Real Estate Roundtable Policy Priorities January 2025

The Real Estate Roundtable

Policy Priorities – January 2025

This document provides relevant information on The Real Estate Roundtable's key policy issues, including fact sheets and detailed issue briefs. The majority of the document consists of brief 1-2-page summaries of national policy issues currently facing the industry, The Roundtable's position on the issue, and helpful links for where to find additional information and details regarding The Roundtable's advocacy efforts. The document also includes multiple Roundtable-produced fact sheets distilling key legislation or regulations.

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Preferential Rate and Realization Requirement

Issue

Traditionally, the United States has taxed long-term capital gain at a lower rate than ordinary income. The only exception was a brief three-year period after the Tax Reform Act of 1986 when Congress lowered the top ordinary tax rate from 50% to 28% and created temporary tax parity between ordinary and capital income. Long-term capital gain is currently taxed at a top rate of 20%. However, the rate increases to 23.8% if the income is subject to the 3.8% tax on net investment income. The net investment income tax applies to real estate gains earned by passive investors and not income earned from the active conduct of professionals in real estate.

The prior Biden administration proposed raising the capital gains rate to 39.6%, which would bring it to parity with its proposed top rate on ordinary income. In addition, President Biden has proposed to increase the 3.8% tax on net investment income to 5% and extend it to the income of active business owners, including real estate professionals; the net investment income tax applies to both capital gains and rental income.

President Biden and several key Democratic lawmakers have also proposed a mark-to-market regime in which built-in, unrealized gain is taxed on an annual basis, regardless of whether the asset is sold

The Roundtable's Position

Congress should continue to encourage investment and job creation with a meaningful capital gains incentive.

- Maintaining a reduced tax rate on capital gain decreases the cost of capital, drives long-term investment, encourages productive entrepreneurial activity, draws investment from around the world, and increases U.S. workforce productivity and competitiveness.
- Policymakers should reward risk-taking and investment in communities where it is needed, not punish it.
- High taxes on capital income make it harder to attract the investment needed to rebuild our urban centers. Opportunity Zone capital gains incentives facilitated $75 billion in new investment in low-income communities in the first two years after enactment.
- Risk capital differs from wage compensation. The entrepreneur who foregoes a traditional job in favor of starting a business forfeits many protections and benefits offered to employees, such as a pre-negotiated salary. The capital gains preference compensates entrepreneurs for this risk, including the potential complete loss of their time and capital.
- The reduced capital gains rate partially offsets the higher risk with illiquid, capital-intensive real estate projects, as well as the economic effects of inflation.
- Unlike other tax policies, such as immediate expensing, the capital gains preference only rewards smart, productive investments that generate profits.
- A tax on unrealized gains would require the IRS to police households as they identify, tabulate, and value all their worldly possessions. The tax would thrust the IRS into a new and unwelcome role. The agency would become a permanent, live-in accountant and watchdog over every aspect of household's finances, consumer activity, and economic life.

Preferential Rate and Realization Requirement

- In addition, taxing unrealized gains would trigger wasteful disputes and litigation, detracting from productive economic activity. Annual valuation requirements will require costly appraisals. Valuation disagreements will be a constant source of audits and administrative appeals.
- Current law encourages taxpayers to put capital to work on projects that won't pay off for many years. By taxing business assets and investments annually, a tax on unrealized gains would remove one of the major incentives for patient, productive capital investment. The differential tax treatment of liquid and illiquid investments will distort markets and give rise to wasteful new tax shelters and taxpayer games.
- The proposed tax on unrealized gains is quite possibly unconstitutional. Supreme Court jurisprudence has applied a realization requirement to determine whether gains or profits constitute income taxable under the 16th Amendment. Since the proposed tax applies to both realized and unrealized gains, it may go beyond the boundaries of Congress's taxing power.

Tax Policy

Pass-Through Business Income

Issue

Real estate generally is owned and operated through "pass-through" entities. In 2017, Congress reduced the corporate tax rate by 40% and created a new 20% deduction (section 199A) for pass-through business income to avoid putting partnerships, S corporations, and REITs at a competitive advantage relative to large C corporations.

Section 199A expires at the end of 2025. At that time, the effective marginal rate on pass-through business income would rise by over one-third, from 29.6% to 39.6%.

Tax legislation considered in 2021 would have raised the top marginal income tax rate on many small and pass-through business owners from 29.6% today to 46.4%.

The Trump administration supports extending all of the expiring 2017 tax cuts, including section 199A.

The Roundtable's Position

Congress should continue to support closely-held, entrepreneurial businesses that create jobs and spur growth, and reject tax changes that discriminate against pass-through entities.

- Our pass-through regime is a competitive strength of the U.S. tax system. Most countries rely on inflexible corporate regimes that provide little ability for an entrepreneur to tailor the capital and ownership structure to meet the needs of the business and its investors.
- Small and closely-held businesses drive job growth and entrepreneurial activity in the United States. Entity choice is a differentiator that contributes to our entrepreneurial culture.
- Half of the 4 million partnerships in the U.S. are real estate partnerships, and real estate activity constitutes a large share of pass-through business activity.
- Listed REITs allow small investors to invest in diversified, commercial real estate using the same single tax system available to partners and partnerships.
- Partnerships, Limited Liability Companies (LLCs), S corps, and REITs are ideal for real estate because they give investors flexibility in how they structure the risks and rewards of these capital-intensive and relatively illiquid businesses.
- Any new tax legislation should avoid the unintended consequences and potential harm caused by the stacking of tax increases on pass-through entities.
- Section 199A is appropriately targeted at businesses that hire workers and invest in capital equipment and property.
- Section 199A also helps preserve tax fairness vis-à-vis large corporations.

Real Estate Like-Kind Exchanges

Issue

Since 1921, the tax code has allowed taxpayers to defer capital gain when exchanging real property used in a trade or business for a property of a like-kind (section 1031). In 2017, Congress narrowed section 1031 by disallowing its use for personal property (art, collectibles, etc.).

The prior Biden administration would have restricted gain deferred through like-kind exchanges to no more than $500K per year ($1M/couple). A similar proposal has appeared in the last six budgets submitted by Democratic administrations.

The Roundtable's Position

Congress should support healthy real estate markets and property values by preserving the current tax treatment of like-kind exchanges.

- 15-20% of commercial transactions involve a like-kind exchange. Exchanges get languishing properties into the hands of new owners who improve them and put them to their best use.
- Like-kind exchanges helped stabilize property markets at the height of the COVID-19 lockdown. Exchanges are even more important during periods of market stress when external financing is harder to obtain. Section 1031 is facilitating a smoother transition as real estate assets are re-purposed in the post-COVID economy.
- Like-kind exchanges allow businesses to grow organically with less unsustainable debt, creating a ladder of economic opportunity for minority-, veteran-, and women-owned businesses and cash-poor entrepreneurs that lack access to traditional financing.
- Academic and outside research has found that exchanges spur capital expenditures, increase investment, create jobs for skilled tradesmen and others, reduce unnecessary economic risk, lower rents, and support property values.
- Roughly 40% of like-kind exchanges involve rental housing. Section 1031 helps fill gaps in the financing of affordable housing. Unlike the low-income housing tax credit, developers can use section 1031 to finance land acquisition costs for new affordable housing projects.
- Exchanges help low-income, hard-hit, and distressed communities where outside sources of capital are less available. Section 1031 also supports public services (police, education) by boosting transfer/recording/property taxes (nearly 3/4 of all local tax revenue).
- Land conservation organizations rely on exchanges to preserve open spaces for public use or environmental protection.
- Section 1031 is consistent with corporate and partnership tax rules that defer gains when the proceeds are retained and reinvested in businesses (sections 721, 731, 351, and 368).

Carried Interest

Issue

A "carried" interest is the interest in partnership profits that a general partner receives from the investing partners for managing the investment and taking on the entrepreneurial risk of the venture. Carried interest may be taxed as ordinary income or capital gain depending on the character of the income generated by the partnership. Lawmakers have introduced various proposals to increase the tax burden on carried interest since 2007. In 2017, Congress created a three-year holding period requirement for the reduced long-term capital gains rate.

Legislation introduced in the last Congress, the *Ending Wall Street Tax Giveaway Act* (H.R. 2686), would have converted virtually all real estate-related carried interest income to ordinary income subject to the top tax rates and self-employment taxes.

In 2021, House Ways and Means Democrats passed legislation to extend the carried interest holding period from 3 to 5 years, and other changes, while adding a new exception for a real property trade or business (e.g., real estate). The proposals were not enacted.

Former Senate Finance Chairman Ron Wyden (D-OR) has proposed treating carried interest as an interest-free loan from the limited partners to the general partner that is taxable upon grant, regardless of whether the partnership ever generates any profits.

The Roundtable's Position

- The tax code should reward risk-taking; the capital gains rate should apply to more than just invested cash.
- Carried interest changes would harm small businesses, stifle entrepreneurs and sweat equity, and threaten future improvements and infrastructure in neglected areas. They would increase the cost of building or improving infrastructure, workforce housing, and assisted living, and deter risky projects, such as sites with potential environmental contamination.
- Carried interest is not compensation for services. General partners receive fees for routine services (leasing, property management). Those fees are taxed at ordinary tax rates.
- Carried interest is granted for the value the general partner adds beyond routine services, such as business acumen, experience, and relationships. It is also a recognition of the risks the general partner takes with respect to the general partnership's liabilities (funding pre-development costs, guaranteeing construction budgets, potential litigation).
- Carried interest proposals apply retroactively to prior transactions and partnership agreements executed years earlier. The agreements were based on tax law as it existed at the time. By changing the results years later, they would undermine the predictability of the tax system and discourage long-term, patient investment.

Tax Policy

Opportunity Zones

Issue

Created in 2017, Opportunity Zones (OZs) are designated, low-income census tracts where qualifying investments are eligible for reduced capital gains taxes. By channeling investment where it is needed, OZs help stimulate jobs and growth in low-income communities.

The three main OZ tax benefits were a deferral of prior capital gain rolled into an OZ fund, an increase (partial "step-up") in the basis of the prior investment after a 5 or 7-year holding period, and the exclusion of gain on the OZ investment 10 years.

The final OZ regulations were issued four months before the COVID lockdown. The tax benefits are gradually phasing down (the deferral of prior gain ends in 2026) and the partial basis step-up has expired for new OZ fund contributions.

In the last Congress, bipartisan House legislation (Reps. Mike Kelly, R-PA and Dan Kildee, D-MI; H.R. 5761) would extend OZ deadlines for two years, allow helpful "fund of funds" OZ tax structures, sunset certain high-income OZ census tracts, and create new OZ information reporting and transparency rules.

The renewal and reform of the OZ tax incentives is expected to be a major topic of discussion as Congress considers extension of the 2017 tax bill in 2025.

The Roundtable's Position

- In their short tenure, OZs have created jobs and spurred billions of dollars in new investment in economically struggling communities across the country.
- Opportunity Funds finance affordable, workforce, and senior housing; grocery-anchored retail centers; and commercial buildings that create spaces for new businesses and jobs.
- In 2020, the White House Council of Economic Advisors estimated that the Opportunity Funds had raised $75 billion in private capital in the first two years following the incentives' enactment, including $52 billion that otherwise would not have been raised. The council projected this capital could lift one million people out of poverty in OZs by 11%.
- The decentralized design of OZs allows more investors and stakeholders to participate in the market and invest in qualifying projects that generate economic opportunity and improve the built environment in high-need communities.
- Congress should ensure that OZs continue to act as a catalyst for economic development in struggling communities by passing legislation that extends OZ deadlines.
- Congress should also continue working on improvements to the OZ tax incentives, such as enhanced information reporting, data collection, and transparency, as well as lowering the substantial improvement threshold to cover a broad range of real estate rehabilitation and redevelopment projects.

Tax Policy

Business Interest Deductibility

Issue

The 2017 tax bill included strict new limits on the deductibility of business interest but also included a key provision that allows commercial real estate (a real property trade or business) to opt out of the interest limitation. The original House Republican tax plan—the House blueprint for tax reform—would have eliminated the deductibility of all business interest (including commercial real estate debt) while replacing depreciation rules with the immediate expensing of all future capital investment, including real property.

The final legislation included a revised section 163(j) in which the deductibility of business interest is generally limited to 30% of the taxpayer's EBITDA (earnings before interest, tax, depreciation, and amortization). It also included 100% expensing of equipment and machinery (not real estate) for 5 years, phasing down thereafter. The 30% interest limit does not apply to an electing real estate business. However, an electing real estate business is required to use the alternative depreciation system, which includes slightly longer cost recovery periods for real property and cannot immediately expense leasehold and other interior improvements.

Since 2022, the general 30% business interest limitation has applied a less favorable rule that uses the taxpayer's EBIT (earnings before interest and tax) rather than EBITDA as the base for measuring the amount of deductible interest.

In 2025, extension of EBITDA rule, which was in effect from 2018-2021, is under review as Congress considers extension of the 2017 tax bill.

The Roundtable's Position

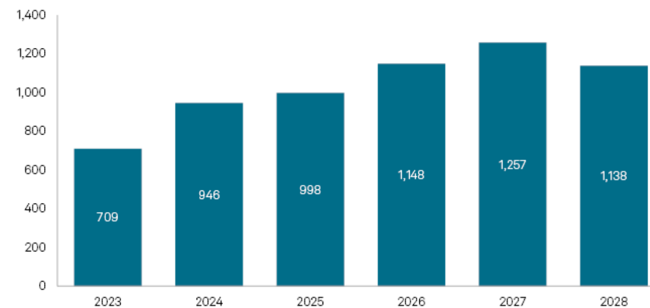
- Debt is a fundamental part of a real estate entity's capital structure and, in addition to property acquisition costs, is used to finance day-to-day operations like meeting payroll, buying raw materials, making capital expenditures, and building new facilities.
- New restrictions on interest deductibility would cause enormous damage to U.S. commercial real estate by dragging down property values and discouraging new investment. Fewer loans could be refinanced, fewer projects could be developed, and fewer jobs would be created. Congress should extend the EBITDA rule that was in effect from 2018-2021.
- The ability to finance investment and entrepreneurial activity with borrowed capital has driven jobs and growth in the United States for generations. America's capital markets are the deepest in the world and provide our economy with a valuable competitive advantage.
- Business interest expense is appropriately deducted under the basic principle that interest is an ordinary and necessary business expense. Interest income is taxable to the recipient.
- Commercial banks are the dominant source of financing for commercial real estate investment. Like other entrepreneurs, small and medium-sized real estate developers and investors lack access to equity markets and rely on traditional lending to grow and expand.

Capital and Credit

Addressing the Wave of Maturing CRE Debt and Pro-cyclical Regulatory Policy

Issue

Roughly $950B of US commercial real estate mortgages are estimated to mature in 2024 ($B)



Data compiled Aug. 19, 2024.

Data represents the aggregation of 3.6 million commercial real estate property mortgages, sourced from various tax filings from approximately 75% of US counties. While roughly 60% of the loans were originally missing a maturity date, analysis uses a random forest model to impute the missing values. Since the random forest model varies each time it is run, the values shown represent averages across five runs.

The raw data does not include roughly 25% of counties, so we created another model using gross county product and the number of properties in the county to estimate the total mortgage amounts in the missing counties. Ultimately, these were relatively minimal amounts compared to the overall market.

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To help rebalance the wave of maturing loans, it is important to advance measures that will encourage additional capital formation and loan restructuring and avoid pro-cyclical regulatory actions such as the *Basel III Endgame*.

As urged by the Roundtable, a policy statement - *Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts* - issued by regulatory agencies encouraging financial institutions to work constructively with creditworthy borrowers on CRE loan workouts is helping to see loans through the current environment.

Many of these loans require additional equity, and borrowers still need time to restructure this debt. Capital formation is vital to help restructure maturing debt and fill the equity gap.

It is also important to bring more foreign capital into U.S. real estate by lifting legal barriers to investment, as well as repealing or reforming the archaic Foreign Investment in Real Property Tax Act (FIRPTA).

The original *Basel III Endgame* proposal would have increased capital requirements for the largest banks by as much as 20%. Based on the resounding opposition to the proposal from the industry participants, a revised proposal was announced in September by Michael Barr, the outgoing Fed Vice Chair for Supervision, that would increase Tier 1 capital requirements for global systemically important banks by roughly 9%—less than half of what would have been required in the original proposal. Nonetheless, concerns remain that any increase in capital requirements will have a pro-cyclical impact on credit capacity and carry a cost to commercial real estate and the overall economy, increasing the cost of credit and constraining capacity. Former Fed Vice Chair Randy Quarles warned it is a "mistake," saying, "It will restrict the ability of the financial system to provide support for the real economy."

Capital and Credit

Addressing the Wave of Maturing CRE Debt and Pro-cyclical Regulatory Policy

The proposed regulations come at a significant economic cost without clear benefits to economy.

In a Jan. 12 letter, The Roundtable raised industry concerns about the negative impact of the *Basel III Endgame* proposal, including the increased cost of credit and diminished lending capacity, and requested that the proposal be withdrawn.

The revised proposal reduces risk weights for certain residential mortgages and retail exposures, extending this reduction to low-risk corporate debt. However, commercial real estate risk weights remain unclear. Yet, the Fed and other regulators remain deadlocked on advancing the revised proposal. With Barr's departure from the supervisory role, there is speculation that the proposal could ultimately be withdrawn.

The Roundtable's Position

- By renewing the flexibility for banks to work constructively with their borrowers during times of economic stress, this measure has led to billions of dollars of loan restructurings.
- While this policy statement is helpful, additional steps are called for to help restructure and transition the ownership and financing of commercial real estate from a period of low rates and robust markets to a time of higher rates. Additional capital is an essential element to this restructuring, and enacting policies that will encourage robust capital formation is imperative.
- In a January 12 comment letter, The Roundtable raised concerns about the proposed *Basel III Endgame* measure. The potential significant increase in capital requirements for large banks' capital market activities due to the proposal could materially reduce the depth of banks' products and services offerings to the real estate sector, which will in turn lead to an increase in hedging risk and the cost of raising capital in the industry.
- The largest U.S. banks' capital and liquidity levels have grown dramatically since the original Basel III standards were implemented in 2013 in response to the 2008 Global Financial Crisis. Since 2009, Tier 1 capital has increased by 56 percent and Common Equity Tier 1 capital has tripled. Today, as the Federal Reserve recently observed, the U.S. "banking system is sound and resilient, with strong capital and liquidity."[1]
- While well-intentioned, we are concerned that the proposals could increase the cost of credit, diminish lending capacity, and undermine the essential role banks play in lending and financial intermediation for real estate. With new supervisory leadership at the Fed, the *Endgame* proposal could be scrapped.
- Policymakers should consider additional measures to encourage constructive restructuring and new lending on solidly underwritten assets.

[1] https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf

Commercial Insurance Coverage in an Evolving Threat Environment

Issue

The proliferation of natural catastrophe threats has raised concerns about commercial insurance coverage for real estate. As economic losses caused by disasters increase, changing exposures around the world must be addressed in order to effectively manage natural catastrophe risk. These concerns have highlighted the lack of—and need for—insurance capacity and various lines of commercial insurance. Expanding coverage gaps and increased costs present challenges for businesses across many industries, including real estate. A lack of adequate coverage will lead to economic uncertainty, harm stakeholders, and undermine the growth of communities.

- Real estate insurance rates have spiked, with consecutive quarterly increases in overall premiums.
- The nation has seen years of atypical weather patterns and historic losses from natural catastrophes attributed to climate change – economic damages have tripled in cost from just 10 years ago.
- High reinsurance costs and a lack of reinsurance capacity also contribute to higher premiums.
- The U.S. insurance industry is regulated at state-level, with no central federal regulation.

Risks from natural disasters like floods, hurricanes, wildfires, hail, tornadoes, and drought cost the U.S. billions of dollars each year. Even if policyholders are able to find coverage for these various lines, prices are increasing dramatically, raising economic concerns.

Without adequate coverage, the vast majority of these natural catastrophe losses are likely to be absorbed by policyholders. These widening coverage gaps and price hikes raise serious economic concerns about protection gaps, coverage capacity, and increased costs from natural catastrophes and business interruption losses.

The budget debate in Congress has raised concerns about the future of the National Flood Insurance Program (NFIP), which is subject to temporary funding extensions and now must be reauthorized by March 14, 2025.

It is important to find solutions—either market-based or with the partnership of the federal government—to fill these commercial insurance gaps across changing threat patterns, and provide the economy with the coverage it needs to address catastrophic events.

The Roundtable, along with its industry partners, continues to work constructively with policymakers and stakeholders to address this market failure and enact a long-term reauthorization of an **improved National Flood Insurance Program (NFIP)**.

A long-term reauthorization of the **National Flood Insurance Program (NFIP)** is essential for residential markets, overall natural catastrophe insurance market capacity, and the broader economy. The NFIP's commercial property flood insurance limits are low—$500,000 per building and $500,000 for its contents—so it is important to exempt larger commercial loans from the mandatory NFIP purchase requirements.

Commercial Insurance Coverage in an Evolving Threat Environment

The **NFIP** is currently operating under a continuing resolution. Since 2017, Congress has extended the NFIP's authorization 32 times, though the program has lapsed briefly three times.

As policymakers continue to debate potential changes and improvements to the program, their challenge is to find a balance between improving the financial solvency of the program, reducing taxpayer exposure, and addressing affordability concerns.

The Roundtable's Position

- Floods are the most common, costliest natural peril in the U.S. The NFIP was enacted in 1968 due to a lack of private insurance and increases in federal disaster aid.
- The Program is administered by the Federal Emergency Management Agency (FEMA) and is essential for homeowners, renters, and small businesses in affected areas.
- The level of flood damage from recent storms makes it clear that FEMA needs a holistic plan to prepare the nation for managing the cost of catastrophic flooding under the NFIP.
- The NFIP is important for residential markets, overall natural catastrophe insurance market capacity, and the broader economy. However, under the NFIP, commercial property flood insurance limits are low—$500,000 per building and $500,000 for its contents. NFIP has approximately five million total properties, only 6.7% are commercial. Nearly 70% of NFIP is devoted to single-family homes and 20% to condominiums. In the total program, 80% pay actuarial sound rates; however, in the commercial space, only 60% pay actuarial sound rates.
- Congressional hearings have illuminated numerous acute problems surrounding the NFIP, such as insolvency, increased risk of flooding across the country, and insufficient and inaccurate flood mapping. The unintended negative outcomes generated by the NFIP continue to grow and are now spreading to GSEs (government-sponsored enterprises) Fannie Mae and Freddie Mac.
- Lenders typically require base NFIP coverage, and commercial owners must purchase Supplemental Excess Flood Insurance for coverage above the NFIP limits. The NFIP's low commercial limits make it problematic for most commercial owners. As a result, The Roundtable has been seeking a voluntary exemption for mandatory NFIP coverage if property owners have flood coverage from commercial insurers.
- The Roundtable supports increased private market participation. By permitting certain private issue insurance policies to satisfy the NFIP's "mandatory purchase requirement" for properties in flood plains financed by loans from federally guaranteed institutions, commercial property owners would have the ability to "opt out" of mandatory NFIP commercial coverage if they have adequate private coverage outside the NFIP program to cover financed assets.
- The Roundtable and its partner associations support a long-term reauthorization of an improved NFIP that helps property owners and renters prepare for and recover from future flood losses. Given the low coverage amounts provided to commercial properties, it is important to permit larger commercial loans to be exempt from the mandatory NFIP purchase requirements.
- Going forward, it is important to protect American jobs and to ensure a sustainable and speedy economic recovery from future natural catastrophe events. If not remedied, these insurance gaps could hinder economic growth.

Beneficial Ownership & Corporate Transparency Act

Issue

Under the Corporate Transparency Act (CTA), many U.S. businesses are required to disclose information on their "beneficial owners" under regulations issued (and to be issued) by the Treasury Department's Financial Crimes Enforcement Network (FinCEN).

The stated goal of the CTA is to prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity by requiring companies to disclose beneficial ownership information, or BOI, to FinCEN, a bureau of the U.S. Department of the Treasury.

The Rule imposes heavier compliance burdens on real estate businesses with numerous legal entities that own and operate real property across all asset classes. While the CTA and its implementing regulations are not specifically targeted to real estate businesses, it will have a direct impact on the industry. As discussed below, certain types of entities will be exempt from the reporting requirements; however, these exemptions will not apply to many typical real estate limited liability companies and partnerships formed to own and operate commercial properties.

The CTA requires reporting companies to supply three categories of information: information about the entity, BOI, and information about the company applicant. Each reporting company will have to provide information on its "beneficial owners" as well as the "company applicants" involved in forming the entity. A beneficial owner refers to an individual who owns at least 25% of an entity or indirectly exercises "substantial control" over it.

While this disclosure obligation began on January 1, 2024, the U.S. Court of Appeals for the Fifth Circuit on Dec. 26, 2024, vacated the stay and reinstated the nationwide preliminary injunction enjoining enforcement of the Corporate Transparency Act (CTA) and the Reporting Rule, including the impending reporting deadlines. The appellate court said it was taking such action in order to preserve the constitutional status quo while that court considers the parties' weighty substantive arguments in an expedited appeal.

According to a December 27 Alert from FinCEN, reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the order remains in force, based on a recent federal court order. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.

As a result, no filings under the CTA are currently required by law, including the initial beneficial ownership information (BOI) reports of Reporting Companies formed or registered prior to 2024 that were due by Jan. 13, 2025, under an extension granted by the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

Reporting Companies and affected individuals should carefully monitor developments and be prepared to file if the injunction is once again lifted. The Roundtable continues to track this important issue.

Beneficial Ownership & Corporate Transparency Act

The Roundtable's Position

- The Real Estate Roundtable has repeatedly raised concerns, along with its coalition partners, about the regulatory burden posed by the CTA and has supported the court challenges to the law.
- There is significant concern about the CTA's far-reaching scope and its impact on many commercial and residential real estate businesses that use the LLC structure for conducting business.
- The CTA amended the Bank Secrecy Act to require corporations, limited liability companies, and similar entities to report certain information about "beneficial owners" who own at least 25% of an entity or indirectly exercise "substantial control" over it. The CTA authorizes FinCEN to collect and disclose beneficial ownership information to authorized government authorities and financial institutions, subject to effective safeguards and controls. The statute requires the submission of regular reports to the federal government that include a litany of sensitive personal identifiers of the owners, senior employees, and/or advisors of covered entities.
- Although the measure is intended to provide support for law enforcement investigations into shell companies engaged in money laundering, tax evasion, and terrorism financing, it places many costs and legal burdens on small businesses, especially those in the real estate industry. In 2021, The Roundtable and its coalition partners submitted detailed comments to FinCEN regarding the development, disclosure, and maintenance of a new federal registry that will contain beneficial ownership information.
- The real estate coalition's extensive comments emphasize the "scope of the CTA is far-reaching and will impact many commercial residential real estate businesses who are frequent users of the LLC structure for conducting business. If not implemented with a clear set of rules and regulations, the CTA could result in an outcome of confusion, missteps, and ultimately fines on law-abiding businesses."
- In 2022, The Roundtable and its coalition partners submitted comments to the U.S. Department of the Treasury (DOT) and FinCEN that support efforts to thwart illegal money laundering in real estate, while encouraging policymakers to find a balanced approach that does not unfairly burden law-abiding businesses.
- The Roundtable continues to work with industry partners to address the implications of FinCEN's proposed rules and the impact it could have on capital formation and the commercial real estate industry.

Restrictions on Foreign Investment in U.S. Real Estate

Issue

Foreign investment is a major source of capital for U.S. commercial real estate, leading to job creation and economic growth for communities throughout our nation. A number of policy measures at the national and state level seek to restrict foreign investment in U.S. real estate. A number are already in effect. Most of these measures are intended to protect the homeland and ensure that such investments may prevent a nefarious state actor from adversely impacting the nation's economic, military, or civil interests.

At the **state level,** the Florida legislature enacted Senate Bill 264 (SB 264) in 2023. SB 264 aims to limit and regulate the sale and purchase of certain Florida real property by "Foreign Principals" from "Foreign Countries of Concern." Twenty states have enacted restrictions on foreign investors in real estate and agricultural land. Eight states are considering similar measures. More are looking at the issue. So, the state-level restrictions have national implications and seem to fly in the face of the commerce clause of the Constitution in that they interfere with the free flow of interstate and foreign commerce.

While The Roundtable supports efforts to protect the nation's economic, military, or civil security as well as the integrity of commercial real estate investments, we have concerns about rules that may hinder foreign investment in U.S. real estate by legitimate enterprises and capital formation by law-abiding entities.

The Roundtable's Position

- The Roundtable's Sept. 5, 2023, comment letter encourages state regulators to ensure that Senate Bill 264 does not deter investment in real estate in the state or undermine the economic benefits of this important industry. It also raises concerns about the technical aspects of SB 264 that could have unintended and negative consequences for investment in Florida and therefore limit the freedom of Florida's future growth.
- The letter also cites the importance of foreign investment in U.S. real estate markets. In particular, many investment funds that are controlled or advised by regulated U.S. asset managers—including those that actively invest in Florida real estate—source investment capital in global capital markets.
- With approximately $1.5 trillion of U.S. commercial real estate debt coming due in the next three years, foreign equity investments in U.S. assets are often an important source of capital as commercial real estate owners seek to restructure, refinance, or sell their properties.
- The proposed rule published on Sept. 21 addresses the implementation of Florida Senate Bill 264 (SB 264), Section 203, signed into law on May 8. The new law aims to limit and regulate the sale and purchase of certain Florida real property by "foreign principals" from "foreign countries of concern." The Florida Real Estate Commission will implement the new law. (SB 264 text).
- Section 203 of the bill prohibits investment in real property near military installations and critical infrastructure. Importantly, the *de minimis* exemption has been re-drafted, which (1) fixes earlier drafting errors to the Registered Investment Advisor exemption, and (2) introduces a new category of *de minimis* interests that categorically exempts passive indirect investment. (See highlighted areas in the Notice of Proposed Rule)
- The proposed rule clarification remains subject to change during a 21-day public comment period and may include a formal hearing.

Real Estate Capital Formation Challenged by SEC Custody Proposal

Issue

On February 15, 2023, the Securities and Exchange Commission (SEC) proposed changes to require SEC-registered investment advisers to put all their clients' assets, including all digital assets like Bitcoin, with "qualified custodians".

- *Safeguarding Advisory Client Assets* – would significantly expand requirements of Custody Rule to maintain client assets with a qualified custodian for certain physical assets such as real estate

The proposal would also require a written agreement between custodians and advisers, expand the "surprise examination" requirements, and enhance recordkeeping rules. These rules were originally designed for digital assets. "Reasonable" safeguarding requirements is ambiguous as applied to real estate. The SEC's release indicates that deeds evidencing ownership of real estate can be held at a qualified custodian—this is not accurate. Deeds are recorded with a government authority. Land and buildings cannot be physically absconded. Lenders and other interested parties have an interest in ensuring no misappropriation of real estate.

- Could severely impact advisory clients' ability to invest in real estate. Roundtable seeking real estate exception
- Ample safeguards already exist to promote the safe-keeping of real estate assets held in advisory accounts or funds, which assets are not subject to high risk of loss or theft
- SEC has not coherently explained how Proposed Rule would apply to real estate – seeking exception for real estate

The Roundtable's Position

- The Roundtable sees no policy reason to impose the proposed rule on real estate—real estate cannot readily be stolen. Lenders and others have an interest in ensuring no misappropriation of real estate. Title insurance protects real estate investors against covered title defects, such as a previous owner's debt, liens, and other claims of ownership. It's an insurance policy that protects against past problems, whereas other insurances usually deal with future risks. Titles are recorded in the name of the acquiring entity by a government entity.
- The SEC's release indicates that deeds evidencing ownership of real estate can be held at a qualified custodian—this is not accurate. Deeds are recorded by a government authority. Conditions to the exemption for real assets are problematic. Auditor verification of transactions is costly and not negotiated for by fund investors.
- "Reasonable" safeguarding requirements is ambiguous as applied to real estate. Different jurisdictions present even more challenges. Different laws for title exist between not only states but also countries. The rule applies to registered investment advisors regardless of where the asset is located.
- For these reasons, we believe that the SEC's policy reasons for imposing the rule on real estate seem irrelevant. The Roundtable has submitted a comment letter to SEC and met with senior staff from the investment management division, requesting an exception for real estate.

Capital and Credit

Real Estate Capital Formation Challenged by SEC Custody Proposal

- In addition to the proposed Custody Rule, the Securities and Exchange Commission (SEC) has a number of proposed rulemaking measures that could have a chilling effect on real estate capital markets that could further impair liquidity and be a "death by a thousand cuts" for commercial real estate. Capital formation is vital when credit markets tighten to restructure maturing debt.
- Fortunately, on June 5, 2024, the U.S. Fifth Circuit Court of Appeals issued an opinion that vacated the SEC Private Fund Adviser Rules, holding that the SEC exceeded its statutory authority in adopting the Rule. Specifically, the court held that the "promulgation of the [Rule] was unauthorized … no part of it can stand."
- With the change of administrations, SEC Chair Gary Gensler will be replaced by SEC veteran Paul Atkins, subject to Senate confirmation. Under Atkins leadership, it is likely that the Commission may either withdraw the proposed rule altogether, or grant an exception for real estate.

NASAA's Proposed Revisions to its Statement of Policy Regarding REITs

Issue

On July 12, 2022, the North American Securities Administrators Association, Inc. (NASAA) announced it is seeking public comment on proposed revisions to the NASAA Statement of Policy Regarding Real Estate Investment Trusts (the "REIT Guidelines"). The Roundtable has serious concerns about the Proposal and urges NASAA to withdraw the Proposal.

The Roundtable's Position

- The Proposal could have a profound impact on the $20.7 trillion U.S. commercial and multifamily real estate market, approximately 9.4% of which is comprised of real estate investment trusts (REITs).
- It could have the unintended and unnecessary impact of impeding real estate capital formation, undercutting economic growth, and weakening the strength and stability of U.S. real estate capital markets. Investing in real estate supports economic growth; helps to grow the much-needed supply of housing, particularly in the multi-family, workforce, and affordable housing sector; enhances the infrastructure of industrial space, and supports state and local communities across the country.
- Since 1996, the Securities Act of 1933, as amended, has provided a preemption of the substantive state securities law requirements for several types of securities and offerings. However, certain securities offerings, including publicly offered REITs that do not list their securities on a stock exchange ("non-traded REITs"), remain subject to state securities law registration requirements. In addition, they remain subject to review by state securities regulators and the Securities and Exchange Commission (SEC). The REIT Guidelines have been adopted by several state securities regulators or used by their staff in reviewing such offerings.
- The REIT Guidelines were last amended in 2007 and set out requirements for REIT sponsors, advisers, and persons selling REITs, including provisions dealing with the suitability of investors, conflicts of interest, investment restrictions, and rights of shareholders as well as disclosure and marketing.
- NASAA has proposed revisions to the REIT Guidelines in four areas:
- The proposed revisions would update the conduct standards for brokers selling non-traded REITs by supplementing the suitability section with references to the SEC's best interest conduct standard.
- The proposal includes an update to the individual net income and net worth requirements—up to (a) $95,000 minimum annual gross income and $95,00 minimum net worth, or (b) a minimum net worth of $340,000—in the suitability section through adjusting upward to account for inflation occurring since the last adjustment in 2007.
- The proposal would add a uniform concentration limitation prohibiting an aggregate investment in the issuer, its affiliates, and other non-traded direct participation programs that exceed 10% of the purchaser's liquid net worth. Liquid net worth would be defined as that component of an investor's net worth that consists of cash, cash equivalents, and marketable securities. [NOTE: There is no carveout for accredited or other sophisticated investors.]

NASAA's Proposed Revisions to its Statement of Policy Regarding REITs

- The proposed revisions also include, in multiple sections, a new prohibition against using gross offering proceeds to fund distributions, "a controversial product feature used by some non-traded REIT sponsors . . . having the potential to confuse and mislead retail investors."
- In the request for comment, NASAA points out that if adopted, the revisions to the REIT Guidelines have the potential to influence updates to other Guidelines, including those for Asset-Backed Securities, Commodity Pools, Equipment Leasing, Mortgage Programs, and Real Estate Programs (other than REITs) and the Omnibus Guidelines.
- We are concerned that the Proposal appears to be substantially based on a flawed and outdated impression of the PNLR sector and PNLR products. Many of the issues that NASAA highlights to justify the Proposal—such as liquidity concerns, fee transparency, and sources of distributions—are largely, if not completely, ameliorated with respect to the NAV PNLRs[2] that are now being offered to investors.
- We are working on this issue with a number of other groups and submitted a comment letter raising concerns about the proposal.

[2] REITs that are registered with the SEC but whose shares intentionally do not trade on a national securities exchange. NAV PNLRs, which comprise the majority of PNLRs marketed today, are permanent entities that provide shareholders with regular ability to sell shares back to the REIT at the current Net Asset Value (NAV).

Return to the Workplace

Issue

During the public health emergency created by the rapid spread of the COVID-19 virus, governmental authorities ordered widespread closures of places where people gather, including office buildings.

These shutdowns were appropriate at the time, and the commercial real estate industry worked diligently to create safe work environments that would accelerate the reopening of economic activity.

In his State of the Union speech in February 2022, President Biden stated:

- It's time for Americans to get back to work and fill our great downtowns again with people. People working from home can feel safe and begin to return to their offices. We're doing that here in the federal government. The vast majority of federal workers will once again work in person.

Unfortunately, agency actions did not immediately live up to the President's words. Federal agencies continued to promote remote working arrangements as a recruitment, retention, and cost-saving tool.

In February 2023, the House of Representatives passed the SHOW Up Act (H.R. 139) directing federal agencies to reinstate their pre-pandemic telework policies and ensuring that any future remote working plans receive careful and deliberate consideration.

In April 2023, the White House Office of Management and Budget informed federal agencies that they have 30 days to develop plans to "substantially increase" their employees' in-person work at headquarters. In the same month, the White House Office of Personnel Management announced in a government-wide memo that it was ending its "maximum telework" directive for federal agencies, which it adopted during the pandemic.

The guidance was an important step forward supported by The Real Estate Roundtable. Federal agencies must follow through, in good faith, on the White House directive.

President Trump has indicated he intends to enforce a strict, return-to-office mandate for federal workers.

The Roundtable's Position

- The federal government employs over 1.3 million civilians in 2,200 communities across the country and is a market leader that influences leasing costs and property values. Actions it takes as a tenant have profound impacts on local markets and associated property tax revenue, surrounding small businesses and their workers, and more.
- Federal agencies' actions to promote permanent remote working are out of step with the direction of private sector employers, who are increasingly recognizing the importance of bringing employees back to the workplace.
- Instead of aggressively promoting work-from-home arrangements for federal workers, as it did during the pandemic, the federal government should help facilitate a smooth, market-based transition to the new era.

Return to the Workplace

- The work-from-home trend has created negative pressure on commercial real estate property values and reduced local tax revenues. Between 2021 and 2022, the decline in office building property assessments reduced property tax revenue in Washington, DC, by $140 million. A report by the New York City Comptroller in December 2023 concluded that remote work could contribute to a potential decline in property tax revenue as great as $2.1 billion over the next three years. In October 2024, Moody's downgraded San Francisco's credit rating, citing the impact of hybrid work, declining office employment, and depressed downtown rents.
- Restaurants, small businesses, and their employees are another casualty of policies that discourage a return to the workplace. Workers are spending less time and money in central business districts, with devastating consequences for the businesses—coffee shops, gyms, barber shops, restaurants, etc.—that rely on their patronage.
- Leading academic research has identified a dozen cities where the reduction in local spending as a result of remote work exceeds $2,000 annually per teleworking employee.
- Research released by the Labor Department found that "the increase in remote work had significant effects on local employment...[s]pecifically, a 10% decrease in foot traffic in a Census tract led to a 2.8% decline in employment for accommodation and food services and a 2 percent decline in retail trade employment."

Property Conversions and Housing Tax Incentives

Issue

The United States faces a severe shortage of affordable housing. Current production has just not kept up with demand. At the same time, certain other commercial real estate assets like office buildings are under significant stress due to pandemic-related issues, including employers' greater reliance on remote work arrangements. The Roundtable is encouraging lawmakers to help revitalize cities, boost local tax bases, and address housing challenges by enacting a tax incentive and federal loan support for converting older, under-utilized buildings to housing. The Roundtable also supports a meaningful expansion of the low-income housing tax credit.

Bipartisan legislation introduced in the last Congress by Representatives Mike Carey (R-OH) and Jimmy Gomez (D-CA), the *Revitalizing Downtowns and Main Streets Act* (H.R. 9002), would create a new tax credit to reduce the costs associated with converting older office buildings to housing or other uses. The legislation is supported by a broad coalition of pro-housing and real estate-related organizations.

Low-income housing tax credit: Since its inception in 1986, the low-income housing tax credit (LIHTC) has financed the development of nearly 3.5 million affordable rental homes that house over eight million low-income households. The administration's budget and legislation passed by the House Ways and Means Committee in the first year of the Biden administration would make major new investments ($29-32 billion) in expanding and improving LIHTC.

The *Tax Relief for American Families and Workers Act* (H.R. 7024), passed by the House in early 2024 and supported by The Roundtable, would expand LIHTC. The bill would temporarily increase credit allocations to States and lower the amount of private activity bond financing that an affordable housing project must receive in order to receive credits outside of the capped state allocation process.

Furthermore, at The Roundtable's urging, the prior administration surveyed existing agency programs that might offer low-interest loans to help support housing conversion projects. The "Guidebook to Available Federal Resources" curates programs from the Departments of Transportation, Housing, Energy and the EPA that can be used to assist adaptive reuse projects—but agency rules and guidelines are necessary to streamline underwriting procedures so proceeds can be issued to borrowers in about six months after an application for financing is submitted.

The Trump administration's position on the expansion and improvement of the low-income housing tax credit is not yet clear.

The Roundtable's Position

- Congress should help expand and grow the supply of affordable and workforce housing by investing greater resources in time-tested tax incentives like the low-income housing tax credit and adopting creative new approaches that support the conversion of underutilized, existing buildings to housing.

Property Conversions and Housing Tax Incentives

- A quarter of American renter households spend more than 50% of their income on housing expenses. More than 10 million low-income households spend more than half of their monthly income on rent, according to Harvard's Joint Center for Housing Studies.
- The conversion of underutilized and often vacant buildings offers a tremendous opportunity to improve the built environment and lift a surrounding locality. Property conversions are a cost-effective means to develop new housing supply, create jobs, and generate critical sources of local property tax revenue.
- Conversion projects can occur in a variety of settings, from central business districts and suburban office parks to rural communities and industrial facilities. The repurposing of existing structures can save energy while reinvigorating communities and reigniting economic growth where it is most needed.
- The inherent risks and elevated costs associated with property conversions, combined with the numerous social and economic benefits of conversions that flow to the broader community, justify proactive government policies that incentivize owners to adapt existing properties to new uses.
- LIHTC is an efficient, market-based housing solution that relies on the private sector to finance, build, and operate affordable housing by creating a federal incentive for new construction and redevelopment.
- Under the successful LIHTC program, states can award housing credits based on their own affordable housing priorities. They can target credits to housing units dedicated to certain populations such as seniors or veterans, or to specific regions most in need of affordable housing.
- The Tax Cuts and Jobs Act of 2017 indirectly diminished the value of low-income housing credits because the corporate tax cut reduced the underlying tax liability of many tax credit purchasers, thereby decreasing demand for the credits in the marketplace.
- Congress should significantly expand LIHTC, along the lines of the *Affordable Housing Credit Improvements Act* (S.1136, H.R. 2573 in the last Congress). The bill would create and preserve more than two million affordable homes, support three million jobs, and generate $119 billion in sustainable tax revenue.
- Congress should also enact a meaningful tax incentive for commercial-to-resident property conversions along the lines of the *Revitalizing Downtowns and Main Streets Act* (H.R. 9002 in the last Congress). The bill would create a 20% tax credit for the costs associated with converting older commercial buildings to housing, provided the housing includes a significant set-aside for affordable rental units.
- Aside from legislative strategy, the new administration should build on the progress made in the last administration, based on Roundtable input and listening sessions, **to streamline federal agency loan programs to provide financial support** for CRE conversions. In particular, the administration should gear Department of Transportation loans for transit-oriented development (RRIF and TIFIA) to better enable commercial-to-residential building conversions.
- The single-family rental (SFR) market also holds great promise to increase the nation's housing supplies. Studies show that provides opportunities for upward social and economic mobility to households that are unable to buy homes but can rent in neighborhoods with better school districts. The Roundtable organized a "listening session" in June 2024 with our members and housing policy experts at the White House to discuss the virtues of the SFR market as a key component to help address the nation's housing crisis and will continue these advocacy efforts in 2025.

Property Conversions and Housing Tax Incentives

Additional Resources

- RER Letter to White House Council of Economic Advisers, providing recommendations to improve low-interest federal loan programs (RRIF and TIFIA) to assist property conversions (April 15, 2024)
- Roundtable Weekly, “Reports Show Single-Family Rentals Increase Housing Availability, Drive Educational Advancement” (June 7, 2024)

Bridging the Housing Gap and GSE Reform

Issue

There is a chronic shortage of housing in the U.S. that is driving up housing prices and making it more difficult for lower-income individuals to find safe, affordable housing. Housing production in the U.S. is not keeping pace with expanding housing needs. The underbuilding gap in the U.S. now totals more than 5.5 million housing units. The impact of this growing problem of an under-supply of affordable housing is far-reaching and undermines economic growth—particularly in urban areas.

In addition, the government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac—the primary funding sources for housing in the U.S.—have been in conservatorship for 17 years. Debate over reforms continues, but no active legislative proposals are currently under consideration. The first Trump administration pushed hard for reform and, in the end, never got anywhere. The Biden team never tried. A second Trump administration and a new Congress in 2025 once again raise the prospect of renewed efforts to remove Fannie Mae and Freddie Mac (the GSEs) from their federal government conservatorship.

Most of the new housing units in recent years have been single-family homes. Through the end of 2023, production of new single-family homes reached more than 1 million annually in 2022 and 2023 for the first time since the housing bubble burst in 2007. Apartment construction is also at historic levels, with 438,500 units built last year, the highest level since 1987. The number of apartments under construction at the end of the year, about 981,000, was an all-time high since the survey began in 1969.

So, with no change in current housing policy, we can expect annual production of approximately 1,515,000 units, including an estimated 1 million single-family units, some 440,000 multifamily units, and approximately 75,000 manufactured homes. How do we bridge the gap?

The Roundtable's Position

- Safe, decent, and affordable housing is critical to the well-being of America's families, communities, and businesses. The COVID-19 pandemic has intensified the nation's persistent housing crisis, prompting The Roundtable to mobilize with our national real estate organization partners and jointly advocate for policies that will help to increase housing supplies, grow jobs, and modernize our nation's critical infrastructure.
- Having a robust housing finance system is critical to expanding America's housing infrastructure to help meet the nation's longstanding goal of ensuring decent and affordable housing for all. Current efforts have failed to keep pace with the growing need for affordable housing.
- GSE reform must appropriately balance taxpayer protections and establish an efficient marketplace with a strong, efficient, and sustained financing environment for homeownership, rental housing, and sustained mortgage liquidity.
- As the gap between the number of lower-income renters and the supply of affordable units continues to grow, it is critical for the GSEs to provide support for mortgages to aid low- and moderate-income families—for homeownership and rental housing—as well as underserved areas.
- As American households increasingly turn to the rental market for their housing, a strong housing finance system should support not only homeowners but also aid the expansion of affordable rental housing.

Bridging the Housing Gap and GSE Reform

- Finally, and most importantly, it is important for the industry to focus on sparking a national transformation in housing policy, from the ground up. Through the development of a "battle plan" to unleash a wave of new housing construction, the industry can position itself as the solution to the housing crisis, rather than the problem.
- Rumors abound that the new Trump administration will try again to advance GSE reform. If they do, the Roundtable will be engaged, as we have in every prior effort. Sensible GSE reform still makes a lot of sense, but the devil is in the details.

Energy

Corporate Sustainability Disclosures

Issue

Regulations in the U.S. and abroad seek to require companies to publicly disclose climate-related risks on their finances, operations, and assets. Some of these rules are proving more durable than others.

- **Federal Rules:** The U.S. Securities and Exchange Commission ("SEC") released final rules on March 6, 2024, for registered companies to disclose "material" climate-related financial risks. The SEC's rules continue to be the subject of multiple lawsuits consolidated in federal court. Even if they survive litigation, the Trump 2.0 administration will likely take steps to repeal them. If the SEC's rules somehow endure and are not delayed, the largest registrants (in terms of "public float") must include certain climate-related disclosures starting with annual Form 10-Ks filed in March 2026. Additional disclosures ramp-up over time and phase-in to reach smaller registered companies. Key disclosures include:
  - Form 10-K's audited financial statement must set out expenses, losses, and capitalized costs incurred in the prior fiscal year to address extreme weather and natural conditions related to climate change—where "aggregated amounts" have a 1% or greater financial impact.
  - Scope 1 and 2 GHG emissions assured by a third-party "attestation report." The SEC rules do ***not*** require registrants to report Scope 3 emissions from sources in a company's supply chain.
  - Any voluntary climate target or goal established by the registrant, even if it includes Scope 3 emissions.
  - Expenditures from "physical risks" to buildings such as equipment replaced due to a storm or insurance coverage affected by rising sea levels.
  - Expenditures from "transition risks" to address adaptation to a warming planet such as cap ex plans to install more energy efficient equipment, purchases of renewable energy certificates (RECs), or fines paid to comply with local climate laws.
- **State Rules:** California enacted S.B. 253 and S.B. 261 in 2023. These laws require companies doing business in the state to report on global Scope 1, 2, and 3 emissions. The California Air Resources Board (CARB) is developing rules to implement these laws, with filings scheduled to start in 2026 (pertaining to the reporting company's FY 2025 emissions). However, CARB has vowed to relax enforcement regarding the first reports currently due in 2026. All of this could change pending litigation against California's corporate climate reporting program. Nonetheless, other states could follow California's lead and consider similar laws (e.g., Senate Bill 897A from New York's 2023-2024 legislative session).
- **International Rules:** The European Union's Corporate Reporting Sustainability Directive (CRSD) applies to U.S. companies with EU subsidiaries, and U.S. companies with listed securities on EU exchanges. The European Parliament has delayed CRSD implementation by two years (until June 2026) to give companies more time to prepare. CRSD's reporting topics are much broader than those covered by the SEC and California laws. They go beyond GHG emissions and climate risks to address biodiversity and a range of other environmental, social, and governance topics. Note, however, that in February 2025 the EU is expected to announce "simplified" corporate sustainability reporting requirements.

Corporate Sustainability Disclosures

The Roundtable's Position

- Real estate companies do not own or control sources in their supply chains. Thus, they should not be required to publicly report Scope 3 emissions.
- For example, real estate owners and developers do not control operations in tenant spaces. Nor do they control manufacturing processes for construction materials and other goods used in buildings. Accordingly, owners and developers should be under no mandate to quantify and report Scope 3 tenant-based emissions, or embodied emissions that occur in factories during product manufacturing.
- Policymakers can encourage voluntary reporting by helping building owners and developers capture valid and reliable data from Scope 3 sources. For example, governments should develop policies for utilities to provide building owners with anonymized, aggregated data from tenants who pay leased space energy bills directly to the utility. Similarly, government agencies should create a uniform system of "product declarations" for manufacturers to disclose voluntarily embodied carbon in materials purchased by developers and owners.
- Governments and NGOs should strive for consistent climate reporting rules across their respective frameworks.
- Reporting cycles should be consistent across varying disclosure regimes, based on when companies collect and verify valid climate-related data within a fiscal year. No framework should require companies to issue a report based largely on estimates, and then another report based on collected and verified data, within the same fiscal year.

Additional Resources

RER fact sheets

- The SEC's Climate Disclosure Rules: What CRE Should Know (March 12, 2024)
- California's Climate Disclosure Package: Summary of SB 253 and SB 261 (Sept. 2023)

RER comment letters

- Comments to SEC on proposed climate risk disclosure rule (June 2022)
- Real estate coalition "joint trades" letter to SEC on climate disclosure (June 2022)
- Initial comments to SEC on climate reporting (June 2021)

Energy

Energy Tax Incentives

Issue

President Biden signed the *Inflation Reduction Act of 2022* (IRA) into law on August 16, 2022. The legislation will invest almost $370 billion over 10 years to tackle the climate crisis. While the Trump 2.0 administration and the new GOP-controlled Congress ran on political platforms to eliminate IRA incentives, many Red States benefit from clean energy projects supported by the law. It thus remains to be seen whether the rhetoric matches efforts to significantly dismantle the IRA.

A number of the IRA's changes to the federal tax code may help the U.S. real estate sector reduce its carbon footprint, particularly:

- A deduction to help make commercial and multifamily buildings more energy efficient (Section 179D);
- A credit to encourage investments in renewable energy generation, storage, grid interconnection, and other "clean energy" technologies sited at buildings and other facilities (Section 48);
- A credit to incentivize EV charging stations (Section 30C); and
- A credit to incentivize energy-efficient new residential construction and major rehabs, including multifamily (Section 45L).

The Real Estate Roundtable (RER) has encouraged Congress for years to make clean energy tax incentives more usable for building owners, managers, and financiers—and more impactful to help meet energy efficiency goals.

The Roundtable's Position

- Davis-Bacon prevailing wage and registered apprenticeship (PW/RA) requirements are a major barrier for real estate companies to access the IRA's clean energy "bonus" tax credits. These labor standards hinder the deployment of projects to make buildings more resilient, efficient, and withstand power outages.
- The IRA's best opportunities for energy deployment are probably the Section 48 investment tax credit (ITC) for solar, wind, and associated storage projects. If those projects generate under 1 MW of electricity, they qualify for a 30% tax credit—and do not have to comply with PW/RA requirements.
- New IRA provisions allow taxpayers to "transfer" certain credits to unrelated third parties. This is an important policy change to enable more clean energy deployment by REITs and other real estate owners who generally have no appetite to benefit from tax incentives. Treasury/IRS should enact rules to optimize the credit "transfer" benefits for mixed partnerships with for-profit and not-for-profit owners.
- The 179D deduction is the tax code's primary incentive for energy efficiency projects in commercial buildings. The IRA made key improvements to 179D to make it more usable for existing building retrofits. However, more changes are necessary for 179D to have real impact in the marketplace. Congress should:

Energy Tax Incentives

- Convert 179D to a tax credit ***or*** eliminate 179D's current language that reduces property basis by the amount of the deduction. Either change will help make 179D a net benefit to lower tax liability, as opposed to simply providing a timing benefit akin to accelerated depreciation.
- Allow private sector building owners to transfer or "allocate" 179D to architects or engineers—as the law currently allows for government, tribal, and non-profit building owners.

Additional Resources

RER fact sheets

- Clean Energy Tax Incentives Relevant to U.S. Real Estate (July 2023)
- Section 48 Investment Tax Credit: "Base" and "Bonus" Rate Amounts (May 2023)
- *Inflation Reduction Act* Revenue Provisions (Aug. 2022)

RER comment letters on Treasury/IRS notices and proposed rules:

- Prevailing Wage and Apprenticeship Requirements Under the *IRA* (Oct. 2023)
- Monetizing Energy Credits: Transfer and Direct Pay (July 2023)
- Clean Energy Tax Credits for Low-Income Communities, Housing (June 2023)
- Comments on Notice for Section 30C Tax Credits for EV Charging Stations (Dec. 2022)
- Comments on Notices for 179D Deduction for Energy Efficient Buildings, Section 48 Investment Tax Credit, and Section 45L Tax Credit for Residential Construction (Nov. 4, 2022)

Energy

Building Performance Standards

Issue

No federal agency has authority from Congress to regulate private sector buildings through a national building performance standard ("BPS"). A number of cities and states (map) have filled this federal regulatory vacuum by enacting BPS mandates in their jurisdictions to lower energy use, reduce GHG emissions, or install heat pumps and other electrification equipment.

Failure to meet local BPS requirements can result in fines and penalties if buildings do not reach emissions or electrification "targets" by certain deadlines.

The U.S. Department of Energy has made federal funds available to states and localities, to develop and enforce local BPS laws. The Roundtable has developed a policy guide for state and local real estate advocates on the key issues and talking points that should be raised before city council and statehouses as they develop climate-related performance mandates on buildings.

Although the federal government cannot ***mandate*** standards for building performance, the U.S. Environmental Protection Agency (EPA) and Department of Energy (DOE) are developing ***voluntary*** programs to recognize buildings that achieve high performance and reduce energy usage. EPA and DOE guidelines may establish more achievable and straightforward criteria for building owners compared to the complex patchwork of state/local BPS that have emerged.

Meanwhile, non-governmental organizations (NGOs) have developed their own BPS-type standards and climate accounting frameworks. Some have international influence across global markets.

Chief among these are the Science Based Targets Initiative (SBTi) and World Resources Institute's Greenhouse Gas (GHG) Protocol. Government bodies increasingly incorporate GHG Protocol and SBTi standards in their policies. Likewise, major real estate lending and equity institutions have also adopted these NGO frameworks to align with their ESG investment principles.

The Roundtable's Position

- As discussed in RER's BPS policy guide, BPS laws can create complex challenges for real estate stakeholders to navigate. Federal officials, along with state and local lawmakers, should use the policy guide to shape how BPS laws are designed and implemented. Key points from the policy guide include: develop science-based and data-driven standards, align standards across jurisdictions, and provide clear compliance resources and fair remedies.
- Voluntary federal guidelines—such as DOE's National Definition of a Zero Emissions Building (ZEB), and EPA's "NextGen" label for low-carbon buildings—provide consistent and rational standards for local jurisdictions and NGOs that create BPS frameworks.
- Cities, states, and NGOs should rely on federal DOE and EPA policies before re-inventing the wheel with their own building emissions programs that impose unattainable standards and punitive fines.

Building Performance Standards

- A "zero emissions" building is generally a long-term aspirational goal. DOE's ZEB attainment horizon must be grounded in a business case for life-cycle investments to install electrification equipment only when oil, gas, or steam-fired boilers become functionally obsolete. It is worse for the environment to rip out working systems that are still useful to heat and cool buildings for years to come.
- DOE's "zero" emissions ZEB definition should work in tandem with EPA's "low" carbon Next Gen certification. The agencies should recognize that satisfying NextGen criteria is a key intermediate signal to the marketplace that a building is on the path toward ZEB status.
- EPA's Portfolio Manager provides the industry-wide, standard tool to measure a building's energy use and carbon emissions. Any BPS program should rely on Portfolio Manager as the evolving tool to capture climate-related metrics for real estate.
- Some localities and NGOs want CRE owners to use 100% clean power at their buildings. This is impossible to achieve unless electric grids, district steam systems, and other offsite energy infrastructure are also 100% clean. Yet, a decarbonized grid remains a distant aspiration according to EPA's eGRID data.
- If policymakers want to drive in the direction of decarbonized buildings then they must also impose measures to decarbonize the power grid at the same pace. Until both buildings and the grid are fully decarbonized, policymakers must provide real estate portfolios with opportunities for off-site market-based clean power procurements—such as purchases of Renewable Energy Certificates (RECs)—to meet renewable energy goals.

Additional Resources

RER policy guide:

- Lessons Learned to Shape Fair and Reasonable Building Performance Standards (BPS) 20-Point Guide (Oct. 2024)

RER fact sheets and newsletter articles:

- Roundtable Weekly, "White House Announces Guidelines for a 'Zero Emissions Building" (June 7, 2024)
- Roundtable Weekly, "Administration Unveils Principles for Carbon Offset Markets" (May 31, 2024)
- Roundtable Weekly: "EPA Releases 'Next Gen' Criteria for Low-Carbon Buildings" (March 22, 2024)
- Roundtable Weekly: "Roundtable and Nareit Comment on National Definition for a Zero Emissions Building" (Feb. 2, 2024)
- Roundtable Weekly: "CRE Coalition Asks EPA to Help Standardize Conflicting State, Local Building Emission Laws" (Sept. 15, 2023)
- Fact sheet: Science-based Targets Initiative ("SBTi") (Aug. 9, 2023)

RER comment letters:

- RER letter to US-DOE regarding Inflation Reduction Act Support for BPS – Round 1 Grants (Oct. 2024)
- RER and Nareit joint letter and technical comments on US-DOE's ZEB definition (Feb. 2024)

Energy

Building Performance Standards

- Real estate coalition “joint trades” letter to EPA supporting Portfolio Manager (Sept. 2023)
- RER/Nareit supplemental letter to SBTi (Aug. 2023)
- RER/Nareit comments to SBTi on building sector guidance (July 2023)
- RER comments to EPA on proposed “Next Gen” criteria (March 2023)
- RER comments on EPA’s use of *Inflation Reduction Act* funds (Jan. 2023)
- RER comments to Institute for Market Transformation (IMT) on “model” BPS law (April 2021)

Installation Building HVAC – Federal Regulations

Issue

The U.S. Environmental Protection Agency (EPA) is accelerating the phasedown of hydrofluorocarbons (HFCs), commonly used in air conditioning and refrigeration systems, with significant impacts on real estate owners and developers.

Hydrofluorocarbons (HFCs) are a class of greenhouse gases widely used as refrigerants in air conditioning (AC) equipment like chillers and heat pumps, as well as cold storage equipment installed in residential, commercial, and industrial buildings. Many HFCs have a very high global warming potential (GWP), allowing them to trap significantly more heat in the atmosphere than carbon dioxide. About 20% of global electricity consumption in buildings is from space cooling, which often uses high-emissions refrigerants. This makes HFCs a major contributor to climate change, despite their ozone-friendly properties.

In 2020, the U.S. Congress passed the American Innovation and Manufacturing (AIM) Act, requiring the phasedown of HFCs and a transition to new technologies with lower emissions impacts. The AIM Act requires that the production and consumption of HFCs in the U.S. be reduced by 85% by 2036. Building owners must transition to low-GWP technologies when old equipment reaches the end of its lifecycle and when new buildings are constructed.

On December 20, 2024, the EPA published its latest federal rules on the HFC phasedown and technology transition, and on October 11, 2024, the EPA published final rules governing leak detection and repair of equipment that uses HFCs. These new rules will require the adoption of new technologies and refrigerants that reduce greenhouse gas emissions, affecting the design, installation, and management of AC systems. Key deadlines for installation start in 2026 and 2027.

The Roundtable's Position

- While the new rules may help lower emissions, they pose key challenges to the real industry that, if left unaddressed, may impose severe costs and regulatory burdens. The EPA should work in partnership with real estate stakeholders to resolve these issues.
- The quickly approaching installation deadlines do not address the challenges associated with permitting and construction timelines. Ongoing developments often require approved permits years before construction starts. The 2026 installation deadline could force developers to repeat or restart lengthy design, contracting, and permitting processes. The EPA should extend installation deadlines to provide a fair HFC transition for real estate assets.
- AC and refrigeration equipment is governed by mechanical, fire, and other building codes, which must be navigated alongside the HFC phasedown and technology transition. The rules do not address the alignment of AIM Act deadlines with state laws and building codes at the local level, posing a significant challenge for compliance.
- The EPA should publicize and track all of the residential and commercial building code updates across the U.S. needed to allow use of A2L and other refrigerants with low global warming potential. The EPA should also develop a holistic building code amendment strategy with model code bodies, state legislatures, and the buildings sector.

Installation Building HVAC – Federal Regulations

- Once existing systems reach the end of their useful life, buildings will need to be retrofitted to accommodate new AIM Act-compliant technologies. However, this can involve considerable costs, including changing building designs, floorplates, and layouts; and getting retrofits approved by local permitting and zoning bodies. The rules do not address the cost-effectiveness of retrofits, potentially leaving some buildings stranded in noncompliance.
- The EPA should clarify what, if any, regulatory impact will arise on existing buildings' AC and chiller systems when they reach the end of their "useful lives." Guides and resources to assist property owners with capital expenditure budgeting to support life-cycle investments in building AC and cooling equipment should also be provided.

Additional Resources

RER fact sheets and newsletter articles:

- Fact Sheet: How Federal Rules on HFC Refrigerants Affect Buildings (Jan. 2025)
- Roundtable Weekly, "EPA Issues New Rules Impacting Building Air Conditioning Systems" (Sept. 27, 2024)

RER comment letters:

- RER comments on EPA's proposed rules regarding the Phasedown of HFCs Under the AIM Act (Sept. 2024)

Cyber and Physical Threats

Issue

The rising incidence of violent crime, organized retail crime, civil unrest, cyber-attacks, artificial intelligence (AI) and the renewed threat of terrorism have prompted increased vigilance, information sharing, and legislative efforts to improve our nation's resilience. The proliferation of these threats has raised concerns in the commercial facilities sector about how to protect commercial properties and the people who occupy them from such threats. In addition to the challenges posed by these threats, the Russian invasion of Ukraine, conflict in the Middle East, and rising tensions in Asia have raised security concerns about the increased incidence of cyber-attacks from the Russian Federation, the People's Republic of China (PRC), Iran, North Korea and other state actors.

In May 2024, the U.S. government announced that several aspects of the U.S. National Cybersecurity Strategy were advanced or had gone into force this year. This includes progress on scores of objectives including developing cybersecurity scenario exercises to help critical infrastructure owners prepare for attacks from nation states and malicious cyber actors and proposing changes to the way the government maintains security. The strategy also aims to ensure that the U.S. stays at the forefront of developing cybersecurity standards and establishes a State Department Bureau of Cyberspace and Digital Policy to build international partnerships to counter malicious cyber actors.

First released in early 2023, the US National Cybersecurity Strategy was designed to "secure the full benefits of a safe and secure digital ecosystem for all Americans" and bolster collaboration between the public and private sectors to ensure a secure cyber ecosystem, according to a White House statement.

The Roundtable's Position

- Recent high-profile hacking attacks have brought to the fore the necessity of fortifying the nation's IT infrastructure against cyber-attacks. Additionally, there are growing concerns about AI having the potential to create new risks. Key concerns include the risk of cyberattacks exploiting AI vulnerabilities, leading to unauthorized access to facilities or sensitive data.
- The Office of the National Cyber Director (ONCD) issued a report that discusses its efforts to develop "a comprehensive policy framework for regulatory harmonization" that aims to "strengthen" cybersecurity resilience across critical infrastructure sectors, "simplify" the work of sector-specific regulators while taking advantage of their unique expertise, and "substantially reduce the administrative burden and cost on regulated entities." Comments indicate frustration with a disjointed regulatory environment that increased compliance costs without a commensurate enhancement in cybersecurity.
- The ONCD plans to use the report to inform its pilot effort to develop a reciprocity framework for a designated critical infrastructure sector. A companion blog post from the head of ONCD describes the pilot as seeking to "design a cybersecurity regulatory approach from the ground up." The blog calls on Congress for help to bring relevant agencies together "to develop a cross-sector framework for harmonization and reciprocity for baseline cybersecurity requirements."

Homeland Security

Cyber and Physical Threats

- The Roundtable has raised concerns that duplicative and inconsistent regulations create additional challenges for those tasked with defending the nation's critical infrastructure, including the CF sector, and undermine cyber preparedness. Policymakers must work together to identify and address this overlap. We look forward to working with policymakers toward a more effective framework and welcome input from our members.
- Through our Homeland Security Task Force and Real Estate Information Sharing and Analysis Center (RE-ISAC), The Roundtable remains focused on measures that businesses can take—such as creating resilient infrastructure that is resistant to physical damage and cyber breaches—through increased cross-agency information sharing and cooperation with key law enforcement and intelligence agencies.
- Through a Cybersecurity Information Sharing and Collaboration Agreement with DHS's CISA, the RE-ISAC engages in operational efforts to better coordinate activities supporting the detection, prevention, and mitigation of cybersecurity, communications reliability, and related data threats to critical infrastructure.
- In addition to civil unrest, organized retail crime, and violent attacks on properties across the U.S., real estate continues to face a variety of cyber and physical threats, such as:
    - disruptive and destructive cyber operations against strategic targets, including an increased interest in control systems and operational technology;
    - cyber-enabled espionage and intellectual property theft;
    - improvised explosive devices (IEDs);
    - attacks against U.S. citizens and interests abroad and similar attacks in the homeland;
    - tenant fraud;
    - pandemic risk; and
    - unmanned aircraft system (UAS) attacks against hardened and soft targets.
- As a critical part of the nation's infrastructure, real estate continues to assess and strengthen its cyber and physical defenses to protect our industry from an array of threats—international and domestic terrorism, criminal activity, cyber-attacks, border security, and natural catastrophes.
- The Roundtable continues to promote security measures against both physical and cyber threats by facilitating increased information sharing and cooperation among its membership with key law enforcement and intelligence agencies.