The Real Estate Roundtable

Real Estate Roundtable Policy Priorities May 2025

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Policy Priorities – May 2025

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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Preserving Business Property Tax Deductions

Tax Policy

Summary

As part of the budget reconciliation process and in order to finance a growing list of tax priorities, members of Congress have considered limitations on the federal tax deduction for state and local taxes paid by businesses ("Business SALT") as a source of new revenue. These restrictions could take several forms. A cap on the deductibility of business-related property taxes would have devastating consequences for commercial real estate values, rents, and the entire economy and financial system. The tax legislation passed by the House Ways and Means Committee in May does not limit the deductibility of state and local business-related property taxes.

RER has strongly urged Congress to preserve the deductibility of state and local business property taxes to avoid the detrimental impacts that would result from changing this policy.

Key Takeaways

- State and local property taxes represent, on average, **40 percent** of the operating costs of U.S. commercial real estate, a greater expense than utilities, maintenance, and insurance costs combined.
- Business-related property taxes are different from state and local income taxes. Property taxes are an **unavoidable expense**, an inescapable cost of operating any business. They are a cash outlay that is owed **regardless** of whether the business has any income at all.
- Analysis by the Tax Foundation indicates that disallowing corporate SALT deductions for corporate income and property taxes would reduce GDP and American incomes by 0.6 percent and reduce hours worked by 147,000 full-time equivalent jobs.

Background

2017 Tax Cuts and Jobs Act (TCJA)

- The TCJA imposed a $10,000 cap on the deductibility of state and local income and property taxes paid by individuals.
- The bill retained the deductibility of state and local business taxes, including property taxes on business property (property used in a trade or business, or property held for investment), state corporate income taxes, and state income taxes paid at the entity-level (state pass-through "work around" regimes).
- Business SALT restrictions are considered a potential offset for individual SALT relief, an extension of already-expired business provisions (e.g., bonus depreciation), or a further reduction of the corporate rate.
- Advocates of limiting the deductibility of Business SALT offer two policy arguments.
    - Some suggest, as a matter of tax parity, that businesses should be treated the same as individuals.
    - Others argue that restricting the Business SALT deduction would put pressure on states to further lower their tax burden on job creators.

Recommendations

Preserve the Deductibility of Business SALT: Repealing the deductibility of state and local business property taxes would cause unimaginable damage to U.S. commercial real estate, local communities, and the broader economy and must be avoided.

- Eliminating or capping the Business SALT deduction could **raise effective tax rates to 1970s-era levels near 50 percent**, discouraging investment in housing, infrastructure, and economic development projects nationwide.
- This would **reverse** the benefits of the TCJA and Section 199A, in effect **raising business owners' property tax bills by roughly 40 percent** and causing employers to owe federal tax on money that they do

not have.

- Real estate values would fall as investors rush to exit the market, and banks and other lending institutions would face increased negative pressure.
- Foreclosures, insolvencies, and massive layoffs would result, and new investment would dry up.
- Changing deductibility of Business SALT would **hit lower-rent housing the hardest**, drive up operating costs, and deter construction at a time when housing affordability is already at a crisis point.
    - The cost will be passed through to tenants as landlords are forced to raise rents. Lower-income renters will be hit the hardest because property taxes are a larger percentage of the total cost for these properties.
    - In addition to stalling housing development and eroding property values, repealing Business SALT deductions would undercut local tax bases that fund schools, fire departments, and more. These public services and others would suffer as local tax revenue declines.

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Pass-Through Business Income

Tax Policy

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.

The 20 percent deduction for pass-through business income enacted in 2017, Section 199A of the tax code, **expires at the end of 2025**. At that time, the effective marginal rate on pass-through business income would rise by over one-third. Tax legislation passed by the House Ways and Means Committee in May would permanently extend Section 199A and increase the deduction to 23 percent, lowering the top effective tax rate on qualifying income to 28.49 percent.

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.
- Listed 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

2017 Tax Cuts and Jobs Act (TCJA)

- In 2017, Congress reduced the corporate tax rate by **40 percent** and created a new **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.
- Section 199A expires at the end of 2025. At that time, the effective marginal rate on pass-through business income is projected to increase significantly, from **29.6 percent to 39.6 percent**.
- 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.
- The Trump administration supports extending all of the expiring 2017 tax cuts, including Section 199A.

Recommendations

Extend 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.
- Section 199A also helps preserve tax fairness vis-à-vis large corporations, promoting competition and entity choice.

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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.

This year, both Republican and Democratic leaders have proposed making policy changes that would increase the tax burden on carried interest. President Trump has 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 reportedly pushed 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 this year 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 bill 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

Preserve 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 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.

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Opportunity Zones

Tax Policy

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.

This year, the renewal and reform of the OZ tax incentives is expected to be a **major topic of discussion** as Congress considers the **extension** of the Tax Cuts and Jobs Act of 2017. RER has advocated for a long-term extension of the OZ incentives, as well as additional reforms to scale their impact and improve their effectiveness.

Tax legislation passed by the House Ways and Means Committee in May would extend OZ incentives through 2033, create new benefits for rural OZs, call for a new round of OZ census tract designations, and make other reforms to the provisions.

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 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. The tax benefits are **gradually phasing down**, with the deferral of prior gain ending in **2026**. The partial basis step-up has expired for new OZ fund contributions.
- In the last Congress, bipartisan House legislation (Reps. Mike Kelly, R-PA and Dan Kildee, D-MI; H.R. 5761) would extend OZ deadlines for two years, allow helpful "fund of funds" OZ tax structures, sunset certain high-income OZ census tracts, and create new OZ information reporting and transparency rules.

Recommendations

Provide a Long-Term Extension of OZ Deadlines: Congress should ensure that OZs continue to act as a catalyst for economic development in struggling communities by passing legislation that extends OZ deadlines.

- In the case of new investments, two of the three OZ tax incentives have either expired altogether or phased down. The third and **most important benefit**, the exclusion of gain on OZ investments held at least 10 years, expires for new investments made after December 31, 2026.
- A long-term extension will avoid disruption to the growing ecosystem of opportunity funds and the network of OZ investors that are mobilizing private capital for low-income communities and creating new jobs, housing, and economic opportunities for their residents.

Supplement the Extension of OZs with Well-Designed Reforms: Congress should also continue working on improvements to the OZ tax incentives to boost their scale and impact. RER encourages Congress to enact the following reforms:

- Remove limitations on the type of capital eligible for investment in Opportunity Funds.
- Add a new OZ tax benefit for the conversion of older, obsolete commercial buildings to housing.
- Establish a rolling deferral period and reinstate a basis step-up for new OZ investments.
- Codify, lengthen, and improve the OZ working capital safe harbor.
- Increase flexibility of Opportunity Fund ownership, investment, restructuring, and leasing arrangements.
- Modify the substantial improvement threshold to cover a broad range of real estate rehabilitation and development projects.
- Promote greater foreign investment.
- Establish information reporting and transparency requirements.

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Preferential Rate and Realization Requirement

Tax Policy

Summary

It has become standard practice in the United States to tax 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. 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 bring 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.

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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 prior Biden administration proposed restrictions on gains deferred through like-kind exchanges. **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.).
- 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.

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).

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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.

Since 2022, the general 30 percent business interest limitation has applied a less favorable rule that uses the taxpayer's EBIT (earnings before interest and tax) rather than EBITDA as the base for measuring the amount of deductible interest. In 2025, extension of EBITDA rule, which was in effect from 2018-2021, is under review as Congress considers extension of the 2017 tax bill.

Tax legislation passed by the House Ways and Means Committee in May would reinstate the EBITDA tax rule for business interest deductibility for five years: 2025-2029.

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

EBITDA Rule

- 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 equipment and machinery (not real estate) 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.

Recommendations

Extend the EBITDA Rule: Congress should extend the EBITDA rule that was in effect from 2018-2021 and avoid passing 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.

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

Tax Policy

Summary

Under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), foreign investors are generally subject to U.S. capital gains tax on sales of U.S. real estate and most REIT shares—unlike gains on other U.S. investments. However, an exemption exists for domestically controlled REITs, where less than 50 percent of the shares are held "directly or indirectly" by foreign persons.

In April 2024, the Treasury Department issued final regulations under FIRPTA that changed the previous interpretation of the phrase "directly or indirectly" and introduced a sweeping new "look-through" rule. Though these changes aim to safeguard national security, they risk discouraging essential foreign capital crucial for refinancing and sustaining U.S. commercial real estate markets, particularly given upcoming debt maturities.

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.

RER has advocated for the withdrawal of the "look-through" rule and the restoration of a stable, predictable framework for foreign investment in U.S. real estate.

Key Takeaways

- The FIRPTA look-through rule is legally unsound, economically harmful, and inconsistent with congressional intent.
- Foreign investment is a major source of capital for U.S. commercial real estate, leading to job creation and economic growth for communities throughout our nation.
- Many investment funds that are controlled or advised by regulated U.S. asset managers source investment capital in global capital markets.
- 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.

Background

New "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.

- In such cases, the REIT shares held by the domestic C corporation are attributed up to its shareholders and counted as foreign-owned. The rule applies retroactively, including to long-established structures created under the prior legal regime.
- 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.”

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. Treasury should formally withdraw the “look-through” rule and issue sub-regulatory guidance allowing taxpayers to rely on the forthcoming withdrawal.

- **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.
- **The legal case against the look-through rule is even stronger today** in the wake of the Supreme Court’s *Loper Bright* decision, in which the Court significantly narrowed the deference to which regulatory agencies are entitled when rulemaking.
- While RER supports efforts to protect national security as well as the integrity of commercial real estate investments, we have concerns about rules that may hinder foreign investment in U.S. real estate by legitimate enterprises and capital formation by law-abiding entities.

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.

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

Capital and Credit

Summary

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

- As urged by RER, a policy statement—*Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts*—issued by regulatory agencies encouraging financial institutions to work constructively with creditworthy borrowers on CRE loan workouts is helping to see loans through the current environment.
- Many of these loans require additional equity, and borrowers still need time to restructure this debt.
- Capital formation is vital to help restructure maturing debt and fill the equity gap.

It is also important to avoid pro-cyclical regulatory actions such as the *Basel III Endgame*.

A revised *Basel III Endgame* proposal announced in September 2024 would have increased Tier 1 capital requirements for global systemically important banks by roughly 9 percent. Concerns remain that any increase in capital requirements will have a pro-cyclical impact on credit capacity and carry a cost to commercial real estate and the overall economy, increasing the cost of credit and constraining capacity.

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

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

Key Takeaways

- Providing banks with the flexibility to work constructively with their borrowers during times of economic stress has led to **billions of dollars of loan restructurings and reduced undue stress in bank loan portfolios**.
- The proposed *Basel III Endgame* regulations would come at a **significant economic cost** without clear benefits to the economy.
- The largest U.S. banks' capital and liquidity levels have grown dramatically since the original Basel III standards were implemented in 2013 in response to the 2008 Global Financial Crisis. **Since 2009, Tier 1 capital has increased by 56 percent and Common Equity Tier 1 capital has tripled**. Today, as the Federal Reserve recently observed, the U.S. "banking system is sound and resilient, with strong capital and liquidity."[1]
- Further, it is important to bring more foreign capital into U.S. real estate by lifting legal barriers to investment, as well as **repealing or reforming** the archaic Foreign Investment in Real Property Tax Act (FIRPTA).

Background

Basel III Endgame

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

- The original *Basel III Endgame* proposal would have increased capital requirements for the largest banks by as much as 20 percent.
- Based on the resounding opposition to the proposal from the industry participants, a revised proposal was announced in September by Michael Barr, the outgoing Fed Vice Chair for Supervision, that would increase Tier 1 capital requirements for systemically important global banks by approximately 9 percent—less than half of what would have been required in the original proposal.
- Nonetheless, there are still concerns about the impact the change will have on commercial real estate and the overall economy. Former Fed Vice Chair Randy Quarles warned it is a "mistake," saying, "It will restrict the ability of the financial system to provide support for the real economy."
- The revised proposal reduces risk weights for certain residential mortgages and retail exposures, extending this reduction to low-risk corporate debt. Commercial real estate risk weights remain unclear.

Recommendations

Withdraw the Proposal to Increase Capital Requirements: While well-intentioned, we are concerned that the proposals could increase the cost of credit, diminish lending capacity, and undermine the essential role banks play in lending and financial intermediation for real estate.

- With new supervisory leadership at the Fed, the *Endgame* proposal could be scrapped or be capital neutral.
- As outlined in RER's January 2024 comment letter, the potential significant increase in capital requirements for large banks' capital market activities due to the *Basel* proposal could materially reduce the depth of banks' product and services offerings to the real estate sector, which will in turn lead to an **increase in hedging risk and the cost of raising capital in the industry**.

Support Robust Capital Formation: Additional capital is called for to help restructure and transition the ownership and refinancing of commercial real estate from a period of low rates to a time of higher rates. Additional capital is an essential element to this restructuring, and enacting policies that will encourage robust capital formation is imperative.

The Real Estate Roundtable

Commercial Insurance Coverage in an Evolving Threat Environment

Capital and Credit

Summary

The proliferation of natural catastrophe threats has raised concerns about commercial insurance coverage for real estate. These concerns have highlighted the lack of—and need for—insurance capacity and various lines of commercial insurance. Risks from natural disasters like floods, hurricanes, wildfires, hail, tornadoes and drought cost the U.S. billions of dollars each year. Even if policyholders are able to find coverage for these various lines, prices are increasing dramatically. A lack of adequate coverage will lead to economic uncertainty, harm stakeholders, and undermine the growth of communities.

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

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

Key Takeaways

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

Background

Current Insurance Environment

- Real estate insurance rates have spiked, with consecutive quarterly increases in overall premiums.
- The nation has seen years of atypical weather patterns and historic losses from natural catastrophes attributed to climate change—economic damages have tripled in cost from just 10 years ago.
- High reinsurance costs and a lack of reinsurance capacity also contribute to higher premiums.
- The U.S. insurance industry is regulated at state-level, with no central federal regulation.

National Flood Insurance Program (NFIP)

- Floods are the most common, costliest natural peril in the U.S. The NFIP was enacted in 1968 due to a lack of private insurance and increases in federal disaster aid.
- The Program is administered by the Federal Emergency Management Agency (FEMA) and is essential for homeowners, renters, and small businesses in affected areas.
- Under the NFIP, commercial property flood insurance limits are low—$500,000 per building and $500,000 for its contents. NFIP has approximately 5 million total properties, and only 6.7 percent are commercial.

Nearly 70 percent of NFIP is devoted to single-family homes and 20 percent to condominiums. In the total program, 80 percent pay actuarial sound rates; however, in the commercial space, only 60 percent pay actuarial sound rates.

- Congressional hearings have **illuminated numerous acute problems** surrounding the NFIP, such as insolvency, increased risk of flooding across the country, and insufficient and inaccurate flood mapping. The unintended negative outcomes generated by the NFIP continue to grow and are now spreading to GSEs (government-sponsored enterprises) Fannie Mae and Freddie Mac.
- The NFIP is currently operating under a continuing resolution. Since 2017, Congress has extended the NFIP's authorization 33 times, though the program has lapsed briefly three times.
- As policymakers continue to debate potential changes and improvements to the program, their challenge is to find a balance between improving the financial solvency of the program, reducing taxpayer exposure, and addressing affordability concerns.

Recommendations

Enact a Long-Term Reauthorization of NFIP: The level of flood damage from recent storms makes it clear that FEMA needs a holistic plan to prepare the nation for managing the cost of catastrophic flooding under the NFIP.

- RER and its partners support a long-term reauthorization of an improved NFIP that helps property owners and renters prepare for and recover from future flood losses. NFIP is **essential** for residential markets, overall natural catastrophe insurance market capacity, and the broader economy.
- Going forward, it is important to protect American jobs and to ensure a **sustainable and speedy economic recovery** from future natural catastrophe events. If not remedied, these insurance gaps could hinder economic growth.

Increase Private Market Participation: By permitting certain private issue insurance policies to satisfy the NFIP's "mandatory purchase requirement" for properties in flood plains financed by loans from federally guaranteed institutions, commercial property owners would have the ability to "opt out" of mandatory NFIP commercial coverage if they have adequate private coverage outside the NFIP to cover financed assets.

- Lenders typically require base NFIP coverage, and commercial owners must purchase Supplemental Excess Flood Insurance for coverage above the NFIP limits. The NFIP's low commercial limits make it problematic for most commercial owners.
- As a result, RER has been seeking **a voluntary exemption** for mandatory NFIP coverage if property owners have flood coverage from commercial insurers.

Beneficial Ownership & Corporate Transparency Act

Capital and Credit

Summary

Under the Corporate Transparency Act (CTA), many U.S. businesses are required to disclose information on their "beneficial owners" under regulations issued (and to be issued) by the Treasury Department's Financial Crimes Enforcement Network (FinCEN).

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

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

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

Key Takeaways

- While the CTA and its implementing regulations are not specifically targeted to real estate businesses, **it will have a direct impact on the industry**.
- Certain types of entities will be exempt from the reporting requirements; however, these exemptions will not apply to many typical real estate limited liability companies and partnerships formed to own and operate commercial properties.
- There is significant concern about the CTA's far-reaching scope and its impact on many commercial and residential real estate businesses that use the LLC structure for conducting business.

Background

CTA Requirements

- The stated goal of the CTA is to prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity by requiring companies to disclose beneficial ownership information, or BOI, to FinCEN, a bureau of the U.S. Department of the Treasury.
- A beneficial owner refers to an individual who owns at least 25 percent of an entity or indirectly exercises "substantial control" over it.
- The CTA amended the Bank Secrecy Act to require corporations, limited liability companies, and similar entities to supply three categories of information: information about the entity, BOI, and information about the company applicants involved in forming the entity.
- The CTA authorizes FinCEN to collect and disclose beneficial ownership information to authorized government authorities and financial institutions, subject to effective safeguards and controls. The statute requires the submission of regular reports to the federal government that include a litany of sensitive personal identifiers of the owners, senior employees, and/or advisors of covered entities.
- While this disclosure obligation began on January 1, 2024, the U.S. Court of Appeals for the Fifth Circuit vacated the stay on December 26, 2024 and reinstated the nationwide preliminary injunction enjoining enforcement of the CTA and the Reporting Rule, including the impending reporting deadlines. The appellate court said it was taking such action in order to preserve the constitutional status quo while that court considers the parties' weighty substantive arguments in an expedited appeal.

Recommendations

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

- Although the measure is intended to provide support for law enforcement investigations into shell companies engaged in money laundering, tax evasion, and terrorism financing, it places many **costs and legal burdens on small businesses**, especially those in the real estate industry.
- In 2021, RER and its coalition partners submitted detailed comments to FinCEN regarding the development, disclosure, and maintenance of a new federal registry that will contain beneficial ownership information.
- The real estate coalition's extensive comments emphasize the "scope of the CTA is far-reaching and will impact many commercial residential real estate businesses who are frequent users of the LLC structure for conducting business. If not implemented with a clear set of rules and regulations, the CTA could result in an outcome of confusion, missteps, and ultimately fines on law-abiding businesses."
- In 2022, RER and its coalition partners submitted comments to Treasury and FinCEN that support efforts to thwart illegal money laundering in real estate, while encouraging policymakers to find a balanced approach that does not unfairly burden law-abiding businesses.
- RER continues to work with industry partners to address the implications of FinCEN's proposed rules and the impact they could have on capital formation and the commercial real estate industry.

Summary

In 2023, the Securities and Exchange Commission (SEC) proposed changes to require SEC-registered investment advisers to put all their clients' assets, including all digital assets like Bitcoin and certain physical assets like real estate, with "qualified custodians." The proposal would also require a written agreement between custodians and advisers, expand the "surprise examination" requirements, and enhance recordkeeping rules. These rules were originally designed for digital assets. "Reasonable" safeguarding requirements is ambiguous as applied to real estate. Furthermore, the SEC's release contains an inaccuracy regarding the way deeds evidencing ownership of real estate are recorded.

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

Key Takeaways

- Due to a variety of factors, real estate cannot readily be stolen, making the rule seem irrelevant to this asset class.
- In addition to the proposed Custody Rule, the SEC has a number of proposed rulemaking measures that could have a chilling effect on real estate capital markets, further impair liquidity, and be a "death by a thousand cuts" for commercial real estate.
- Capital formation is vital when credit markets tighten to restructure maturing debt.

Background

SEC Proposal

- On February 15, 2023, the SEC proposed *Safeguarding Advisory Client Assets*, which would significantly expand the requirements of the Custody Rule to maintain client assets with a qualified custodian for certain physical assets such as real estate.
- The SEC's release indicates that deeds evidencing ownership of real estate can be held at a qualified custodian—this is not accurate.
    - Deeds are recorded with a government authority. Land and buildings cannot be physically absconded.
    - Lenders and other interested parties have an interest in ensuring no misappropriation of real estate.
- Fortunately, on June 5, 2024, the U.S. Fifth Circuit Court of Appeals issued an opinion that vacated the SEC Private Fund Adviser Rules, holding that the SEC exceeded its statutory authority in adopting the rule. Specifically, the court held that the "promulgation of the [Rule] was unauthorized... no part of it can stand."
- With the change of administration, SEC Chair Gary Gensler has been replaced by SEC veteran Paul Atkins. Under Atkins' leadership, it is likely that the Commission may either withdraw the proposed rule altogether or grant an exception for real estate.

Recommendations

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

- Real estate cannot readily be stolen. As stated above, lenders and others have an interest in ensuring no misappropriation of real estate.

- Title insurance protects real estate investors against covered title defects, such as a previous owner's debt, liens, and other claims of ownership. It's an insurance policy that protects against past problems, whereas other insurances usually deal with future risks. Titles are recorded in the name of the acquiring entity by a government entity.
- Different jurisdictions present even more challenges. Different laws for titles exist between not only states but also countries. The rule applies to registered investment advisors regardless of where the asset is located.
- RER has submitted a comment letter to the SEC and met with senior staff from the investment management division, requesting an exception for real estate.

The Real Estate Roundtable
Expanding on the EB-5 Visa with the "Gold Card" Concept
Capital and Credit

Summary

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

Key Takeaways

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

Background

The EB-5 Visa Program

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

Recommendations

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

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

The Real Estate Roundtable

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;
    - Extending and improving Opportunity Zones (OZs);
    - Enacting the *Housing Affordability Act*; and
    - 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 Revit*alizing 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.

Extend and 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. Under current law, the OZ tax benefits are phasing down and will expire altogether for new investments made after December 31, 2026.
- 72 percent of U.S. counties contain at least one OZ. Recent estimates suggest OZs have attracted over $120 billion in capital.

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 12.5 percent increase in LIHTC allocations to states will expire at the end of 2025 and should be extended.
- 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, and the *Decent, Affordable, Safe Housing for All (DASH) Act*, which 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 Tax Cuts and Jobs Act of 2017 (TCJA) indirectly diminished the value of low-income housing credits because the corporate tax cut reduced the underlying tax liability of many tax credit purchasers, thereby decreasing demand for the credits in the marketplace.
- The *Tax Relief for American Families and Workers Act* (H.R. 7024), passed by the House in early 2024 and supported by RER, would expand LIHTC. The bill would temporarily increase credit allocations to states and lower the amount of private activity bond financing that an affordable housing project must receive in

order to receive credits outside of the capped state allocation process.

- The Trump administration's position on the expansion and improvement of the LIHTC is not yet clear.

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 new 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 significantly expand LIHTC, along the lines of the *Affordable Housing Credit Improvements (AHCI) Act* (S.1136, H.R. 2573 in the last Congress).

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

Support a Robust Single-Family Rental (SFR) Market: The SFR market holds great promise to increase the nation's housing supplies.

- Studies show that SFRs provide opportunities for upward social and economic mobility to households that are unable to buy homes but can rent in neighborhoods with better school districts.
- 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. Institutional capital is essential to expanding housing supply and addressing the chronic housing shortage affecting affordability nationwide.

The Real Estate Roundtable
GSE Reform and the Housing Finance System
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.

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 September 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 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 held approximately 21 percent of total multifamily real estate mortgages as of 2023. 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" and priorities announced by U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin and Department of Energy (DOE) Secretary Chris Wright emphasize the same principles: cutting energy costs, pursuing an "all of the above" strategy for American energy abundance, strengthening the nation's electric grid, streamlining federal permitting processes, and fostering innovation in artificial intelligence (AI).

The House Bipartisan Task Force on AI released a December 2024 report underscoring that America's economic and national security depend heavily on a robust and modernized power grid. Our nation needs enough energy to meet growing electricity demands driven by AI, advanced manufacturing, electric vehicle adoption—and to power our buildings. US-DOE projects that data centers will consume up to 12 percent of U.S. electricity by 2028, primarily to meet AI and cloud computing needs.

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

- Avoided energy use—or "nega-watts"—represents the **most cost-efficient strategy** for strengthening U.S. energy security. Building upgrades that reduce power demand save consumers money, support grid reliability, and free up energy use for more energy-intensive facilities like AI data centers and manufacturing.
- **Grid reliability is essential**. With surging electricity demand from AI and other key sectors, 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

U.S. Energy Demand, Grid Reliability, and Real Estate's Role

- A 2024 assessment authorized by Congress to assess grid capacity highlighted the "critical reliability challenges" needed to satisfy "escalating energy growth," as retiring power plants age out of service. The report also noted the need to accelerate construction of transmission projects to bring electricity to the nation's cities and suburbs.
- Patchwork efforts in states and localities across the country to mandate building performance standards (BPS) have also raised concerns about electricity availability, as requirements for greater electrification further increase power demand.
- In President Trump's address to a joint session of Congress in March 2025, he emphasized the administration's focus on reducing energy costs: "A major focus of our fight to defeat inflation is rapidly reducing the cost of energy… That's why, on my first day in office, I declared a national energy emergency… It's called 'drill, baby, drill.'"
- A recent report from the Center for Strategic & International Studies warns that while AI is digital, its biggest hurdle is physical infrastructure. The report explores using President Trump's energy "emergency" declaration to fast-track permitting and urges a stronger DOE role in accelerating nuclear projects.

- North America's data center sector doubled its construction supply in 2024 to a record 6,350.1 megawatts (MW), underscoring the increasing power demands of AI-driven computing, according to CBRE's latest North American Data Center Trend Report.
- Buildings account for nearly 40 percent of U.S. energy consumption and over 70 percent of electricity use, making the real estate sector an important stakeholder in grid modernization and energy efficiency investments.
- In April 2025, the Trump administration released an executive order titled, "Strengthening the Reliability and Security of the U.S. Electric Grid" in response to the unprecedented surge in electricity demand.

Recommendations

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

- The real estate industry—with appropriate policy support—can help bring stability to the grid by investing in power purchase agreements and market-based measures like renewable energy certificates (RECs) that help finance energy infrastructure.

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

- Federal tax incentives, voluntary standards, and public-private programs should prioritize scalable commercial energy retrofits.
- Policies encouraging building efficiency will save families and businesses money on utility bills, create jobs, and attract investors seeking to park capital in well-managed and profitable real estate assets.
- Congress and DOE should support power purchase agreements to finance upgrades to existing building stock.

Embrace "All of the Above" Energy Creation: America must lead across all energy technologies to unleash our country's energy dominance.

- Congress and DOE should expand R&D and commercialization pathways for natural gas, nuclear, geothermal, hydropower, battery storage, solar, wind, hydrogen, and carbon capture and storage (CCS). The U.S. cannot afford to cede leadership in developing any of these technologies to China or other competitors.
- Energy tax credits (e.g., 179D, 45L, 48, and 45X) and direct pay/transfer provisions under the Inflation Reduction Act (IRA) must be implemented in ways that work for REITs and real estate partnerships.

Streamline Permitting Reform: Federal policy can help modernize and speed up the lengthy, burdensome permitting process for new energy projects.

- Federal laws like the National Environmental Policy Act (NEPA), and orders from the Federal Energy Regulatory Commission (FERC), must emphasize streamlined approvals for energy generation projects.
- Policies must also support creation of long-distance, high-speed transmission lines to carry electricity over long distances and across state lines to our nation's population centers.

The Real Estate Roundtable
Corporate Sustainability Disclosures
Energy

Summary

Regulations in the U.S. and abroad seek to require companies to publicly disclose climate-related risks on their finances, operations, and assets. Some of these rules are proving more durable than others. While the Trump administration has rescinded Biden-era federal climate disclosure rules from the Securities and Exchange Commission (SEC), state governments and international regulators are advancing reporting regimes that could have major implications for U.S. real estate companies.

Key Takeaways

- Scope 3 emissions—such as tenant energy use or embodied carbon in building materials—**are not under the direct control of real estate owners and should remain voluntary**.
- The SEC's climate disclosure rule is on hold and not expected to advance during the current administration.
- California's climate disclosure laws (S.B. 253 and S.B. 261) will begin taking effect in 2026, requiring large companies doing business in California to report emissions and climate-related financial risks.
- The European Union has postponed compliance dates for its Corporate Sustainability Reporting Directive (CSRD) and has narrowed its scope substantially. In February 2025, the European Commission adopted a package to apply the CSRD only to the largest companies (more than 1000 employees), and to lessen Scope 3 reporting requirements on emissions from smaller companies in a reporting company's value chain. Large U.S. companies with EU operations may still face disclosure requirements when the CSRD goes into full effect.

Background

Federal, State, and International Rules

- Emissions are generally defined under three categories—Scope 1, 2, and 3 emissions.
    - Scope 1 emissions are direct emissions from sources owned or controlled by a company, such as boilers or vehicles.
    - Scope 2 emissions are indirect emissions from purchased electricity, steam, heating, or cooling consumed by the company.
    - Scope 3 emissions include all other indirect emissions in a company's value chain, such as emissions from suppliers, tenants, and the production of building materials.
- Biden-era rules from the SEC would have required registered companies to disclose "material" climate-related financial risks in 10-K filings. This included Scope 1 (direct) and Scope 2 (indirect) greenhouse gas emissions. Scope 3 disclosures were part of a draft rule but ultimately not included in the final rule.
- The Trump administration has withdrawn the Biden-era rule.
- A vacuum of federal climate reporting rules means "progressive" states are taking up the issue.
    - California enacted S.B. 253 and S.B. 261 in 2023. S.B. 253 requires companies doing business in California with annual revenues greater than $1 billion to report global Scope 1, 2, and 3 emissions, with disclosures ramped up over time. S.B 261 requires California businesses with annual revenues greater than $500 million to more generally disclose climate-related financial risks and measures to mitigate them.
    - The California Air Resources Board (CARB) is now developing rules to implement both laws, with filings scheduled to start in 2026. CARB has vowed to relax enforcement regarding the first Scope 1 and 2 reports under S.B. 253 only, currently due in 2026.

  - Similar bills have been introduced—though not enacted, and not in effect—in Colorado, Illinois, New Jersey, New York, and Washington state. Please do not consider this an exhaustive list.
- The European Commission recently announced simplified requirements under its Corporate Reporting Sustainability Directive (CRSD). The latest announcement reportedly removes 80 percent of companies from the CRSD's regulatory scope and limits the types of information large companies and banks must request from smaller companies in their supply chains regarding Scope 3 emissions.
- In its original form, CRSD would apply broadly to U.S. companies with EU subsidiaries and U.S. companies with listed securities on EU exchanges. The European Parliament has delayed CRSD implementation by two years (until June 2026) to give companies more time to prepare.

Recommendations

Clarify Emissions Reporting Boundaries: Real estate companies do not control most Scope 3 emission sources, thus they should not be mandated to publicly report these emissions. Disclosure should remain voluntary.

- Owners and developers do not control operations in tenant spaces or manufacturing processes for construction materials.
- Reporting requirements should reflect these operational boundaries and not penalize real estate companies for emissions outside their control.

Improve Data Access for Voluntary Scope 3 Reporting: Policymakers can encourage voluntary Scope 3 reporting by helping building owners and developers capture valid and reliable data from supply chain sources.

- Governments should develop policies for utilities to provide building owners with tenant space energy data.
- Similarly, government agencies should create a uniform system of "product declarations" for manufacturers to disclose embodied carbon in materials purchased by developers and owners.

Align Reporting Timelines Across Jurisdictions: Any reporting cycles should be consistent across varying disclosure regimes, based on when companies collect and verify valid climate-related data within a fiscal year.

- No framework should require companies to issue a first report based largely on estimates, and then another report later based on collected and verified data, within the same fiscal year.

The Real Estate Roundtable

Energy Tax Incentives for U.S. Real Estate

Energy

Summary

The Trump administration and congressional Republicans are committed to major tax code reform. Elimination and phase-down of Biden-era clean energy tax credits, signed into law in the Inflation Reduction Act of 2022 (IRA), will likely be achieved by the Republican majority.

For a description of the Biden-era IRA energy tax incentives important to commercial real estate, see RER's fact sheet here. For a description of the changes to IRA clean energy incentives proposed in the House Republican bill marked up by the Ways & Means Committee on May 14, 2025, see RER's fact sheet here. The situation is very much in flux. It is unclear which, if any, IRA tax incentives survive current tax reform discussions taking place in the spring-summer of 2025.

As long-term investment decisions are being made and real estate projects are already underway, uncertainty around the future of these tax incentives poses significant risks. **RER encourages that any potential phase-down of IRA energy incentives take place over a number of years. Existing projects that have begun construction and are relying on these credits must be permitted to continue using them until the projects are completed.**

Key Takeaways

- **Tax incentives that are most used and best promote an "all of the above" energy strategy should be preserved**. Several IRA provisions directly benefit commercial and multifamily buildings—including incentives for retrofits, solar and battery systems, and residential construction.
- Reports show that repealing the IRA could result in nearly 790,000 job losses, decrease GDP by more than $160 billion in 2030, and increase consumer energy costs by $6 billion annually by 2030.
- Many of the most impactful clean energy investments are occurring in Republican-held districts—79 percent of current clean power capacity and 77 percent of new additions are located in GOP districts.

Background

Inflation Reduction Act Energy Tax Incentives

- A number of the IRA's changes to the federal tax code may help the U.S. real estate sector reduce energy usage and emissions, particularly:
  - A deduction to help make commercial and multifamily buildings more energy efficient (Section 179D)
  - A credit to encourage investments in renewable energy generation, storage, grid interconnection, and other "clean energy" technologies sited at buildings and other facilities (Section 48)
  - A credit to incentivize EV charging stations (Section 30C)
  - A credit to incentivize energy-efficient new residential construction and major rehabs, including multifamily (Section 45L)
- The IRA ties full "bonus" incentives to compliance with prevailing wage and registered apprenticeship rules. These standards are often difficult to meet on private real estate projects, particularly those in markets with limited union labor availability. Treasury and IRS rules have added complex recordkeeping burdens that deter participation.
- The IRA allows many energy tax credits to be "transferred" to unrelated third parties for cash. This is particularly useful for REITs and partnerships that lack tax liability. However, administrative barriers remain, especially for "mixed" partnerships with both tax-exempt and for-profit owners, which often face reduced credit values.

Recommendations

Preserve Tax Incentives That Work: Many of the IRA's energy tax credits support energy savings and job creation in ways that align with private-sector capital flows. Congress should preserve the provisions that are working—particularly those that promote scalable building energy solutions.

- In particular, Section 48E and Section 45L tax credits support real estate investment and increase the deployment of distributed energy, solar, storage, and high-efficiency technologies in commercial and residential buildings across the country.
- These investments also help to reduce grid stress, which is especially important given surging electricity demand from AI, data centers, and electrification.

Protect Projects Already Underway: Many energy projects are already in progress with IRA incentives baked into their financial models. Unwinding these credits retroactively—or changing eligibility rules mid-construction—would destabilize markets, strand capital, and increase financing costs for real estate owners. Congress must provide certainty for current projects.

- Credit availability should be preserved for projects that have commenced construction or entered into binding financial agreements in reliance on IRA incentives.
- "Transition rules" should provide safe harbors for in-progress projects, ensuring they are not penalized by future legislative or regulatory changes.
- Any repeal or modification should be forward-looking only, with carveouts that respect prior investment decisions and avoid sudden, retroactive cost shocks.

Fix Barriers That Limit Real Estate Participation: Davis-Bacon prevailing wage and registered apprenticeship (PW/RA) requirements are limiting the ability of real estate owners to access the IRA's most generous "bonus" credit rates—especially in markets where unionized building trades are scarce or unavailable. Without changes to these labor standards, some energy upgrades and retrofit projects may not move forward.

- PW/RA rules should be relaxed, waived, or scaled for building retrofit projects under a certain size or budget threshold.
- DOE or IRS should consider alternate "good faith effort" pathways for real estate owners who cannot access sufficient numbers of certified apprentices or wage data.
- Federal agencies should release more timely guidance, digital tools, and market-specific clarity on how to comply with labor requirements in real estate contexts.
- Compliance burdens must be realistic for retrofit and clean energy projects that provide significant public benefits but may not involve large construction workforces.

Retain Credit Transferability: IRA provisions allow taxpayers to "transfer" certain credits to unrelated third parties. This policy enables more energy project deployment by REITs and other real estate owners who generally have no appetite to benefit from tax incentives.

- Congress should keep the "transfer" provisions, which support investment.
- Treasury/IRS should enact rules to optimize credit "transfer" benefits for mixed partnerships with for-profit and not-for-profit owners.
- IRS should ensure that allocations of credit and proceeds in a partnership context are treated as valid, non-taxable partnership transactions.

The Real Estate Roundtable

Building Performance Standards: Federal, Local, and NGO-Driven

Energy

Summary

The federal ENERGY STAR program must be preserved as a voluntary, non-regulatory public-private partnership. Proposed budget cuts and agency staff reorganizations from the Trump administration indicate that it may eliminate the program. Commercial, residential, and manufacturing stakeholders all rely on the program heavily and are united in advocating for its preservation.

Meanwhile, a number of progressive cities and states (map) have enacted building performance standards (BPS) mandates—with widely varying rules on 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 them the Science Based Targets Initiative (SBTi) and the World Resources Institute's Greenhouse Gas (GHG) Protocol. These NGO standards increasingly influence both regulatory policy and private capital markets. Many real estate lenders and equity investors have adopted SBTi and GHG Protocol frameworks to align with their ESG investment principles.

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).
- State and local governments are increasingly adopting 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

Defend 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. For RER, 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.
- We need ENERGY STAR to **counter state and local laws that ban natural gas in buildings**. If ENERGY STAR is not preserved, we lose a major tool to protect against "state and local regulatory overreach" identified by the Trump administration's Executive Order. In fact, RER has worked with DOE and EPA to structure ENERGY STAR to **allow** highly efficient use of gas appliances in buildings.
- It is critical to **keep Portfolio Manager up and running** to avoid regulatory chaos. If Portfolio Manager goes away, commercial and residential building owners would have no consistent, standard tool to comply with the "patchwork" of state and local building laws.
    - 330,000 buildings—or 25 percent of U.S. commercial floor space—use Portfolio Manager.
- HUD-financed buildings rely on ENERGY STAR as a **contractual obligation in multifamily mortgages**. Apartment owners get a reduction on HUD-required mortgage insurance—up to 40 basis points—by using Portfolio Manager.
- 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.

Increase Federal Oversight on BPS Mandates: The U.S. government should not award federal grants to induce states and localities to enforce BPS regulations on the real estate industry.

- Our system of federalism gives states and localities the right to develop BPS laws. If a jurisdiction chooses to do so, its laws should not be supported by U.S. taxpayer-funded grants resulting in costly, burdensome regulations.
- The U.S. government should not award BPS grants for local laws levying fines on buildings that the U.S. government itself lauds as "high performers"—such as through the US-EPA ENERGY STAR program.
- Congress should oversee federal BPS grant awards and examine how states and localities are spending this money supported by U.S. taxpayers.

The Real Estate Roundtable

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.

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

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;
    - Pandemic risk; 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 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.