

## ECONOMY STANDARDS

Facility energy audits aren't just trendy; they're becoming best practice.

BY GABRIELLE SIGEL  
AND WILLIAM KAPLOWITZ

**ENERGY AUDITS ARE BECOMING BEST PRACTICE**, as well as compliance obligations, for industrial, commercial, and residential buildings. Although in the United States only a few states and local jurisdictions now require them, energy audits will become accepted practice within the next several years. Commercial and industrial building owners and managers will insist on audits to help them control costs and in transactions to allow buyers and sellers to evaluate the costs of buildings operations. Because energy audit results likely will be standard disclosure documents in commercial transactions, as well as legally required reportable data to government agencies in many jurisdictions, counsel should be involved in key decisions regarding the disclosure of and reliance upon information in energy audits.

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There is no global or U.S. standardized definition of an energy audit. Its principal purpose is to evaluate energy or other resource use and identify potential cost savings. An energy audit can vary in detail, complexity, and resource investment. Increasingly, states, municipalities, and the business community are using the joint Environmental Protection Agency/Department of Energy Energy Star program's Portfolio Manager to compile the data in an energy audit. Portfolio Manager is an online tool that allows owners and operators of buildings (and those who may be acquiring them) to:

- Track energy use in a single building or a portfolio of buildings;
- Compare a building's energy performance to others nationally;
- Estimate the building's "carbon footprint," i.e., greenhouse gas emissions from fuel combustion and purchased energy;
- Track energy conservation improvement projects; and
- Apply for national Energy Star recognition from the EPA.

Specifically, Portfolio Manager allows a user to evaluate energy use

by tracking energy consumption and cost data in a dedicated account. The user can then benchmark performance, compare it to goals, and find ways to improve performance. A building operator can use this information to evaluate and compare facilities within a company's entire portfolio and even similar ones in the U.S. based on the Energy Department's Commercial Building Energy Consumption Survey. Portfolio Manager can generate a score from 1 to 100 that represents how a building compares to those in the Energy survey; a score of 50 means that the building is more energy-efficient than 50 percent of similar buildings in the survey. Similarly, the online tool can compare industrial sites. Those that score 75 or higher may be able to apply for an Energy Star designation.

There are three reasons you now, or soon will, need an energy audit. First, in some states and municipal and non-U.S. jurisdictions, energy audits are required. California, Washington State, Washington, D.C., New York City, Austin, San Francisco, and Seattle have all recently enacted laws requiring

energy audits and disclosure of energy audit information, with most requirements beginning in 2011.

For example, in 2007 California enacted Assembly Bill 1103, which requires owners and operators of nonresidential buildings to release the past 12 months of benchmark data and ratings generated by Portfolio Manager software to prospective buyers, lessees, and lenders prior to the closing of a transaction involving the entire building. The California Energy Commission is drafting regulations implementing the law, which are expected to go into effect in the second quarter of 2011.

In 2009 the state of Washington adopted a similar statute, Senate Bill 5854, which requires owners of nonresidential buildings to rate their buildings using Portfolio Manager “or an equivalent tool” adopted by the state and disclose that information prior to the closing of a transaction.

New York City now requires owners of all buildings that exceed 50,000 gross square feet to conduct energy audits every ten years and submit results to the Department of Buildings, with the first audits for some buildings due in 2013. Similarly, Washington, D.C., San Francisco, and other cities require public filing of energy audit data even when a real estate transaction is not about to occur. San Francisco’s ordinance, for example, requires building owners and managers to submit Portfolio Manager benchmarking data annually to the city, and the results of a commercial energy audit every five years. The city will make

the annual benchmarking data and audit results public.

At this time, there is no federal law addressing energy audits. During the last Congress, at least seven bills introduced in the House or Senate mentioned energy audits, either as an element in proposed grant, loan, or tax credit programs or as a basis for evaluating public building energy efficiency. In the new Congress, Senator Barbara Boxer (D-California) introduced the Pollution and Costs Reduction Act, S.77, which includes priority financial assistance for projects that obtain exemplary scores on the Portfolio Manager benchmarking tool.

For those businesses with non-U.S. facilities, energy audits may well be required by law. For example, under the European Union’s Energy Performance of Buildings Directive, an Energy Performance Certificate (EPC) is required when a residential building in the E.U. is built, sold, or leased. To obtain an EPC, the building owner must conduct an energy audit. There is a similar program for large public buildings, which are required to display their EPCs.

A second reason to conduct energy audits is that they will soon become accepted and expected, whether for transactions, due diligence, or best operational practice. Indeed, ASTM International recently issued a Standard Practice for Building Energy Performance Assessment (ASTM E2797), which applies an industry standard to how energy audit data should be collected.

The third reason to conduct energy audits is that they may very well save your client money, either through cost savings or cost avoidance. In addition, energy audits and energy services companies are a burgeoning business. They present opportunities to limit costs at current operations and a new area of business in which to participate.

Energy audits are not just the wave of the future—they are now required in many locations and are expected in many transactions involving existing facilities. Because of the compliance obligations and potential disclosure liabilities, counsel should evaluate carefully how their client is using energy audits in their business operations, government disclosures, due diligence, and real estate transactions.

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*Gabrielle Sigel is a partner at Jenner & Block, cochair of the firm’s climate and clean technology law practice, and a founding member of the firm’s environmental, energy, and natural resources law practice. William Kaplowitz is an associate in those two practices at the firm.*