

AN ESG SNAPSHOT: Survey Confirms Companies Are Responding to Increasing Expectations

Investors and other key stakeholders are increasingly applying environmental, social and governance (ESG) criteria when evaluating risks and growth opportunities within companies. As concerns over sustainability, climate change and social justice grow, corporate ESG response is being carefully scrutinized. Companies that fail to provide sufficient transparency or embrace accountability in these areas may face reduced interest in investment, decreased performance, re-election challenges with directors and reputational damage.

Both in the United States and abroad, increased regulatory rulemaking is on the horizon while lawsuits are starting to be filed. Many of the current U.S. administration's priorities are tied to ESG. Rating agencies are proliferating, and regulatory agencies are ramping up their focus on ESG issues, with the SEC's proposed ESG rulemaking currently scheduled for October 2021.

In the absence of a single, uniform ESG reporting framework, even the most well-intentioned in-house legal departments and corporate leaders face significant challenges. With so many processes and protocols to consider under the broad ESG umbrella, companies are working to determine and prioritize objectives while developing targeted strategies to move these objectives forward—in a way that meets the needs of all of their stakeholders. But it is undisputed that this is uncharted territory.

One useful approach is to gather information on how companies facing similar challenges are responding. With the survey underlying this report, Thompson Hine asked in-house counsel and other senior corporate leaders for their thoughts and experiences related to a number of key ESG issues, including:

- The status of their companies' implementation of ESG practices and programs
- The nature of the disclosures they are providing or planning to provide
- Their short- and long-term ESG-related needs and challenges
- Delegation of ESG oversight responsibilities within the company—including the role of general counsel in ESG efforts
- How and against which metrics they are measuring their success in meeting ESG objectives
- Best practices

This report shares some of the findings of the survey.



The ESG Collaborative utilizes Thompson Hine's proprietary SmartPaTH system, which prioritizes predictability, efficiency and transparency to maximize value in client service delivery.

48% of respondents have an ESG strategy in place, with 33% of public, and 14% of private companies characterizing ESG as critical to their business objectives.

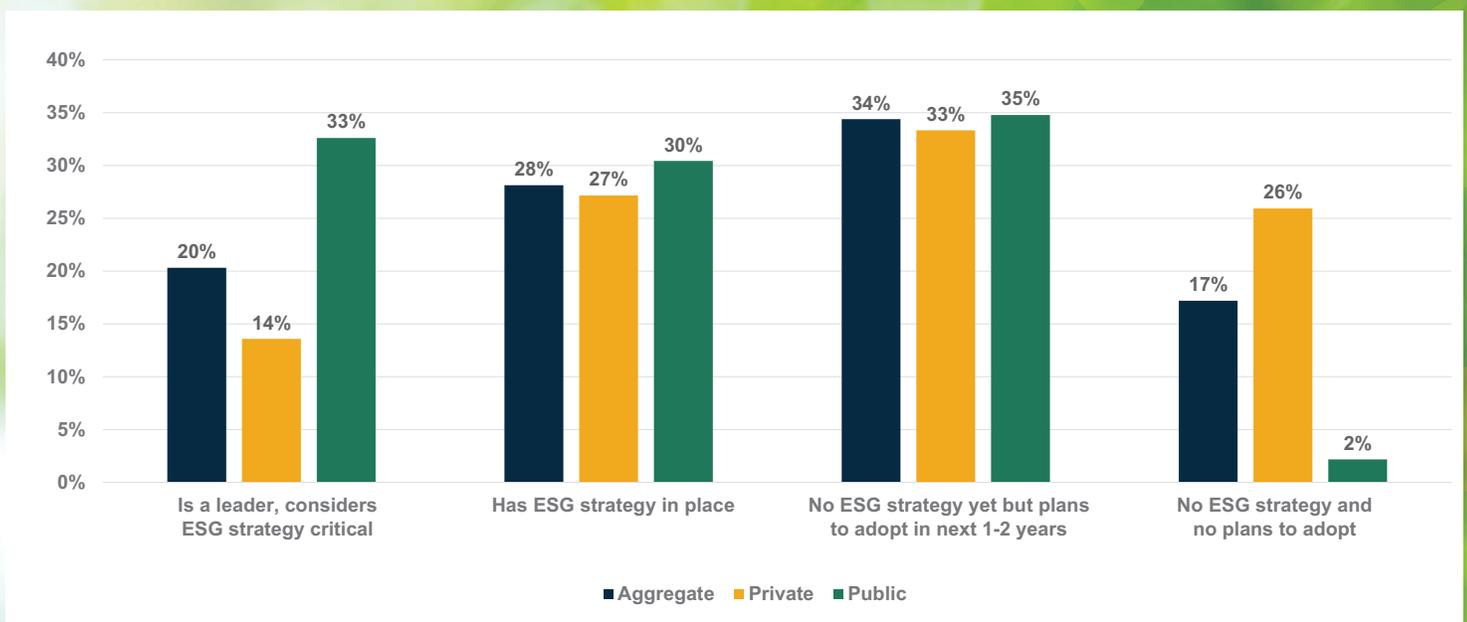
ESG IN PROGRESS: WELL UNDERWAY, BUT NEWCOMERS ABOUND

ESG isn't new—it was first mentioned in 2006 in a United Nations Principles for Responsible Investment (PRI) report, and some companies have been engaging in ESG efforts for years. Others, however, are just beginning their efforts and trying quickly to get up to speed.

Almost a third of our survey respondent companies (28%) have an ESG strategy in place, and another 20% of them characterized ESG as a critical business objective—and identified the company as being at the forefront of this push. Just over a third (34%) had not yet formally adopted ESG efforts but expected to do so in the next one to two years.

While more public than private companies (33% v. 14%) said ESG was critical to their business strategy, roughly the same percentages of public and private companies reported either having ESG priorities already in place (public 30% v. private 27%) or planning to implement them very soon (public 35% v. private 33%). Twenty-six percent of private companies and more than 2% of public companies reported that they had neither adopted an ESG strategy nor had any current plans to do so.

Of those companies adopting ESG objectives, many are well into their efforts, with 25% initiating ESG-related programs and protocols over five years ago and another 15% three to four years ago. Twenty-three percent started ESG-related measures one to two years ago and 11% just got started in 2021. For those companies that are currently planning to launch an ESG program, 10% expect to do so within the next one to two years.



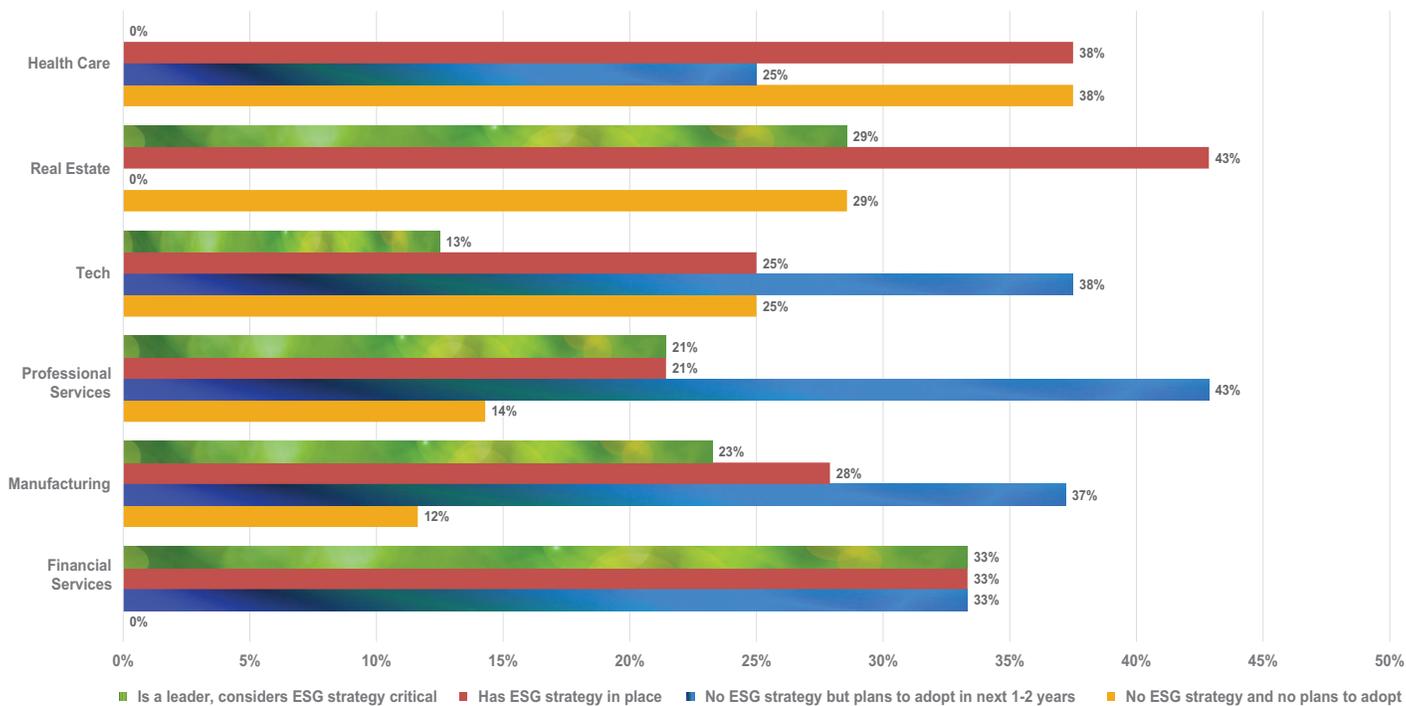
INDUSTRY BREAKDOWN HIGHLIGHTS

Based on aggregate survey responses, the heavily regulated **Financial Services** industry appears to be leading the charge. No respondents in this industry chose the option of “no ESG strategy and no plans to adopt.” Responses were equally split between companies considering themselves leaders, having an ESG strategy in place, and planning to adopt an ESG strategy within the next two years.

Real Estate respondents reported that 29% considered themselves leaders and 43% had an ESG strategy in place. **Health Care** industry respondents reported the largest percentage of “no ESG strategy and no plans to adopt” (38%), but had an equal amount of respondents with a strategy in place. The **Manufacturing** industry respondents reported the second lowest on “no ESG strategy in place and no plans to adopt” (12%), with the greatest percent, 37%, reporting that they plan to adopt an ESG strategy in one to two years.

INDUSTRY BREAKDOWN SPECIFICS

Which statement best describes your company’s current position on Environmental, Social and Governance (ESG)?



COMPANY SIZE

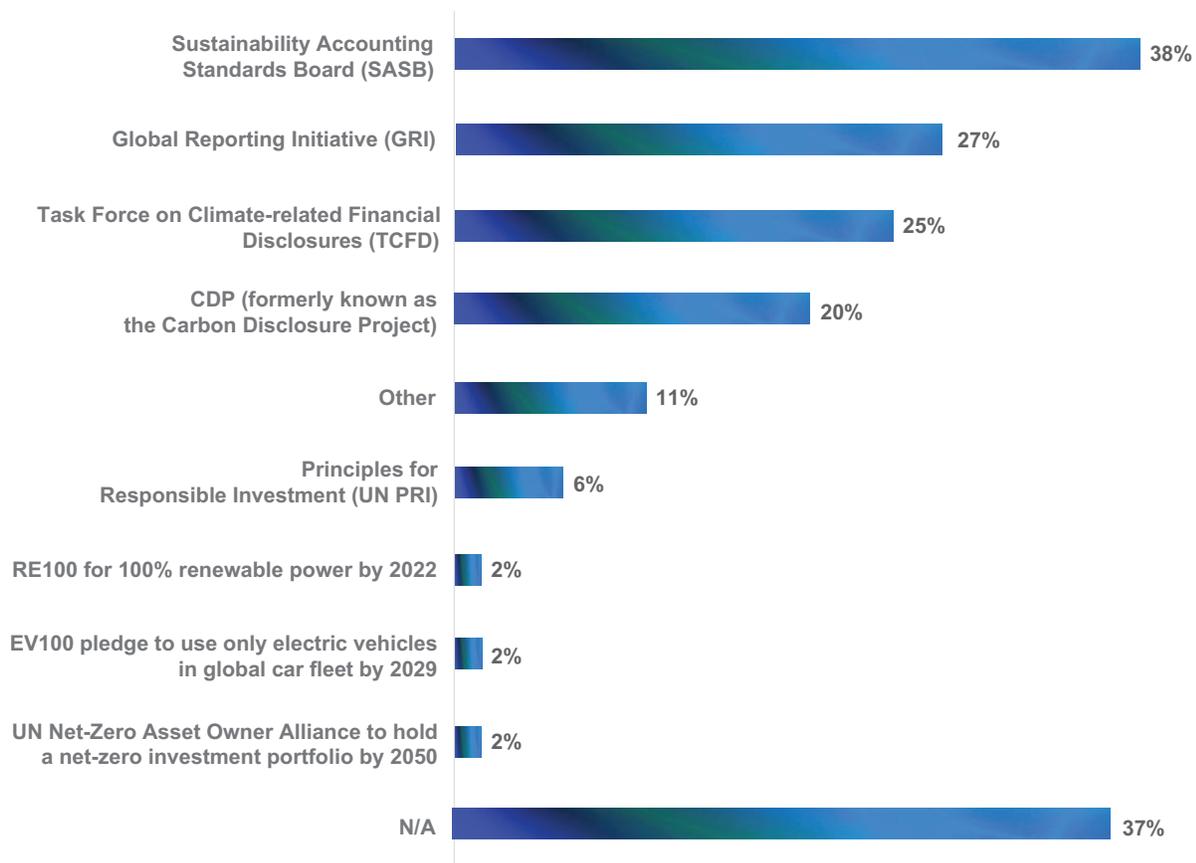
It is perhaps predictable that companies with less than \$50,000 in annual revenue do not consider themselves to be on the forefront of ESG and 29% have no current plans to implement ESG strategies. While leadership and implementation numbers were high in larger companies, 27% of surveyed companies approaching \$500 million in revenue and 6% of companies over \$1 billion still had no plans to implement. Companies with revenue between \$500 million and \$1 billion were all-in on ESG, either currently or planning to implement in the near future.



ESG ENGAGEMENT

The top three ESG standards that **public** companies are utilizing or planning to utilize are Sustainability Accounting Standards Board (SASB) (72%), and Task Force on Climate-related Financial Disclosures (TCFD) and Global Reporting Initiative (GRI) (both at 48%). CDP (formerly known as the Carbon Disclosure Project) followed close behind for public companies, at 41%. **Private** companies are mostly utilizing SASB and GRI (tied at 11%), and TCFD and Principles for Responsible Investment (UN PRI) (tied at 6%). No public companies and only one private company reported using or planning to use RE100, EV100 or UN Net-Zero.

The following chart provides an aggregate snapshot of ESG standards utilized by all respondents.



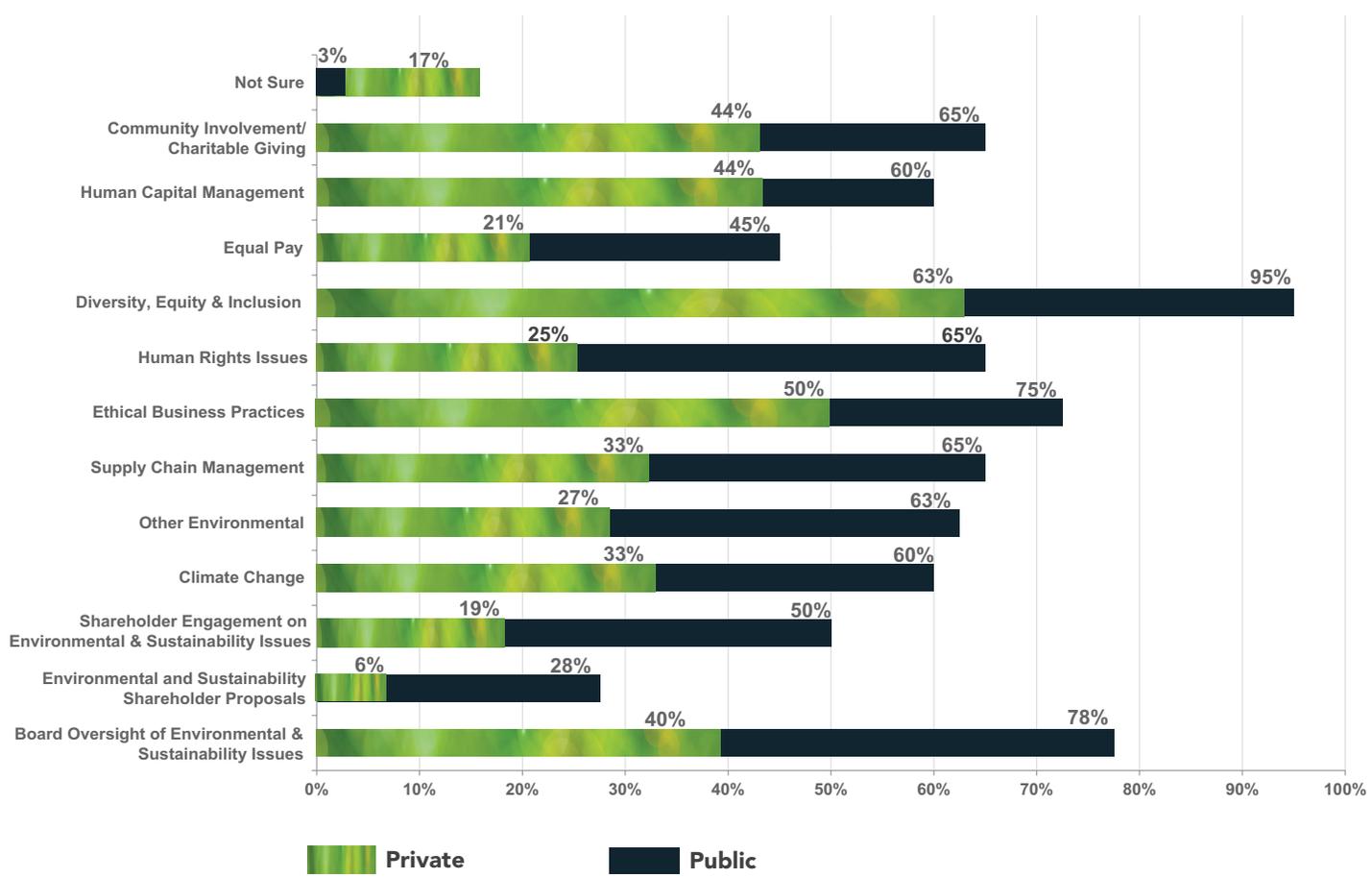
When it comes to the types of ESG disclosures companies are currently providing or plan to provide in the future, Diversity, Equity & Inclusion was the top focus (95% for public companies and 63% for private companies).

THIRD-PARTY ASSURANCE SERVICES

Forty percent of companies (59% of public and 26% of private) reported that they were using or planning to use third-party assurance services to assist with providing limited or other assurances as to their ESG data.

DO SOMETHING, SAY SOMETHING (DISCLOSURES)

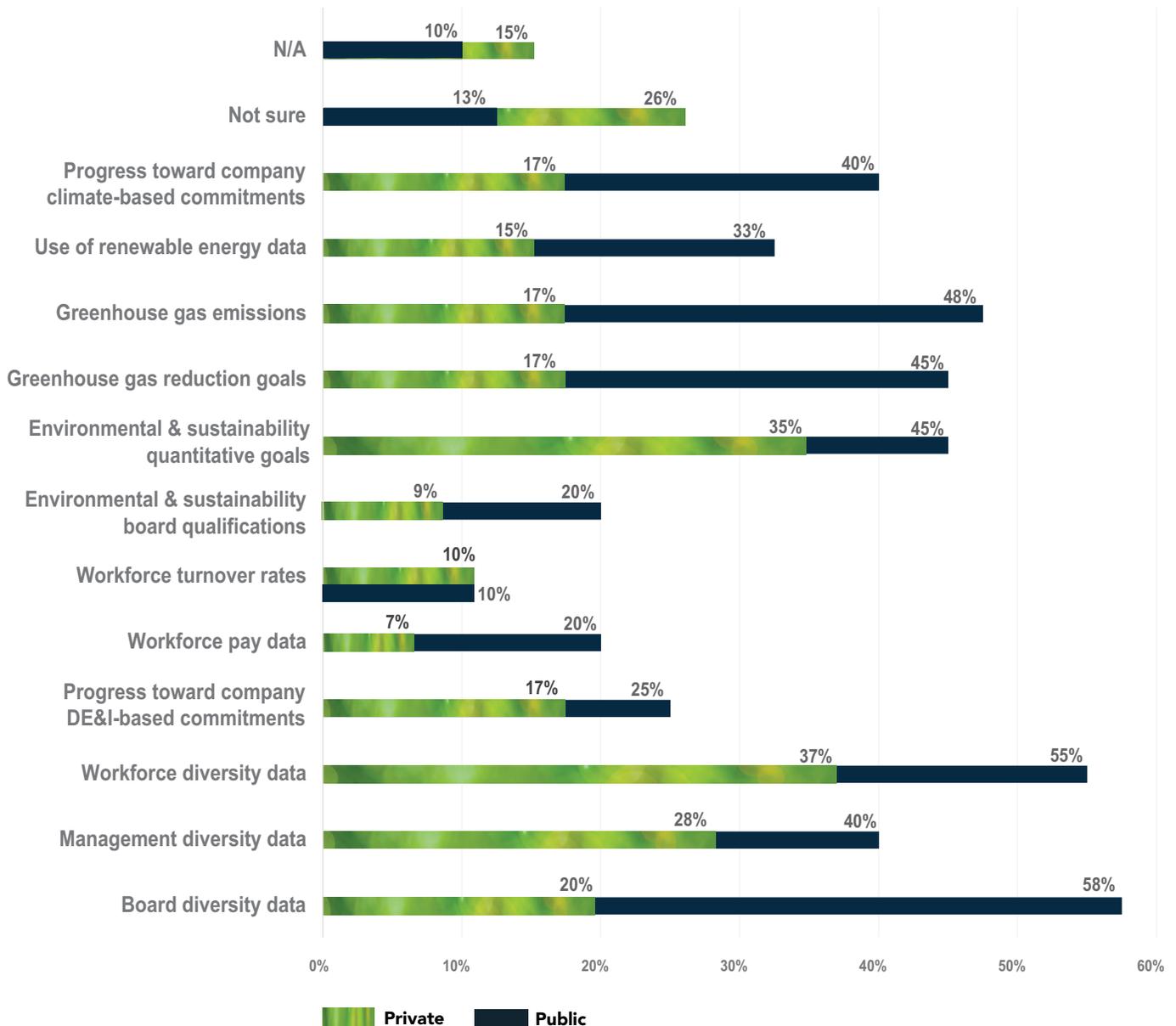
When it comes to the types of ESG disclosures companies are currently providing or plan to provide in the future, **Diversity, Equity & Inclusion** was the top focus (95% for public companies and 63% for private). In addition to Diversity, Equity & Inclusion, public companies are most often disclosing information regarding **Board Oversight of Environmental and Sustainability Issues** (78%) and **Ethical Business Practices** (75%), while private companies are focusing on **Ethical Business Practices** (50%) and **Community Involvement/Charitable Giving** and **Human Capital Management** (both at 44%).



Eighty-one percent of public companies are publicly providing ESG disclosures, as compared to 17% of private companies. And 72% of public companies and 15% of private companies are publishing sustainability reports.

LET'S TALK NUMBERS

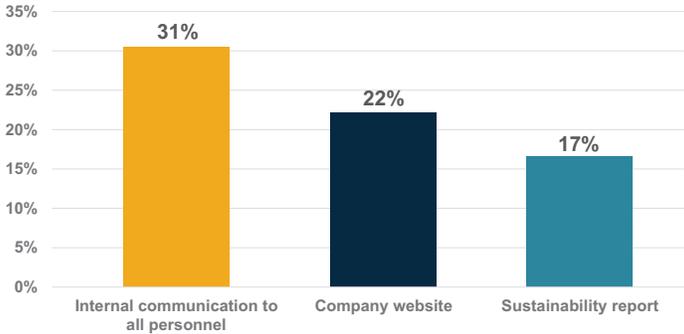
Seventy-three percent of public companies and 53% of private companies were planning to disclose quantitative metrics in their ESG disclosures. Once again, information related to diversity, equity and inclusion was the main focus for all companies, although it varied slightly between public and private companies, with public companies most concerned with disclosing **Board Diversity Data** (58%) and private companies focusing on **Workforce Diversity Data** (37%). Eighty-one percent of public companies are publicly providing ESG disclosures, as compared to only 17% of private companies. And 72% of public companies and 15% of private companies are publishing sustainability reports.



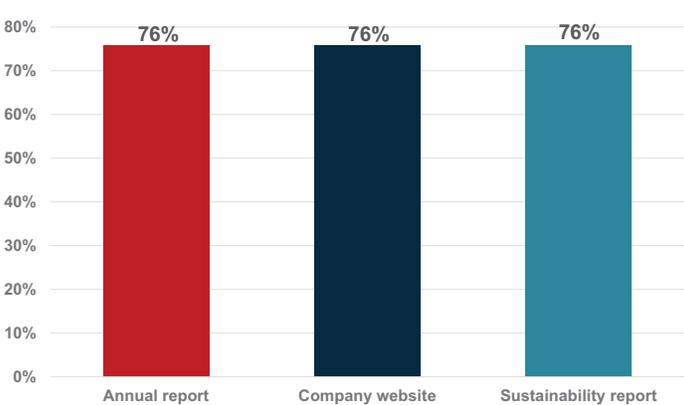
WHERE TO DISCLOSE

Three-quarters of public companies are including ESG disclosures in their **Annual Reports**, on their **Company Websites** and in **Sustainability Reports** (76% each). **Internal Communications** (48%) and **Proxy Reports** (24%) also factor into public company communications. By contrast, private companies reported relying mainly on **Internal Communications** (31%), along with their **Company Websites** (22%) and **Sustainability Reports** (17%), when making disclosures.

Private Company Forms of Disclosures



Public Company Forms of Disclosures



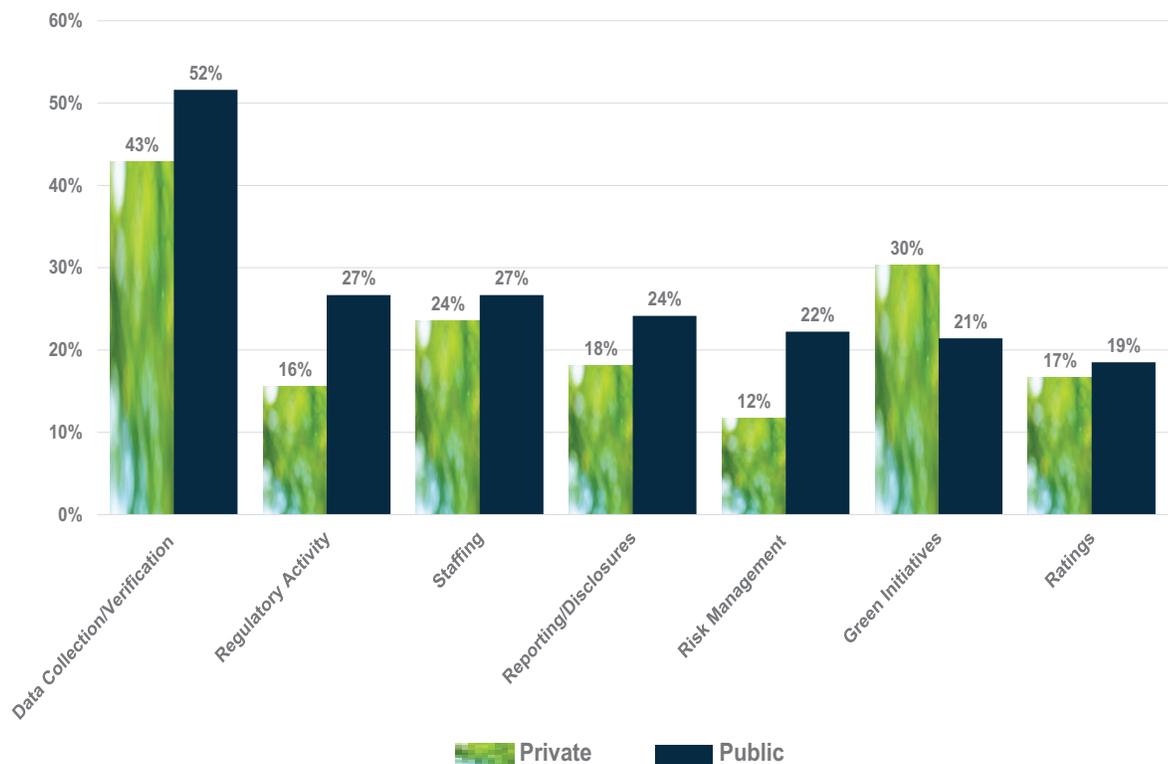
Note: Additional unranked write-in responses referenced disclosing human capital management in the Form 10-K; overall strategy in proxy statements and in-depth discussions in sustainability reports; press releases; and “direct to customer disclosures using audit reports, in response to regulatory inquiries/surveys or via safety councils.”

Whether public or private, companies reported that **Data Collection/Verification** was the most pressing ESG concern in the next year.

NEEDS AND CHALLENGES

Whether public or private, companies reported that **Data Collection/Verification** was the most pressing ESG concern in the next year (52% public and 43% private).

Regulatory Activity (27%) and **Staffing** (27%) rounded out the top three significant near-term concerns for public companies, while private companies were most acutely concerned about **Green Initiatives** (30%) and **Staffing** (24%).

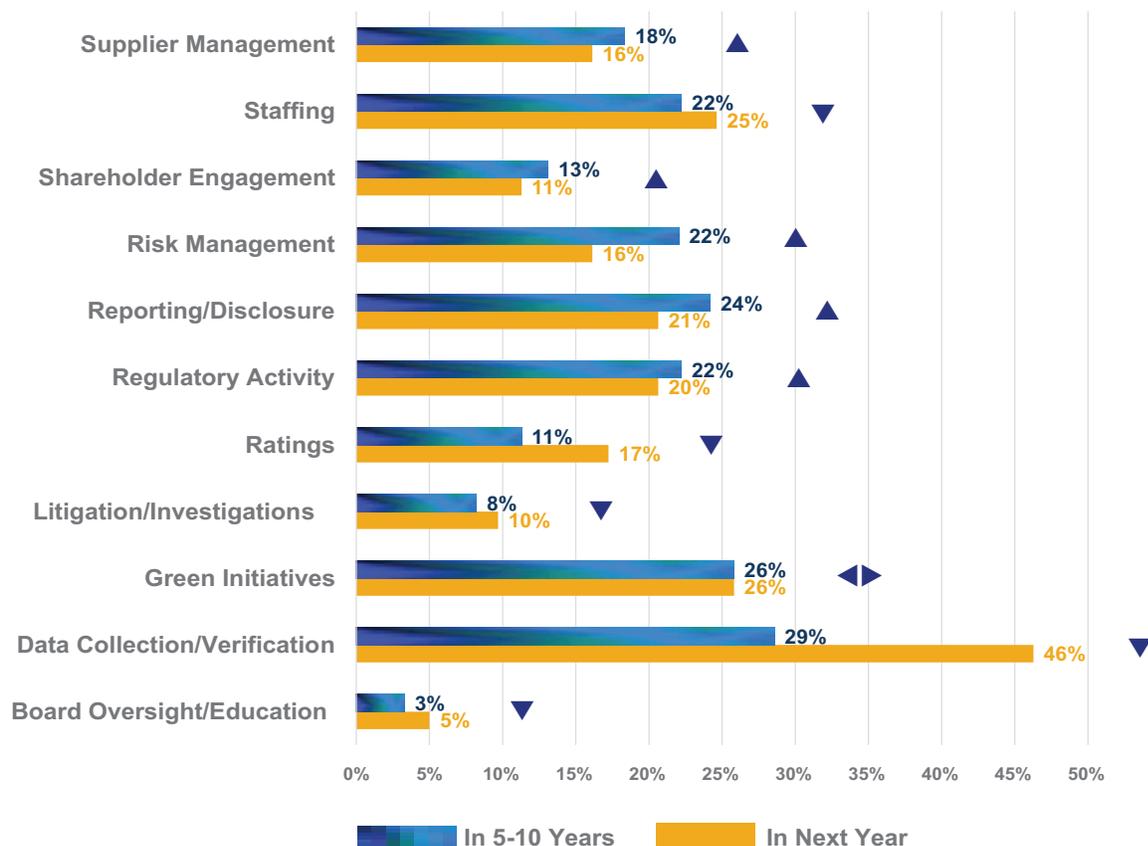


Via write-in responses, companies reported experiencing additional challenges that included:

- Reducing emissions across the entire value chain
- Focusing on ESG investing and making sure investment managers adhere to policies
- Finding time to contemplate ESG activities in a meaningful way
- Dealing with ESG as a brand-new concept

When asked the same question—instead looking five to 10 years ahead—companies indicated that **Data Collection/Verification** (29%) will continue to be their top concern but will become less challenging. **Green Initiatives** (26%) and **Reporting/Disclosure Requirements** (24%) rounded out the respondents’ top three long-term concerns. Regulatory activity over the coming years may change these trends.

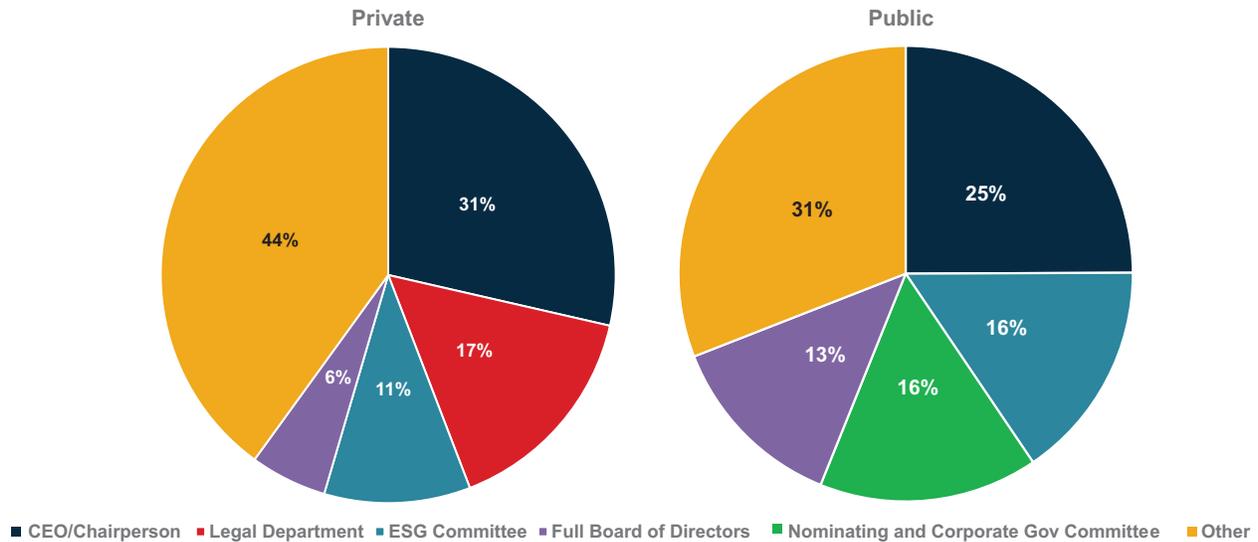
The data below is on an aggregated basis and includes both private and public companies.



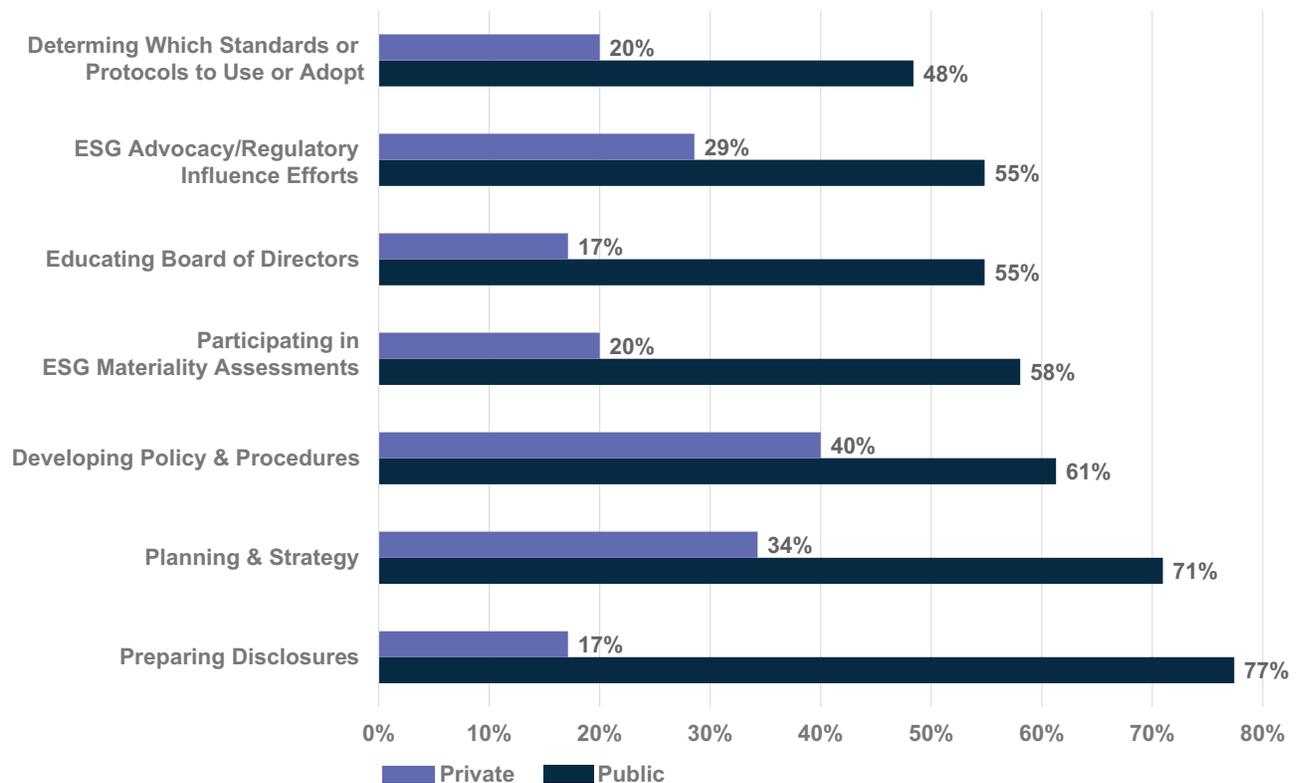
One respondent aptly summarized their needs and concerns: “Because ESG is really a lot of different topics under the umbrella term ‘ESG,’ [our challenges are] mapping out who owns the various risks related to the various topics and putting a control framework around it, as well as building a more formal internal control framework around the public disclosures.”

THE WHO OF ESG

Whether public or private, responding companies revealed that the CEO usually has ESG oversight responsibility. In private companies, ESG oversight next often rests with the Legal Department (17%), followed by the ESG committee (11%) and the full Board of Directors (6%). In surveyed public companies, the ESG Committee and the Nominating and Corporate Governance Committee play equal and primary oversight roles (16%), with the full Board of Directors also overseeing ESG efforts (13%). Discrete ESG issues such as DE&I, human capital or climate may also be allocated to other committees of the board.



As for the role of in-house counsel in ESG and sustainability, public company lawyers seem to be spending most of their time preparing disclosures (77%), on planning and strategy (71%) and developing policy and procedures (61%). Of the choices presented to them, they reported spending the least amount of time negotiating with vendors and suppliers. By comparison, private company in-house counsel reported focusing their time on developing policies and procedures (40%) and planning and strategy (34%), with ESG advocacy and regulatory influence efforts (29%) also a top priority.



BEST PRACTICES

Just under a quarter (24%) of responding companies reported that they believe they are employing certain best practices as part of their ESG programs, as shown below:



This report is a summary of survey responses collected from 134 in-house counsel and other senior business executives nationwide, representing a diverse mix of industries, company sizes and locations. With a public/private ratio of 36% to 64%, respondents' ranked corporate areas included Corporate Secretary (7%); Environmental, Health & Safety (8%); Human Resources (8%); Legal Department (38%); and Sustainability/ESG (7%). Industries included Manufacturing (34%); Financial Services and Professional Services (11% each); Tech, Real Estate and Health Care/Life Sciences (6% each); Oil/Gas/Utilities (5%); Construction (3%); Retail (2%); and Transportation (2%). Breakdown by revenue was <\$50k (5%); \$50k – \$500 million (49%); \$500 million – \$1 billion (9%); and >\$1 billion (37%) and employee counts were as follows: 50 or fewer (20%); 51-500 (26%); 501-2,000 (15%); 2,001 – 10,000 (17%); and more than 10,000 (22%).

Please note that the survey underlying this report was not a scientific survey. This communication and the survey results are intended to inform clients about legal matters of current interest. They are not intended as legal advice. Readers should not act upon the information contained in them without professional counsel. All numbers have been rounded to the nearest percentage.



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The ESG Collaborative



As businesses, boards and investors increasingly prioritize ESG criteria, our experienced multidisciplinary ESG team of transactional, regulatory and other practitioners helps clients identify material risks and growth opportunities by evaluating their sustainability, diversity, equity & inclusion, and social stewardship efforts.

With additional regulatory rulemaking expected in the United States and abroad, many of the current administration's priorities tied to ESG, and several regulatory agencies and other organizations creating additional standards to further incorporate ESG factors into the investment process, we can help businesses navigate the compliance and reporting challenges.

The list of stakeholders concerned with businesses' ESG performance grows daily. Corporate leadership teams know that public reputation and consumer and investor confidence can rise or fall depending on how they incorporate ESG strategies into their policies and practices. We develop and implement comprehensive strategies to integrate ESG criteria into a company's business model while preserving value and mitigating risk, and we focus on continuous innovation to serve clients with greater predictability, efficiency and transparency.

ESG Collaborative Leadership



Jurgita Ashley
216.566.8928
Jurgita.Ashley@ThompsonHine.com



Heidi B. (Goldstein) Friedman
216.566.5559
Heidi.Friedman@ThompsonHine.com

Visit www.ThompsonHine.com/services/ESG-Collaborative



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- Legal Services Innovation Index
- Litera Microsystems