

# Capital & Credit

The Roundtable supports pro-growth measures to sustain a robust and liquid real estate market. Such policies should encourage reliable credit capacity and capital formation, while reflecting sound underwriting, stable valuations, appropriate transparency, economically responsible commercial and multifamily real estate lending, and the rational pricing of economic risk. It is also vital to have effective risk management tools to provide the industry with the coverage it needs to create jobs and support the broader economy.

## Protecting American Jobs from Pandemic Risk

Pandemic risk is the largest unhedged risk in the economy. The COVID-19 pandemic exposed and indeed exacerbated an expanding “protection gap” in an array of commercial insurance lines affecting many industries across the economic spectrum. What many businesses and non-profits had assumed to be a resilient financial protection system of commercial insurance was found to be ineffective in addressing the economic fallout from mandated pandemic-related shutdowns. Business interruption coverage proved elusive, and coverage in other lines of insurance has been withdrawn or restricted going forward. Escalating coverage gaps present challenges for businesses across many industries and could stall economic recovery and job growth.

The Roundtable is working through the Business Continuity Coalition (BCC) to develop and enact an effective federal pandemic risk/business continuity insurance program that provides the economy with the coverage it needs to protect American jobs in the face of pandemic risk. The House’s reintroduced *Pandemic Risk Insurance Act (H.R. 5823)* would create a federal backstop to ensure coverage in all critical commercial lines of insurance for business interruption losses, whether from

future pandemics or other public health emergencies. The Roundtable and BCC strongly support the bill.

## Ensuring a Smooth Transition from LIBOR

The London Interbank Offered Rate (LIBOR) is used as a reference rate in an estimated \$200 trillion of financial contracts, including some \$1.3 trillion of commercial real estate loans. LIBOR is set to be retired in 2023. The Federal Reserve has warned banks that they must “completely end” the use of LIBOR in new contracts by December 31, 2021. It is important to expedite this transition with federal legislation to ensure that market stability and liquidity will be preserved.

The Roundtable’s Real Estate Capital Policy Advisory Committee (RECPAC) LIBOR Working Group continues to work to implement measures that will ensure a smooth transition from LIBOR to The Secured Overnight Financing Rate (SOFR) and other effective replacement benchmarks that do not impair liquidity, needlessly increase borrowing costs, or cause market disruptions.

The Roundtable has constructively engaged with the U.S. Treasury and the IRS regarding clarification of any tax implications for implementing new replacement benchmarks. Consistent with The Roundtable’s



*Sen. Mark Warner (D-VA), member of the Senate Finance; Banking, Housing and Urban Affairs; Budget Committees discussed bipartisan efforts to invest in the nation's infrastructure, affordable housing investment, and address deficit reductions.*

recommendations, the Treasury's regulations give borrowers and lenders the flexibility they need to replace LIBOR with virtually any other index that reflects objective changes in the cost of borrowing money without tax consequences.

Legislation passed by the House in December 2021 — The Adjustable Interest Rate (LIBOR) Act of 2021 — would help smooth the transition away from LIBOR as a reference rate for financial contracts. In the event a contract referencing LIBOR does not have a fallback or replacement rate provision in effect when LIBOR is retired, or a replacement rate is not selected by a determining person as defined by the bill, the bill provides for a transition to a replacement rate selected by the Board of Governors of the Federal Reserve System. The bill also provides for conforming changes to these contracts, the continuity and enforceability of these contracts, and protections against liability as a result of such a transition.

The bill addresses the tax consequences of such a transition. Specifically, the selection or use of a replacement rate; the determination, implementation, or performance of related conforming changes to a contract; or other application of changes related to the transition shall not be

treated as a sale, exchange, or other disposition of property for tax purposes. The bill would also create a safe harbor from litigation for parties that are covered by the legislation and prevent otherwise inevitable litigation costs and gridlock. A similar measure is advancing in the Senate.

### **Improving and Reauthorizing the National Flood Insurance Program (NFIP)**

Floods are the most common, costliest natural peril in the United States. The NFIP is currently operating under a temporary extension that will expire February 18, 2022. Reauthorizing the NFIP is important for residential markets, overall natural catastrophe insurance market capacity, and the economy.

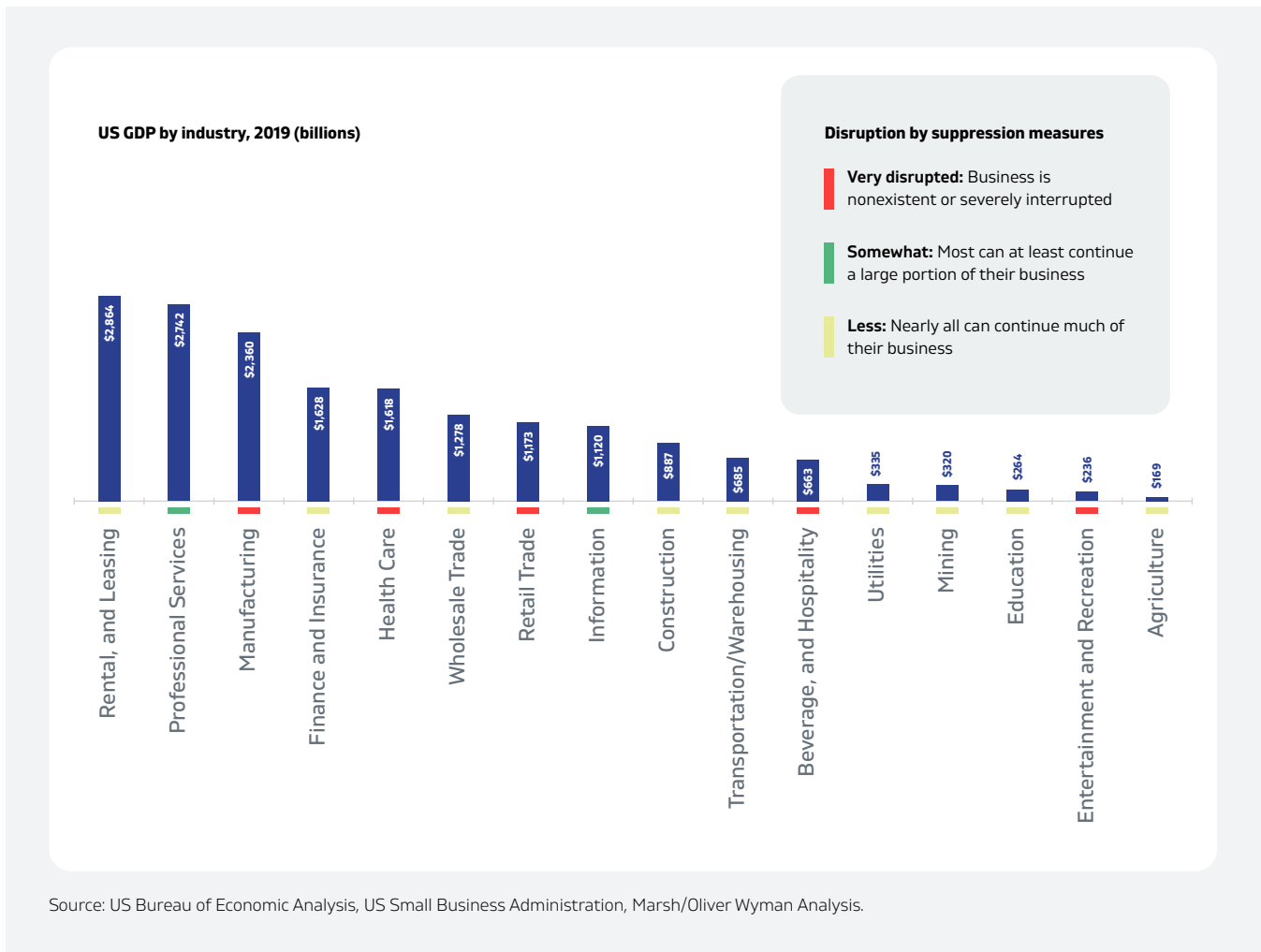
Since the end of FY2017, over a dozen short-term NFIP reauthorizations have been enacted. As policymakers continue to debate potential changes and improvements to the program, their challenge is to find a balance between improving the financial solvency of the program, reducing taxpayer exposure, and addressing affordability concerns.

The Roundtable and its partner associations support a long-term reauthorization and reform of the NFIP that will help property owners and renters prepare for and recover



*Rep. French Hill (R-AR) serves on the influential House Financial Services Committee, and is the Ranking Member of the Housing, Community Development and Insurance Subcommittee.*

**Disruptions from COVID-19 vary significantly by industry.**



from future flood losses. Given the low coverage amounts provided to commercial properties, it is important to permit larger commercial loans to be exempted from the mandatory NFIP purchase requirements.

**Corporate Transparency Act/  
Beneficial Ownership**

The Corporate Transparency Act (CTA) of 2020 requires certain corporations and limited liability companies (LLCs) to disclose information about their beneficial owners to the Treasury Department’s Financial Crimes Enforcement Network (FinCEN).

Consistent with the Congressional mandate, FinCEN recently issued an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on a potential rule to address the vulnerability of the U.S. real estate market to money laundering and other illicit activity. The systemic money laundering vulnerabilities within the U.S. real estate sector, and consequently, the ability of illicit actors to launder criminal proceeds through the purchase of real estate, threatens U.S. national security and the integrity of the U.S. financial system.

The Roundtable is working in coalition with other organizations to respond to this ANPRM and to continue to engage with policymakers in support of a balanced approach to inhibiting illicit money laundering activity without the imposition of additional and costly reporting requirements on real estate businesses.

### **SAFE Banking Act and Cannabis-Related Businesses (CRBs)**

Forty-seven states and Washington, D.C. have legalized cannabis to varying degrees. Yet the use, possession, and sale of cannabis remains illegal under federal law. According to a recent survey by the National Association of Realtors, the growing trend in cannabis decriminalization is increasingly impacting the commercial real estate industry as real estate owners, lessors, brokers, and financiers need certainty when they transact with legal CRBs. CRBs face the challenge of obtaining bank accounts, and commercial

property owners face legal challenges of taking on CRB tenants without safe harbor protections.

The Roundtable recommends Congress provide fuller protections to real estate business through legislation that clarifies state-compliant cannabis transactions are not illegal federal “trafficking” – and do not produce unlawful proceeds under money laundering statutes.

In April 2021, the Secure and Fair Enforcement (SAFE) Banking Act, passed the House. The Roundtable-supported bill would eliminate the need for CRBs to operate on a cash basis, bring them into the banking system, and allow them to obtain accounts and credit cards. Commercial property owners would get a safe harbor if they lease space to a CRB, and their mortgages cannot be subject to corrective action by a bank. The Roundtable continues its long-standing support of the SAFE Act, which has been introduced in every Congress since 2013.