The Real Estate Roundtable

Real Estate Roundtable Policy Priorities January 2026

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Policy Priorities – January 2026

This document provides relevant information on The Real Estate Roundtable (RER)'s key policy issues, including fact sheets and detailed issue briefs. The majority of the document consists of brief summaries of national policy issues currently facing the industry, RER's position on the issue, and helpful links for where to find additional information and details regarding RER's advocacy efforts.

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Summary

Real estate generally is owned and operated through "pass-through" entities that allow income to pass through to individual owners rather than taxing the income at the entity level. Pass-through entities such as partnerships, limited liability companies (LLCs), S corporations, and REITs are ideal for real estate because they give investors flexibility in how they structure the risks and rewards of these capital-intensive and relatively illiquid businesses.

Congress enacted a 20 percent deduction for pass-through business income in the Tax Cuts and Jobs Act of 2017 (Section 199A). Congress permanently extended the pass-through deduction in the One Big Beautiful Bill Act (OB3 Act), signed into law on July 4, 2025. More recently, a handful of Democratic members of the House of Representatives have introduced legislation to repeal the pass-through deduction for taxpayers with incomes over $1 million.

Senate Finance Ranking Democrat Ron Wyden (D-OR) has proposed comprehensive reforms to restructure partnership taxation. The *PARTNERSHIPS Act* (S. 2095) would increase the tax burden on partnerships by an estimated $727 billion over the next 10 years.

Over the last two years, RER has submitted three amicus briefs (e.g., RER submission in *Soroban*, December 2025) in support of taxpayers challenging the government's recent assertion that limited partners are subject to self-employment taxes (SECA) unless the LP is also passive investor. The government position, which could have significant negative consequences for real estate partnerships, is inconsistent with the intent, language, and spirit of the 1977 statute that exempts limited partners from SECA.

Key Takeaways

- Our pass-through regime is a competitive strength of the U.S. tax system. Most countries rely on inflexible corporate regimes that provide little ability for an entrepreneur to tailor the capital and ownership structure to meet the needs of the business and its investors.
- Half of the 4 million partnerships in the U.S. are real estate partnerships, and real estate activity constitutes a large share of pass-through business activity.
- Publicly traded REITs allow small investors to invest in diversified, commercial real estate using the same single tax system available to partners and partnerships.
- Small and closely-held businesses drive job growth and entrepreneurial activity in the United States. Entity choice is a differentiator that contributes to our entrepreneurial culture.

Background

Pass-Through Business Income Deduction

- In 2017, Congress reduced the corporate tax rate by **40 percent** and created a temporary **20 percent** deduction (Section 199A) for pass-through business income to avoid putting partnerships, S corporations, and REITs at a competitive disadvantage relative to large C corporations.
- The pass-through deduction applies to pass-through income to the extent the business pays wages to employees and/or owns tangible, depreciable property (such as real estate). Specified services businesses (e.g., law firms, accounting firms, etc.) are not eligible for the deduction.
- Section 199A lowers the top marginal income tax rate on qualifying pass-through business income from 39.6 percent to 29.6 percent.
- Section 199A was scheduled to expire at the end of 2025. The OB3 Act permanently extended the pass-through deduction.
- Tax legislation considered in 2021 would have raised the top marginal income tax rate on many small and

pass-through business owners from 29.6 percent to 46.4 percent.

- Legislation introduced after enactment of the OB3 Act by a handful of House Democratic members (*Equal Tax Act*, H.R. 5336) would repeal Section 199A for business owners with annual incomes over $1 million.

Recommendations

Preserve Pass-Through Tax Rules and Section 199A: Congress should continue to support **closely-held, entrepreneurial businesses** that create jobs and spur growth, and reject tax changes that discriminate against pass-through entities.

- Any new tax legislation should avoid the unintended consequences and potential harm caused by the stacking of tax increases on pass-through entities.
- Section 199A is appropriately targeted at businesses that hire workers and invest in capital equipment and property, and it should be retained.
- Section 199A helps preserve tax fairness vis-à-vis large corporations, promoting competition and entity choice.
- In addition, Congress should avoid partnership tax reforms that will discourage capital formation, make it harder to contribute property to a partnership, or undermine the ability to finance partnership operations and activities. Congress should also avoid tax reforms that retroactively and unfairly change the economics of prior transactions.
- Lastly, fundamental changes such as rewriting or reinterpretation of the limited partner exception from self-employment taxes should be considered through the legislative process, not by administrative fiat.

Carried Interest

Tax Policy

Summary

A "carried" interest is the interest in partnership profits that a general partner receives from the investing partners for managing the investment and taking on the entrepreneurial risks of the venture, such as funding pre-development costs, guaranteeing construction budgets, and potential litigation. Carried interest is also granted for the value the general partner adds beyond routine services, such as business acumen, experience, and relationships. Carried interest may be taxed as ordinary income or capital gain depending on the character of the income generated by the partnership.

In the past year, both Republican and Democratic leaders have proposed making policy changes that would increase the tax burden on carried interest. President Trump urged Republican lawmakers to include a tax increase on carried interest as part of budget reconciliation legislation.

Since carried interest and its tax treatment first emerged as a controversial political issue in 2007, **RER has consistently opposed legislative proposals to tax all carried interest at ordinary income rates.**

Key Takeaways

- **Carried interest is essential to real estate investment**, supporting housing development, economic growth, and the modernization of U.S. infrastructure.
- Carried interest is **not compensation for services**. General partners receive fees for routine services (leasing, property management). Those fees are taxed at ordinary tax rates.
- Proposals to tax all carried interest as ordinary income would result in an enormous tax hike on the **2.2 million** real estate partnerships and **9.7 million** real estate partners across the country who develop, own, and operate income-producing real estate.
- Unfair retroactive application of carried interest legislation to existing partnerships would distort the economics of private-sector agreements with unknown and potentially damaging consequences for real estate markets and the overall economy.

Background

Proposed Changes to Carried Interest

- Lawmakers have introduced various proposals to increase the tax burden on carried interest since 2007.
- **In 2017**, Congress created a **three-year** holding period requirement for the reduced long-term capital gains rate.
- During his first term in office, President Trump urged Republican lawmakers to include much stricter restrictions on carried interest than the three-year holding period that was included in the final 2017 tax bill.
- In 2021, House Ways and Means Democrats passed legislation to extend the carried interest holding period from three to five years, and other changes, while adding a new exception for a real property trade or business (e.g., real estate). The proposals were not enacted.
- In February 2025, President Trump informed Republican congressional leaders that one of his main tax priorities is "closing the carried interest tax deduction loophole." Shortly thereafter, a group of 13 Senate Democrats reintroduced the *Carried Interest Fairness Act* (S. 445).
- The *Carried Interest Fairness Act* would convert virtually all real estate-related carried interest income to ordinary income subject to the top tax rates and self-employment taxes.
- Former Senate Finance Chairman Ron Wyden (D-OR) has proposed treating carried interest as an interest-free loan from the limited partners to the general partner that is taxable upon grant, regardless of whether the partnership ever generates any profits.

Recommendations

Retain Current Law on Carried Interest: Carried interest changes would harm small businesses, stifle entrepreneurs and sweat equity, and threaten future improvements and infrastructure in neglected areas.

- Such changes would increase the cost of building or strengthening infrastructure, workforce housing, and assisted living, and would deter risky projects, such as sites with potential environmental contamination.
- The tax code should reward risk-taking**; the capital gains rate should apply to more than just invested cash**.
- The tax code has never, and should never, limit the reward for risk-taking to taxpayers who have cash to invest. An entrepreneur who forgoes the security of a salary to invest time and effort into starting a business should qualify for capital gains treatment in the same way that a passive investor qualifies when they put their cash into a public stock or private venture.
- Carried interest proposals apply retroactively to prior transactions and partnership agreements executed years earlier. The agreements were based on tax law **as it existed at the time**.
- Changing the results years later would undermine the predictability of the tax system and discourage long-term, patient investment.

Summary

Created in 2017, Opportunity Zones (OZs) are designated, low-income census tracts where qualifying investments are eligible for reduced capital gains taxes. By channeling investment where it is needed, OZs help stimulate jobs, generate economic opportunity, and improve the built environment in low-income communities. The decentralized design of OZs allows more investors and stakeholders to participate in the market and invest in these projects.

The One Big Beautiful Bill Act (OB3 Act), signed into law on July 4, 2025, permanently extended the OZ tax incentives and made a number of helpful reforms that will further increase the provisions' positive impact in low-income communities.

Key Takeaways

- In their short tenure, OZs have created jobs and spurred billions of dollars of new investment in economically struggling communities across the country.
- Opportunity Funds finance affordable, workforce, and senior housing; grocery-anchored retail centers; and commercial buildings that create spaces for new businesses and jobs.
- In 2020, the White House Council of Economic Advisers estimated that the Opportunity Funds had raised **$75 billion** in private capital in the first two years following the incentives' enactment, including **$52 billion** that otherwise would not have been raised. The council projected this capital could lift one million people out of poverty, decreasing poverty in OZs by 11 percent.
- Despite major hurdles such as COVID-19 and high interest rates, more recent estimates suggest OZs have attracted over **$120 billion** in capital.
- Today, **72 percent** of U.S. counties contain at least one OZ, and **32 million** people live in the 8,764 OZ-designated census tracts.

Background

Tax Cuts and Jobs Act of 2017 (TCJA)

- First introduced by Senator Tim Scott (R-SC) and supported on a bipartisan basis, OZs were created under section **1400Z of the Internal Revenue Code** as part of TCJA. The three main OZ tax benefits were a **deferral of prior capital gain** rolled into an OZ fund, an increase (partial "step-up") in the basis of the prior investment after a five or seven-year holding period, and the **exclusion of gain** on the OZ investment after 10 years.
- The final OZ regulations were issued four months before the COVID-19 lockdown. Prior to the OB3 Act, the tax benefits were **gradually phasing down**, with the deferral of prior gain ending in **2026** and the partial basis step-up having already expired for new OZ fund contributions.

One Big Beautiful Bill Act

- The OB3 Act permanently extended the OZ tax incentives, including the full exclusion of capital gain on OZ investments held for 10 years.
- Beginning in 2027, the new law provides a rolling, five-year deferral period for prior gain that is invested in an Opportunity Fund (this ends the prior problem of a shrinking OZ tax incentive as the statutory recognition date for deferred gain approaches).
- The law also provides for a re-designation of OZ census tracts by state governors every 10 years and tightens the definition of a low-income census tract that is eligible for an OZ designation.
- The OB3 Act establishes additional benefits for rural OZs, including a lower substantial improvement test

for real estate projects, as well as transparency/reporting measures for all Opportunity Funds.

Recommendations

Support Implementation of New Rules: The OB3 Act represented an important and positive step forward in OZ tax policy and will ensure that the incentives continue to help mobilize capital for productive real estate investment, spur hiring in low-income areas, and boost housing supply.

- The U.S. Department of the Treasury should act quickly to lock in the legislative gains with well-designed guidance that supports implementation of the new rules. The guidance should clarify the eligibility of projects that started but were not completed prior to the expiration of the TCJA deadlines. Continuing expenditures on these long-term projects should qualify for OZ benefits.
- Treasury and/or Congress should consider actions that can be taken to encourage continued OZ investment in 2026. Otherwise, there is a risk that OZ investment will largely cease ("OZ dead zone") as investors wait until the new OZ regime takes effect on Jan. 1, 2027. In December 2025, RER submitted a formal request to Treasury for an expedited Revenue Procedure that provides safe harbors for long-term investments in expiring TCJA OZs.
- Congress should also continue working on improvements to the OZ tax incentives to boost their scale and impact. These improvements should include:
    - Removing limitations on the type of capital eligible for investment in Opportunity Funds.
    - Adding a new OZ tax benefit for the conversion of older, obsolete commercial buildings to housing.
    - Codifying, lengthening, and improving the OZ working capital safe harbor.
    - Increasing flexibility of Opportunity Fund ownership, investment, restructuring, and leasing arrangements.
    - Modifying the substantial improvement threshold to cover a broad range of real estate rehabilitation and development projects.
    - Promoting greater foreign investment.

Capital Gains

Tax Policy

Summary

For over 100 years, with one brief exception (1987-1990), the United States has taxed long-term capital gain at a lower rate than ordinary income. The previous Biden administration proposed raising the capital gains rate to be on par with the top rate on ordinary income. Former President Biden also proposed increasing the tax rate on net investment income and applying it to active business owners, including real estate professionals.

RER encourages Congress to continue to support investment and job creation with a meaningful capital gains incentive.

Key Takeaways

- Unlike other tax policies, such as immediate expensing, the capital gains preference only **rewards smart, productive investments** that generate profits.
- The reduced capital gains rate partially offsets the higher risk that comes with illiquid, capital-intensive real estate projects, as well as **the economic effects of inflation**.
- **High taxes on capital income make it harder** to attract the investment needed to rebuild our urban centers. Opportunity Zone capital gains incentives facilitated **$75 billion** in new investment in low-income communities in the first two years after enactment.
- A tax on unrealized gains would require the IRS to **police households** as they identify, tabulate, and value all their worldly possessions. The tax would thrust the IRS into a new and unwelcome role. The agency would become a permanent, live-in accountant and watchdog over every aspect of household finances, consumer activity, and economic life.

Background

Proposed Changes to Capital Gains

- Traditionally, the United States has taxed long-term capital gain at a lower rate than ordinary income. Since 1921, the only exception was a brief three-year period after the Tax Reform Act of 1986, when Congress lowered the top ordinary tax rate from 50 percent to 28 percent and created temporary tax parity between ordinary and capital income.
- Long-term capital gain is currently taxed at a top rate of 20 percent.
- However, the rate increases to 23.8 percent if the income is subject to the 3.8 percent tax on net investment income. The net investment income tax applies to real estate gains earned by passive investors and not income earned from the active conduct of professionals in real estate.
- The prior Biden administration proposed raising the capital gains rate to 39.6 percent, which would have brought it to parity with its proposed top rate on ordinary income.
- In addition, former President Biden had proposed to increase the 3.8 percent tax on net investment income to 5 percent and extend it to the income of active business owners, including real estate professionals; the net investment income tax applies to both capital gains and rental income.
- Former President Biden and several key Democratic lawmakers also proposed a mark-to-market regime in which built-in, unrealized gain would be taxed on an annual basis, regardless of whether the asset is sold.

Recommendations

Maintain a Reduced Tax Rate on Capital Gains: The current structure **decreases the cost of capital**, drives long-term investment, encourages productive entrepreneurial activity, draws investment from around the world, and increases U.S. workforce **productivity and competitiveness.**

- The differential tax treatment of liquid and illiquid investments would distort markets and give rise to wasteful new tax shelters and taxpayer games.

Reward Risk-Taking: Current law on capital gains encourages taxpayers to **put capital to work** on projects that won't pay off for many years. By taxing business assets and investments annually, a tax on unrealized gains would remove one of the major incentives for **patient, productive capital investment**.

- Risk capital differs from wage compensation. The entrepreneur who foregoes a traditional job in favor of starting a business forfeits many protections and benefits offered to employees, such as a pre-negotiated salary.
- The capital gains preference **compensates entrepreneurs** for this risk, including the potential complete loss of their time and capital.

Preserve the Integrity of Our Tax System: A proposed tax on unrealized gains is quite possibly **unconstitutional**. Supreme Court jurisprudence has applied a realization requirement to determine whether gains or profits constitute income taxable under the 16th Amendment.

- In addition, taxing unrealized gains would trigger **wasteful disputes and litigation,** detracting from productive economic activity. Annual valuation requirements will require **costly appraisals**. Valuation disagreements will be a constant source of audits and administrative appeals.

Real Estate Like-Kind Exchanges

Tax Policy

Summary

Currently, the tax code allows taxpayers to defer capital gain when exchanging real property used in a trade or business for a property of a like-kind. The last six budgets offered by Democratic presidents have proposed restrictions on gains deferred through like-kind exchanges. In addition, Republicans' 2017 tax bill repealed like-kind exchanges for non-real estate transactions. **RER advocates for preserving the current tax treatment of like-kind exchanges.**

Key Takeaways

- **15-20 percent of commercial transactions** involve a like-kind exchange. Exchanges get languishing properties into the hands of new owners who improve them and put them to their best use.
- Academic and outside research has found that exchanges spur capital expenditures, increase investment, create jobs for skilled tradesmen and others, reduce unnecessary economic risk, lower rents, and support property values.
- Like-kind exchanges allow businesses to grow organically with less unsustainable debt, creating a ladder of economic opportunity for minority-, veteran-, and women-owned businesses and cash-poor entrepreneurs that lack access to traditional financing.
- Land conservation organizations rely on exchanges to **preserve open spaces for public use** or environmental protection.

Background

Like-Kind Exchanges

- Since 1921, the tax code has allowed taxpayers to defer capital gain when exchanging real property used in a trade or business for a property of a like-kind, which today is covered in Section 1031.
- In 2017, Congress narrowed Section 1031 by disallowing its use for personal property (art, collectibles, etc.). Congressional Republicans initially considered repealing 1031 for real estate as well.
- The previous Biden administration would have restricted gains deferred through like-kind exchanges to no more than $500K per year ($1M/couple). A similar proposal has appeared in the last six budgets submitted by Democratic administrations.
- The *Equal Tax Act* (H.R. 5336), introduced in the summer of 2025 by a handful of House Democrats, would severely restrict 1031 transactions.

Recommendations

Preserve Current Policy on Like-Kind Exchanges: The existing tax treatment of like-kind exchanges under Section 1031 supports healthy real estate markets and property values.

- Like-kind exchanges helped **stabilize property markets** at the height of the COVID-19 lockdown. Exchanges are even more important during periods of market stress when external financing is harder to obtain.
- **Section 1031 is facilitating a smoother transition** as real estate assets are re-purposed in the post-COVID economy.
- Roughly **40 percent** of like-kind exchanges involve rental housing. Section 1031 helps fill gaps in the financing of affordable housing. Unlike the Low-income Housing Tax Credit, developers can use Section 1031 to **finance land acquisition costs for new affordable housing projects.**

- Exchanges help low-income, hard-hit, and distressed communities where outside sources of capital are less available. Section 1031 also **supports public services** (police, education) by boosting transfer/recording/property taxes (nearly 3/4 of all local tax revenue).
- Section 1031 **is consistent with corporate and partnership tax rules** that defer gains when the proceeds are retained and reinvested in businesses (sections 721, 731, 351, and 368).

Business Interest Deductibility

Tax Policy

Summary

The 2017 tax bill included strict new limits on the deductibility of business interest, generally restricting this to 30 percent of the taxpayer's EBITDA (earnings before interest, tax, depreciation, and amortization). However, the bill also included a key provision that allows commercial real estate (a real property trade or business) to opt out of the interest limitation.

The One Big Beautiful Bill Act (OB3 Act) included a provision that will allow more real estate businesses to fully deduct their business interest and qualify for 100 percent bonus depreciation on their nonresidential, interior improvements.

Key Takeaways

- Debt is a fundamental part of a real estate entity's capital structure and, in addition to property acquisition costs, is used to finance day-to-day operations like meeting payroll, buying raw materials, making capital expenditures, and building new facilities.
- The ability to finance investment and entrepreneurial activity with borrowed capital has driven jobs and growth in the United States for generations. America's capital markets are the deepest in the world and provide our economy with a valuable competitive advantage.
- **Commercial banks are the dominant source of financing for commercial real estate investment**. Like other entrepreneurs, small and medium-sized real estate developers and investors lack access to equity markets and rely on traditional lending to grow and expand.

Background

Business Interest and Depreciation

- The original 2017 House Republican tax plan—the House blueprint for tax reform—would have eliminated the deductibility of all business interest (including commercial real estate debt) while replacing depreciation rules with the immediate expensing of all future capital investment, including real property.
- The final legislation included a revised Section 163(j) in which the deductibility of business interest is generally limited to 30 percent of the taxpayer's EBITDA. It also included 100 percent expensing of leasehold and nonresidential interior improvements for five years, phasing down thereafter.
- The 30 percent interest limit does not apply to an electing real estate business. However, an electing real estate business is required to use the alternative depreciation system, which includes slightly longer cost recovery periods for real property and cannot immediately expense leasehold and other interior improvements.
- The OB3 Act reinstated (effective Jan. 1, 2025) and permanently extended a broader EBITDA definition of income for purposes of the section 163(j) limit on business interest. This change will allow many taxpayers to own and operate commercial real estate under the general §163(j) business interest limitation, a requirement for 100 percent expensing of leasehold and interior improvements.

Recommendations

Avoid New Restrictions on Business Interest Deductibility: Business interest expense is appropriately deducted under the basic principle that interest is an ordinary and necessary business expense. Interest income is taxable to the recipient.

- New restrictions on interest deductibility would cause enormous damage to U.S. commercial real estate by dragging down property values and discouraging new investment. Fewer loans could be refinanced, fewer projects could be developed, and fewer jobs would be created.

- The change to the EBITDA/163(j) definition in the OB3 Act is a positive development that will allow more real estate businesses to fully deduct their interest while also expensing their property improvements and upgrades. The change will accelerate the modernization and repositioning of real estate assets that is critical to meet post-pandemic business needs.

Treasury Guidance Needed: Treasury should act quickly to issue guidance confirming taxpayers' ability to modify a real property trade or business (RPTOB) election previously made under section 163(j)(7)(B). Such guidance would clarify property owners' eligibility for the expanded bonus depreciation benefit. To this end, specific recommendations were submitted to Treasury by RER on Oct. 17, 2025.

Protecting Access to Foreign Investment in U.S. Real Estate

Tax Policy

Summary

Foreign investment is a major source of capital for U.S. commercial real estate, but new federal regulations, a wave of state-level restrictions, and proposed legislation threaten to deter the deployment of global capital in U.S. assets.

First, in April 2024, the Treasury Department issued final regulations that greatly expanded the reach of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), a law that imposes a discriminatory capital gains tax on foreign investment in U.S. real estate. The regulations created a new and unprecedented "look-through" rule that largely nullified the longstanding, statutory exemption from FIRPTA for domestically controlled REITs, thereby raising the tax burden on inbound real estate capital. Newly proposed tax regulations issued by the Trump administration would repeal the 2024 look-through rule.

Second, at the state level, 20 states have enacted restrictions on foreign investors in real estate and agricultural land, and eight states have considered similar measures.

Third, Congress recently considered a tax proposal—known as Section 899—that would impose higher U.S. tax rates on income, dividends, and capital gains earned by investors from foreign countries deemed as maintaining "unfair" tax regimes. Section 899 was ultimately dropped from the One Big Beautiful Bill Act (OB3 Act) and a recent OECD agreement to carve out U.S. companies from the global minimum tax agreement has significantly reduced the likelihood that Section 899 will be revived.

Key Takeaways

- With approximately $1.5 trillion of U.S. commercial real estate debt coming due in the next three years, foreign equity investments in U.S. assets are often an important source of capital as commercial real estate owners seek to restructure, refinance, or sell their properties.
- Discouraging foreign investment weakens U.S. competitiveness, raises the cost of capital for U.S. developers, and undermines efforts to revitalize urban cores, modernize infrastructure, and expand the housing supply.
- The FIRPTA look-through rule is legally unsound, economically harmful, and inconsistent with congressional intent. Treasury should act quickly to finalize proposed regulations repealing the look-through rule.
- The enactment of Section 899 as proposed would create uncertainty that in turn would substantially deter foreign investment, increase borrowing costs, and dampen property values.

Background

FIRPTA "Look-Through" Rule

- In April 2024, the Treasury Department issued final regulations under FIRPTA that introduced a "look-through" rule to determine whether a real estate investment trust (REIT) or regulated investment company (RIC) qualifies as a "domestically controlled qualified investment entity" (DCQIE) under Section 897(h)(4)(B) of the Internal Revenue Code.
- For decades, Treasury regulations interpreted the phrase "directly or indirectly" to refer to actual ownership and not constructive ownership through unrelated entities. Domestic C corporations—including those with significant foreign ownership—were treated as U.S. persons for purposes of determining whether a REIT was domestically controlled.
- The 2024 final regulation reverses this position. It requires "look-through" treatment of any non-public domestic C corporation if 50 percent or more of its stock is held (directly or indirectly) by foreign persons.

- The rule applies retroactively, including to long-established structures created under the prior legal regime.

State-level Restrictions on Foreign Real Estate Investment

- States that have enacted or considered restrictions on foreign investors in real estate and agricultural land include Florida, which enacted Senate Bill 264 in 2023. The law aims to limit and regulate the sale and purchase of certain Florida real property by "Foreign Principals" from "Foreign Countries of Concern."

Proposed "Section 899" Tax

- Section 899, as proposed in initial versions of the 2025 budget reconciliation bill, would have operated through the tax code's foreign residency rules, and in many cases made the Treasury Department responsible for determining whether a foreign country imposes unfair taxes and could therefore face escalating penalities. This would have resulted in uncertainties for foreign investors, where individual tax rates could change from year to year or between administrations.
- The provision would have extended to a wide range of passive investors—including sovereign wealth funds, pension funds, high-net-worth individuals, and insurance companies—with the economic burden often falling on U.S. borrowers under typical loan covenants that shift tax-law risk to domestic parties.
- Lawmakers also contemplated retroactive application to income from investments made months or years prior—a move that would have undermined global confidence in U.S. property markets.
- Policymakers dropped Section 899 from the OB3 Act after G7 countries pledged to exempt the U.S. from the OECD Pillar Two global minimum tax. The OECD released a side-by-side agreement in January 2026 to carve out U.S. companies from the global minimum tax. Congressional leaders have said they are prepared to reconsider the proposal if needed, if the agreement is not fully implemented.

Recommendations

Reform FIRPTA and Withdraw the "Look-Through" Rule: The federal government should reform FIRPTA and work to remove tax barriers that deter capital formation and investment in U.S. real estate and infrastructure.

- In March 2025, RER resubmitted detailed comments challenging the legality of the FIRPTA look-through rule and describing its harm to U.S. real estate and the broader economy. The letter asked the new administration to repeal the provision on several grounds:
  - **The rule exceeds Treasury's authority.** Congress explicitly authorized "look-through" rules for REITs and RICs in Section 897(h)(4)(E) but deliberately excluded domestic C corporations. Treasury's new interpretation reads into the statute a rule Congress rejected.
  - **It reverses decades of well-settled law.** Treasury's interpretation of the statute is contradicted by the structure and legislative history of Section 897, the only IRS ruling on the topic, and judicial opinions concerning the application of constructive ownership rules generally.
  - **The "look-through" rule is retroactive and disruptive.** It imposes the regulations on investment structures in place for years and creates significant uncertainty for foreign investors in REITs and infrastructure.
  - **It impedes investment in the U.S. economy.** Foreign capital as a share of total U.S. CRE investment has already fallen from over 16 percent in 2018 to less than 6 percent in 2024. The rule risks further reducing capital formation for job-creating U.S. real estate and infrastructure projects.
- On Oct. 21, 2025, in a very welcome development, Treasury issued proposed regulations that would repeal the FIRPTA look-through rule for domestically controlled REITs. The preamble to the proposed regulations conveyed the adminstration's strong agreement with the policy and economic arguments in RER's March 2025 letter. RER wrote to Treasury in December 2025 commending the administration and urging finalization of the regulations.

Use Caution Around State-Level Rule Changes: States enacting or considering restrictions on foreign investment in real estate should proceed carefully to prevent unintended consequences that could hold back economic growth and capital formation.

- State-level restrictions have national implications and seem to fly in the face of the Commerce Clause of the Constitution in that they interfere with the free flow of interstate and foreign commerce.

Avoid Enacting Section 899 or Make Substantial Revisions to the Proposal: Congress should continue to oppose proposals such as Section 899 that could disrupt global capital flows and chill passive investment in U.S. real estate and infrastructure.

- If a "retaliatory tax" like Section 899 moves forward, lawmakers should modify the measure to exempt passive, non-controlling minority investment in U.S. real estate in order to protect an important source of financing and capital.

Reauthorizing Federal Terrorism Insurance

Summary

Today, the risk of terrorism remains as strong as ever. According to the 2025 Annual Threat Assessment from the Office of the Director of National Intelligence (ODNI), "A diverse set of foreign actors are targeting U.S. health and safety, critical infrastructure, industries, wealth, and government. State adversaries and their proxies are also trying to weaken and displace U.S. economic and military power in their regions and across the globe."[1]

For more than two decades, at almost no cost to the taxpayer, the national terrorism insurance program established by the Terrorism Risk Insurance Act (TRIA) in 2002 has made it possible for businesses to purchase the terrorism risk coverage they need. Threatened with acts of terrorism, and in the absence of a viable private market, business insurance consumers would be unable to secure adequate coverage without such a program. The Real Estate Roundtable supports a long-term reauthorization of TRIA and urges prompt congressional action to renew this critical program in advance of its expiration on Dec. 31, 2027.

Key Takeaways

- Terrorism risk is a national security challenge that requires a federal solution.
- TRIA has successfully maintained market stability for over 20 years at minimal taxpayer cost.
- Without TRIA, terrorism risk coverage would become scarce or unaffordable, threatening economic resilience and recovery.
- Should a terrorist attack occur without adequate coverage in place, underinsured businesses will face the risk of ruin, with potentially catastrophic local economic effects, and the federal government will face significant pressure to hastily assemble financial assistance to underinsured victims.
- Early reauthorization will ensure continued business confidence and prevent market disruption as the program approaches its 2027 expiration.
- It is important to enact a long-term reauthorization of TRIA well in advance of its termination date of December 31, 2027.

Background

Terrorism Risk Requires a Federal Insurance Backstop Takeaways

- For commercial real estate properties of all types—from hospitals and museums to public utilities and manufacturing facilities—maintaining adequate levels of insurance is essential to managing risk and protecting assets from all potential perils, including terrorism. These business consumers cannot properly manage the risks of today's world if terrorism insurance coverage is not available.
- To help protect the economy from this peril, the nation's current terrorism risk insurance program provides continuity to the marketplace so that policyholders—American businesses large and small—are able to obtain the insurance coverage they need to manage terrorism risk, grow their businesses, create jobs, and protect the workers they employ.
- Unfortunately, the nation's federal terrorism risk insurance program established by TRIA and its subsequent extensions is scheduled to sunset at the end of 2027. Because a viable private sector marketplace for this coverage does not yet fully exist, the program's expiration would leave policyholders and taxpayers exposed and unprotected—just as they were after 9/11. The Government Accountability Office (GAO), President's Working Group on Financial Markets, and other terrorism risk observers have consistently

[1] 2025 Annual Threat Assessment (ATA), Office of the Director of National Intelligence, March 2025.

concluded that "acts of terrorism" are uninsurable risks.[2]

- Terrorism is not aimed at a specific business or property owner; it is aimed at America, our government, our people and our way of life. Maintaining a workable federal terrorism insurance mechanism is vital for the nation's economy, and private markets alone cannot and will not provide the level of terrorism insurance our economy demands.
- Some 22 other nations recognize that private markets alone cannot underwrite this risk, and each has a permanent terrorism insurance program.[3]
- RER helped establish the Coalition to Insure Against Terrorism (CIAT) in 2002. CIAT is a broad coalition of commercial insurance consumers formed immediately after 9/11 to ensure that American businesses could obtain comprehensive and affordable terrorism insurance.
- In the aftermath of 9/11, it was virtually impossible for commercial policyholders to secure coverage against terrorism risk; however, banks and other capital providers would not provide financing without it. According to an RER survey, over $15 billion in real estate-related transactions were stalled or even cancelled because of a lack of terrorism risk insurance in the 14 months between 9/11 and TRIA's enactment.
- CIAT's diverse membership represents key elements of the commercial facilities sector, including commercial real estate, banking, energy, construction, hotel and hospitality, higher education, manufacturing, transportation, entertainment, the major league sports and racing, as well as public sector buyers of insurance. According to a 2019 Marsh[4] study, the education, health care, financial institutions, and real estate sectors had the highest "take-up" rates among the 17 industry segments surveyed—all above 70 percent.
- The House Financial Services Subcommittee on Insurance, Housing, and Community Opportunity held a hearing on Sept. 17, 2025, just after the 24th anniversary of the September 11th attacks, to examine the terrorism risk capacity of the insurance industry and to discuss the future of the nation's federal terrorism risk insurance program. CIAT submitted a statement to the Subcommittee stressing the importance of enacting a long-term reauthorization well in advance of the sunset date. This hearing was just the first step in a much longer journey to extend the federal government's role in the terrorism risk insurance market.
- Despite our successful legislative efforts in 2002, 2005, 2007, 2015, and 2019, and the fact that terrorism remains a clear and present danger, we appreciate the work of the Subcommittee to focus on the importance of reauthorizing TRIA on a timely basis. While the program does not sunset until 2027, efforts to reauthorize the federal program have already begun.

Recommendations

Reauthorize and Strengthen TRIA: TRIA has been a tremendous success. It is a comprehensive plan to provide for economic continuity and recovery in the wake of a major terrorist attack, while simultaneously protecting taxpayers via a mandatory recoupment mechanism. We urge Congress to promptly enact a long-term reauthorization of this important program.

- **TRIA has been, and remains, extremely effective in achieving its primary purpose**. The purpose was to stabilize the market following 9/11 and to ensure the continued availability of terrorism coverage for commercial policyholders in the future.
- **America needs a stable and reliable terrorism insurance market.** As part of its national economic security, the country must ensure that employers can invest in assets and create jobs without assuming the risk and liabilities of a terrorist attack. At almost no cost to the taxpayer, the program has been the key factor in ensuring that the private insurance market has remained intact and continues to meet the needs of

[2] *Terrorism Risk Insurance: Report of the President's Working Group on Financial Markets*, September 2006, p.12; *Terrorism Insurance: Measuring and Predicting Losses from Unconventional Weapons Is Difficult, but Some Industry Exposure Exists,* United States Government Accountability Office, September 2006, p. 4.
[3] *Background on: Terrorism risk and insurance*, Insurance Information Institute, April 18, 2024.
[4] *2019 Terrorism Risk Insurance Report*, Marsh Risk Management Research, 2019.

commercial policyholders during the ongoing threat of a future terrorist attack.

- **Allowing the program to sunset would threaten economic and homeland security.** Should the program be allowed to sunset, we would expect a period of profound economic slow-down—posing a very real threat to our economic and homeland security. American businesses, schools, real estate owners, bond holders, and the entire financial services system all depend on their ability to finance insured collateral. Without the ability to maintain adequate insurance coverage, a business or a property owner's capacity to finance is materially impaired and its liquidity is jeopardized.
- **The absence of terrorism insurance had significant economic and employment impacts**. Due to deferred construction investment, the White House Council of Economic Advisors estimated that there was a direct loss of 300,000 jobs during the 14 months between 9/11 and TRIA's enactment. In short, the lack of availability of terrorism insurance for commercial policyholders had a very real and far-reaching impact on the economy.
- **Federal analysis confirms TRIA's ongoing effectiveness.** RER concurs with the 2024 Department of Treasury Federal Insurance Office's *Report on the Effectiveness of the Terrorism Risk Insurance Program*, which concluded that the current terrorism risk insurance program is "effective in making terrorism risk insurance available and affordable in the insurance marketplace,"[5] and that there is insufficient "private reinsurance capacity for the exposure the Program currently supports in connection with a catastrophic terrorism loss."[6] There has been no evidence that private markets can develop adequate terrorism risk capacity without some type of federal participation.
- **Letting TRIA lapse would destabilize the market and limit coverage.** Without TRIA in place, we believe the availability of terrorism risk coverage will diminish, or insurers will simply stop offering the coverage altogether. CIAT members have seen evidence of this each time that TRIA has been up for renewal (most recently in 2019). In each instance, policy renewals often included "springing exclusions," which would have voided terrorism coverage upon the expiration of TRIA.

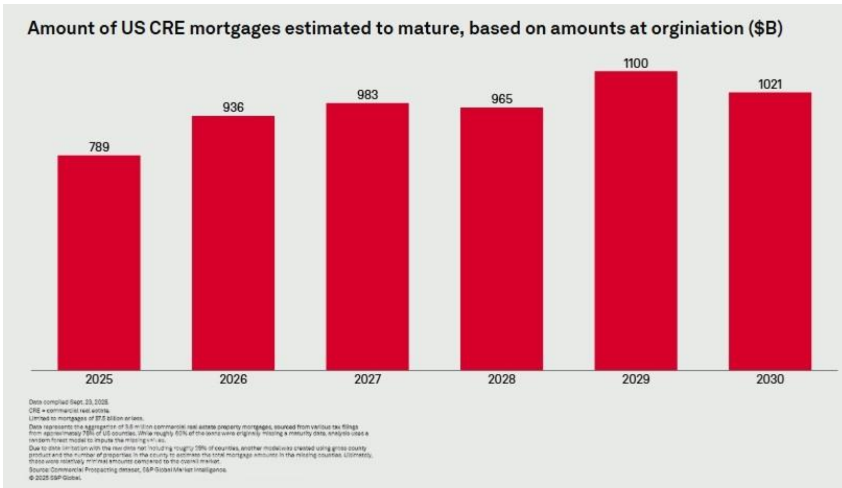
[5] Federal Insurance Office, U.S. Dept. of the Treasury, Report on the Effectiveness of the Terrorism Risk Insurance Program 2 (June 2018).
[6] Id. at 47.

The Real Estate Roundtable

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

Capital and Credit

Summary



Source: S&P Global

Nearly $936 billion of U.S. commercial real estate mortgages are estimated to mature in 2026. 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. Implementation remains uncertain.

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.

Vice Chair for Supervision Michelle Bowman said that the central bank is working with the FDIC and the OCC on reproposal of the rule. A more industry-friendly version of contentious capital rules is expected in early 2026.

In a Dec. 19, 2025 letter to Vice Chair Bowman and other bank regulatory agencies, House Financial Services Committee Chairman French Hill (R-AR) urged regulators to design the Basel III Endgame capital rules in a way that protects bank safety without unnecessarily restricting credit or harming economic growth, while supporting households, businesses, and markets.

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 original *Basel III Endgame* proposal would have had 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."[7]
- 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

- 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 industry participants, a revised proposal was announced in September 2024 by Michael Barr, the former Fed Vice Chair for Supervision, that would have increased 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.
- The core idea is to require large banks to hold more capital by more accurately measuring the riskiness of their assets, but concerns remain about the potential impact on lending and economic growth.
- 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.

- 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.

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

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. Congress must now reauthorize the NFIP by no later than Jan. 30, 2026.

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 was operating with short-term funding under a continuing resolution. Since 2017, Congress has extended the NFIP's authorization 34 times, and the program will lapse again without congressional action by Jan. 30, 2026.
- 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

Summary

The Corporate Transparency Act (CTA) requires certain companies to disclose information about their beneficial owners to the Treasury Department's Financial Crimes Enforcement Network (FinCEN). The goal was to create a national directory of beneficial owners to curb illicit finance, drug cartels, terrorist groups, and other harmful activities.

As of March 2025, the Treasury Department announced it will suspend enforcement of the CTA against U.S. domestic reporting companies and their beneficial owners, focusing solely on foreign entities. This means U.S. commercial real estate entities are now exempt from providing beneficial ownership information to FinCEN.

FinCEN intends to issue new rules to narrow the scope of the CTA's reporting requirements to only apply to foreign-formed companies that have registered to do business in the U.S.

The Real Estate Roundtable continues to work with policymakers in support of a balanced approach that would inhibit illicit money laundering activity without the imposition of costly reporting requirements for real estate investors.

Key Takeaways

- Thanks to the Treasury's action to suspend CTA enforcement for domestic reporting companies, much of the 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 is allayed.

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 Jan. 1, 2024, the U.S. Court of Appeals for the Fifth Circuit vacated the stay on Dec. 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.
- On March 2, 2025, the U.S. Treasury Department announced it would suspend enforcement of the CTA against U.S. citizens and domestic reporting companies, and later issued an interim final rule through FinCEN that eliminated their reporting requirements entirely. This action removes the beneficial ownership information (BOI) reporting obligations for most U.S. entities, leaving only foreign reporting companies subject to the CTA.

Recommendations

Support Measures that Encourage Capital Formation: RER, along with its coalition partners, repeatedly raised concerns about the regulatory burden posed by the CTA and has supported the court challenges to the law. We are pleased by the Treasury's constructive action to exempt domestic reporting companies.

- Although the CTA 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.
- 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 welcomes the Treasury's action to exempt domestic reporting companies and continues to push for measures that encourage capital formation for 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 Feb. 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."
- The SEC previously considered expanding its Safeguarding Rule to include physical assets like real estate under the prior administration but faced significant industry pushback, with groups like RER urging its exclusion due to existing protections.
- The initial proposal aimed to broaden the rule's application beyond traditional privately offered securities but was met with concerns that it would create compliance burdens, raise costs for clients, and inadequately address the unique nature of real estate assets.
- As of October 2023, there was active discussion to exclude real estate from the final rule, though the outcome of the proposal remains uncertain.
- 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.

Gold and Platinum "Trump Cards" and the EB-5 Visa

Summary

On Sept. 19, 2025, the White House released an Executive Order, fact sheet, and website announcing Gold and Platinum "Trump Cards." The program is intended to grant permanent residency in the U.S. for immigrants with high net worth. The administration's announcement directs the Secretaries of Commerce, State, and Homeland Security to coordinate and establish a program that expedites "green cards" issued under the EB-1 and EB-2 visa categories for foreign nationals who make a "significant financial gift to the Nation."

This new green card program raises important questions:

- Will Trump Cards appeal to overseas investors and American employers as viable options for permanent residency in the U.S.?
- Will Trump Cards impact the separate EB-5 "regional center" program, which confers green cards on foreign investors who make capital commitments to finance job-creating projects in the U.S.?
- Will Trump Cards speed up backlogs for visas—particularly in markets like China, India, and other countries—where investors must wait years to advance in the process to get a green card?

It will take some time to see how Trump Cards resonate in foreign capital markets, and what further program guidelines entail, before these and similar questions are fully sorted out.

Key Takeaways

- The new Trump Cards and the EB-5 visa program provide separate visa pathways to **attract global capital and top-tier talent**.
- Trump Cards do not and legally cannot replace EB-5 visas.
- The EB-5 program is the established, statutorily authorized pathway to attract foreign investors to the U.S. It has delivered **$350 billion in economic impact and created over 1.5 million American jobs—at no cost to taxpayers—and should continue to be fully supported by Congress and the administration**.
- **Congress should permanently authorize the EB-5 program.** It should give the foreign investment market stability by authorizing regional centers in 2026, ahead of their scheduled expiration in 2027.

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.
- EB-5 requires $800,000 investments in targeted employment area (TEA) projects (i.e., infrastructure, rural, high unemployment census tracts)—or $1.05 million investments in projects not within favored TEA categories.
- 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. **They should be made permanent.**

The "Trump Card" Program

- According to the Sept. 19 Executive Order:
    - **Cost:** Gold Cards will require $1 million payments from individuals, and $2 million payments from companies. Platinum Cards will require $5 million payments. The $2 million Corporate Gold Card is "per employee." That is, the company (not the employee) "owns" the Corporate Gold Card, and it is portable to other workers.

- **Taxes:** Platinum Card holders can spend up to 270 days in the U.S. without being subject to U.S. taxes on non-U.S. income. Gold Card holders are treated similarly to other permanent residents and citizens.
- **Trump Card holders will not get their money back.** They are making a gift and buying a green card. In contrast, EB-5 investors expect their money back—with a return on their investment.
- **Trump Cards do not create new visa programs or add more visas.** Payments for a Trump Card are considered "evidence" to support green card eligibility under either the EB-1 visa category, for people of "extraordinary" ability, and/or the EB-2 visa category, for professionals with advanced degrees and those with "exceptional" ability.
- **Trump Cards do not replace EB-5 visas.** And, they will not add to or subtract from the number of EB-5 visas available in a given year. However, Section 3(f) of the Executive Order states that the agencies shall "consider… expanding the Gold Card program" to EB-5 visa applicants.

Recommendations

Permanently authorize EB-5 Regional Centers: Give stability to foreign investment markets—and maximize U.S. job growth opportunities—by making permanent the 2022 reforms that have created a fair and workable balance for urban and rural projects.

- EB-5 investment helps finance **housing, grid modernization, infrastructure, and manufacturing plants** to further recent Executive Orders and national priorities.

The Real Estate Roundtable

Democratizing Access to Alternative Assets for 401(k) Investors

Capital and Credit

Summary

On Aug. 7, 2025, President Trump issued an Executive Order entitled, "Democratizing Access to Alternative Assets for 401(k) Investors," signaling a fundamental shift in federal policy regarding access to asset classes previously reserved for institutional investors.

The Executive Order aims to allow ordinary workers to invest in alternative assets such as private equity and real estate through their 401(k) plans. The initiative seeks to reduce regulatory obstacles for plan fiduciaries and clarify their duties through ongoing work by the U.S. Department of Labor (DOL) and the U.S. Securities & Exchange Commission (SEC).

The DOL is nearing the release of a proposed rule on advisors' duties when recommending alternative investments for defined contribution plans. According to the White House's Office of Management and Budget (OMB), the DOL submitted its proposed rule entitled, "Fiduciary Duties in Selecting Designated Investment Alternatives" on Jan. 13, 2026.

Key Takeaways

- In the August order, Trump directed the DOL to propose new regulations on alts in retirement plans subject to the Employee Retirement Income Security Act (ERISA) within six months. It also directed the DOL to work with other regulators to determine necessary rule changes to ease alternative investment access in 401(k)s, and for the SEC to help with that effort in participant-directed retirement plans.
- While such alternative investments have long been part of defined-benefit plan portfolios, such as pensions, they are not expressly barred from defined contribution plans. Nonetheless, fiduciary rules make it challenging to include them in 401(k)s.

Background

Action Post-Executive Order

- Since the Executive Order was issued in August, SEC Chair Paul Atkins has affirmed the need for access to retail alternative investments–such as real estate–"within reason," while Commissioner Mark Uyeda called for litigation reform to protect plan sponsors by making it harder for investors to sue ERISA fiduciaries for offering alts in 401(k) plans.
- While the Executive Order and rescission of DOL guidance demonstrate a change may be on the horizon for 401(k) plans and investors, they do not bring with them any regulatory change; further guidance and rulemaking from the DOL and SEC will clarify what comes next for fund sponsors, general partners, and their institutional investors.

Recommendations

Prepare for DOL Public Comment and Next Steps: Once the OMB signs off on the proposal, the DOL's Employee Benefits Security Administration will then release it for public comment, which typically is a 60-day period.

- RER will continue to engage with regulatory agencies on this issue.

Expanding America's Housing Infrastructure

Housing, Infrastructure, and Cities

Summary

There is a chronic shortage of housing in the U.S. that is driving up housing prices and making it more difficult for lower-income individuals to find safe, affordable housing. Housing production in the U.S. is not keeping pace with expanding housing needs. The underbuilding gap in the U.S. now totals more than 5.5 million housing units. The impact of this growing problem of an under-supply of affordable housing is far-reaching and undermines economic growth—particularly in urban areas.

Key Takeaways

- **Safe, decent, and affordable housing is critical to the well-being of America's families, communities, and businesses.** The COVID-19 pandemic intensified the nation's persistent housing crisis and heightened the need to expand the supply of affordable housing.
- Having a robust housing finance system is critical to meeting the nation's longstanding goal of ensuring decent and affordable housing for all. Debate over reforms to the government-sponsored enterprises (GSEs) continues, but no legislative proposals are currently under consideration.
- Confronting the housing crisis requires a **national transformation in housing policy**, including a **strategic plan to expand the supply of affordable housing**.
- Policymakers should look at the full scope of tools available to bridge the underbuilding gap as part of this national strategy, including:
    - Yes In My Backyard (YIMBY) policies;
    - Property conversion incentives;
    - Reforms to zoning and permitting rules;
    - Reforms to the GSEs that continue to protect financial stability and access to affordable mortgages;
    - Further improving Opportunity Zones (OZs);
    - Enacting the *Housing Affordability Act*; and
    - Further expanding the Low-Income Housing Tax Credit (LIHTC).
- RER has partnered with 16 other national real estate organizations to jointly advocate for policies that will help to **increase housing supplies, grow jobs, and modernize our nation's critical infrastructure**.

Background

The Underbuilding Gap

- A persistent underbuilding gap over many decades has left the U.S. with fewer housing units than needed, leading to higher home and rent prices and lower affordability.
- Housing supply was also significantly impacted by the Global Financial Crisis (GFC) in 2008 and disruptions caused by the COVID-19 pandemic. The construction industry was particularly affected due to higher labor and material costs, worsening the underbuilding gap.
- Most of the new housing units in recent years have been single-family homes. Through the end of 2023, production of new single-family homes reached more than 1 million annually in 2022 and 2023 for the first time since the housing bubble burst in 2007.

- Apartment construction is also at historic levels, with 438,500 units built last year, the highest level since 1987. The number of apartments under construction at the end of the year, about 981,000, was an all-time high since the survey began in 1969.
- With no change in current housing policy, we can expect annual production of approximately 1,515,000 units, including an estimated 1 million single-family units, some 440,000 multifamily units, and approximately 75,000 manufactured homes. Yet, even at the current pace, this level of production remains far below the 5.5 million housing units the U.S. is currently estimated to need.
- A quarter of American renter households spend more than 50 percent of their income on housing expenses. More than 10 million low-income households spend more than half of their monthly income on rent, according to Harvard's Joint Center for Housing Studies.

Recommendations

Enact Federal YIMBY Legislation: Proposed legislation like the bipartisan *Yes in My Backyard (YIMBY) Act* would help eliminate discriminatory land use policies and remove barriers to production of affordable housing.

- RER and 17 other national organizations submitted a letter in strong support of a version of the bill introduced in the 118th Congress, H.R. 3507.
- The *YIMBY Act* requires recipients of certain federal grants to submit public reports about their implementation of specific land-use policies, such as policies for expanding high-density single-family and multifamily zoning.

Implement Property Conversion Incentives: The bipartisan *Revitalizing Downtowns and Main Streets Act of 2025* (H.R. 2410) would create a market-based tax incentive for converting older commercial buildings to residential use.

- By incentivizing residential conversions, the bill would help modernize U.S. real estate, create new and affordable housing, and strengthen cities and neighborhoods that continue to suffer from the aftereffects of the pandemic.
- The bill would create a new and temporary 20 percent tax credit for qualified property conversion expenditures, modeled after the historic rehabilitation credit. The total credit authority would be limited to $15 billion, allocated by state housing finance agencies based on feasibility and impact.

Reform Zoning and Permitting Rules: Restrictive zoning and permitting rules create prohibitive barriers to constructing affordable housing and are exacerbating the housing crisis.

- Exclusionary zoning policies, such as prohibitions on multifamily homes, constrain housing construction. Streamlining permitting and zoning processes can unlock new housing supply.

Further Improve OZs: Opportunity Zone (OZ) tax incentives have successfully mobilized private investment in historically underserved communities. Long-term extension and targeted reforms are essential.

- Since their enactment in 2017, OZs have spurred billions in private investment to revitalize distressed communities, finance affordable housing, and create jobs. The One Big Beautiful Bill Act (OB3 Act), signed into law on July 4, 2025, permanently extended the OZ tax incentives and made a number of helpful reforms.
- Congress should also continue working on improvements to the OZ tax incentives to boost their scale and impact.
- 72 percent of U.S. counties contain at least one OZ. Recent estimates suggest OZs have attracted over $120 billion in capital.

Further Expand the LIHTC: The LIHTC is a critical federal tool for addressing the widespread lack of affordable rental housing. Expansions to the program are critical to maximizing its impact.

- The OB3 Act included a permanent 12 percent increase in the amount of LIHTC allocations to states and permanently lowered the requirement for private activity bond financing for LIHTC projects from 50 percent to 25 percent.

- Legislation has been previously proposed to strengthen the LIHTC, including the *Affordable Housing Credit Improvement Act (AHCI)*, which would make it easier to combine LIHTC with other sources of capital. RER continues to support elements of this bill that were not included in the OB3 Act. Additionally, the *Decent, Affordable, Safe Housing for All (DASH) Act* would offer a new Middle-Income Housing Tax Credit (MIHTC).

Pass the Housing Affordability Act: Senators Ruben Gallego (D-AZ) and Dave McCormick (R-PA) introduced the bipartisan *Housing Affordability Act* to expand the supply of affordable housing by increasing Federal Housing Administration's (FHA) outdated multifamily loan limits.

- Without this fix, most areas are misclassified as "high-cost," limiting HUD's ability to support new multifamily developments and deepening the national housing crisis.
- If enacted, it will increase apartment construction, add supply, and help bring down housing costs, making housing more available and affordable for millions of American families.
- The *Housing Affordability Act* has the broad support of a number of real estate industry organizations, including RER, NAHB, NAR, NMHC, NHC, NAA, IREM, NAHMA, NLHAC, NAHC, and others.

Property Conversions and Housing Tax Incentives

Housing, Infrastructure, and Cities

Summary

The U.S. faces a severe shortage of affordable housing. Current production has just not kept up with demand. At the same time, certain other commercial real estate assets like office buildings are under significant stress due to pandemic-related issues, including employers' greater reliance on remote work arrangements. **RER is encouraging lawmakers to help revitalize cities, boost local tax bases, and address housing challenges** by enacting a tax incentive and federal loan support for converting older, underutilized buildings to housing. RER also supports a meaningful expansion of the Low-Income Housing Tax Credit (LIHTC).

Key Takeaways

- Congress should help expand and grow the supply of affordable and workforce housing by investing greater resources in time-tested tax incentives like the LIHTC and adopting creative new approaches that support the conversion of underutilized, existing buildings to housing.
- The conversion of underutilized and often vacant buildings offers a tremendous opportunity to improve the built environment and lift the surrounding locality. Property conversions are a cost-effective means to develop new housing supply, create jobs, and generate critical sources of local property tax revenue.
- The LIHTC is an efficient, market-based housing solution that relies on the private sector to finance, build, and operate affordable housing by creating a federal incentive for new construction and redevelopment.

Background

Property Conversions

- Bipartisan legislation introduced by Representatives Mike Carey (R-OH) and Jimmy Gomez (D-CA), the *Revitalizing Downtowns and Main Streets Act of 2025* (H.R. 2410), would create a new tax credit to reduce the costs associated with converting older office buildings to housing or other uses. The legislation is supported by a broad coalition of pro-housing and real estate-related organizations.
- Conversion projects can occur in a variety of settings, from central business districts and suburban office parks to rural communities and industrial facilities. The repurposing of existing structures can save energy while reinvigorating communities and reigniting economic growth where it is most needed.
- The inherent risks and elevated costs associated with property conversions, combined with the numerous social and economic benefits of conversions that flow to the broader community, justify proactive government policies that incentivize owners to adapt existing properties to new uses.

The LIHTC

- Since its inception in 1986, the LIHTC has financed the development of nearly 3.5 million affordable rental homes that house over 8 million low-income households. Proposed legislation would make major new investments ($29-32 billion) in expanding and improving the LIHTC.
- Under the successful LIHTC program, states can award housing credits based on their own affordable housing priorities. They can target credits to housing units dedicated to certain populations such as seniors or veterans, or to specific regions most in need of affordable housing.
- The One Big Beautiful Bill Act (OB3 Act) included a permanent 12 percent increase in the amount of LIHTC allocations to states and permanently lowered the requirement for private activity bond financing for LIHTC projects from 50 percent to 25 percent.

Recommendations

Implement Property Conversion Incentives: Congress should pass the *Revitalizing Downtowns and Main Streets Act of 2025* (H.R. 2410) to incentivize property conversions, increase the housing supply, and revitalize downtowns.

- The bill would create a 20 percent tax credit for the costs associated with converting older commercial buildings to housing, provided the housing includes a significant set-aside for affordable rental units.
- The current administration should also build on the progress made in the last administration, based on RER input and listening sessions, to streamline federal agency loan programs to provide financial support for CRE conversions.
- In particular, the administration should gear Department of Transportation loans for transit-oriented development (RRIF and TIFIA) to better enable commercial-to-residential building conversions.

Expand the LIHTC: Congress should further expand LIHTC, and RER continues to support elements of the *Affordable Housing Credit Improvements (AHCI) Act* (S.1136, H.R. 2573 in the last Congress) that were not included in the OB3 Act.

- The *AHCI* would create and preserve more than 2 million affordable homes, support 3 million jobs, and generate $119 billion in sustainable tax revenue.

Support a Robust Single-Family Rental (SFR) Market: In January 2026, President Donald Trump said he would move to ban "large institutional investors" from purchasing single-family homes, framing the proposal as part of a broader push to improve housing affordability. However, research shows that **large-scale SFR investments** have **helped revitalize distressed properties and communities**, contributing to economic growth and stability.

- For example, a UNC Charlotte study released in May 2024 found that children from low- and moderate-income households see **improved achievements in school** when they rent single-family homes in neighborhoods where they cannot afford to buy.
- Additionally, an August 2025 report from the American Enterprise Institute found that **institutional investors are not a primary driver of housing unaffordability**, noting that housing shortages stem largely from restrictive zoning, limited new construction, and inflationary pressures.
- On March 24, 2025, RER responded to the FTC's request for public comment regarding the impact that large-scale SFR operators and institutional investors are having on home prices and rents in single-family housing.
- RER will continue to work with policymakers to demonstrate why institutional capital is essential to expanding housing supply and addressing the chronic housing shortage affecting affordability nationwide. RER will also advance initiatives that remove barriers to housing development, incentivize capital investment in housing, and help people achieve the American Dream.

Fannie Mae, Freddie Mac, and the Future of Housing Finance in the U.S.

Housing, Infrastructure, and Cities

Summary

In response to the Global Financial Crisis in September 2008, the U.S. Treasury placed Fannie Mae and Freddie Mac into conservatorship under the oversight of the Federal Housing Finance Agency (FHFA). This action was intended to stabilize the mortgage market and restore confidence in the government-sponsored enterprises (GSEs). It also involved an injection of $190 billion of capital, while creating an explicit U.S. government guarantee. The ongoing conservatorship means that the government has total control over these huge government-backed mortgage enterprises, with $7.7 trillion in combined assets.

Conservatorship was not meant to be indefinite. More than 17 years later, the GSEs are in a much stronger financial position and have repaid the $187 billion used to preserve Fannie and Freddie during the financial crisis. Yet, retiring the government's preferred and common equity stake would require a refinancing of massive scale, a taxpayer gift from the U.S. Treasury of tens of billions of dollars to Fannie and Freddie, or both.

Policymakers have increasingly discussed various reform proposals, including ending the conservatorship, full privatization, hybrid models, and continued government backing with additional safeguards. The administration has set reform as a key priority, yet concrete details have yet to emerge.

As policymakers consider privatization or structural reforms, it is essential to the real estate industry and the broader economy to **preserve a well-functioning housing finance system that supports homeownership, expands affordable housing supply, and sustains economic growth**.

Key Takeaways

- GSE reform will involve transitioning these government-sponsored enterprises to private entities, which necessitates significant recapitalization, potentially through an Initial Public Offering (IPO), to meet regulatory capital requirements and address outstanding liabilities.
- As a practical matter, it will be challenging for Fannie and Freddie to exit conservatorship and remain effective in the marketplace without a government guarantee. Determining the cost of this guarantee is one of the key challenges of reform.
- An explicit guarantee, similar to Ginnie Mae, might be one solution, but this would likely require an act of Congress and a fee paid to the Treasury for assuming the risk. This could increase costs for underlying borrowers.
- If Fannie and Freddie are transitioned to private ownership, the process must ensure **financial stability, avoid market disruptions, and protect access to affordable mortgages.**
- Reforms to the GSEs should be part of a **larger national transformation in housing policy** to unleash a wave of new housing construction and fully address the underbuilding gap, including Yes In My Backyard (YIMBY) policies, property conversion incentives and reforms to zoning and permitting rules, Opportunity Zones, and the Low-Income Housing Tax Credit (LIHTC).

Background

Fannie Mae and Freddie Mac

- The Federal National Mortgage Association (FNMA), known as Fannie Mae, was chartered in 1938 to support the housing market during the Great Depression. In 1968, Fannie Mae was removed from the federal budget and became a federally chartered, stockholder-owned corporation. The Federal Home Loan Mortgage Corporation (FHLMC), or Freddie Mac, was chartered in 1970 to further expand the secondary mortgage market.

- Both of these entities enjoyed an "implicit guarantee" that the government would not allow such important institutions to fail or default on debt, enabling them to borrow in the credit markets at lower rates than other financial institutions. They have played a vital role in the U.S. residential single-family and multifamily mortgage market. As of December 2024, Fannie Mae and Freddie Mac collectively guarantee $6.6 trillion in Agency Mortgage-Backed Securities (MBS), or some 50 percent of all outstanding U.S. mortgage debt.
- Since 2019, the GSEs have been authorized to retain profits to build capital. As of the third quarter of 2024, the Treasury's liquidation preference for the senior preferred shares stands at $340 billion. This would need to be addressed as part of any privatization plan.
- As a result of retaining capital, Fannie Mae and Freddie Mac increased their combined net worth to $147 billion as of the third quarter of 2024. Despite this steady growth, the GSEs remain well below the minimum regulatory capital framework requirements set by the FHFA in 2020. As of Sept. 30, 2024, Fannie Mae's capital requirement is $187 billion, while Freddie Mac's is $141 billion, resulting in a combined total requirement of $328 billion.
- Privatization efforts languished under the former Biden administration, but Trump administration officials, including U.S. Department of Housing and Urban Development (HUD) Secretary Scott Turner, FHFA Director Bill Pulte, and Treasury Secretary Scott Bessent, have expressed a desire to end the conservatorship. Yet, a key consideration of ending the conservatorship for Sec. Bessent is the potential impact on mortgage rates. He has indicated that any plan to release the GSEs from government control must carefully assess potential effects on mortgage rates to ensure that homeownership remains affordable.
- On Dec. 9, 2024, House Financial Services Committee Chairman French Hill (R-AR) commented on the potential for reform: "Although some changes can be achieved through administrative actions, certain important reforms are only possible through statutory changes."

Recommendations

Preserve Market Liquidity: Reforms that directly affect or result in changes to the GSEs' market activities must ensure that there continues to be sufficient liquidity to maintain a well-functioning housing finance system. Less liquidity and higher costs could reduce investment in new housing supply and exacerbate the housing shortage.

- The GSEs serve a vital purpose in the U.S. housing market, helping to keep mortgage rates relatively low and encouraging financial institutions to finance single-family and multifamily housing.
- Fannie Mae and Freddie Mac support around 70 percent of the mortgage market, and in the first half of 2024, were responsible for 48 percent of newly originated apartment loans.

Support Affordable Housing Goals: GSE reforms should ensure that Fannie and Freddie continue to maintain a strong emphasis on affordable housing and underserved markets.

- GSE-backed financing assists in the construction of new affordable housing, which is essential to address the chronic housing shortage. The estimated gap of 5.5 million housing units in the U.S. undermines affordability and economic growth—particularly in urban areas.
- As part of their mission, Fannie and Freddie purchase multifamily loans which support affordable and workforce housing. The GSEs' loan purchases are overseen by the FHFA, which sets volume caps based on market forecasts.

Ensure Soundness and Stability: Any privatization or restructuring must ensure that the GSEs maintain financial strength, mitigate risk to taxpayers, and support long-term market confidence.

- Fannie Mae and Freddie Mac together accounted for 42 percent of the total dollar volume of multifamily mortgages originated in 2023, according to the Mortgage Bankers Association (MBA). Reforms should ensure that the soundness of these and other loans continue to meet standards while providing sufficient liquidity to meet the market's needs, particularly in the affordable sector.
- The Enterprise Regulatory Capital Framework (ERCF), adopted by the FHFA as part of the conservatorship, established risk-based capital standards for the GSEs that exceed the statutory minimum leverage requirements. Reforms to Fannie and Freddie's capital requirements should ensure that they continue to be well-capitalized and can withstand economic distress.

Enhance Private Market Capacity: GSE financing efforts should focus on affordable and workforce housing and avoid crowding out private-sector financing and investment in class “A” market-rate apartments. However, reforms must appropriately calibrate any restrictions on multifamily lending to avoid any unintended consequences to aggregate credit capacity—particularly in times of economic distress.

The Real Estate Roundtable

Real Estate's Role in Unleashing America's Energy Dominance

Energy

Summary

President Trump's Executive Order on "Unleashing American Energy" calls for policies to: cut energy costs; strengthen the nation's electric grid by developing "base load" power resources (coal, gas, nuclear) over intermittent sources (solar, wind); streamline federal permitting of energy infrastructure projects; and ensure America wins the global race for AI leadership.

The U.S. commercial real estate industry has a central role to play in achieving the country's energy and economic goals. With energy demand surging, real estate is a critical partner to support energy investments, increase energy efficiency, and deliver energy savings across the economy.

Key Takeaways

- **No energy should be wasted and efficiency should be prioritized.** Doing more with less energy consumption is the most cost-effective way for buildings to lower utility bills for owners and tenants, and strengthen U.S. energy security. Building retrofits that use less energy save consumers money, support grid reliability, and free up power for AI data centers, mining crypto, and re-shoring the U.S industrial base.
- **Grid reliability is essential**. It is crucial to expand grid capacity and invest in long-distance transmission. Federal permitting reform is critical to speed up energy infrastructure projects.
- **RER supports a national "all of the above" energy strategy** that invests in building efficiency, grid modernization, faster permitting, and innovation across all energy sources.

Background

Electricity Demand is Spiking from a "Perfect Storm" of Multiple Forces

- AI and Data Centers: Expected to account for nearly half of global demand growth through 2030. (IEA 2025)
- EV Charging: Electric vehicles are expected to raise global power demand 6-8 percent by 2035. (IEA 2024)
- Manufacturing Reshoring: New U.S. facilities for semiconductors, batteries, and critical-minerals production will significantly increase industrial load. (CSIS 2024)
- Crypto Mining: U.S. Bitcoin mining consumes electricity equal to powering 6 million homes. (EIA 2024)
- Building Electrification: 40 percent of U.S. buildings now use electric heating—driven by codes, tenant preferences, and investor sustainability demands. (BOMA 2023)

Billions in Private Investments

- Unprecedented demand for electricity is prompting major private sector investments to shore-up the grid's security and reliability for "baseload" power (gas, oil, nuclear, hydro), amid the Trump administration's cancellation of Biden era clean energy funds.
- Investor-owned electric companies were forecasted to invest an unprecedented record-high **$208 billion in capital projects in 2025—a $30 billion increase from 2024**—to modernize transmission systems, expand capacity, and manage consumer costs, according to the Edison Electric Institute (EEI).

Major Energy Policy Shift

- Meanwhile, the Trump administration is cutting federal support "to get low-cost renewable projects on the grid"—cancelling billions in Biden administration project funding—and "pinning many of its promises of energy affordability on a nuclear moon shot." (PoliticoPro, Oct. 6, 2025).
- The sharp policy swing from has some members of Congress calling for a fuel agnostic, all-of-the-above national energy strategy. "We need every electron we can get if we want to be energy dominant. To do that, we should take every electron," said Sen. John Curtis (R-UT). (PoliticoPro, Oct. 6, 2025)

Permitting Reform is a Priority

- Permitting reform is a top bipartisan priority on Capitol Hill.
- The *SPEED Act* (HR 4776) passed the House on Dec. 18, 2025, to reform and streamline the process for federal environmental reviews to build energy infrastructure projects. The stage is now set for Senate talks.
- RER explained real estate's interest in energy permitting reform to spur housing and other economic development. (Letter, Dec. 8, 2025)
- RER also joined a multi-industy business coalition letter (Dec. 16, 2025) supporting the *SPEED Act*, explaining why a quicker permitting process advances U.S. economic growth.

Recommendations

Strengthen Grid Reliability and Expansion: Electricity demand is surging. Lawmakers must encourage investments to support quick, cost-effective, and reliable power.

Prioritize Building Efficiency: Reducing energy use in buildings—"nega-watts"—is the lowest-cost pathway to achieving U.S. energy dominance.

Embrace "All of the Above" Energy Creation: America must lead across all energy technologies, regardless of fuel source, to achieve America's energy dominance.

Pass Permitting Reform (SPEED Act): The National Environmental Policy Act (NEPA) must be reformed to speed up the lengthy, burdensome permitting process for new energy projects. Also, projects once approved should be allowed to finish—and later political administrations should be barred from revoking previously and legitimately issued permits.

The Real Estate Roundtable

Clean Energy Tax Incentives and the One Big Beautiful Bill (OB3) Act

Energy

Summary

On July 4, 2025, President Trump signed the One Big Beautiful Bill (OB3) Act into law. It makes significant changes to energy-related tax benefits pre-dating and modified by the Biden-era Inflation Reduction Act (IRA).

This document summarizes how the OB3 Act treats solar, storage, energy efficiency, and similar projects in commercial and multifamily real estate. A detailed fact sheet on RER's website (here) provides a deeper analysis of the complex rules regarding tax incentives that may accelerate ROI for energy-related cap ex projects.

Key Takeaways

Energy-related building investments that begin construction in 2025 and after should consider:

- **Tax credits that start to phase out over the next one to five years** (e.g., the Section 48E "tech neutral" credit for solar generation; the Section 179D deduction and 45L credit for energy efficiency projects; and the 30C credit for EV charging stations);
- **Tax credits that remain available well into the 2030s** (e.g., Section 48E for energy storage); and
- **Permanent options for "full expensing" that may accelerate tax write-offs** of energy-related building investments, regardless of Section 48E or other tax credit availability.

Background

Solar Tax Credits for Building-Related Energy Projects

- **"Small Solar" projects generating under 1 MW of electricity:** Can qualify for a 30 percent Section 48E tax credit without needing to satisfy the IRS's Davis-Bacon wage and Registered Apprenticeship (DB/RA) standards. Further, "Small Solar" can meet relatively straightforward IRS rules to determine the "beginning of construction" date using the so-called "Five Percent Safe Harbor" (see Notice 2025-42), which is key to 48E tax credit eligibility and expiration.
- **"Low Output" solar projects generating between 1 MW and 1.5 MW:** Must satisfy optional DB/RA rules to reach 30 percent tax credit levels. Easier "beginning of construction" rules are available under the Five Percent Safe Harbor.
- **Solar projects generating greater than 1.5 MW:** Must satisfy optional DB/RA rules for a 30 percent tax credit. More challenging "beginning of construction" rules apply under the "Physical Work" test (i.e., the Five Percent Safe Harbor is not available).
- **Phasedown of the current Section 48E "tech neutral" tax credit for solar and wind projects:** If a solar/wind project **begins construction in 2025**, it must be "placed in service" by the end of 2029. If construction **begins between Jan. 1-July 4, 2026**, the project must be "placed in service" by the end of 2030. If construction **begins on or after July 5, 2026**, the project must be "placed in service" by the end of 2027.
- Available credits may be **transferred to third parties unrelated to the taxpayer**.
- **Complex new "foreign entity of concern" (FEOC) provisions restrict projects from accessing Section 48E tax credits**. New FEOC rules require careful review and analysis. Projects that begin construction on or after Jan. 1, 2026, will **not** be eligible for Section 48E (and other) credits if they receive "material assistance" from a "prohibited foreign entity" (e.g., a Chinese company) that manufactures components like solar cells or batteries.

Storage and EV Charging Stations

- **The 48E tax credit remains fully available for energy storage projects through 2033**.
- **The amount of 48E credits for a storage project depends on its capacity**. A storage project with a capacity of less than 1 MW is eligible for a 30 percent 48E credit, whereas a capacity of 1 MW or more is eligible for a 30 percent 48E credit if it complies with the DB/RA option. If it does not comply with DB/RA, it is eligible for a 6 percent tax credit.
- **The 30C tax credit for EV charging stations remains available** for property "placed in service" by June 30, 2026.

Tax Incentives for Building Energy Efficiency Projects

- **The 45L tax credit for new energy-efficient homes:** Only available for homes "acquired" or rental units leased by June 30, 2026.
- **The 179D tax deduction for energy-efficient commercial and larger multifamily new construction and retrofits:** Projects must "begin construction" by June 30, 2026.

"Full Expensing" for Building-Related Energy Projects

- **Real estate businesses have a choice:** They can "elect" to deduct 100 percent of their business interest expense, **<u>or</u>** they can use favorable "bonus depreciation" rules to fully expense the costs of building improvements and "write off" all cap ex investments in the year they are placed in service. This "election" can be made on a partnership-by-partnership, or property-by-property, basis.
- **Real estate businesses opting for "full expensing" can write off all eligible energy-related project costs, with or without claiming energy tax credits.** A project may choose to "stack" both 48E credits and opt for bonus depreciation. An owner's tax basis in qualifying property is reduced by 50 percent of the credit amount, regardless of whether the taxpayer uses bonus depreciation or regular depreciation rules. If the property is later sold, the amount realized that exceeds the property's cost basis (after being reduced by the credit amount) may be treated as taxable gain.
- **What can be fully expensed:** Solar, energy storage, and EV charging property may be fully expensed. Existing **<u>commercial</u>** building energy efficiency "retrofit" components can be fully expensed if they meet the tax code's definition of "Qualified Improvement Property" (QIP)—non-structural, interior improvements to existing, non-residential portions of a commercial building. **<u>Residential</u>** "retrofit" efficiency components, by definition, are not QIP and are thus not eligible for full expensing.
- **Prevailing wage, apprenticeship, domestic content, and foreign entity restrictions**—which can limit access to clean energy tax credits—do **<u>not</u>** apply to "full expensing."

ENERGY STAR and Building Performance Standards

Summary

US-EPA's ENERGY STAR is a critical voluntary, non-regulatory public-private partnership focused on energy efficiency in buildings and products. Commercial, residential, and manufacturing stakeholders all rely heavily on ENERGY STAR certifications and other offerings.

The good news is that Congress is poised to pass sufficient ENERGY STAR funding for FY'26—a very positive development given the Trump administration's signals last sping to potentially de-fund and privatize the program.

Meanwhile, a number of progressive cities and states (map) have enacted building performance standards (BPS). These mandates impose rules regarding building emissions, electrification, and compliance timelines. The regulatory specifics vary from jurisdiction to jurisdiction—making compliance exceedingly complex and expensive. To help bring consistency to the nationwide "patchwork" of BPS regulations, **RER has developed a peer-reviewed policy guide outlining 20 key considerations for any jurisdiction adopting a BPS law.**

In addition, non-governmental organizations (NGOs) have developed their own BPS-type standards and climate accounting frameworks. Chief among these is the World Resources Institute's Greenhouse Gas (GHG) Protocol, and the Science Based Targets Initiative (SBTi). These NGO standards increasingly influence decisions of certain pension and sovereign wealth funds, pressuring CRE and other companies to "align" with "net-zero" targets as a condition to providing investment capital.

Key Takeaways

- **Voluntary, non-regulatory federal guidelines like ENERGY STAR recognizing "high performance" real estate remain critical.** These programs help quantify energy savings, attract capital, place less strain on the grid, and promote innovation in U.S. buildings.
- More than 330,000 buildings—representing nearly 25 percent of U.S. commercial building floor space—utilized EPA's Portfolio Manager software last year.
- ENERGY STAR-certified buildings achieve an average of 35 percent less energy usage compared to similar non-certified buildings. The program has saved businesses and families nearly $200 billion in utility bills since 1992, including $14 billion in 2024 alone.
- States and cities are adopting BPS mandates that often impose rigid electrification or net zero emissions targets. These laws vary significantly and frequently penalize buildings already recognized as high-performance assets under federal programs.

Background

Building Performance Standards

- No federal agency has authority from Congress to regulate private sector buildings through a national building performance standard (BPS).
- "Progressive" state and local governments are adopting and implementing BPS laws that impose energy and climate performance mandates on real estate.
- These laws typically set annual limits on how much energy buildings can use and how much greenhouse gases (GHGs) they can emit, with an ultimate goal of reaching net zero emissions around 2050.
- Failing to meet local BPS requirements can result in fines and penalties on buildings.
- The Trump administration's April 8, 2025 Executive Order on "Protecting American Energy from State Overreach" reflects the administration's view that "American energy dominance is threatened when State and local governments seek to regulate energy beyond their constitutional or statutory authorities."

Recommendations

Support ENERGY STAR: Programs like EPA's ENERGY STAR and "NextGen" certified buildings and DOE's Better Buildings initiative signify "high performance" real estate and are critical to unleashing America's energy dominance.

- **ENERGY STAR helps "unleash American energy dominance" aligned with President Trump's priorities.** It is key to the "all of the above" national energy strategy because it is the main U.S. government program focused on avoiding energy waste. It provides the federal standard to use all energy resources efficiently regardless of fuel source.
- ENERGY STAR is a **voluntary federal program**. It is a non-regulatory public-private partnership. It is embedded in how residential and commercial owners operate buildings and has supported the commercial real estate industry for more than 30 years.
- ENERGY STAR has always been **widely bipartisan**. On multiple occasions, big majorities of Congress during both Republican and Democratic administrations have authorized and funded the program.
- **U.S. commercial building owners use ENERGY STAR to save money and earn profit.** ENERGY STAR is all about the "business case" for energy efficiency. The program has saved families and businesses:
    - $200 billion in utility bills since inception; and $14 billion in energy cost savings in 2024 alone.
- ENERGY STAR assists real estate companies in helping their **renter families and business tenants lower their utility bills.** It gives owners the tools to effectively quantify and communicate how much energy tenants use in the spaces they lease.
- ENERGY STAR **improves grid reliability**. It quantifies how buildings can free-up capacity on the electric grid needed to grow AI, crypto markets, and U.S. manufacturing.
    - ENERGY STAR certified buildings—including data centers—use 35 percent less energy compared to similar buildings in their asset class.
    - In 2024, ENERGY STAR helped buildings and plants save kWh equal to about 92 percent of all electricity used in the state of Florida in a single year.
- The U.S. real estate industry needs ENERGY STAR to **attract investment capital**—especially from overseas. We use ENERGY STAR to push back against unrealistic "net zero" requirements from Europe and elsewhere.
- Real estate is **aligned with the manufacturing sector**. We support ENERGY STAR with the appliance-side of the program, and are pursuing joint advocacy to Congress and the federal agencies.

Ensure Fair and Reasonable BPS Laws: States and localities should ensure their building performance mandates reflect the 20 points raised in RER's peer-reviewed policy guide, which provides extensive guidance and detailed stakeholder input.

- Chief among these points: US-EPA and US-DOE guidelines should offer compliance pathways with state/local BPS laws. Uniform federal criteria can bring rationality and consistency to the chaotic "patchwork" of BPS regulatory mandates across the country.
- No city or state BPS law should fine or penalize a "high performance" building recognized by US-EPA or US-DOE partnerships.
- Policymakers must also consider how BPS regulations impact key points such as:
    - Affordability and supply of housing for low-income and working class families;
    - Availability of debt, equity, and incentives to pay for all of the retrofit projects induced by BPS laws;
    - Reliability of local grids to provide electricity, if power infrastructure is strained by all of the extra loads caused by building electrification;
    - Achievability of goals to reduce overall emissions, if the community's electric grid relies heavily on fossil fuels; and

    - Accessibility of market-based programs (e.g., RECs) to purchase clean power to help achieve an "all of the above" energy strategy.

GHG Protcol's Proposed Changes to Scope 2 Guidelines are Impractical—and Should Not be Adopted:

- GHG Protocol recommendations to change its "Scope 2 Guidelines" to account for emissions from purchased electricity, steam, heat and cooling, would not be workable or practicable for U.S. real estate assets.
- RER and other real estate industry groups do not support GHG Protocol's proposal to require so-called "24/7 matching" for bulk clean energy purchases.
- It is not feasible to require companies that contract for clean energy to match power consumption with emissions-free generation every hour, of every day, co-located on-site and/or within the same local grid segment.
- GHG Protocol should continue to allow optional 24/7 matching—but not require it under their Guidelines.
- Mandating strict time and place restrictions for corporate procurements like Renewable Energy Certificates will make compliance burdens with the Scope 2 Guidelines too onerous—and disincentize private sector investments in clean energy.

Cyber and Physical Threats to U.S. Real Estate

Homeland Security

Summary

The rising incidence of violent crime, organized retail crime, civil unrest, cyber-attacks, artificial intelligence (AI), and the renewed threat of terrorism have prompted increased vigilance, information sharing, and legislative efforts to improve our nation's resilience. The proliferation of these threats has raised concerns in the commercial facilities sector about how to protect commercial properties and the people who occupy them from such threats.

In addition to the challenges posed by these threats, the Russian invasion of Ukraine, conflict in the Middle East, and rising tensions in Asia have raised security concerns about the increased incidence of cyber-attacks from the Russian Federation, the People's Republic of China (PRC), Iran, North Korea, and other state actors.

Information sharing is vital for the commercial facilities sector to enhance cybersecurity, improve incident response, mitigate physical threats, build community resilience, and maintain a competitive edge by fostering collaboration and innovation among different facilities and organizations.

The real estate industry, in partnership with policymakers and law enforcement officials, must remain vigilant to potential threats to our critical infrastructure from cyber or physical threats.

Key Takeaways

- Recent high-profile hacking attacks have brought to the fore the necessity of **fortifying the nation's IT infrastructure against cyber-attacks**. Additionally, there are **growing concerns about AI having the potential to create new risks**. Key concerns include the risk of cyberattacks exploiting AI vulnerabilities, leading to unauthorized access to facilities or sensitive data.
- RER continues to promote security measures against both physical and cyber threats by facilitating increased information sharing and cooperation among its membership with key law enforcement and intelligence agencies, including as part of RER's **Homeland Security Task Force and Real Estate Information Sharing and Analysis Center (RE-ISAC)**.
- Policymakers should avoid imposing duplicative and inconsistent regulations that create additional challenges for those tasked with defending the nation's critical infrastructure, including the commercial facilities (CF) sector, and undermine cyber preparedness.

Background

CISA 2015 Reauthorization – Critical for Information Sharing

- The Cybersecurity Information Sharing Act of 2015 (CISA 2015) was designed to encourage and protect the sharing of cyber threat information between private sector companies and the federal government. The act was a cornerstone of public-private partnership in cybersecurity, enhancing national defense and economic security. Yet, Congress failed to reauthorize CISA 2015, and it expired on Sept. 30, 2025 amid the government shutdown fight.
- The primary impact of this lapse is the loss of specific legal protections for private companies sharing cybersecurity threat information with the government. While sharing may continue, the lack of explicit liability and antitrust shields could reduce the flow of critical threat intelligence, weakening a key defense against increasingly sophisticated cyberattacks.
- The House Homeland Security Committee, led by Chairman Andrew Garbarino (R-NY), advanced a reauthorization bill, the *Widespread Information Management for the Welfare of Infrastructure and Government (WIMWIG) Act* (H.R.5079). Chairman Garbarino's bill seeks to reauthorize CISA 2015 for 10 years and update it to address artificial intelligence and supply chain threats.
- Reauthorization efforts stalled in the Senate, primarily due to objections from Senator Rand Paul (R-KY). Sen. Paul blocked efforts to pass a clean reauthorization, citing concerns about CISA's involvement in

combating online misinformation and disinformation. The Real Estate Roundtable supports Chairman Garbarino's bill and is working to advance this important legislation.

National Cybersecurity Strategy

- First released in early 2023, the U.S. National Cybersecurity Strategy was designed to "secure the full benefits of a safe and secure digital ecosystem for all Americans" and bolster collaboration between the public and private sectors to ensure a secure cyber ecosystem, according to a White House statement.
- In May 2024, the U.S. government announced that several aspects of the U.S. National Cybersecurity Strategy were advanced or had gone into force. This includes progress on scores of objectives, including developing cybersecurity scenario exercises to help critical infrastructure owners prepare for attacks from nation states and malicious cyber actors and proposing changes to the way the government maintains security.
- The strategy also aims to ensure that the U.S. stays at the forefront of developing cybersecurity standards and establishes a State Department Bureau of Cyberspace and Digital Policy to build international partnerships to counter malicious cyber actors.
- The Office of the National Cyber Director (ONCD) issued a report that discusses its efforts to develop "a comprehensive policy framework for regulatory harmonization" that aims to "strengthen" cybersecurity resilience across critical infrastructure sectors, "simplify" the work of sector-specific regulators while taking advantage of their unique expertise, and "substantially reduce the administrative burden and cost on regulated entities." Comments indicate frustration with a disjointed regulatory environment that increased compliance costs without a commensurate enhancement in cybersecurity.
- The ONCD plans to use the report to inform its pilot effort to develop a reciprocity framework for a designated critical infrastructure sector. A companion blog post from the head of ONCD describes the pilot as seeking to "design a cybersecurity regulatory approach from the ground up." The blog calls on Congress for help to bring relevant agencies together "to develop a cross-sector framework for harmonization and reciprocity for baseline cybersecurity requirements."

Recommendations

Strengthen Preparedness and Info Sharing: Policymakers and law enforcement agencies must advance efforts to counter potential physical and cyber threats, especially to critical infrastructure. The real estate industry remains an important partner in these efforts.

- As a critical part of the nation's infrastructure, real estate continues to assess and strengthen its cyber and physical defenses to protect our industry from an array of threats.
- In addition to civil unrest, organized retail crime, and violent attacks on properties across the U.S., real estate continues to face a variety of cyber and physical threats, such as:
    - Disruptive and destructive cyber operations against strategic targets, including an increased interest in control systems and operational technology;
    - Cyber-enabled espionage and intellectual property theft;
    - Improvised explosive devices (IEDs);
    - Attacks against U.S. citizens and interests abroad and similar attacks in the homeland;
    - Tenant fraud; and
    - Unmanned aircraft system (UAS) attacks against hardened and soft targets.
- Through a Cybersecurity Information Sharing and Collaboration Agreement with DHS's CISA, the RE-ISAC engages in operational efforts to better coordinate activities supporting the detection, prevention, and mitigation of cybersecurity, communications reliability, and related data threats to critical infrastructure.
- RER supports the *WIMWIG Act* introduced to reauthorize and make updates to CISA 2015.
- RER remains focused on measures that businesses can take—such as creating resilient infrastructure that is resistant to physical damage and cyber breaches—to better prepare for potential threats.