Capital & Credit

Reliable credit capacity and robust capital formation are essential for the real estate industry. Maintaining stable debt and equity real estate capital markets requires policies that minimize regulatory burdens, encourage stable market valuations, reflect appropriate transparency, and provide necessary systemic safeguards. In practice, real estate is an essential industry that is vital to job creation and supporting the broader economy.

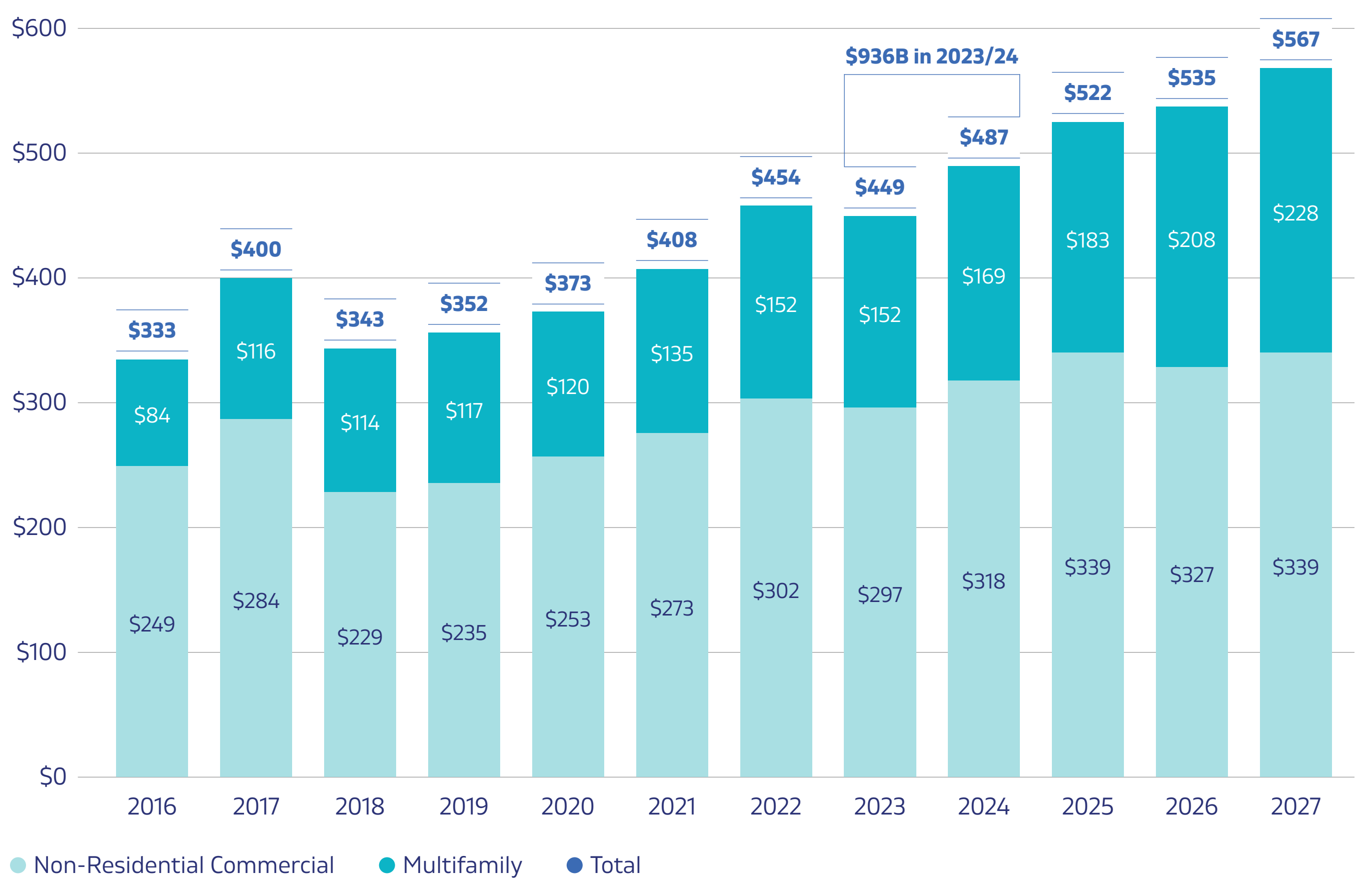
Maintaining Financial Stability in the Face of Volatility

Amidst a rising interest rate environment and heightened turmoil in the banking system, some $1.5 trillion in commercial and multifamily loans are maturing over the next three years, over half of which is held by commercial banks.[18] The bulk of these loans were financed when base rates were near zero. They now need to be refinanced in an environment where rates are much higher, values are much lower and in illiquid markets. Further complicating market fundamentals and urban economics, continued remote work has stalled office space demand. The combination of these forces exerted pressure on liquidity and increased refinancing challenges for many commercial real estate assets. Further, the higher rate environment has raised concerns about valuations, as the Federal Reserve noted in a February 2023 meeting.

Real Estate Debt Maturities[19]

$1.458T of CRE & MF debt maturing in next three years (2023, 2024, and 2025)

Commercial Mortgage Maturities, 2016 to 2027



Vice-Chair of the House Financial Services Committee Rep. French Hill (R-AR) discussed economic issues and CRE, the banking system, and monetary policy.

In response to these risks, and to prevent further market turmoil, The Roundtable wrote to the federal bank regulators to immediately reestablish a debt restructuring program so that financial institutions have the flexibility to work constructively with borrowers. Such a program has been used successfully before in response to the 2009 financial crisis, during the heat of COVID and is not inconsistent with the 2022 proposed regulatory guidance. To address this problem, lenders need to be given the leeway by regulators to work with borrowers to develop responsible, constructive refinancing plans. Such actions would allow time for capital markets to stabilize and the private sector to develop solutions.

President and CEO, Jeff DeBoer and other members of The Roundtable's Board of Directors raised awareness of these concerns and called for potential solutions during multiple media appearances. The Roundtable will continue to analyze the impact of recent bank crises and other macroeconomic factors on commercial real estate as the situation evolves, and ensure we continue to advocate for increased flexibility to avert an unnecessary crisis.

Roundtable President and CEO Jeffrey DeBoer and National Multifamily Housing Council President Sharon Géno appeared on the Walker Webcast, hosted by Roundtable Member Willy Walker (Walker & Dunlop), to discuss capital concerns affecting commercial and multifamily markets.

Relieving Regulatory Burden on Real Estate Capital Formation (SEC Private Fund Advisers & Form PF)

In 2022, the Securities and Exchange Commission (SEC) proposed rules that would significantly overhaul the regulation of the real estate private fund industry. The intent of the proposed rules was to protect investors and monitor systematic risk. Specifically, the rules proposed amendments to Form PF reporting requirements for certain private fund managers and proposed new and amended rules under the Investment Advisers Act of 1940 that would impose new SEC and investor reporting requirements on certain private fund advisers.

While we generally appreciate efforts taken by the Commission to protect investors and monitor risk, our comment letters in March and April of 2022, expressed concerns over the compliance and operational challenges the rules would create as well as the potential negative unintended economic consequences, such as decreased capital formation and job growth.

On May 3, 2023, the SEC approved harmful amendments to Form PF reporting requirements for private fund managers. The Roundtable will continue to analyze how these changes affect private funds and commercial real estate.

LIBOR Transition

For decades, the London Interbank Offer Rate (LIBOR) served as the prevailing reference rate for financial contracts—including commercial real estate debt, mortgages, student loans, and derivatives—worth an estimated $350 trillion.[20] However, the benchmark expired at the end of 2021, introducing significant uncertainty to the commercial real estate industry and the broader economy.

Last March, Congress passed the Roundtable-supported *Adjustable Interest Rate (LIBOR) Act*, designed to provide an orderly transition for so-called tough legacy contracts that do not have clear and practicable provisions for replacing LIBOR. More recently, the Financial Accounting Standards Board voted to extend accounting relief to companies transitioning financial contracts from the LIBOR benchmark to an alternative benchmark such as the Secured Overnight Financing Rate (SOFR).

In December of 2022, The Federal Reserve Board adopted SOFR as the fallback benchmark rate to replace LIBOR in certain financial contracts after LIBOR is phased out on

June 30, 2023. The Roundtable and 17 national trade groups previously submitted letters to policymakers supporting these measures.

These actions will aid the smooth transition from LIBOR by giving borrowers and lenders the flexibility and support they need to replace the current benchmark without causing market disruptions. The Roundtable, through its Real Estate Capital Policy Advisory Committee (RECPAC), continues to engage with industry partners to support a smooth transition away from LIBOR and toward new alternative benchmarks.

Proposed Rules on Real Estate Investment Trusts (REITs)

A REIT is a company that owns, operates, or finances income-producing real estate. REITs provide an investment opportunity, similar to a mutual fund, that makes it possible for everyday Americans—not just Wall Street, banks, and hedge funds—to benefit from valuable real estate, present the opportunity to access dividend-based income and total returns, and help communities grow, thrive, and revitalize. Commercial real estate historically has provided investors with portfolio diversification, inflation protection, a source of income, and long-term growth.

In July 2022, the North American Securities Administrators Association (NASAA) proposed revisions to its Statement of Policy Regarding Real Estate Investment Trusts. If adopted, the proposal could have unintended and unnecessary consequences of impeding real estate capital formation, undercutting economic growth, and weakening the strength and stability of U.S. real estate capital markets.

The Roundtable shares NASAA's goal of ensuring that the best interests of retail investors are served by their broker-dealers and investment advisers, and by the investment products that are made available to them. However, The Roundtable has concerns regarding the widespread economic impact of the proposal, the constraints that it would place on investors' ability to diversify their investment portfolios in highly regulated securities. In a September comment letter to the NASAA, The Roundtable highlighted:

- The proposal would impose arbitrary restrictions that would limit investor choice during a time of stock market volatility and high inflation. The concentration, net worth, and gross income limits would prevent many investors from attaining adequate portfolio diversification.
- The proposal does not provide any economic impact analysis on how its adoption may affect the affordable housing market, or the wider commercial real estate market.
- The proposal would also not only impact public non-listed REITs, but would indirectly limit the availability of other highly-regulated investment vehicles offered by leading asset management companies that support real estate and the broader economy, including the sponsors of mutual funds, exchange-traded funds, interval funds, tender offer funds, and business development companies.

The Roundtable urges the NASAA to withdraw the proposal.

Beneficial Ownership

In September 2022, the Treasury Department issued a final rule requiring companies to report information about their beneficial owners—persons who own at least 25% of a company or exert significant control over it. The rule is intended to strengthen national security by making it more difficult for nefarious groups and entities to use complex legal structures to launder money and commit other crimes that could harm Americans.

The Roundtable shares these goals; however, we've previously raised concerns to the department's Financial Crimes Enforcement Network (FinCEN) about how these rules would affect real estate transactions. Namely, such reporting requirements would unfairly burden law-abiding businesses with additional costs and legal burdens. At the same time, we emphasized the industry's commitment to providing law enforcement with the tools necessary to stop money laundering, terrorism financing, and other crimes.

The Roundtable is part of a broad coalition of business trade groups that supports a National Small Business Association legal challenge (*NSBA v. Janet Yellen*) on the constitutionality of the *Corporate Transparency Act*, the underlying beneficial ownership legislation, which became law in January 2021. The Roundtable 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.

Safe Harbor for Banks & Real Estate Firms that Do Business With Legal Cannabis-Related Businesses (CRBs)

Differences in federal and state cannabis policy leave banks and real estate providers trapped between their mission to serve lawful businesses in local communities and the threat of federal enforcement action.

The Secure and Fair Enforcement (SAFE) Banking Act would allow financial institutions to legally work with state-authorized cannabis-related businesses, while providing commercial property owners a safe harbor if they lease space to a state-approved cannabis-related business (CRB). Additionally, owners who lease space to CRBs under SAFE could finance their properties without repercussions from federal anti-money laundering statutes. If enacted, federally regulated banks would no longer face the threat of sanction simply by providing financial services to legitimate cannabis-related businesses (CRB).

The Roundtable is a long-standing supporter of the bipartisan legislation and our advocacy efforts remain ongoing.

EB-5 Reform

In March 2022, Congress passed the Roundtable-backed EB-5 Reform and Integrity Act ("RIA"). The law achieved a hard-won reauthorization and overhaul of the regional center program. The reforms give the U.S. a competitive edge to attract overseas investments that create American jobs on infrastructure and other development here at home.

Following the EB-5 reauthorization, The Roundtable and coalition partners urged House and Senate leaders to ensure that the federal agency overseeing immigration programs implements RIA in a manner that respects Congress's intent. The leaders' bipartisan, bicameral letter to Homeland Security Secretary Alejandro Mayorkas was submitted in the record of a successful lawsuit that ultimately affirmed the continued validity of previously designated EB-5 regional centers after RIA's enactment.

The Roundtable remains involved to ensure RIA's correct implementation and proper oversight. Our February 9, 2023 coalition letter seeks confirmation that the period to sustain EB-5 capital remains "coupled" with the term of an investor's conditional residence. We will continue to press policies that support the role of bona fide regional centers to help grow the U.S. economy and create jobs.

(L-R): RER SVP Chip Rodgers and Rep. Andy Barr (R-KY), shared his insights on capital and credit issues as chairman of the House Financial Services Subcommittee on Financial Institutions and Monetary Policy.

In addition to these issues, The Roundtable will continue to work with our partners to advocate for the development of an effective federal public-private backstop program for prospective pandemic risk insurance coverage, as well as the long-term reauthorization of the National Flood Insurance Program (NFIP).

The Roundtable will continue to support measures that boost the availability of credit and enhance the formation of capital in the commercial and multifamily real estate industry, particularly during these times of market uncertainty.