Capital & Credit
The Real Estate Roundtable continues to lead efforts in support of public policy that promotes the availability of credit and the formation of capital in the commercial and multifamily real estate industry.

Consistent with these efforts, The Roundtable has effectively engaged with policymakers on a number of issues relevant to maintaining healthy credit and capital markets. These issues include the importance of ensuring a resilient banking system, an orderly transition away from the LIBOR reference rate, and reducing regulatory compliance burdens on industry participants.

Pandemic Risk Insurance

The Roundtable continues to work closely with industry partners, stakeholders, and policymakers through the Business Continuity Coalition (BCC) to develop an insurance program that protects jobs by ensuring business continuity from future economic losses due to pandemics and other emergencies necessitating widespread closures of the economy. During a Senate hearing in July 2021, the BCC offered testimony on how pandemic risk is one of the greatest unhedged risks in the American economy. The BCC’s testimony also highlighted how a public-private backstop program for pandemic risk insurance—similar to the Terrorism Risk Insurance Act (TRIA) following the 9/11 attacks—is urgently needed to ensure a speedy recovery in a post-pandemic economy.

In November 2021, the Pandemic Risk Insurance Act (PRIA) was introduced in the House of Representatives which, if enacted, would establish a federal program that provides for a transparent system of shared public-private compensation for property and casualty insurance losses resulting from a pandemic, protecting American jobs by ensuring the continued widespread availability of essential coverage for pandemic-related losses and allowing for a transitional period for private markets to stabilize. The Roundtable strongly supports this legislation as a positive and forward-thinking solution to existing coverage shortfalls. In February 2022, members of the BCC urged policymakers to enact a pandemic risk program in a policy comment letter. Most recently, The Roundtable engaged with Representative French Hill (R-AR), Ranking Member of the House Financial Services Subcommittee on Housing, Community Development and Insurance, in a virtual discussion on the widening gaps in pandemic-related coverage in commercial insurance markets. In tandem with the BCC, we will continue to champion the issue.

London Interbank Offer Rate (LIBOR)

The London Interbank Offer Rate (LIBOR) served as the benchmark interest rate for approximately $373 trillion worth of cash and derivative contracts globally; however, it officially expired at the end of 2021. The transition away from LIBOR as a reference interest rate introduced significant uncertainty to the commercial real estate industry and the broader economy, particularly with regard to existing agreements and financial contracts.

Over the last year, The Roundtable’s LIBOR Working Group has worked to provide input on the development of an effective new replacement benchmark that does not impair liquidity, increase borrowing costs, or cause market disruptions. Additionally, The Roundtable and 17 national trade groups submitted letters to House
Financial Services and Senate Banking Committee policymakers in support of guidance on the LIBOR transition in July and November 2021, respectively.

This work ultimately resulted in the passage of the Adjustable Interest Rate (LIBOR) Act. The Roundtable-supported House bill protects trillions in “tough legacy” contracts that use the LIBOR as a reference rate. The bill also provides a safe harbor for market participants switching from existing LIBOR-referencing financial contracts to a replacement benchmark for debt instruments. In March 2022, as part of a larger funding package, Congress passed Roundtable-supported language that addressed the transition away from LIBOR.

Beneficial Ownership

In December 2021, the Treasury Department’s Financial Crimes Enforcement Network (FinCEN) issued a Notice of Proposed Rulemaking to guide the implementation of beneficial ownership reporting requirements that were included in the Corporate Transparency Act (CTA) of 2020. The proposed rule is designed to enhance U.S. national security by preventing malignant actors from exploiting legal entities, such as shell companies, to launder money, among other crimes. Such abuses can undermine U.S. national security, economic fairness, and the integrity of the U.S. financial system.

In February 2022, a coalition of ten real estate organizations, including The Roundtable, submitted comments to the Department of the Treasury and FinCEN that applaud efforts to maintain integrity in the U.S. financial system, while also encouraging policymakers to adopt a balanced approach that does not unfairly burden law-abiding businesses. Specifically, the letter includes the following recommendations:

- Study the commercial and multifamily real estate markets to ensure that future regulation takes into account how those markets function;
- Leverage the CTA and the beneficial ownership database to limit the need for further action; and
- Distinguish nonbank commercial real estate lenders from true all-cash transactions.

The letter also notes that the real estate industry supports efforts to provide the law enforcement community with the tools necessary to stop money laundering, terrorism financing, or other crimes. However, the coalition urges that any compliance regime should be structured in a manner that does not discourage commercial real estate capital formation and investment.

Additional legislation is being considered in the House Financial Services and Senate Banking Committees, known as the Kleptocrat Liability for Excessive Property Transactions and Ownership (KLEPTO) Act. The bill would arm law enforcement with the information required to track down kleptocrats’ luxury assets in the U.S. The Roundtable strongly supports efforts to identify and impede illegal investments by Russian Federation oligarchs in U.S. real estate and continues to work with policymakers to minimize the imposition of costly reporting requirements on non-bank businesses, especially those in the real estate industry.
Cannabis-Related Businesses (CRBs)/SAFE Banking Act

The Roundtable has long been a supporter of the bipartisan Secure and Fair Enforcement (SAFE) Banking Act, which would eliminate the need for legal cannabis-related businesses (CRBs) to operate on a cash basis, incorporate them into the banking system, and allow them to obtain accounts and credit cards. If enacted, the SAFE Banking Act would provide commercial property owners with a safe harbor if they lease space to a CRB, whose mortgages would not be subject to corrective action by a bank under federal law. To date, the SAFE Banking Act has passed the U.S. House six times, most recently in February 2022 as an amendment to the America COMPETES Act but it has yet to pass the Senate. The Roundtable’s advocacy efforts on this front remain ongoing.

National Flood Insurance Program (NFIP)

Floods are the most common, costliest natural peril in the U.S. The NFIP aims to reduce the impact of disasters by promoting the purchase and retention of general risk insurance, including flood insurance. The NFIP has been temporarily extended multiple times as part of Congress’ budget process and is currently operating under an extension that will expire on September 30, 2022.

Reauthorization of the NFIP is important for residential markets, overall natural catastrophe insurance market capacity, and the broader economy. The Roundtable and its partner associations support a long-term reauthorization and reform of the NFIP that helps property owners and renters prepare for and recover from future flood losses.
NFIP Property Makeup

Under the NFIP, commercial property flood insurance limits are low—$500,000 per building and $500,000 for its contents. NFIP has approximately 5 million total properties, only 6.7% are commercial. Nearly 70% of NFIP is devoted to single-family homes and 20% to condominiums.

SEC Proposed Rules on Form PF and Private Fund Advisers

Over the past year, the Securities and Exchange Commission (SEC) introduced several proposals with regulatory implications for private real estate investment funds. The proposed rules would significantly overhaul the regulation of the private real estate fund industry. Specifically, the SEC issued proposed amendments to Form PF reporting requirements for certain private fund managers and proposed new and amended rules under the Investment Advisers Act of 1940 that, if adopted, would impose new SEC and investor reporting requirements on certain real estate private fund advisors.

In January, the SEC outlined new reporting requirements on private equity advisers, including a mandate to file reports (Form PF) within one business day of certain events. In response, The Roundtable submitted comments to the SEC that highlighted how the requirements present significant compliance and operational challenges for private real estate fund sponsors, with no added benefit to investors and no
apparent improvement in the SEC’s ability to monitor systemic risk—a key objective of the proposal.

The Roundtable also submitted comments to the SEC in response to their proposed rulemaking on the private fund advisers that detail how the proposal could have a negative impact on real estate private fund disclosures, reporting, fees and expenses, and operations. The letter also explains how the Commission’s extensive reporting requirements proposed under the new rules would increase compliance costs, decrease returns for all private fund investors, and drive smaller fund sponsors away from the market. The Roundtable letter also raises concerns that the SEC proposal, if finalized, could hinder real estate capital formation, harm development and improvement of real properties, and curtail essential economic activity that encourages job creation.

Additionally, The Roundtable and 24 other national business organizations submitted comments in April to SEC Chairman Gary Gensler about the SEC’s current exceedingly short comment periods and the need for more time to assemble meaningful stakeholder analysis as part of the rulemaking process.

**EB-5 Investment Visa Program**

The Roundtable has long advocated to reform and modernize the EB-5 regional center program, which expired in June of 2021. After years of negotiations, Congress passed the EB-5 Reform and Integrity Act this past March as part of the omnibus spending package to fund the federal government for FY 2022.

The EB-5 visa program gives the U.S. a competitive edge in attracting investments from abroad to fund infrastructure and other economic development projects in our country. The new law authorizes regional centers for five years. It also sets new program requirements to safeguard national security, deter fraud, and promote urban and rural developments supported by overseas investor financing. These and other key reforms are summarized in the comprehensive fact sheet prepared by The Roundtable.

The Roundtable was central to the bicameral, bipartisan negotiations that ultimately resulted in the new law’s passage. We are also working to ensure that regional centers can meet the new law’s “integrity measures” as swiftly as possible while attracting new sources of inbound foreign capital consistent with the intent of Congress.

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**We remain involved to ensure the law’s swift implementation, and leverage congressional oversight, so that bona fide regional centers can get to work as soon as possible to attract inbound foreign capital to create jobs for America’s workforce.**