## The repeal of the *Quill* physical presence standard has corporate income tax implications, as well

- Although many states assert economic nexus for corporate income tax purposes, not all states have specific or bright-line economic nexus authority
  - Will *Wayfair* change this?
  - A number of states have revised their nexus standards for income and gross receipts taxes post-*Wayfair*

## Things to consider

- Retroactivity – judicial decisions interpreting existing laws could apply retroactively, especially since many states believed the *Quill* physical presence requirement did not apply in the context of income taxes
- Public Law 86-272 protections – more taxpayers will want to consider whether they are entitled to protection under P.L. 86-272

# Increased compliance

**VDAs**

—Penalty and/or interest can be waived

—Limited lookback period

—Often initially anonymous

**ERP/related tax engine upgrades**

—More streamlined and accurate tax decisions at the time of purchase

—May keep future audits closer to no change (assuming accurate decisions by tax engine)

**Percentage based reporting**

—Alternative to tax engine decision making on taxability of purchases

—Offered as a formal program in some states (Texas)

**Outsourcing compliance**

—Leaner tax departments becoming more common

—Compliance process taken care of by professionals who focus solely on those processes





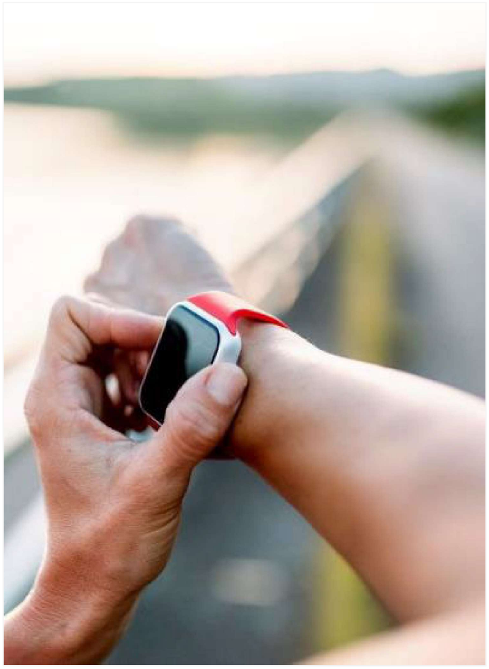
# Audit Volume Increases

## Managed audit benefits

—Penalty and interest waiver

—Taxpayer in the driver’s seat and can speed up the process

—Easier ability to look for refunds



# Questions?





# Credits and incentives: Inflation Reduction Act

# What we've heard from companies

### How can we increase the rate of return on our company's investments?

- We are investing in renewable energy, energy efficiencies, greenhouse gas emissions reductions, etc. How can we decrease our costs on our investments by using credits and incentives?

### How can we track our company's credits and incentives?

- We do not have full visibility across all of the credits and incentives claimed by the company in all jurisdictions. How can we access and use this data to drive future decisions?

### How can we institute a comprehensive approach by which we access and manage credits and incentives?

- We typically react to investment decisions as opposed to proactively building credits and incentives into those decisions. How can we build tax and other areas into the investment decision process? How can we holistically manage the credits and incentives we claim?





# Credits and incentives

| Credits | Incentives |
|---|---|
| **Statutory** | **Discretionary** |
| Research & development tax credit | Grant |
| Job creation/retention tax credit | Infrastructure funding |
| Job training tax credit | Low-interest financing/forgiveable loan |
| Work opportunity tax credit | Income tax credit/tax holiday/reduced tax rate |
| Disaster tax credit | Witholding tax credit/refund |
| Investment tax credit | Property tax abatement |
| Manufacturing/production tax credit | Sales tax exemption |
| Carbon sequestration tax credit | Free/subsidized land |
| Electric vehicle (EV) tax credit | Utility discount |
| EV charging station tax credit | |

# ESG and credits and incentives

| Environmental | Social | Governance |
|---|---|---|
| Use credits and incentives as a "pay for" E and S investments | | Institute governance approach |
| • Research & development<br>• Renewable energy<br>• Co-gen & energy recovery<br>• Greenhouse gas emissions reduction<br>• Electric vehicle, charging station<br>• Energy efficient building | • Employee hiring/retention<br>• Job training<br>• Investment in economically distressed area<br>• Historic rehabilitation<br>• Low income housing | • Incentive strategy in alignment with company values<br>• Governance approach around incentives<br>• Stakeholders and work cadence<br>• Technology to enhance transparency and visibility |





# Inflation Reduction Act: Corporate credit extensions/modifications

| Renewable energy | Advanced manufacturing | Transportation | Alternative fuels | Carbon capture |
|---|---|---|---|---|
| § 45 Production tax credit and § 48 Investment tax credit (wind, solar, geothermal, etc.)<br>§ 179D Energy efficient commercial buildings deduction | § 48C Credit for manufacturing energy property (EV components, fuel cells, electric grids, etc.) | § 30D Clean vehicle credit<br>§ 30C Credit for EV charging stations | § 40 Second-generation biofuel credit<br>§ 40A and § 6426 Biodiesel and renewable diesel; biodiesel mixture credit; alternative fuel credit | § 45Q Credit for carbon oxide sequestration (increased rates) |
| **Producer or property investor** | **Property investor** | **Property investor** | **Producer** | **Property investor** |

# Inflation Reduction Act: Corporate new credits

### Renewable energy

§ 45U Zero-emission nuclear power production credit

§ 45Y and 48E Technology neutral clean electricity production and investment tax credits

**Producer or property investor**

### Advanced manufacturing

§ 45X Advanced manufacturing production credit for solar & wind components, batteries, and critical minerals

§ 45V Clean hydrogen production credit

**Producer**

### Transportation

§ 45W Qualified commercial clean vehicles

§ 25E Previously owned clean vehicle credit

**Property investor**

### Alternative fuels

§ 40B Sustainable aviation fuel

§ 45Z Clean fuel production tax credit

**Producer**

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# Inflation Reduction Act: Credits Quickview

An Overview of Key Dates for Certain Extended and New Tax Credits under the IRA

| Extended Tax Credits | Credit Name | Credit Period | Effective Date | Sunset | Wage and Apprenticeship Date | Transferable (6418) | Direct Pay (6417) for Non-Tax Exempts |
|---|---|---|---|---|---|---|---|
| 45 | PTC | 10-year | PIS 2022+ | Begin Const. by 2024 | 60 days after Treas. Guidance | Yes | No |
| 48 | ITC | 1-time | PIS 2022+ | Begin Const. by 2024 | 60 days after Treas. Guidance | Yes | No |
| 45Q | CCS | 12-year | PIS 2022+<br>New Rates begin 2023 | Begin Const. by 2032 | 60 days after Treas. Guidance | Yes | Yes (5-years) |
| 30C | Alt. Fuel Refueling | 1-time | Old Rules: PIS 2021<br>New Rules: PIS 2022+ | PIS by 2032 | 60 days after Treas. Guidance | Yes | No |
| 48C | Adv. Energy Project Credit | 1-time<br>(Must apply with IRS) | New Rules in effect 2023 | New Rules in effect 2023 | Immediate | Yes | No |
| **New Tax Credits** | **Credit Name** | **Credit Period** | **Effective Date** | **Sunset** | **Wage and Apprenticeship Date** | **Transferable (6418)** | **Direct Pay (6417) for Non-Tax Exempts** |
| 45Y | Clean Energy PTC | 10-year | PIS 2025+ | Phase-out starts if Begin Const. after 2033 or 2-years after emission threshold | 60 days after Treas. Guidance | Yes | No |
| 48E | Clean Energy ITC | 1-time | PIS 2025+ | Phase-out starts if Begin Const. after 2033 or 2-years after emission threshold | 60 days after Treas. Guidance | Yes | No |
| 45V | Clean Hydrogen | 10-year if PTC<br>1-time if ITC | Hydrogen produced after 2022 | Begin Const. by 2032 | 60 days after Treas. Guidance | Yes | Yes |
| 45Z | Clean Fuel PTC | n/a | Clean Fuel produced after 2024 | Clean Fuel must be sold before 2028 | None if PIS before 2025; otherwise must be met | Yes | No |
| 45X | Advanced Manufacturing PTC | n/a | Components produced and sold after 2022 | 25%/year Phase-out starts in 2030 (excluding critical minerals) | n/a | Yes | Yes |
| 45U | Zero-Emission Nuclear PTC | 10-year | Electricity Produced and Sold after 2023 | Terminates after 2032 | Immediate | Yes | No |

Direct Pay & Transferability | Additional Credit Qualifications | Corporate AMT

# New credit requirements

## Prevailing wage and apprenticeships

- Signficantly higher credit rates available for projects which satisfy certain wage and workforce requirements during the construction and operation of the projects
- Generally, projects that begin construction prior to 60 days after the date that guidance on prevailing wages and apprenticeship requirements is issued are eligible for bonus rates even if they do not satisfy the prevailing wage and apprenticeship requirements
- January 29, 2023

## Domestic content

- Additional credits available in some cases if projects are constructed using domestically sourced steel and iron as well as manufatured products
- Effective for projects placed in service after 2022





# New credit requirements (con't.)

## Other targeted credit enhancements

- Additional credit amounts available in some cases for projects located in low-income communities, brownfield sites, and communities formerly reliant on coal and fossil fuel industries
- Effective for projects placed in service after 2022

# New credit monetization options

| Direct pay | Transferable |
|---|---|
| • § 45Q Credit for carbon oxide sequestration<br>• § 45V Clean hydrogen production tax credit<br>• § 45X Advanced manufacturing production tax credit for solar & wind components, batteries, and critical minerals<br>• Tax-exempt entities, states, and political subdivisions thereof | • Annual election<br>• Eligible credit sold to unrelated third party<br>• Transfer shall be required to be paid in cash<br>• Transfer shall not be includible in gross income of the transferor<br>• Amount paid by the transferee shall not be deductible<br>• Eligible credit can only be transferred once |





# New credit monetization options: transferability considerations

## Transferability considerations

- Quality of credit claim
- Substantiation needs
- Opinion memorandum
- Risk of recapture
- Loss of tax depreciation attributes
- Indemnification clauses
- Going rate for the sale/purchase of credits

So, what about tax equity, then?

# Other credit considerations

## Other credit considerations

- Extended credit carryover periods: carry forward/back from 1/20 to 3/22 years, respectively
- Credits can be used to offset the new 15% corporate Alternative Minimum Tax (AMT), subject to the general business credit limitation rules
  - General business credits may offset up to 75% of a taxpayer's combined regular federal income tax and new corporate AMT
- Impact of direct pay or refundable credits on general business credit limitation rules




# What's next

- The IRA credit statutes introduce many nuances and ambiguities in practical considerations – **awaiting additional guidance**. 48C application to be released by 2/12/23
  - Current **requests for comments** and expected future notices for comment
- Time to **reevaluate post-IRA impacts**:
  - New methods for monetization
  - Extension/revision of prior existing programs
  - New requirements: prevailing wage and apprenticeship; domestic content; reference to other existing programs; etc.
- Consider other credit and incentive programs for holistic planning purposes
  - IRA government-funded programs
  - **Proactively layer credits and incentives into the economics of investments**

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