

Board of Directors



The Real Estate Roundtable

Chair

John F. Fish
Chairman & CEO
SUFFOLK

President and CEO

Jeffrey D. DeBoer

Treasurer

Thomas M. Flexner
Vice Chairman and Global Head of Real Estate
Citigroup

Secretary

Jodie W. McLean
Chief Executive Officer
EDENS

Thomas J. Baltimore, Jr.
Chairman, President & CEO
Park Hotels & Resorts

Jeff T. Blau
CEO
Related Companies

Debra A. Cafaro
Chairman and CEO
Ventas, Inc.
Immediate Past Chair
The Real Estate Roundtable

Tiffany English
Senior Director, Architecture/Global Real Estate
Qualcomm
2021 President, CREW Network

Geordy Johnson
CEO
Johnson Development Associates, Inc.

Brian Kingston
Managing Partner and Chief Executive Officer
Brookfield Property Partners

Anthony E. Malkin
Chairman, President and CEO
Empire State Realty Trust, Inc.

Roy Hilton March
Chief Executive Officer
Eastdil Secured

Kathleen McCarthy
Global Co-Head of Blackstone Real Estate
Blackstone

Ken McIntyre
Chief Executive Officer
Real Estate Executive Council

Kara McShane
Head of Commercial Real Estate
Wells Fargo

Mark J. Parrell
President & Chief Executive Officer
Equity Residential
Member, National Multifamily Housing Council

Ross Perot, Jr.
Chairman
Hillwood

Amy Rose
President, Chief Executive Officer
Rose Associates, Inc.

Brandon Shorenstein
Chairman and Chief Executive Officer
Shorenstein Properties

Rob Speyer
President and CEO
Tishman Speyer

A. William Stein
Chief Executive Officer
Digital Realty Trust
Immediate Past Chair, Nareit

Barry Sternlicht
Chairman and CEO
Starwood Capital Group

Owen D. Thomas
Chief Executive Officer
Boston Properties

November 16, 2021

The Honorable Richard Neal
Chairman
House Committee on Ways and Means
1105 Longworth House Building
Washington, DC 20515

The Honorable Ron Wyden
Chairman
Senate Committee on Finance
219 Dirksen Senate Building
Washington, DC 20510

Dear Chairmen:

On behalf of The Real Estate Roundtable (www.rer.org), please consider these comments regarding the “Green Energy” subtitle of the *Build Back Better (“BBB”) Act*.¹ The bill proposes a number of positive reforms to modify the tax code’s incentives to spur clean energy production, investment, and efficiency. However, the credits and deductions covered by the *BBB Act* should be further improved to support private sector building projects in emerging technologies at the scale needed to significantly slash GHG emissions and meet national climate goals.

[According to the U.S. Energy Department](#), commercial buildings – and the behavioral choices of the tenants and other occupants who live, work, shop, and recreate in them – account for 18% of U.S. primary energy use; 35% of electricity consumed in the U.S.; and 16% of all U.S. CO₂ emissions. Yet, [the Joint Committee on Taxation estimates](#) that improvements to the tax code’s main incentive to enhance building efficiency (Section 179D) cost only \$626 *million* out of the total \$300 *billion* green tax package. That is, a scant 0.21% of the cost of the green energy tax package is specifically devoted to commercial buildings.

If Congress is serious about accelerating broad and rapid deployment of low- and zero-carbon building systems by real estate businesses, it must do more to encourage these investments. “Stretch code” and “high performance” equipment have steeper upfront purchasing costs compared to components that simply meet local code requirements. These systems require a skilled labor force to install. They also come with greater ongoing expenses for maintenance and continual tune-up over their useful lives due to their complexity, sophistication, and web-based operations.

The reconciliation process provides a rare opportunity to adopt policies that encourage private sector building owners to incur these extra expenses. The *BBB Act* is a good start. However, the ambition to achieve a de-carbonized economy by 2050 will elude us unless more is done – with less red tape – to prompt the transformation of U.S. building infrastructure expected to operate in a “net zero” landscape.

¹ [H.R. 5376, Rules Committee Print 117-18](#) (Nov. 3, 2021).

The Roundtable offers its perspectives on and recommendations to improve the *BBB Act*'s "Green Energy" subtitle, as follows:

- **Investment Tax Credit (Section 48):** We commend the proposed changes to expand qualifying ITC projects to also include energy storage, dynamic glass, microgrid controllers, and a new credit for long-distance transmission lines. We urge further clarification of the proposed new "energy storage" definition to ensure that "*thermal* energy storage" is captured.
- **Electric Vehicle (EV) Refueling Property Tax Credit (Section 30C):** The *BBB Act* as currently written will not incentivize installations of EV chargers in the nation's affordable rental housing communities, apartments, office parks, and other private multi-tenant environments where the "general public" lacks access. Aspirations for a nationwide system of EV stations will not be realized if renters or employees cannot conveniently re-charge their cars while at home or work. Section 30C should be further revised to support EV charging installations in private residential communities, offices, schools, and other properties that cater to their tenants without widespread "general public" access.
- **Elective Payment Option:** We strongly support the *BBB Act*'s improvements to provide an "elective pay" option. This important change will allow business entities without tax liability to benefit from the credits for investments in renewable energy, EV charging stations, and other clean energy projects.
- **Include Incentives for Heat Pumps and Other Costly Building Electrification Equipment:** We cannot discern a single tax incentive proposed in the *BBB Act* to specifically support installations of heat pumps or other equipment that would support commercial buildings to re-design toward electrification. However, the [long-term U.S. climate strategy](#), released by the Biden Administration on the eve of the COP 26 Glasgow conference, repeatedly states that rapid deployment of heat pumps is a "central strategy" and a "priority of this decade" to electrify buildings. The Administration's plans and Congress's reconciliation framework should support the same goals. The Roundtable recommends that the *BBB Act* should incorporate the "accelerated depreciation" incentive for commercial heat pumps and electric hot water heaters as proposed in the bipartisan *Energy Efficiency Qualified Improvement Property (E-QUIP) Act* ([H.R. 2346](#)). Additionally, the Section 48 ITC should be further reformed to provide a tax credit that incentivizes technologies to electrify real property assets.
- **Energy Efficient Commercial Buildings Deduction (Section 179D):** The *BBB Act*'s proposed Section 179D reforms offer an alternative path for qualifying retrofit projects, a sliding scale that awards deeper efficiency gains with higher deductions, and earnings and profits conformity for REITs. These are welcomed changes long supported by The Roundtable. Further 179D improvements should be made to induce retrofit projects. In particular, the tax deduction should be claimable during the year that the real property business incurs the costs to purchase and install expensive high efficiency equipment – and not one or more years after retrofit construction concludes (as the bill currently proposes).

- **Davis-Bacon Compliance and Apprenticeship Hiring:** The extra costs and bureaucracy associated with Davis-Bacon wage compliance and searching to hire registered apprentices will seriously dampen the private sector's interest in pursuing clean energy incentives. For purposes of Sections 48, 30C, and 179D, the *BBB Act's* "base" rate (without heightened labor standards) is significantly *less* than the incentive amounts already provided under current law. Moreover, "bonus" rates (with added labor compliance costs on the business) either reflect current incentive amounts or are not large enough to encourage the private building sector's quick and wide deployment of clean energy tech. The focus here must be on achieving GHG reduction goals. Simply put, the unprecedented expansion of Davis-Bacon and apprenticeship standards will impede the rapid progress needed to address the climate crisis. They should not be incorporated into the clean energy tax subtitle.

More detail on these points is provided in the attachment to this letter. Thank you for the opportunity to provide these perspectives. For further information, please contact Duane Desiderio, The Roundtable's Senior Vice President for energy policy (ddesiderio@rer.org); or Ryan McCormick, Senior Vice President for tax policy (rmccormick@rer.org).

Sincerely,



Jeffrey D. DeBoer
President and Chief Executive Officer



**THE REAL ESTATE ROUNDTABLE’S PERSPECTIVES
ON THE BUILD BACK BETTER ACT’S²
CLEAN ENERGY TAX PROVISIONS**

Investment Tax Credit (Section 48)

Expanding qualifying Section 48 properties (beyond solar panels, fuel cells, microturbines, and combined heat and power systems) to also include energy storage, dynamic glass, microgrid controllers, and long-distance transmission lines can help spur additional building investments that cut GHG emissions. We commend these proposed changes to the *Build Back Better (“BBB”) Act*.

We urge revision to the House language so its “energy storage” definition encompasses “[thermal energy storage](#)” (“TES”). In [TES systems](#), ice operates as a battery for a building’s air conditioning. During late night or solar-surplus hours when stress on the electric grid is low and electricity is cheaper, TES systems make ice and store it inside cooling tanks. When demand for air conditioning spikes as occupants return the next day, the ice created the night before is used to chill water that circulates throughout the building to cool indoor air. In this manner, ice-creating TES systems dramatically reduce (or eliminate) the building’s reliance on electricity-intensive chillers otherwise needed for air conditioning during peak demand hours.

TES systems are precisely the kind of innovative storage technology that a revised ITC should support. Yet, the *BBB Act* defines “energy storage technology” generally as property “which receives, stores and delivers energy for *conversion to electricity*.”³ As explained above, TES systems “store” energy – the ice functions like a battery – but they do *not* store ice “for conversion to electricity.” The ice is stored to cool the building *without* electricity.

- **Recommendation:** Thermal energy storage should receive the same treatment as hydrogen energy storage for purposes of the improved ITC. The House reconciliation bill should be revised to define “energy storage” as property that stores energy to convert to electricity – “or, in the case of hydrogen or thermal energy systems, which stores energy”⁴

² [H.R. 5376, Rules Committee Print 117-18](#) (Nov. 3, 2021).

³ *Id.*, p. 1345 line 1.

⁴ *Id.*, lines 1-2.

Electric Vehicle Charging Stations (Section 30C)

The Biden Administration has proposed an ambitious vision to build a national network of 500,000 EV charging stations. The Administration favors “incentive programs ... for the private sector” to support “transformational acceleration” of EV chargers “in apartment buildings” and “throughout communities.”⁵

Improving the 30C tax credit to achieve these goals should be a reconciliation framework priority. However, the *BBB Act* limits the definition of “qualified alternative fuel vehicle refueling property” only to charging stations “intended *for general public use*”⁶

This language subverts the Biden Administration’s aim to build a readily accessible coast-to-coast network of EV charging stations. The *BBB Act* does not make the tax credit available to support installations in private apartments and affordable housing projects – where chargers are available for residential tenants but *not* the “general public.” Likewise, the *BBB Act* does not support charging stations located in the parking lots and garages of private schools, universities, office parks, data centers, and industrial facilities – that are accessible to students, employees, and business tenants at these locations but *not* the “general public.”

Section 30C reforms should encourage tenants living in affordable rental housing to buy electric cars – but this will not happen if they do not have the convenience of plugging-in at home. Likewise, if America’s students and workforce have reduced opportunities to charge-up while at school or work, their “[range anxiety](#)” will not be alleviated and the goal for a national, transformational switch to electric vehicles would be impeded.

- **Recommendation:** The 30C tax credit should be revised so the incentive covers EV charging stations accessible to workers, residential and commercial tenants, and students attending private learning institutions – where the chargers are located in garages, parking lots, and other sites not intended for “general public use.”

Elective Payment Option

The “elective payment” option – proposed for the Section 48 ITC, the Section 30C EV charging credit, and other incentives – would be a key improvement to the tax code to help achieve climate goals. The option would allow entities with little or no tax liability to request a payment equal to the value of these credits that they would have received if they paid taxes. Likewise, changes sought by Senator Cardin to eliminate “retained income” restrictions will spur even more renewable energy investments by putting REITs on par with other taxpayers to receive the full benefit of the elective pay option.

We applaud these changes in the *BBB Act*.

⁵ [White House Fact Sheet](#), *Biden Administration Advances Electric Vehicle Charging Infrastructure* (April 22, 2021).

⁶ H.R. 5376, p. 1517, lines 12 and 14.

Accelerated Depreciation for Heat Pumps and Other Building Electrification Equipment

On the eve of the COP 26 climate conference in Glasgow, the Biden Administration released its “Long-Term Strategy of the United States – Pathways to Net Zero Greenhouse Gas Emissions by 2050.”⁷ Regarding building technologies, the Long-Term Strategy states:

- “[T]he priority in this decade is to rapidly improve energy efficiency and increase the sales share of clean and efficient electric appliances – *including heat pumps for space conditioning [and] heat pump water heaters.*”⁸
- “The rapid deployment of heat pumps for space heating and cooling and water heating *is the central strategy* for the efficient, flexible electrification of buildings.”⁹

There is a disconnect between the Long-Term Climate Strategy and the *BBB Act*. The Roundtable cannot discern a single incentive in the clean energy tax subtitle to support private sector investments in heat pumps or other high cost equipment to support commercial building electrification as the Biden Administration wishes.

If policy makers are serious about encouraging large-scale private sector investments to electrify commercial buildings, The Roundtable welcomes a dialogue to assess how the tax code can help support widespread deployment of such technologies. Perhaps the ITC and its direct payment option could be modified to incorporate building electrification components.

Moreover, The Roundtable takes this opportunity to, once again, express our strong support for the bipartisan [*Energy Efficiency Qualified Improvement Property \(E-QUIP\) Act \(H.R. 2346\)*](#) – sponsored by Reps. Brad Schneider (D-IL) and Tom Rice (R-SC). The *E-QUIP Act* offers a favorable “accelerated depreciation” period for certain high-performance building components that stretch beyond the latest efficiency standards. Notably, it is the only federal bill of which we are aware that provides a tax incentive specifically for heat pumps and electric hot water heaters installed to retrofit commercial and multifamily buildings.¹⁰

The *E-QUIP Act* has received strong support from environmental organizations, product manufacturers, state and local energy regulators, and the real estate community alike.¹¹ The [*American Council for an Energy Efficient Committee \(ACEEE\) has prepared a thorough study*](#) estimating the GHG reduction and job creation benefits of the *E-QUIP Act* (which, as far as we can tell, has not been prepared for any of the other incentives included in the reconciliation framework). Moreover, the *E-QUIP Act* will amplify the Section 179D improvements (discussed

⁷ Available at: <https://www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf>.

⁸ *Id.* at p 15 (emphasis supplied).

⁹ *Id.* at p. 33 (emphasis supplied).

¹⁰ *E-QUIP* eligible “unitary heat pumps” and “variable refrigerant flow multisplit heat pumps” must meet the latest above-code tiers of performance set by the Consortium of Energy Efficiency. Also, *E-QUIP* eligible electric hot water heaters must meet the standard of a Coefficient of Performance of 3 or more. See [*H.R. 2346*](#), Section 2, “Performance Requirements.”

¹¹ [*E-QUIP Coalition Letter*](#) sent to House Ways & Means and Senate Finance Committees, (April 1, 2021).

below). Accelerated depreciation would apply to any remaining basis in *E-QUIP* installed components where a taxpayer also qualifies for the whole-building 179D deduction.¹²

- **Recommendations:**

- Include the [E-QUIP Act \(H.R. 2346\)](#) in the reconciliation framework – particularly its provisions to provide accelerated depreciation for electric heat pumps and water heaters installed to retrofit buildings.
- Further consider expanding the ITC to provide a tax credit for these kinds of building electrification components for both new construction and existing building upgrades.

Energy Efficient Buildings Tax Deduction (Section 179D)

The *Build Back Better Act* proposes key improvements to Section 179D that The Roundtable has long supported. Revising the deduction with an alternative path for existing building retrofit projects – where efficiency improvements are measured against an asset’s own energy consumption baseline – is a major step forward. Including a “sliding scale” to reward meaningful efficiency improvements over a high performance spectrum is another important enhancement from current law. And, we are encouraged that Senator Cardin’s amendment to optimize Section 179D’s availability to REITs through the “earnings and profits conformity” provision is included in the House’s latest reconciliation framework.

We continue to recommend changes that would allow a taxpayer to claim the 179D “retrofit” deduction during the year the business incurs the expensive purchasing and labor costs to install equipment. As proposed, the “retrofit” incentive can only be claimed at least one year *after* equipment is purchased and installed. The deduction would induce more energy efficient construction projects along the “retrofit” path if it takes the same approach as the “baseline” 179D path: allow the deduction in the same year that the taxpayer incurs project expenses, not some time afterward.

- **Recommendation:** Synchronize the timing of the proposed “retrofit” incentive with the “baseline” 179D incentive. Allow taxpayers to claim the deductions during the year that energy efficient property is placed in service.

Davis-Bacon and Apprenticeship Standards

The overriding objective of the Green Energy Tax subtitle is to address climate change, reach a net zero emissions economy by 2050, and improve America’s climate policy leadership on the world stage. New prevailing wage and apprenticeship standards are unrelated to – and will

¹² [26 U.S.C. § 179D\(e\)](#): “**BASIS REDUCTION.** For purposes of this subtitle, if a deduction is allowed under this section with respect to any [energy efficient commercial building property](#), the basis of such property shall be reduced by the amount of the deduction so allowed.”

undermine – these primary climate objectives. The Roundtable believes that more real estate companies would invest in GHG reduction technologies – and help achieve far deeper cuts in emissions – if they did not have to deal with the unprecedented expansion of labor and wage standards into the federal tax code.

The extra “hard” costs and paperwork compliance burdens from Davis-Bacon and apprenticeship requirements will swallow even the enhanced amounts offered by the bill’s “bonus rates.” For example, a March 2020 report from U.C. Berkeley estimates that apartment building construction projects in California with prevailing wage requirements “[cost an average of \\$30 more per square foot than those without wage requirements](#)” (p. 14). The amount of the “bonus” 179D deduction would range from \$2.50 per square foot to a maximum of \$5.00 per square foot. A rational taxpayer would not seek to use 179D if the labor costs alone amount to *six times more* than the incentive amount’s upper limit. Because labor costs will more than offset the deduction’s amount, we do not believe that private sector building owners will find this tax deduction useful as proposed.

Davis-Bacon has *never* been applied simply because the Internal Revenue Code provides a deduction to lower a private entity’s tax liability or taxable income. The prevailing wage law has always been restricted to projects supported by a federal government contract, an affirmative award of federal grant money, or extension of a federally-backed loan or insurance. Nor has the tax code ever prevailed upon businesses to search for and hire apprenticed workers. Congress should avoid uncharted territory and refrain from transforming the Internal Revenue Code into a “Davis-Bacon Related Act” or a vehicle to further labor policy.

- **Recommendation:** Eliminate Davis-Bacon and apprenticeship standards from the Green Energy tax subtitle.

* * *