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The Real Estate Roundtable

May 26, 2026

April J. Tabor
Secretary of the Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Re: Comment on “Making Improvements to the Premerger Notification and Report Form”

Dear Ms. Tabor:

The Real Estate Roundtable (“RER”)¹ is grateful for the opportunity to respond to the Request for Public Comment issued by the Federal Trade Commission (“FTC”) and the Antitrust Division of the Department of Justice (the “DOJ”) (together, the “Agencies”) concerning potential modifications to the Premerger Notification and Report Form (the “RFI”).

The RER and its members lead an industry that generates more than 20 percent of America’s gross national product, employs more than 9 million people, and produces nearly two-thirds of the taxes raised by local governments for essential public services. RER members are heavily engaged in the ownership, development, and management of real estate, and thus regularly engage in transactions that fall under long-standing real estate exemptions to HSR filings under 16 C.F.R. § 802.2 and 16 C.F.R. § 802.5 (the “Real Estate Exemptions”). The RER writes to specifically address Question 16 of the RFI regarding these exemptions.

The RER and its members have significant concerns that removing the Real Estate Exemptions would impose substantial costs and delays on lawful real estate transactions without any clear countervailing benefit. The RFI acknowledges that the Real Estate Exemptions were adopted in 1996 “because historically these transactions were considered unlikely to violate the antitrust laws.” The relevant transactions remain unlikely to violate the antitrust laws, and the Agencies have made no showing otherwise. The RER urges the FTC to retain the Real Estate Exemptions.

¹ The Real Estate Roundtable brings together leaders of the nation’s top publicly-held and privately-owned real estate ownership, development, lending, and management firms with the leaders of major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy.

The antitrust policy rationale for the Real Estate Exemptions remains sound.

When the HSR Act was enacted, Congress directed that the FTC may exempt from HSR reporting requirements transactions “which are not likely to violate the antitrust laws.”² Prior to 1996, the FTC PNO applied the broad language of 16 C.F.R. § 802.1 to exempt real estate transactions from HSR premerger reporting.³ In 1996, the FTC amended 16 C.F.R. § 802.1 to provide the specific Real Estate Exemptions under 16 C.F.R. § 802.2 and 16 C.F.R. § 802.5. The FTC Commissioners voted 5-0 to adopt the amendments, reflecting bipartisan consensus on a clear matter of economic analysis. 16 C.F.R. § 802.2 exempts eight categories of real property acquisitions from HSR reporting requirements, ranging from raw land to office and residential property. In each case, after extensive review, the FTC concluded that the categories “are not likely to violate the antitrust laws.”⁴ 16 C.F.R. § 802.5 supplements 16 C.F.R. § 802.2 by recognizing that there may be additional categories of real property assets that, when acquired as investment rental property “are not likely to violate antitrust laws,” including because the FTC found the real estate market to be large and unconcentrated.⁵ At the time the amendments were adopted, William J. Baer, Director of the FTC Bureau of Competition, explained that “[t]hese exemptions will remove an unnecessary burden from business and will allow the FTC and DOJ to better focus scarce resources on transactions that are more likely to cause competitive harm.”⁶ He noted that “experience has taught us that certain categories of acquisitions do not raise competitive concerns and so we will no longer require premerger filings for those deals.”⁷

The policy justifications and economic rationale for the Real Estate Exemptions remain sound. Real estate markets are inherently local and structurally fragmented. Competition for real estate assets is determined by highly localized factors, including property type, geography, neighborhood characteristics, zoning regulations, population density, and other variables. Within these local markets, holdings are typically widely dispersed among many owners and entry is

² Section 7A(d)(2)(B) of the HSR Act.

³ See FTC PNO Informal Interpretation No. 1412009 (Dec. 29, 2014) (rev. Mar. 15, 2016).

⁴ Premerger Notification; Reporting and Waiting Period Requirements, 61 Fed. Reg. 13,666 (Mar. 28, 1996) (codified at 16 C.F.R. pts. 801, 802).

⁵ *Id.* Particularly for 16 C.F.R. § 802.5, it bears emphasizing that the exemption from reporting for investment rental property assets does not limit or otherwise impact HSR reporting for transactions involving the companies that rent space in those assets and conduct business on their properties. For similar reasons, the RER opposes the removal of the REIT exemption under Section 7A(c)(1) of the Clayton Act. See Question 17 of the RFI. REITs acquire real estate in the ordinary course of their business, and such transactions rarely pose threats to competition. The neutral ownership of real estate by REITs ensures equal access to properties and facilities for all would-be renters and avoids potential conflicts of interest that may arise when an operating company is considering whether to lease property to a potential competitor.

⁶ FTC Enacts New Exemptions from Merger Regulations, FTC (Mar. 25, 1996)

<https://www.ftc.gov/news-events/news/press-releases/1996/03/ftc-enacts-new-exemptions-merger-regulations>.

⁷ *Id.*

usually easy. As a result, individual acquisitions rarely have more than a minimal effect on concentration, even in narrowly defined sub-categories.⁸ For example, so-called large institutional investors in residential real estate own, *collectively*, less than 1% of single-family homes nationally, and even smaller percentages in many geographic areas. As an investor class, they are dwarfed by smaller investors, particularly Mom-and-Pop investors who own three to 10 properties and collectively make approximately 60% of investor home purchases. Less than 3% of annual home purchases in the U.S. are made by large investors.⁹ The volume of home purchases by these investors is roughly matched by their home sales, so that their share of home ownership is not growing.¹⁰ Thus, even in this one property type, which has garnered a great deal of media attention, there is no cause to remove the residential real estate exemption, and there is even less cause to remove the Real Estate Exemptions with respect to other categories of real property.

The Agencies have not provided any evidence that circumstances have changed in any material way since the adoption of the 1996 amendments, or that a single exempt real estate transaction would have been challenged had it been subject to HSR premerger reporting. Indeed, we are aware of only one antitrust enforcement action over the last 20 years that involved non-HSR-reportable real estate assets.¹¹

Removal of the Real Estate Exemptions will significantly burden RER's members without any articulated countervailing rationale.

RER's members would be significantly affected by removal of the Real Estate Exemptions. HSR reporting is a costly and burdensome process, particularly for filers who are unfamiliar with the HSR Act's requirements. HSR filing fees currently range up to \$2.46 million depending on deal size and are likely to increase each year, in addition to the legal fees associated with preparing such filings. Preparing and submitting the filings requires significant legal, financial, and operational resources. Eliminating or curtailing these exemptions will impose additional costs on the real estate industry and disrupt liquidity in real estate markets.

Before promulgating new rules that would eliminate the Real Estate Exemptions, and imposing this substantial burden on the economy, it is incumbent on the Agencies to justify any such rules with evidence that exempted acquisitions have had a negative effect on competition and to allow the public to comment on that evidence. The Agencies have not done so here.

⁸ See, e.g., *Re/Max Int'l, Inc. v. Realty One, Inc.*, 173 F.3d 995, 1017 (6th Cir. 1999) ("Re/Max has shown to our satisfaction that [relevant geographic markets for real-estate brokerage services and agents] are relatively small.").

⁹ Hannah Jones, *Realtor.com Investor Report: Investor Buyer Share Edges Higher; Investor Share of Sellers Peaks*, Realtor.com (June 10, 2026).

¹⁰ *Id.*

¹¹ See Fed. Trade Comm'n, *In the Matter of Simon Property Group, Inc.* (June 28, 2011), <https://www.ftc.gov/legal-library/browse/cases-proceedings/101-0061-simon-property-group-inc-matter> (transaction involving outlet centers in local areas within Ohio, Illinois, and Florida).

Removal of the Real Estate Exemptions would therefore result in burdensome filings that are neither necessary nor appropriate to enable the Agencies to detect illegal mergers.¹²

Removal of the Real Estate Exemptions will hinder the goals of Executive Order 14376.

The RFI suggests that removal of the Real Estate Exemptions might by some means advance the purposes of Executive Order 14376 to preserve single-family homes for American families and increase the paths to homeownership.¹³ The connection of this goal to the Real Estate Exemptions is tenuous at best. Executive Order 14376 directs the Agencies to review substantial acquisitions, including series of acquisitions, by large institutional investors of single-family homes in local markets. But, the vast majority of transactions that occur under the Real Estate Exemptions do not involve single-family housing. The Real Estate Exemptions cover diverse real property assets, including hotels and motels, recreational property, agricultural property, rental retail space, warehouses, and more. Moreover, the vast majority of single-family housing transactions would not meet the \$133.9 million size of transaction threshold for HSR filing even if the Real Estate Exemptions were removed.

Removal of the Real Estate Exemptions is not a calibrated way to identify competitively significant acquisitions in local housing markets. For even the rare single-family housing transactions that might be HSR reportable in the absence of the Real Estate Exemptions, the Agencies have provided no evidence that such HSR filings would identify issues relating to competition. In fact, the Agencies have other mechanisms better suited for identifying potentially concerning transactions, including, for example, by soliciting input from the public.

The U.S. faces a significant housing shortage.¹⁴ Rather than advancing the goal of Executive Order 14376 to make single-family homes more accessible to hardworking families, removing the Real Estate Exemptions will negatively impact the supply of housing. The costs and delays of HSR reporting will fall disproportionately on smaller buyers, such as homebuilders and residential developers that buy parcels for development projects addressing the nation's severe housing shortage. These costs will ultimately reach consumers and exacerbate the already significant housing shortage, counterproductively raising prices instead of lowering them.

* * *

¹² Memorandum Opinion and Order, Dkt. 75, *Chamber of Commerce v. FTC*, No. 6:25-cv-9, at 29 (E.D. Tex. Feb. 12, 2026).

¹³ Executive Order 14376, Stopping Wall Street from Competing with Main Street Homebuyers, 91 Fed. Reg. 3023 (Jan. 20, 2026).

¹⁴ See Elena Patel et al., "Make it count: Measuring our housing supply shortage," The Brookings Institution, November 26, 2025, available at <https://www.brookings.edu/articles/make-it-count-measuring-our-housing-supply-shortage/> (describing recent estimates of the housing supply shortage that range from 1.5 to 5.5 million units).

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As discussed above, the RER believes the Real Estate Exemptions rest on strong empirical, policy, and economic grounds. Removing the Real Estate Exemptions would impose substantial costs on the economy without any discernible benefit to the public from antitrust enforcement. We appreciate the Agencies' desire to address housing affordability and believe the Agencies have better and more appropriately targeted tools to identify and remedy conduct of concern. The RER looks forward to continuing to serve as a resource to the FTC, DOJ, and all stakeholders to address issues impacting real estate and the economy.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey D. DeBoer". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Jeffrey D. DeBoer
President & Chief Executive Officer