The Real Estate Roundtable

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

Capital and Credit

Summary

More than $950 billion of U.S. commercial real estate mortgages are estimated to mature in 2025. To help rebalance the wave of maturing loans, it is important to advance measures that will encourage additional capital formation and loan restructuring.

- As urged by RER, 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 avoid pro-cyclical regulatory actions such as the *Basel III Endgame*.

A revised *Basel III Endgame* proposal announced in September 2024 would have increased Tier 1 capital requirements for global systemically important banks by roughly 9 percent. 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.

In a January 2024 letter, RER raised industry concerns about the negative impact of the *Basel III Endgame* proposal, including the higher cost of credit and diminished lending capacity, and requested that the proposal be withdrawn.

The Fed and other regulators remain deadlocked on advancing the revised proposal. With the appointment of Michelle Bowman to the post of Vice Chair for Supervision, however, there is speculation that the proposal could ultimately be withdrawn or end up being capital neutral.

Key Takeaways

- Providing banks with the flexibility to work constructively with their borrowers during times of economic stress has led to **billions of dollars of loan restructurings and reduced undue stress in bank loan portfolios**.
- The proposed *Basel III Endgame* regulations would come at a **significant economic cost** without clear benefits to the economy.
- 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]
- Further, it is 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).

Background

Basel III Endgame

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

- The original *Basel III Endgame* proposal would have increased capital requirements for the largest banks by as much as 20 percent.
- 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 systemically important global banks by approximately 9 percent—less than half of what would have been required in the original proposal.
- Nonetheless, there are still concerns about the impact the change will have on commercial real estate and the overall economy. 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."
- The revised proposal reduces risk weights for certain residential mortgages and retail exposures, extending this reduction to low-risk corporate debt. Commercial real estate risk weights remain unclear.

Recommendations

Withdraw the Proposal to Increase Capital Requirements: 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 or be capital neutral.
- As outlined in RER's January 2024 comment letter, the potential significant increase in capital requirements for large banks' capital market activities due to the *Basel* proposal could materially reduce the depth of banks' product 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**.

Support Robust Capital Formation: Additional capital is called for to help restructure and transition the ownership and refinancing of commercial real estate from a period of low rates 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.

The Real Estate Roundtable

Commercial Insurance Coverage in an Evolving Threat Environment

Capital and Credit

Summary

The proliferation of natural catastrophe threats has raised concerns about commercial insurance coverage for real estate. These concerns have highlighted the lack of—and need for—insurance capacity and various lines of commercial insurance. 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. A lack of adequate coverage will lead to economic uncertainty, harm stakeholders, and undermine the growth of communities.

The budget debate in Congress has called into question the future of the National Flood Insurance Program (NFIP), which is subject to temporary funding extensions and must be reauthorized by September 30, 2025.

RER, along with its industry partners, continues to work constructively with policymakers and stakeholders to address market failure and enact a long-term reauthorization of an **improved NFIP**.

Key Takeaways

- The increased frequency and severity of natural disasters is leading to increased premiums for commercial properties.
- As economic losses caused by disasters increase, it is important to find new strategies in order to effectively manage natural catastrophe risk.
- Expanding coverage gaps and increased costs present challenges for businesses across many industries, including real estate.
- Without adequate coverage, the vast majority of natural catastrophe losses **are likely to be absorbed by policyholders**. These widening coverage gaps and price hikes bring about serious economic concerns about protection gaps, coverage capacity, and increased costs from natural catastrophes and business interruption losses.
- Commercial property owners can take steps to mitigate the risk of natural disasters and potentially lower their insurance costs.

Background

Current Insurance Environment

- 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.

National Flood Insurance Program (NFIP)

- 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.
- 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, and only 6.7 percent are commercial.

Nearly 70 percent of NFIP is devoted to single-family homes and 20 percent to condominiums. In the total program, 80 percent pay actuarial sound rates; however, in the commercial space, only 60 percent 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.
- The NFIP is currently operating under a continuing resolution. Since 2017, Congress has extended the NFIP's authorization 33 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.

Recommendations

Enact a Long-Term Reauthorization of NFIP: 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.

- RER and its partners support a long-term reauthorization of an improved NFIP that helps property owners and renters prepare for and recover from future flood losses. NFIP is **essential** for residential markets, overall natural catastrophe insurance market capacity, and the broader economy.
- 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.

Increase 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 to cover financed assets.

- 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, RER has been seeking **a voluntary exemption** for mandatory NFIP coverage if property owners have flood coverage from commercial insurers.

Beneficial Ownership & Corporate Transparency Act

Capital and Credit

Summary

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 rule imposes heavier compliance burdens on real estate businesses with numerous legal entities that own and operate real property across all asset classes.

On March 2, 2025, the Treasury Department announced it would suspend enforcement of the Corporate Transparency Act (CTA) against U.S. citizens and domestic reporting companies, including beneficial ownership information reporting requirements, citing a move to reduce regulatory burden and focus on foreign entities. The Treasury Department will further be issuing a proposed rulemaking that will narrow the scope of the rule to foreign reporting companies only.

RER continues to track this important issue and plans to comment on the proposed rulemaking after it is released.

Key Takeaways

- While the CTA and its implementing regulations are not specifically targeted to real estate businesses, **it will have a direct impact on the industry**.
- 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.
- 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.

Background

CTA Requirements

- 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.
- A beneficial owner refers to an individual who owns at least 25 percent of an entity or indirectly exercises "substantial control" over it.
- The CTA amended the Bank Secrecy Act to require corporations, limited liability companies, and similar entities to supply three categories of information: information about the entity, BOI, and information about the company applicants involved in forming the entity.
- 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.
- While this disclosure obligation began on January 1, 2024, the U.S. Court of Appeals for the Fifth Circuit vacated the stay on December 26, 2024 and reinstated the nationwide preliminary injunction enjoining enforcement of the 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.

Recommendations

Find A Balanced Approach to Implementing the CTA: RER, along with its coalition partners, has repeatedly raised concerns about the regulatory burden posed by the CTA and has supported the court challenges to the law.

- 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, RER 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, RER and its coalition partners submitted comments to Treasury 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.
- RER continues to work with industry partners to address the implications of FinCEN's proposed rules and the impact they could have on capital formation and the commercial real estate industry.

Summary

In 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 and certain physical assets like real estate, with "qualified custodians." 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. Furthermore, the SEC's release contains an inaccuracy regarding the way deeds evidencing ownership of real estate are recorded.

RER sees no policy reason to impose the proposed rule on real estate and has advocated for an exception for real estate.

Key Takeaways

- Due to a variety of factors, real estate cannot readily be stolen, making the rule seem irrelevant to this asset class.
- In addition to the proposed Custody Rule, the SEC has a number of proposed rulemaking measures that could have a chilling effect on real estate capital markets, 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.

Background

SEC Proposal

- On February 15, 2023, the SEC proposed *Safeguarding Advisory Client Assets*, which would significantly expand the requirements of the Custody Rule to maintain client assets with a qualified custodian for certain physical assets such as 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.
- 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 administration, SEC Chair Gary Gensler has been replaced by SEC veteran Paul Atkins. Under Atkins' leadership, it is likely that the Commission may either withdraw the proposed rule altogether or grant an exception for real estate.

Recommendations

Grant an Exemption for Real Estate: RER believes that the SEC's policy reasons for imposing the rule on real estate seem irrelevant.

- Real estate cannot readily be stolen. As stated above, 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.
- Different jurisdictions present even more challenges. Different laws for titles exist between not only states but also countries. The rule applies to registered investment advisors regardless of where the asset is located.
- RER has submitted a comment letter to the SEC and met with senior staff from the investment management division, requesting an exception for real estate.

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Expanding on the EB-5 Visa with the "Gold Card" Concept

Capital and Credit

Summary

The U.S. faces a strategic imperative to modernize its immigration system in a way that strengthens the domestic labor force and unleashes private capital for economic growth. The push for immigration reforms has prompted renewed interest in investor programs like the EB-5 Visa and the proposed "Gold Card" concept. Both programs can attract high net-worth individuals who can contribute to America's economy.

Key Takeaways

- The Gold Card ideas sketched by the Trump administration would help reduce the national deficit. Individuals would **pay $5 million to receive legal residency status with a path to citizenship**.
- The EB-5 program has delivered **$350 billion in economic impact and created over 1.5 million American jobs**—at no cost to taxpayers.
- EB-5 investment can help finance housing, grid modernization, and manufacturing plants to further recent executive orders and national priorities.
- The Gold Card program can be **supercharged** and its deployment accelerated by **supplementing the existing EB-5 program** that uses private investments to create jobs for American workers.

Background

The EB-5 Visa Program

- The EB-5 Visa is a job creation program that attracts overseas investors to provide capital for economic development projects in the U.S. It was established by the Immigration Act of 1990, officially coming into effect in November 1990.
- In 2022, Congress modernized the investor visa through the EB-5 Reform and Integrity Act. These reforms have helped improve the program's transparency and accountability, spurring investments particularly in infrastructure, rural areas, and high-unemployment census tracts.
- During a meeting with GOP Senators in March, President Trump discussed his Gold Card Program as a revenue source to address the national deficit.

Recommendations

Merge the Success of the EB-5 Visa with the Gold Card Concept: Combined, both EB-5 and the Gold Card offer mechanisms to **attract global capital and top-tier talent**.

- The Gold Card program, along with an improved EB-5 visa program, can leverage private investment to stimulate job creation, reduce the national deficit, finance infrastructure, increase housing supplies, and support energy grid expansion—at no cost to U.S. taxpayers.
- Further agency guidance should clarify that EB-5 investments should be "sustained" as tied to a visa applicant's period of conditional residency, so capital is at work in the marketplace for a sufficient period to finance larger, complex projects that create the most jobs.