



CONNECTION, COMMITMENT, AND COLLABORATION

Supporting Federal Policy through Experience and Innovation in 2022

2022
The Real Estate Roundtable
Policy Agenda



The Real Estate
Roundtable



The Real Estate
Roundtable

Mission

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

By identifying, analyzing and coordinating policy positions, The Roundtable's business and trade association leaders seek to ensure a cohesive industry voice is heard by government officials and the public about real estate and its important role in the global economy.

The Roundtable's membership represents over 3 million people working in real estate; some 12 billion square feet of office, retail, and industrial space; over 2 million apartments; and more than 3 million hotel rooms. It also includes senior, student and manufactured housing as well as medical office, life science campuses, data centers, cell towers, and self-storage properties. The collective value of assets held by Roundtable members exceeds \$3 trillion.

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Who We Are

Asset Managers

3%

Owners

67%

- 55% Private
- 44% Public
- 46% Mixed
- 14% Office
- 12% Retail
- 12% Hotel
- 11% Housing
- 4% Industrial
- 2% Other

Financial Services

20%

- 58% Banks (commercial & investment)
- 26% Insurers
- 16% Mortgage Bankers

Real Estate Trade Organizations

10%

- American Hotel & Lodging Association (AHLA)
- American Resort Development Association (ARDA)
- Association of Foreign Investors in Real Estate (AFIRE)
- Building Owners and Managers Association Int'l. (BOMA)
- CCIM Institute (CCIM)
- CRE Finance Council (CREFC)
- CREW Network CREW)
- International Council of Shopping Centers (ICSC)
- Mortgage Bankers Association (MBA)
- NAIOP, the Commercial Real Estate Development Association (NAIOP)
- National Apartment Association (NAA)
- National Association of Home Builders (NAHB)
- National Association of Real Estate Investment Managers (NAREIM)
- Nareit (NAREIT)
- National Association of Realtors® (NAR)
- National Multifamily Housing Council (NMHC)
- Pension Real Estate Association (PREA)
- Real Estate Executive Council (REEC)
- Urban Land Institute (ULI)

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Introduction

The Real Estate Roundtable brings deep experience and real-world, data-based analysis to national policy discussions.

Roundtable members are eager to help our nation meet its current challenges and the evolving needs of people and businesses. We begin the year by renewing our commitment to the ongoing global pandemic recovery by advancing sustainable national public policies that will restore long-term growth for the economy and the real estate industry, and job opportunities for the tens of millions of workers, businesses, local governments, retirees, schools, and hospitals that rely on our industry and the tax revenue it generates.

Chief among our shared priorities is a safe and successful return to the physical workplace. Our state and local economies—as well as our long-term global competitiveness—depend heavily on the innovation, collaboration, and productivity fostered by an in-person work environment. We will continue to focus on providing work and living spaces that are safe and healthy. Moreover, we will continue to support policymakers with information and up-to-the-minute data needed to guide, encourage, and facilitate the healthy return of the American workforce. Our nation’s long-term health, growth and competitiveness, as well as the strength of small businesses and local governmental budgets, require safe back to workplace encouragement. We look forward to working with policymakers at all levels to reinforce this message.

The real estate industry’s response to the current ongoing health and economic crisis has accelerated innovations. This is not the first crisis our industry has faced and at each challenge, we have responded. We have implemented unprecedented improvements wherever possible, and advocated for policies that facilitate the nearly-possible, encouraging safe and healthy environments, as well as positive civic involvement particularly as the nation faces a growing labor shortage,



John F. Fish, Chair, The Real Estate Roundtable (Chairman & CEO, Suffolk)

historically high inflation, and the resulting increased costs of construction, labor, and insurance. Among the many areas to which the real estate industry has committed itself with the help of Congress and the Administration are the following:

- » Building a healthier and more contaminate-free environment in and outside of our buildings;
- » Improving the energy efficiency of our new and older buildings to address climate change, help reduce cost, and further sustainability;

- » Making built environments safer and more secure for our nation's workers, residents, shoppers, vacationers, and all who use our spaces;
- » Updating and modernizing our surroundings so that they offer a stimulating and productive environment as the nation returns to its traditional physical spaces;
- » Creating more flexibility around financing, especially for residential and commercial tenants impacted by the global pandemic so that the nation's economy can rebuild as soon as possible with limited sustained damage.

Of course, there remains much work to do with the support and partnership of federal policymakers.

Our nation's post-pandemic recovery coincides with a strong national appetite for innovation around the ways in which we use our American real estate assets. From smart cities and smart buildings to climate and energy efficiency, to smarter uses of workplace and safer travel to housing availability and affordability, a stronger national infrastructure, and much-needed transformation of the power grid—our national success remains dependent on stable real estate and the highest levels of building productivity and efficiency in the post-COVID world. The Roundtable continues to support responsible tax policy that encourages capital formation and appropriate risk-taking, as well as advancement in the following policy areas:

- » **Pandemic Risk Insurance.** Sustainable recovery from the pandemic requires a federal risk insurance program tailored to the needs of policyholders, taxpayers, and insurers, as well as appropriate guidelines for pandemic-related liability, and efforts to restore and boost confidence in the health and safety of our nation's transportation system.



Jeffrey D. DeBoer, President & CEO, The Real Estate Roundtable

- » **Investments in Building Efficiency and Carbon Reduction.** Our nation's buildings can be made more efficient with appropriate rewards for sustainable practices in both new buildings and by modernizing the 70% of existing real estate inventory that is projected to remain in use for decades to come. Because buildings vary by age, geography and even floor-by-floor, as renovations are made unevenly, incentives for building components are far more effective than rewards for whole-building metrics. Federal policies should support and encourage investments in energy storage, dynamic glass, heat pumps and other electrification measures, microgrid controllers, and access to EV chargers in affordable rental housing communities, office parks, and schools. Local governments may encourage or require greater use of green energy, and federal policies are therefore needed to expand clean power sources and decarbonize the grid.
- » **Increased Affordable Housing.** More can be done to incentivize builders, developers, and owners to create low- and middle-income affordable housing. Low-income housing tax credits and incentives for

land-use permitting and zoning reform should be enhanced to help in this area.

- » **Improved Security and Resiliency.** Building owners work hard to make their physical spaces secure from external threats, but the virtual and cyber-based systems on which they rely must be equally secure from interference and that requires an ongoing focus from federal policymakers.
- » **Diversity, equity, and inclusion.** We must continue to include anti-discrimination, pro-inclusion equities into federal policies on issues related to tax, capital markets, ESG, housing, infrastructure, and immigration. As we attract our communities back to work we have an opportunity to make our physical workspaces more inclusive—providing

childcare facilities and support for parents of young children, bike storage and incentives for public transportation, and other systems and structures that will help facilitate the needs of working families. The Roundtable also continues its support for critical immigration and visa reforms that attract talent, innovation, and capital to our country without sacrificing border security, as well as reforms to the tax laws applicable to foreign investment.

The Real Estate Roundtable and its members look forward to working in collaboration with you and your colleagues, lending our experience, support, and perspective wherever we can be most helpful. We are grateful for your commitment to our shared stakeholders—the American communities whose interests we both serve.

Tax Policy

The Roundtable's 2022 tax policy agenda is focused on ensuring that the tax code allows real estate to continue contributing to job growth, strong and healthy local communities, and a broad-based economic expansion. These objectives are best served by tax rules that adhere to certain well-grounded and enduring principles.

More specifically:

- » The tax code should encourage capital formation (from domestic and foreign sources) and appropriate risk-taking, while also providing stable, predictable, and permanent rules conducive to long-term investment;
- » The tax code should ensure that tax rules closely reflect the economics of the underlying transaction — avoiding both excessive marketplace incentives and disincentives that can distort the flow of capital investment;
- » The tax code should recognize that, in limited and narrow situations (e.g., low-income housing and investment in economically challenged areas), tax incentives are needed to address market failures and encourage capital to flow toward socially desirable projects; and
- » When tax changes are made, the new rules should provide a well-designed transition regime that minimizes dislocation in real estate markets.

In short, rational taxation of real estate assets and entities supports job creation and facilitates sound, environmentally responsible real estate investment and development, while also contributing to strong property values and well-served, livable communities.

In 2021, these tax principles were challenged on a number of fronts as lawmakers and the Administration looked for new revenue options to pay for ambitious legislative proposals, such as President Biden's budget proposal and subsequent House iterations, among others. These various proposals — changing the tax treatment of like-kind exchanges; raising the tax rate on pass-through businesses; taxing unrealized gains on an annual, mark-to-market basis; and others — remain under consideration. Most concerning are those proposals, such as restricting like-kind exchanges, that are discriminatory and narrowly aimed at real estate.

In addition to raising policymakers' awareness of the potential economic harm caused by several of the proposed tax increases, The Roundtable's tax policy agenda also seeks to advance tax proposals that will support economic growth, capital formation, and jobs. These include: (1) the Retail Revitalization Act (H.R. 840); (2) expanding the low-income housing tax credit; (3) FIRPTA reform – including Parity for Non-Traded REITs Act (H.R. 3123); and (4) extending the deadlines for Opportunity Zone tax incentives. These issues are described in greater detail below and in the remaining sections of the Policy Agenda.



As current Ranking Member and former Chairman of the House Ways and Means Committee, Rep. Kevin Brady (R-TX) has been a champion for tax policies that encourage economic expansion and job growth but avoid unintended consequences.

Like-Kind Exchanges

Fundamental to the health and financing of commercial real estate, like-kind exchanges (section 1031) helped stabilize property markets at the height of the COVID-19 lockdown and are facilitating a faster and smoother transition as many real estate assets are repurposed in the post-COVID-19 economy. The ability to defer capital gain when a taxpayer exchanges one property for another is an essential feature of the current tax system that spurs capital investment, especially during times of market corrections and liquidity shortages. Like-kind exchanges help cash-poor entrepreneurs and investors, including minority-owned and women-owned businesses, grow organically. Research shows that like-kind exchanges increase net investment, boost state and local tax revenue, stimulate capital expenditures which leads to job growth, reduce leverage and financial risk, lower rents for households, and support healthy property values.

President Biden's FY 2022 Budget proposed to restrict gain deferred through real estate like-kind exchanges to no more than \$500,000, or \$1 million in the case of a married couple, effective for exchanges in tax years beginning after 2021. The Roundtable opposes such restrictions, which would undermine the economic recovery and cause unintended and unnecessary risks to the strength and stability of U.S. real estate. A Roundtable-led coalition of more than 40 national organizations wrote to the congressional tax-writing committees in September, detailing how like-kind exchanges under section 1031 support jobs and investment; the health of U.S. commercial real estate and real estate markets; and the preservation of family-owned farms, ranches, and forestland. A Roundtable-supported nonbinding amendment to preserve section 1031 unanimously passed the Senate

Like-Kind Exchanges



New research finds that nearly **1 in 5 commercial real estate transactions** involve a party that is engaged in **a like-kind exchange**



That research also found that almost **40 percent** of all like-kind exchanges **involve rental housing**

Source: Professors David Ling and Milena Petrova, The Tax and Economic Impacts of Section 1031 Like-Kind Exchanges in Real Estate (Aug. 2020)

over the summer, and like-kind exchange restrictions were not included in the *Build Back Better Act*. The Roundtable remains committed to ensuring policymakers preserve like-kind exchanges in future legislation.

Capital Formation

Favorable tax rules for capital formation promote productive economic growth and job creation. For example, a low tax rate on capital gains reduces the cost of capital; drives patient, long-term investment; and encourages productive entrepreneurial activity. In recent years, however, the tax burden on capital has increased relative to the tax burden on corporate income and ordinary wages. Legislation that would discourage capital formation further by raising the tax rate on capital gain is misguided. Similarly, policymakers should reject well-intended but detrimental proposals to reverse longstanding tax principles, such as the axiom that capital gain is deferred until an asset is actually sold. On the contrary, policymakers should take additional steps to encourage and reward productive



House Ways and Means Committee Member Rep. Stephanie Murphy (D-FL) is a co-sponsor of Roundtable-backed legislation that would unlock capital for productive and job-saving investment and contribute to the economic recovery (The Retail Revitalization Act (H.R.840)).

investment through tax policies, such as Opportunity Zones, that mobilize long-term investment and support job growth and economic development. Three areas of capital formation are of particular focus for The Roundtable.

Capital Gains Rate - Today, long-term capital gain is taxed at a top rate of 20%, but the rate rises to 23.8% if the income is subject to the 3.8% tax on net investment income. President Biden's budget proposed raising the top capital gains rate to parity with the top tax rate on ordinary income (currently 37%, but proposed to increase to 39.6%). It also proposed extending the 3.8% tax on net investment income to the income of active business owners, including real estate professionals. The subsequent *Build Back Better (BBB) Act* approved by the House Ways and Means Committee would have raised the capital gains rate from 20 to 25% and expanded the scope of the 3.8% net investment income tax, as proposed by the President. Fortunately, the proposed increase in the general capital gains rate was not included in the revised *BBB Act* passed by the full House in November. The Roundtable is committed to preserving a meaningful reduced rate (relative to ordinary income) to encourage long-term capital investment.

Step-Up in Basis and Taxation of Gains at Death - The tax code levies a tax on appreciated gains when an individual dies through the estate tax, and policymakers should avoid the unfair and unintended economic consequences that would result from imposing a second tax on unrealized gains at death. President Biden's budget proposed to tax built-in gains at death unless the property is donated to charity, applicable to gains in excess of \$1 million. In addition, the President proposed taxing the built-in, unrealized gains of property held in a trust or partnership if the property has not been taxed for 90 years (draft Senate legislation would reduce the term to 21 years for property held in trust). The Roundtable strongly opposes the double taxation of real estate gains at death and recommends Congress retain tax rules that allow family-owned and closely held

businesses to continue growing and creating jobs from one generation to the next. Proposals to tax unrealized real estate gains at death were not included in the House-passed *BBB Act*.

Mark-to-Market Tax Proposal - Senate Finance Committee Chairman Ron Wyden (D-OR) proposed a mark-to-market regime for capital assets in which built-in gain is taxed on an annual basis, regardless of whether the asset is sold. Initially, Chairman Wyden proposed applying the tax to taxpayers with more than \$1 million in annual income and/or more than \$10 million in assets for three consecutive years. Chairman Wyden later introduced a modified version of his mark-to-market proposal that would apply specifically to “billionaires.” The Roundtable is concerned that the so-called billionaires tax proposal is a foot in the door to achieve the much

broader aim of a mark-to-market regime for every American family that has built up a modest amount of assets over their lifetime. The Roundtable strongly opposes such a tax on the grounds that such a regime is unconstitutional; undermines economic growth by promoting short-term trading and reducing the incentive for long-term savings and investment; would exacerbate our reliance on foreign capital and increase foreign ownership of U.S. assets; and would hurt charities, educational endowments, and churches. The House-passed *BBB Act* excludes a mark-to-market regime.

Pass-Through Taxation

Closely held partnerships and pass-through businesses drive job growth and entrepreneurial activity. Pass-through entities give owners flexibility in how they structure the risks and rewards of the business. Our pass-through regime is a strength of the U.S. tax system relative to our international competitors and contributes to our entrepreneurial culture and dynamic economy. In 2017, the *Tax Cuts and Jobs Act* created a new 20% deduction for pass-through business income to provide parallel tax relief for unincorporated businesses alongside the 40% reduction in the corporate tax rate.

In July 2021, Chairman Wyden proposed repealing the 20% deduction for pass-through business income for taxpayers earning over \$400,000/year (section 199A). Legislation passed by the House Ways and Means Committee over the summer of 2021 would have capped the maximum deduction under section 199A at no more than \$500,000. Moreover, through the combination of several, independent tax changes, the Ways and Means bill would have raised the top marginal income tax rate on many small and pass-through business owners from 29.6% today to 46.4%. The Roundtable strongly opposed such changes and recommended that legislation avoid tax changes that discriminate against specific industries or types of entities, such as partnerships and S corps.

Academic Study Finds Ending Capital Gains Treatment for Carried Interest in Real Estate Partnerships Would Result in Job Losses, Reduced Tax Revenue

Long Run Economic Impact of Carried Interest Legislation	
Real Estate-Related Job Losses	\$1.77 million
Reduction in Federal Tax Revenue	\$11.22 billion
Reduction in State/Local Tax Revenue	\$26.74 billion

Source: Professor Charles Swenson (USC Marsh School of Business), Center for Capital Markets Competitiveness, Impact on Jobs, Tax Revenue, and Economic Growth of Proposed Tax Increase on Carried Interest (Sept. 2021).

Our pass-through regime is a strength of the U.S. tax system relative to our international competitors and contributes to our entrepreneurial culture and dynamic economy.

The House-passed *BBB Act* did not include restrictions on the 20% pass-through deduction and lowered the proposed maximum marginal tax rate on pass-through business income from 46.4 to 41.4%.

Carried Interest - Carried interest is the interest in partnership profits a general partner receives from the investing partners for managing the investment and taking on the entrepreneurial risk of the venture. Carried interest may be taxed as ordinary income or capital gain depending on the character of the income generated by the partnership. Lawmakers have introduced various proposals to change the tax treatment of carried interest since 2007. President Biden's budget, as well as stand-alone bills, would convert virtually all carried interest income attributable to gain from the sale of real estate to ordinary income subject to both ordinary income tax rates and self-employment taxes. Legislation passed by the Ways and Means Committee in the summer of 2021 would have extended the holding period required for carried interest to qualify as capital gain from 3 years to 5 years, but would have excluded real estate partnerships. The carried interest proposal was dropped in the House-passed *BBB Act*. The tax code should continue to reward risk taking and Congress should reject tax changes that limit capital gains treatment to invested cash. Proposed carried interest changes would harm small businesses and

partnerships; stifle entrepreneurial risk taking and sweat equity; and threaten improvements and infrastructure in long-neglected neighborhoods most in need of investment.

Tax Proposals to Stimulate Retail Recovery, Housing Affordability, Economic Development in Struggling Neighborhoods, and Foreign Investment in US Real Estate and Infrastructure

The Roundtable continues to advocate a number of targeted tax legislative initiatives to address specific concerns around retail recovery, housing affordability, economic development in struggling neighborhoods, and foreign investment in U.S. real estate and infrastructure.

Pass-Through Taxation



Much of the real estate investment that takes place today uses **the partnership choice of entity**.

Real estate partnerships represent 50% of the nearly 4 million partnerships in the US. That's nearly 8 million individual partners.

Source: IRS, Statistics of Income (2021).

Specifically, The Roundtable urges action on the following issues:

- » **Retail Revitalization Act (H.R. 840)** – H.R. 840 would unlock capital for productive and job-saving investment and contribute to the economic recovery. The bill would modify an antiquated section of our tax code that limits the ability of real estate investment trusts (REITs) and real estate businesses to invest in their tenants, including retail tenants, at a time when there is a significant and urgent need for such investment to support our nation’s economic recovery and prevent further large-scale job losses and bankruptcies in the retail sector and its supply chain. The Roundtable urges Congress to pass this cost-effective and commonsense step to unlock capital and promote a market-based solution where economic stress is widespread.
- » **Affordable Housing** – The Real Estate Roundtable supports well-designed, targeted tax incentives like the low-income housing tax credit (LIHTC) that are aimed at boosting the construction and rehabilitation of badly needed affordable and workforce housing. The House-passed *BBB Act* would make important investments in the LIHTC by expanding the allocation of credits in the coming years. Other ambitious legislation, such as the Affordable Housing Credit Improvement Act (H.R. 2573, S. 1136) and Chairman Wyden’s proposal to create a middle-income housing tax credit modeled on LIHTC, merit serious consideration.
- » **Extension of Opportunity Zone Deadlines** – Opportunity Zones channel investment and spur economic growth in low-income communities by reducing the capital gains burden on investors that redeploy gains from prior investments to new opportunities in otherwise distressed

neighborhoods. Real estate projects financed through Opportunity Funds are an economic multiplier and a catalyst for permanent, lasting job creation. Under the Opportunity Zone statute, the tax benefits associated with Opportunity Zone investments are gradually diminishing. After December 31, 2021, new Opportunity Zone investments will not qualify for a reduction in the capital gains tax owed when gain is rolled over into an Opportunity Fund. In addition, the economic benefits of the deferral period for gain rolled into an Opportunity Fund are declining. Taxpayers must recognize the deferred gain at the end of 2026. In order to encourage investment in Opportunity Zones, a broad coalition led by The Roundtable is recommending that Congress extend the deferred gain recognition date by two years, through the end of 2028.

- » **FIRPTA Reform** – including the Parity for Non-Traded REITs Act (H.R. 3123) – The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) imposes a discriminatory capital gains tax on foreign investors in U.S. real estate that does not apply to any other asset class. In so doing, the FIRPTA regime discourages capital formation and has been an effective deterrent to foreign persons investing in U.S. real estate. H.R. 3132 extends to non-traded REITs the safe harbor that allows a foreign shareholder to own up to 10% of a publicly traded REIT without triggering FIRPTA liability. The Roundtable recommends Congress pass H.R. 3123, as granting non-traded REITs parity with the FIRPTA treatment of exchange-traded REITs offers an opportunity to increase the flow of capital into U.S. commercial real estate and infrastructure with minimal negative impact, if any, on federal revenues.

Capital & Credit

The Roundtable supports pro-growth measures to sustain a robust and liquid real estate market. Such policies should encourage reliable credit capacity and capital formation, while reflecting sound underwriting, stable valuations, appropriate transparency, economically responsible commercial and multifamily real estate lending, and the rational pricing of economic risk. It is also vital to have effective risk management tools to provide the industry with the coverage it needs to create jobs and support the broader economy.

Protecting American Jobs from Pandemic Risk

Pandemic risk is the largest unhedged risk in the economy. The COVID-19 pandemic exposed and indeed exacerbated an expanding “protection gap” in an array of commercial insurance lines affecting many industries across the economic spectrum. What many businesses and non-profits had assumed to be a resilient financial protection system of commercial insurance was found to be ineffective in addressing the economic fallout from mandated pandemic-related shutdowns. Business interruption coverage proved elusive, and coverage in other lines of insurance has been withdrawn or restricted going forward. Escalating coverage gaps present challenges for businesses across many industries and could stall economic recovery and job growth.

The Roundtable is working through the Business Continuity Coalition (BCC) to develop and enact an effective federal pandemic risk/business continuity insurance program that provides the economy with the coverage it needs to protect American jobs in the face of pandemic risk. The House’s reintroduced *Pandemic Risk Insurance Act (H.R. 5823)* would create a federal backstop to ensure coverage in all critical commercial lines of insurance for business interruption losses, whether from

future pandemics or other public health emergencies. The Roundtable and BCC strongly support the bill.

Ensuring a Smooth Transition from LIBOR

The London Interbank Offered Rate (LIBOR) is used as a reference rate in an estimated \$200 trillion of financial contracts, including some \$1.3 trillion of commercial real estate loans. LIBOR is set to be retired in 2023. The Federal Reserve has warned banks that they must “completely end” the use of LIBOR in new contracts by December 31, 2021. It is important to expedite this transition with federal legislation to ensure that market stability and liquidity will be preserved.

The Roundtable’s Real Estate Capital Policy Advisory Committee (RECPAC) LIBOR Working Group continues to work to implement measures that will ensure a smooth transition from LIBOR to The Secured Overnight Financing Rate (SOFR) and other effective replacement benchmarks that do not impair liquidity, needlessly increase borrowing costs, or cause market disruptions.

The Roundtable has constructively engaged with the U.S. Treasury and the IRS regarding clarification of any tax implications for implementing new replacement benchmarks. Consistent with The Roundtable’s



Sen. Mark Warner (D-VA), member of the Senate Finance; Banking, Housing and Urban Affairs; Budget Committees discussed bipartisan efforts to invest in the nation's infrastructure, affordable housing investment, and address deficit reductions.

recommendations, the Treasury's regulations give borrowers and lenders the flexibility they need to replace LIBOR with virtually any other index that reflects objective changes in the cost of borrowing money without tax consequences.

Legislation passed by the House in December 2021 — The Adjustable Interest Rate (LIBOR) Act of 2021 — would help smooth the transition away from LIBOR as a reference rate for financial contracts. In the event a contract referencing LIBOR does not have a fallback or replacement rate provision in effect when LIBOR is retired, or a replacement rate is not selected by a determining person as defined by the bill, the bill provides for a transition to a replacement rate selected by the Board of Governors of the Federal Reserve System. The bill also provides for conforming changes to these contracts, the continuity and enforceability of these contracts, and protections against liability as a result of such a transition.

The bill addresses the tax consequences of such a transition. Specifically, the selection or use of a replacement rate; the determination, implementation, or performance of related conforming changes to a contract; or other application of changes related to the transition shall not be

treated as a sale, exchange, or other disposition of property for tax purposes. The bill would also create a safe harbor from litigation for parties that are covered by the legislation and prevent otherwise inevitable litigation costs and gridlock. A similar measure is advancing in the Senate.

Improving and Reauthorizing the National Flood Insurance Program (NFIP)

Floods are the most common, costliest natural peril in the United States. The NFIP is currently operating under a temporary extension that will expire February 18, 2022. Reauthorizing the NFIP is important for residential markets, overall natural catastrophe insurance market capacity, and the economy.

Since the end of FY2017, over a dozen short-term NFIP reauthorizations have been enacted. 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.

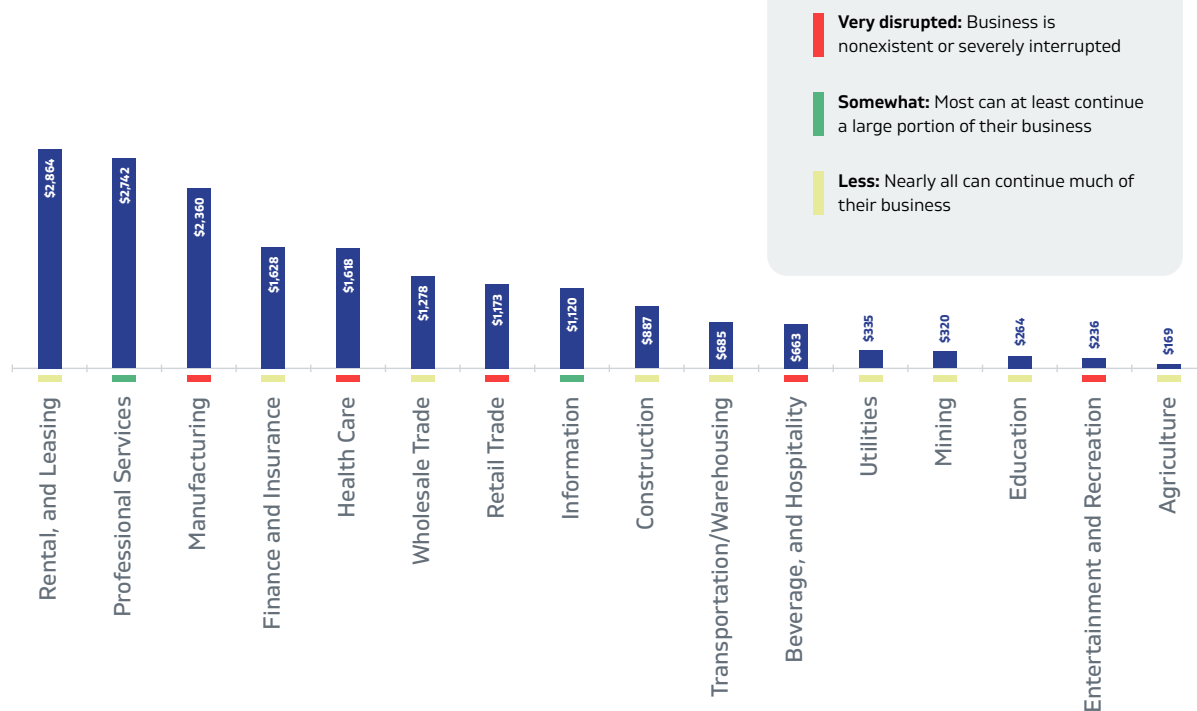
The Roundtable and its partner associations support a long-term reauthorization and reform of the NFIP that will help property owners and renters prepare for and recover



Rep. French Hill (R-AR) serves on the influential House Financial Services Committee, and is the Ranking Member of the Housing, Community Development and Insurance Subcommittee.

Disruptions from COVID-19 vary significantly by industry.

US GDP by industry, 2019 (billions)



Source: US Bureau of Economic Analysis, US Small Business Administration, Marsh/Oliver Wyman Analysis.

from future flood losses. Given the low coverage amounts provided to commercial properties, it is important to permit larger commercial loans to be exempted from the mandatory NFIP purchase requirements.

Corporate Transparency Act/ Beneficial Ownership

The Corporate Transparency Act (CTA) of 2020 requires certain corporations and limited liability companies (LLCs) to disclose information about their beneficial owners to the Treasury Department's Financial Crimes Enforcement Network (FinCEN).

Consistent with the Congressional mandate, FinCEN recently issued an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on a potential rule to address the vulnerability of the U.S. real estate market to money laundering and other illicit activity. The systemic money laundering vulnerabilities within the U.S. real estate sector, and consequently, the ability of illicit actors to launder criminal proceeds through the purchase of real estate, threatens U.S. national security and the integrity of the U.S. financial system.

The Roundtable is working in coalition with other organizations to respond to this ANPRM and to continue to engage with policymakers in support of a balanced approach to inhibiting illicit money laundering activity without the imposition of additional and costly reporting requirements on real estate businesses.

SAFE Banking Act and Cannabis-Related Businesses (CRBs)

Forty-seven states and Washington, D.C. have legalized cannabis to varying degrees. Yet the use, possession, and sale of cannabis remains illegal under federal law. According to a recent survey by the National Association of Realtors, the growing trend in cannabis decriminalization is increasingly impacting the commercial real estate industry as real estate owners, lessors, brokers, and financiers need certainty when they transact with legal CRBs. CRBs face the challenge of obtaining bank accounts, and commercial

property owners face legal challenges of taking on CRB tenants without safe harbor protections.

The Roundtable recommends Congress provide fuller protections to real estate business through legislation that clarifies state-compliant cannabis transactions are not illegal federal “trafficking” – and do not produce unlawful proceeds under money laundering statutes.

In April 2021, the Secure and Fair Enforcement (SAFE) Banking Act, passed the House. The Roundtable-supported bill would eliminate the need for CRBs to operate on a cash basis, bring them into the banking system, and allow them to obtain accounts and credit cards. Commercial property owners would get a safe harbor if they lease space to a CRB, and their mortgages cannot be subject to corrective action by a bank. The Roundtable continues its long-standing support of the SAFE Act, which has been introduced in every Congress since 2013.

Energy & Climate

Commercial buildings – and the behavioral choices of the tenants and other occupants who live, work, shop, and recreate in them – account for 18% of U.S. primary energy use; 35% of electricity consumed in the U.S.; and 16% of all U.S. CO₂ emissions. Reducing the built environment’s carbon footprint is requisite to minimize and mitigate the health, environmental, and economic risks posed by climate change.

The Biden Administration has ambitious goals to achieve a “net zero” emissions economy by 2050, a 100% carbon-free electric grid by 2035, and to build half a million EV charging stations by 2030. These objectives cannot be reached unless policy makers collaborate with the commercial real estate sector.

Policies that encourage greater investments in clean energy present major opportunities to re-skill the U.S. workforce, re-imagine the technologies that power our buildings – and redress the systemic discrimination borne by “frontline” communities disparately impacted by global warming and legacy pollution.

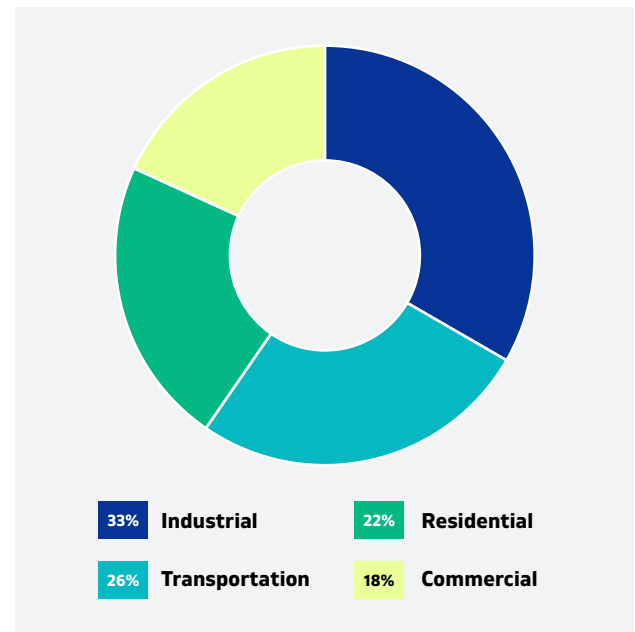
Clean Energy Tax Incentives

The *Build Back Better (BBB) Act* reconciliation bill proposes to re-write sections of the federal tax code to incentivize large-scale private sector investments in clean energy generation, storage, and efficiency. The Roundtable has sought and supports a number of reforms included in the bill thus far, notably:

- » A “direct pay” option to allow entities that cannot generally use tax credits to receive the financial benefit of these incentives.
- » Expanding technologies that qualify for tax credits – beyond solar panels and wind turbines – to also include energy storage, EV charging stations,

Share of Total U.S. Energy Consumption by End-Use Sectors, 2020

Total = 92.94 quadrillion British thermal units



Source: U.S. Energy Information Administration

microgrids, transmission lines, and other clean energy systems.

- » A path for existing building “retrofits” to benefit from the 179D energy efficiency tax deduction.

- » Enhanced credits for solar facilities sited in low-income communities.

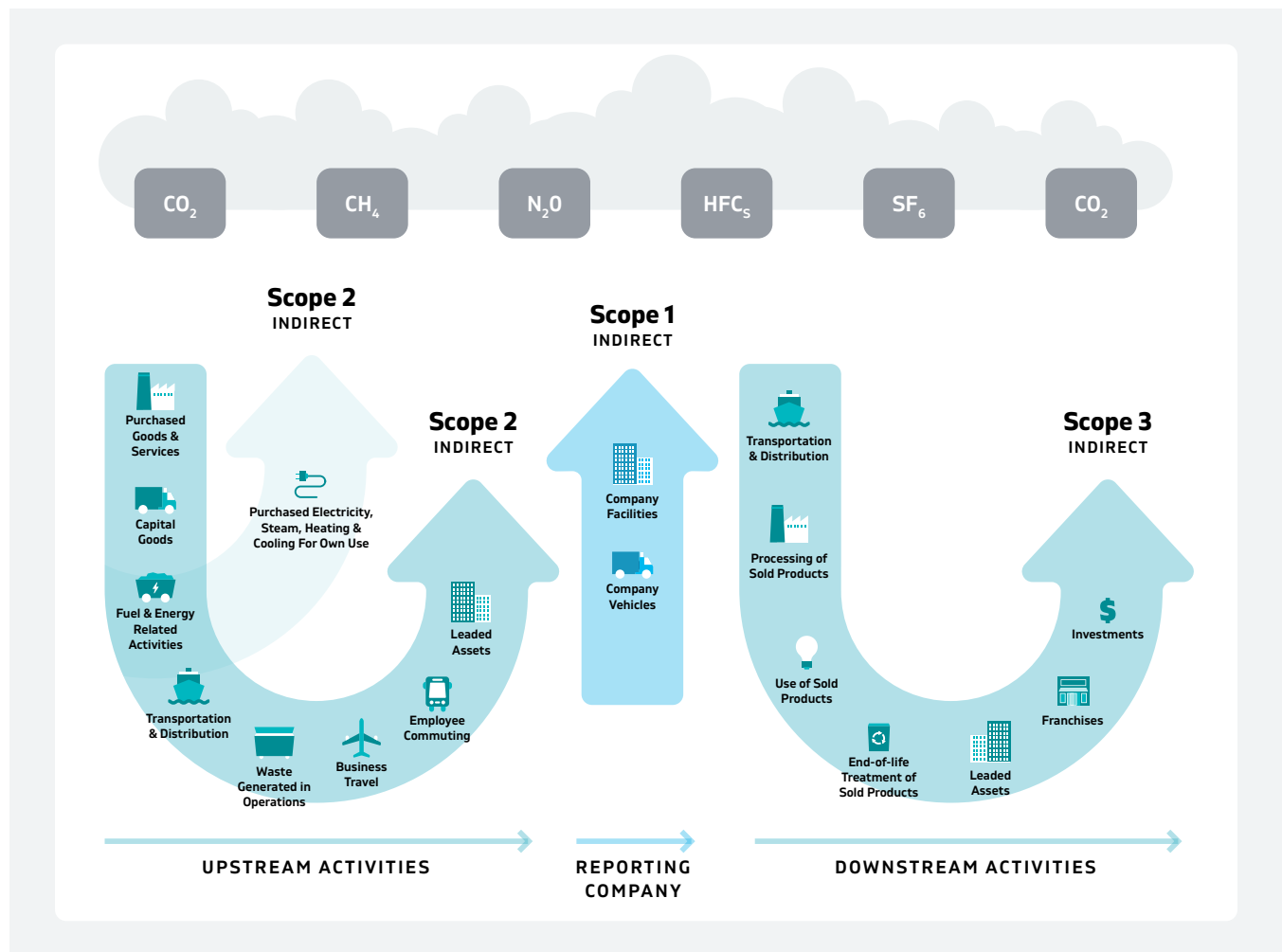
The credits and deductions covered by the *BBB Act* should be further improved to advance the Biden Administration's climate goals:

- » Provide incentives to help defray some of the costs associated with expensive building "electrification" technologies – like electric heat pumps and

perimeter systems that use electric-heated water and steam.

- » Ensure that property owners can use the EV charging station tax credit in parking lots and garages that cater to their residential and commercial tenants (but are not open to the "general public").

Overview of GHG Protocol scopes and emissions across the value chain



Source: EPA.gov

- » Allow the proposed 179D “retrofit” deduction to be claimed in the same year the building owner incurs capital expenses and installs energy efficient systems.

Federal Guidance for Local Building Performance Standards (“BPS”)

A growing number of local and state governments are enacting BPS laws that impose requirements on specific buildings to meet energy efficiency and GHG reduction “targets.” The federal government must play a key role here and help establish consistent standards, methods, and data that reflect best available government and industry practices.

Uniformity is critical to avoid a divergent “patchwork” of varying climate laws that unduly complicate building owners’ compliance and regulators’ enforcement. Policy makers should consider the following as they explore and develop BPS laws:

- » Localities should first compile several years’ worth of verified building energy usage data (such as through benchmarking and reporting laws) before



Chairman of the Senate Energy and Natural Resources Committee Sen. Joe Manchin (D- WV) is one of the key Senators who plays a significant role in forging bipartisan legislation in Congress.

they impose substantive requirements on buildings to meet specified levels of efficiency or emissions.

- » National level guidance from the Environmental Protection Agency (EPA) is essential. For example, EPA should recommend “normalized” metrics that states and localities should use when measuring buildings’ energy usage and carbon intensity. It should also expand the functionality of its online “Portfolio Manager” tool so building owners can estimate their assets’ GHG emissions under different operational scenarios.
- » No BPS law should mandate building owners to reduce emissions from sources beyond their control. Building owners should not be held accountable for GHG impacts caused by tenants, or emissions attributable to the kinds of fuels used by off-site electric grids or thermal energy systems.
- » Any BPS law should be joined with financial assistance to help regulated owners defray the capital expenses needed to bring their buildings into compliance.

ESG Reporting Standards

The Securities and Exchange Commission (SEC) is expected in 2022 to develop rules that will require companies within its jurisdiction to publicly report on climate-related financial risks. The Roundtable submitted comments last year in response to the SEC’s initial request for input on climate change disclosures.

The Roundtable recommends:

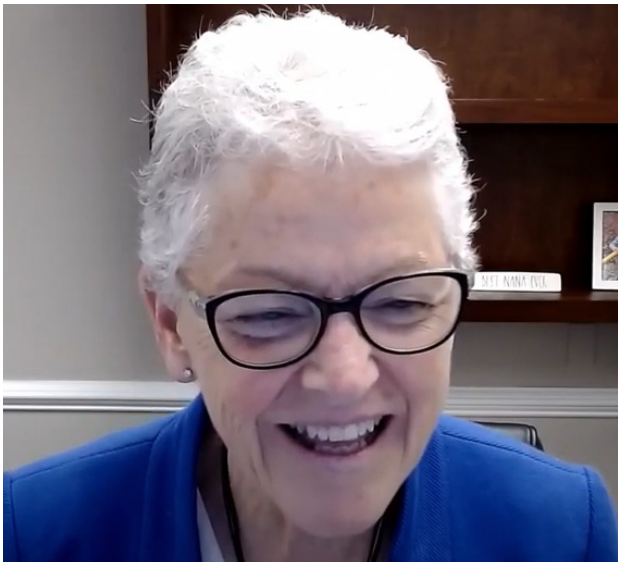
- » There is no single “one size fits all” archetype for real estate companies to measure and report on climate-related impacts and mitigation, because individual buildings and their “occupant mix” are unique environments. The Commission should be flexible

in contemplating climate reporting and disclosure standards for corporate issuers that develop, own and operate income-producing real estate.

- » The GHG-related metrics that building owners can most accurately measure and quantify arise from their direct and immediate operations of assets they manage and control on a day-to-day basis. In that regard, building owners should not be required to report on GHG emissions attributable to their tenants.
- » The SEC should allow a marketplace of reporting frameworks to thrive, flourish, and evolve. No single reporting framework should be mandated.

Energy Data Issues

The quality and timeliness of federal data regarding energy usage and GHG emissions are essential for building owners to manage and measure the environmental impacts of their assets. The Roundtable encourages federal agencies to continually improve, update, and refine



As the first ever White House National Climate Advisor, Gina McCarthy briefed Roundtable members on the Administration's goals and commitments to combat the domestic and global climate crisis.

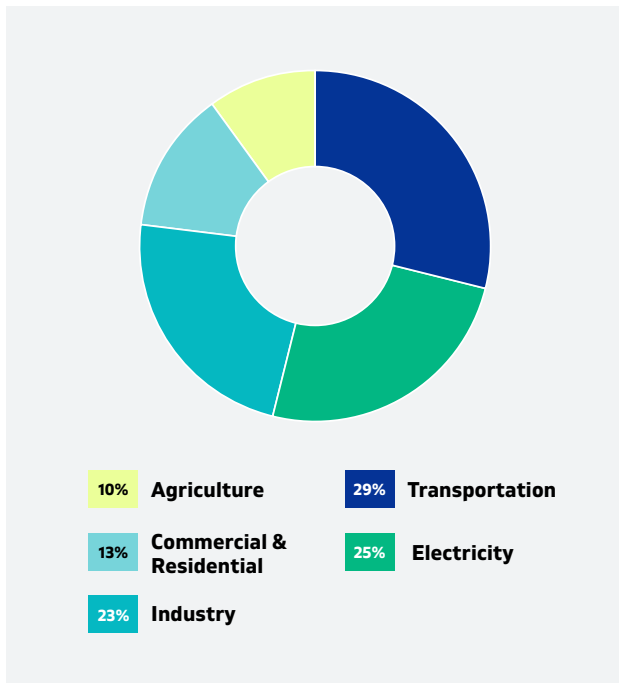
key data sets upon which the real estate industry relies.

- » The Commercial Building Energy Consumption Survey (CBECS), a program of the U.S. Energy Information Administration (EIA), provides the data that EPA uses to generate ENERGY STAR building scores. EIA and EPA should fulfill their obligations under the recently-enacted bipartisan infrastructure law and submit an "information sharing and coordination agreement" to Congress.
- » Rather than waiting to release new CBECS data every 5 (or more) years, EIA should supplement its data with similar building energy usage information collected much more frequently by EPA and a growing number of state and local "benchmarking" laws.
- » The nation's electric grid is rapidly evolving toward greater reliance on solar, wind, and other renewable fuel sources. EPA's "eGRID" database is the best national source on the environmental characteristics of almost all electric power generated in the U.S. It must stay current and should provide information regarding the grid's fuel attributes on at least a yearly, and ideally a monthly, basis.
- » Federal data from eGRID and other sources underpin "carbon factors" used by policy makers and companies. These factors convert various fuel sources, when combusted, to units of carbon emitted. Uniform carbon factors must be released by federal agencies as frequently as possible to guide regulators and the private sector considering site-specific building emissions.

Biden Administration's "Better Climate Challenge" Recognition Program

In November 2021, U.S. Energy Secretary Jennifer Granholm announced a "soft launch" of the multi-sector

Total U.S. Greenhouse Gas Emissions by Sector In 2019



Source: Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2019. U.S. Environmental Protection Agency.

Better Climate Challenge at the COP26 international conference in Glasgow. A “formal” launch is expected in Q1’2022. This new Department of Energy effort aims to recognize U.S. real estate, industrial, and other companies that voluntarily agree to cut their GHG emissions – and share their “best practices” toward achieving emissions reduction goals.

The key element of DOE’s voluntary challenge is for companies to commit to reduce direct emissions

(“scope 1”), and emissions from electricity purchases (“scope 2”), by 50% over 10 years. The Roundtable applauds DOE’s efforts and encourages our members to participate in the recognition program.

Electric Grid Investments in the Bipartisan Infrastructure Law

The Roundtable strongly supported clean energy and grid investments that have become law through the Infrastructure Investment and Jobs Act (IIJA), signed by President Biden in November 2021. Demands from investors and requirements of local regulations increasingly require real estate owners to use zero-carbon sources to power their buildings. As a result, policies to de-carbonize the electric grid have become an emerging priority for The Roundtable. The IIJA should be implemented expeditiously, including its “grid modernization” provisions to:

- » Provide greater authorities to the Federal Energy Regulatory Commission (FERC) to permit the construction of long-distance, high-speed transmission lines needed to carry renewable energy generated in rural areas to our cities and suburbs.
- » Stand-up new grant and loan programs for investments to prevent outages and enhance resilience of the grid to extreme weather events.
- » Permit the Department of Energy to enter into public-private partnerships to decarbonize the grid and construct other clean power projects.

Homeland Security

As a critical part of the nation's infrastructure, real estate continues to face an array of threats from natural catastrophes, international and domestic terrorism, criminal activity, cyber-attacks, and border security. To address such threats, The Roundtable continues to help build a more secure and resilient industry against both physical and cyber threats.

The Real Estate Information Sharing and Analysis Center (RE-ISAC)

The RE-ISAC is a public-private partnership between the U.S. commercial facilities sector and federal homeland security officials organized by The Roundtable in February 2003. Information sharing in a systematic and sustained manner continues to be one of the most effective weapons in protecting the nation's critical infrastructure. The RE-ISAC serves as the primary conduit of terrorism, cyber- and natural-hazard warning and response information between the government and the commercial facilities sector. The RE-ISAC proactively manages risk and strengthens the security and resilience of the U.S. commercial facilities sector infrastructure to aid protection and prevention.

Homeland Security Task Force (HSTF)

The Roundtable works with various federal, state, and local law enforcement agencies through its HSTF. The HSTF identifies, analyzes, and advocates for positions on physical and cyber security policy affecting the real estate community and commercial facilities sector in relevant homeland security and intelligence issue areas. In addition to working with relevant law enforcement and intelligence agencies, the HSTF is working to find new sources and methods to secure high-profile commercial-facility-sector assets and improve their emergency preparedness. Through the work of the HSTF and RE-ISAC, real estate firms are regularly updated on cyber, criminal, and physical threats and how to appropriately implement security measures to help mitigate risks.



As a member of the Senate Foreign Relations, Homeland Security & Government Affairs Committees Sen. Mitt Romney (R-UT) discussed the committees' work on addressing ransomware attacks, cyber security, and international and domestic terrorism.

Improving Resilience to Cyber and Physical Threats

Through the HSTF and RE-ISAC, The Roundtable remains focused on measures that businesses can take through increased cross-agency information sharing and cooperation with key law enforcement and intelligence agencies — such as creating resilient infrastructure that is resistant to physical damage and cyber breaches. Bipartisan legislation that would require private companies to report ransomware attacks to federal authorities was advanced by the Senate Homeland Security and Governmental Affairs Committee in October 2021. The proposed legislation would require certain critical infrastructure owners and operators to report cyber-attacks within 72 hours and

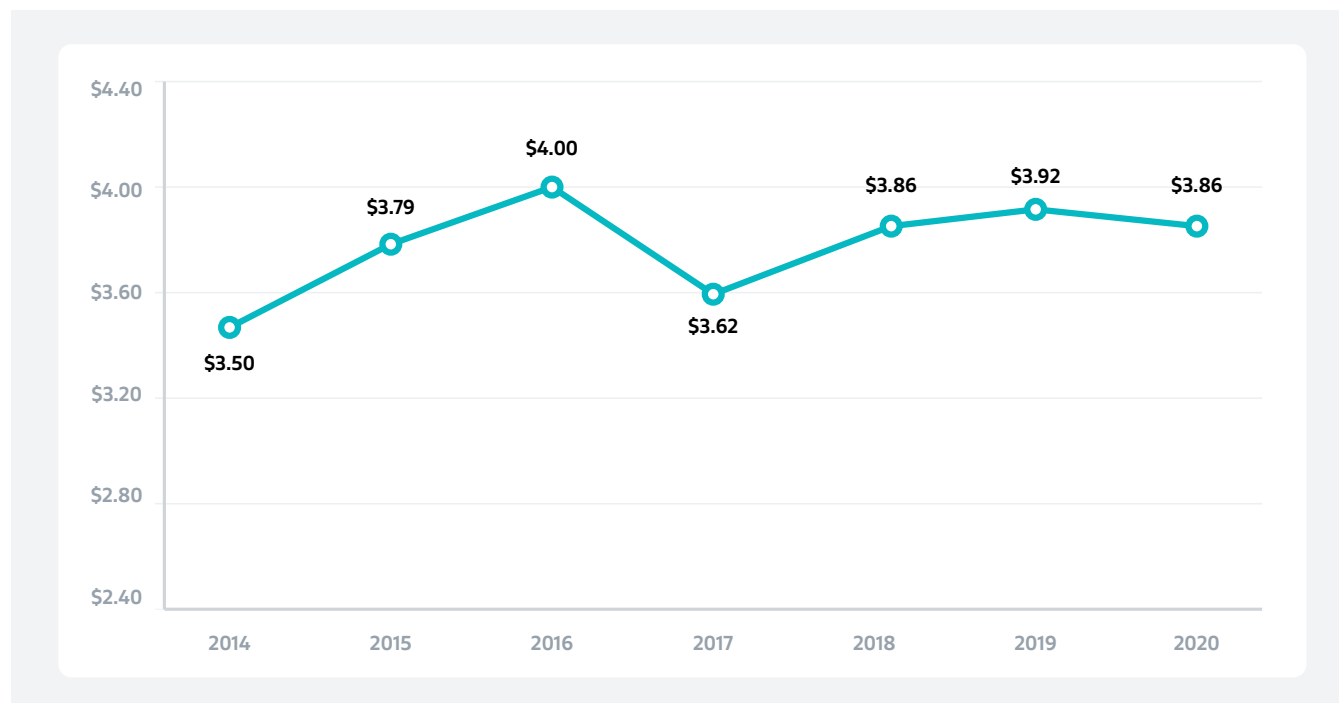
ransom payments within 24 hours to the Cybersecurity and Infrastructure Security Agency (CISA).

The Roundtable is working through a coalition of business organizations to ensure that any cyber incident reporting legislation creates a compliance regime that treats cyber-attack victims as victims, provides affected businesses with clarity in reporting, encourages cooperation between the public and private sectors, and limits legal liability. The Roundtable recommends policymakers include several provisions as part of a mandatory reporting regime, including:

- » Establish a prompt reporting timeline of not less than 72 hours. Legislation should reflect an appropriate, flexible standard for notifying the government about significant cyber incidents.
- » Attach reporting to confirmed cyber incidents. Businesses need clarity in reporting requirements, which should be targeted to well-defined and confirmed cyber incidents.
- » Confine reports to significant and relevant incidents. A list should be limited in reach—particularly excluding small businesses using existing federal rules—and risk based.
- » The business industry comments recommended that federal cybersecurity reporting legislation should also include robust liability protections; consistent federal reporting requirements; restrictive government use of reported data; and guarantee substantial input from industry to protect the rulemaking process.

Average total cost of a data breach

Measured in US \$ millions



Source: IBM Security, July 2021.

Infrastructure & Housing

Investments in infrastructure and the strength of real estate markets have a synergistic, two-way relationship. Our tenants and employees depend on safe and efficient roads, bridges, and mass transit to commute. Our buildings depend on reliable supplies of water, power, and broadband to function. In turn, infrastructure depends on healthy real estate markets. Property taxes are the main revenue source for local investments in roads, schools, etc. Higher property values mean more tax revenues to help pay for more infrastructure.

Investing to Modernize Physical Infrastructure

The Roundtable strongly backs bipartisan investments to modernize the nation's physical infrastructure and applauds the passage of the bipartisan Infrastructure Investment and Jobs Act (IIJA). The IIJA allows \$550 billion in new infrastructure investments, estimated to create around 2 million jobs per year over the next decade. This long-term investment in physical infrastructure can re-imagine how we can productively move people, goods, power and information from home to work, business to business, community to community – and building to building.

The IIJA includes Roundtable-supported measures to expand the use of public-private partnerships (P3s) to reach infrastructure goals and streamlines the federal permitting process. Specifically, the IIJA boosts P3s by supporting programs that deploy taxpayer “seed money” to leverage far greater amounts of private sector investments in a variety of infrastructure asset classes. Provisions of the IIJA are geared to boost P3 investments in road, transit, rail, broadband, electric grid, and carbon sequestration projects. The new law also codifies a 2-year federal permitting goal, and establishes a “One Federal Decision” document to coordinate the environmental reviews of multiple agencies.



U.S. Secretary of Transportation Pete Buttigieg discussed various aspects of infrastructure policy that will bring jobs to the American people, boost the economy, and enhance the U.S.' global competitiveness.

Housing

Safe, decent, and affordable housing is critical to the well-being of America's families, communities, and businesses. The COVID-19 pandemic has intensified the nation's persistent housing crisis, prompting The Roundtable to mobilize with our national real estate organization partners and jointly advocate for policies that increase housing supplies to serve the causes of equity, resiliency, job growth, and modernizing our nation's critical infrastructure.

Bridging the Housing Gap Through Government Sponsored Enterprises (GSE) Reform

The U.S.' chronic housing shortage is driving up housing prices to the detriment of the lower end of the economic spectrum. The underbuilding gap in the U.S. now totals 6.8 million affordable and available rental homes, according to the National Low Income Housing Commission (the "NLIHC"). In total, 50% of American renters are cost burdened. The impact of this growing problem of low supply of affordable housing as well as decreasing housing affordability can be far reaching – from reduced economic and wage growth to higher inequality.

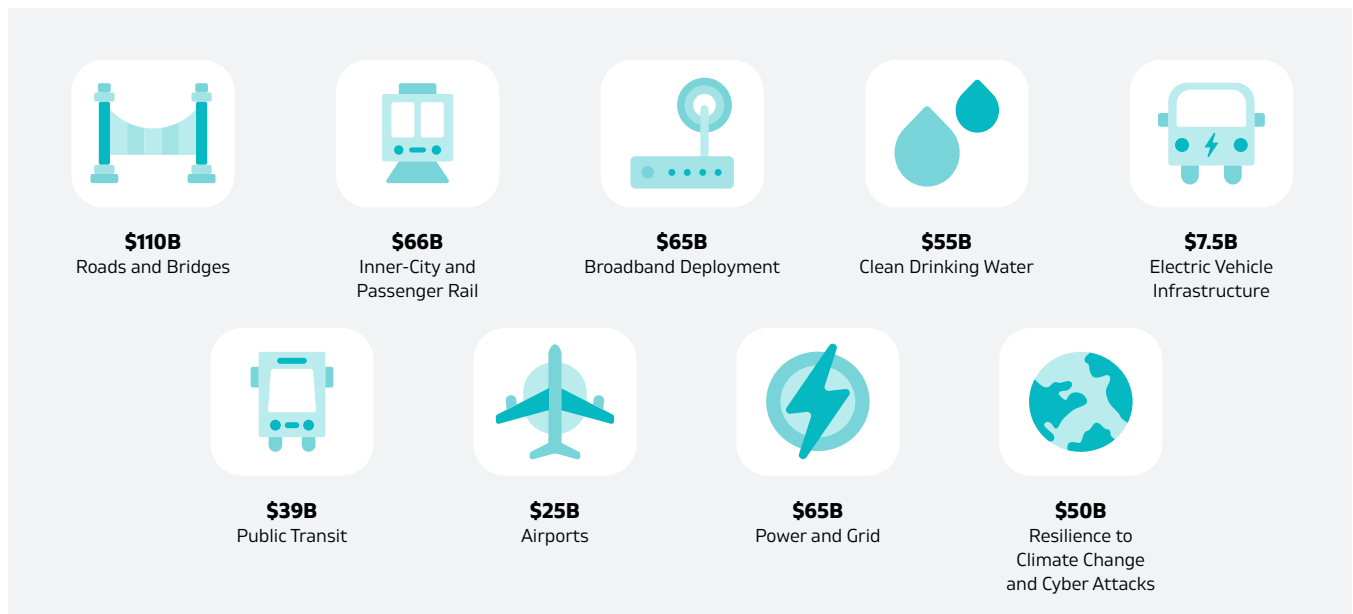
In addition, debate over reforms continues as the GSEs Fannie Mae and Freddie Mac have been in conservatorship for years.



Sen. Sherrod Brown (D-OH) who serves as Chairman of the Senate Banking, Housing and Urban Affairs Committee, outlined the committee's efforts to address the affordable housing crisis throughout the nation.

Elements of the IIJA

The following elements of the IIJA are of particular interest to real estate owners, community developers, and align with The Roundtable's long-standing policies on infrastructure:



Source: IIJA, The Real Estate Roundtable

The Underbuilding Gap

The underbuilding in the U.S. is an estimated **5.5 million housing units.**

Housing Completions Needed Annually to Close the Underbuilding Gap (Units)

VARIABLE	10 YEAR PERIOD	15 YEAR PERIOD	20 YEAR PERIOD
Return to Historical Norm (2000-1968)	1,501,000	1,501,000	1,501,000
Additional Units to Close Gap (2020-2001)	552,000	368,000	276,000
TOTAL ANNUAL COMPLETIONS NEEDED	2,053,000	1,869,000	1,777,000

Source: National Association of Realtors

Reform must appropriately balance taxpayer protections and establish an efficient marketplace with strong and sustained mortgage liquidity. As the gap between the number of lower-income renters and the supply of affordable units continues to grow, it is critical for the GSEs to provide support for mortgages to aid low and moderate income families. The Roundtable holds that a robust housing finance system is critical to expanding America's housing infrastructure to help meet the

nation's longstanding goal of ensuring decent and affordable housing for all. Current efforts have failed to keep pace with the growing need for affordable housing. Reform must appropriately balance taxpayer protections and establish an efficient marketplace with a strong, efficient and sustained financing environment for homeownership and rental housing and sustained mortgage liquidity.

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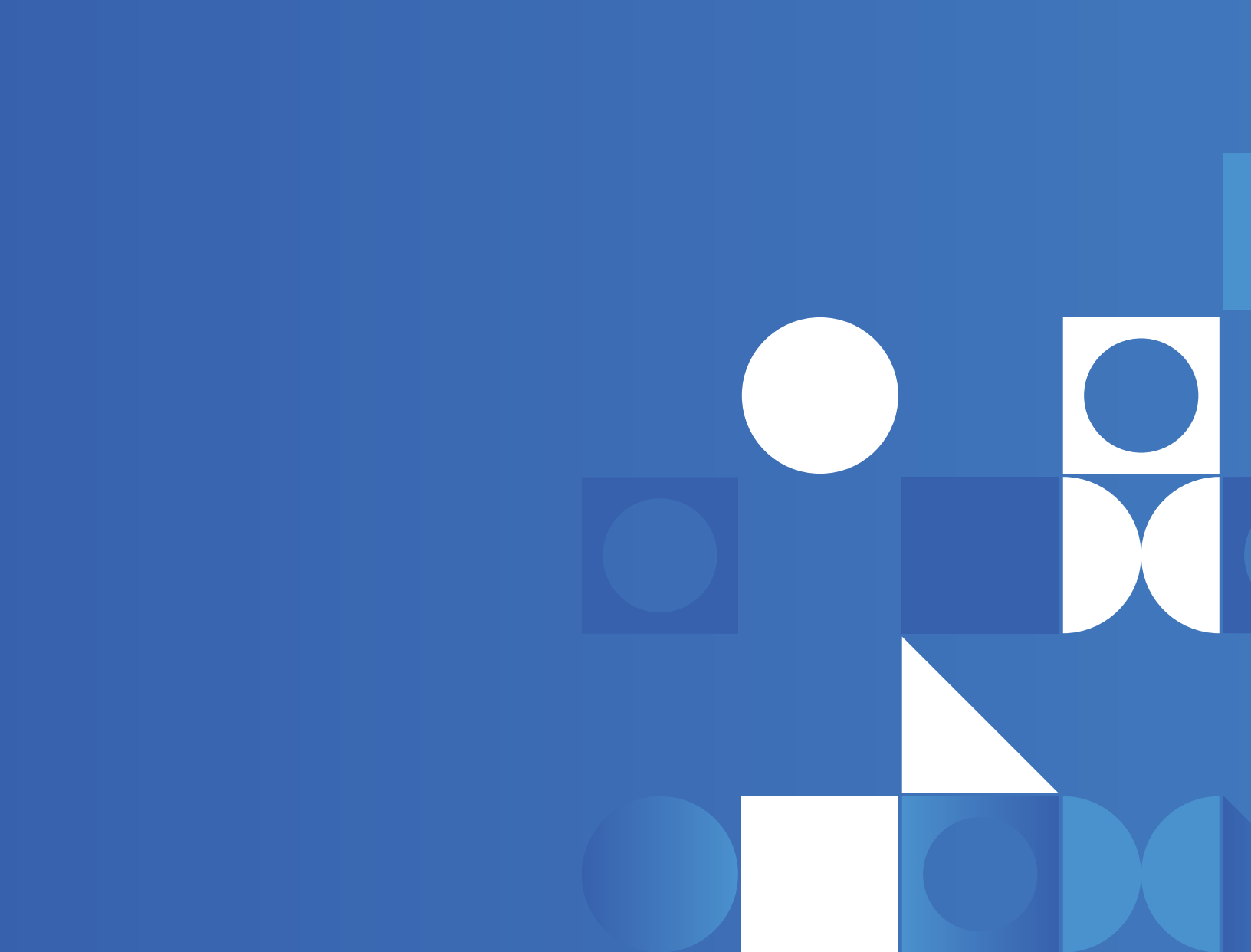
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