CCIM Institute

Experts in Commercial Investment Real Estate
Affiliate of the National Association of REALTORS®

Statements of Policy and Advocacy Agenda

Revised and Approved by the CCIM Institute Board of Directors- April 2019

TABLE OF CONTENTS

Foreword.. 4

Adopting Statements of Policy.. 4

2019 Government Affairs Committee..5

Business Operations.. 6
- ADA Reform.. 6
- National Flood Insurance.. 7
- Professional Certification and Designation.. 7
- Terrorism Risk Insurance.. 8

Community Development Incentives.. 9
- Historic Rehabilitation Tax Credit.. 9
- Low-income Housing Tax Credit.. 10
- New Markets Tax Credit.. 10
- Qualified Opportunity Zone Program.. 11

Environmental.. 12
- Brownfield Redevelopment.. 12
- Energy Star Buildings Program.. 13
- Section 179D.. 14

Finance and Credit..15
- EB-5 Regional Center Program.. 15
- Government Sponsored Enterprises (GSE) Reform.. 15
- HVCRE Reforms.. 16
- SBA Loans.. 16

Infrastructure.. 17
- Transportation Infrastructure.. 17
- Water Infrastructure.. 18

Tax..19
- 1031 Exchanges.. 19
- Indexing of Capital Gains for Inflation.. 20
- Carried Interest.. 21
- Internet Sales Taxation (*South Dakota v. Wayfair*).. 21

Pass-through Treatment………………………………………………………………………………………… 22

Technology……… 23
Blockchain……… 23
Data Security……………………………………………………………………………………………………… 24
Net Neutrality ……………………………………………………………………………………………………… 25
Use of Unmanned Aerial Systems (Drones)……………………………………………………………… 26

Foreword

CCIM Institute's Government Affairs Division staff prepares updated versions of the Statement of Policy for all chapter presidents, legislative liaisons, CCIM Institute committee chairmen and interested members. CCIM Institute encourages all chapters to utilize this information for monitoring and legislative purposes and promotes active participation in federal, state and local legislative matters. CCIM Institute Government Affairs Division staff is available to research general legislative issues of concern to CCIMs upon request.

The success and growth of CCIM Institute's legislative program depends on member participation at the federal, state and local level. Please take an active role in legislative matters and do not hesitate to contact CCIM Institute for assistance.

CCIM Institute
Government Affairs
430 North Michigan Avenue
Chicago, Illinois 60611-4092

Staff:

Liz Vincent, CCIM Institute, Government Affairs Liaison
Phone : (312) 321–4493
Email : evincent@ccim.com

Adopting Statements of Policy

The Government Affairs Committee is responsible for recommending statements of public policy and CCIM Institute positions on current issues.

When the Government Affairs Committee is in session at semiannual CCIM Institute meetings in April and October, positions or policy statements may be adopted with a simple majority vote. The positions and public policy statements are then submitted to the Executive Committee and, subsequently, the Board of Directors for approval.

2019 Government Affairs Subcommittee

Chad Gleason, CCIM, Chair
Shad Phipps, CCIM, Vice Chair
Drew Showfety, CCIM, Immediate Past Chair
Teya Moore, CCIM, Presidential Liaison
Rob Adams, CCIM
Kim Baker, CCIM
Stuart Davis, CCIM
Joe Farr, CCIM
Harold Huggins, CCIM
Randy Krise, CCIM
Lou Nimkoff, CCIM
Patrick Palmer, CCIM
Carnell Scruggs, CCIM
John Stone, CCIM
Jim Tansey, CCIM
Sledd Thomas, CCIM

Business Operations

CCIM supports business operations policies that foster a healthy and sustainable commercial real estate sector and that recognize the enormous impact commercial real estate has on the economy. Commercial real estate development and operations annually support over 8.3 million jobs in the U.S. (NAIOP Research Foundation). Legislation and regulations should support business policies that support and positively contribute to this economic growth.

ADA Reform

The Americans with Disabilities Act (ADA) makes it illegal to discriminate against people with disabilities. The law allows attorneys to collect fees related to pursuing claims of noncompliance, but plaintiffs are not permitted to collect damages. Over the last several years, there has been an increase in lawsuits targeting easily-correctible infractions. These lawsuits extend to the internet. There is no notice requirement if a commercial property is not in compliance, so owners who think they are complying may be vulnerable to lawsuits with no opportunity to correct the issue once a lawsuit has been filed.

CCIM Position

CCIM heartily endorses the mission of the ADA and supports an end to all discrimination against individuals with disabilities. CCIM encourages the regulatory agencies charged with the responsibility of enforcing the Act to adopt fair and workable regulations to ensure and facilitate timely compliance by public accommodations. CCIM supports requiring prior notification, with an opportunity to correct, alleged violations of the ADA before a lawsuit on the alleged violation can be filed, while reaffirming support for the ADA and all programs that encourage compliance with ADA laws.

Legislative Action

In February 2018, the House passed H.R. 620 which would have required a notice and cure provision before a lawsuit can be filed. CCIM is a member of a coalition working to address this issue either through legislative or other policy channels.

Talking Points

- A solution should be explored to positively resolve the issue of drive-by demand letters and lawsuits without the opportunity for notice and cure of the alleged violations.
- The number of these lawsuits is on the rise, with a 37% increase in 2016. CCIM supports requiring prior notification, with an opportunity to correct, alleged violations of the ADA before a lawsuit on the alleged violation can be filed, while reaffirming support for the ADA and all programs that encourage compliance with ADA laws.

National Flood Insurance Program

The National Flood Insurance Program provides affordable flood insurance to properties in flood zones. Without the NFIP, small business owners in 22,000 communities nationwide would be unable to obtain a mortgage or insurance to protect their property against the most common and costly natural disaster in the U.S.: flooding. The program reduces the number of uninsured properties that would otherwise turn to the federal government for taxpayer-funded disaster aid after floods. The NFIP has been consistently renewed by Congress since its inception in 1968, most recently with several short-term extensions, and is currently set to expire on September 30, 2019.

CCIM Position Statement

CCIM supports legislation that reauthorizes and strengthens the NFIP so it is sustainable long-term. CCIM supports improving flood insurance coverage by encouraging the development of private market options for commercial and multifamily properties at lower cost than the NFIP, while making available optional coverage including business interruption and multiple structure policies for commercial properties under the NFIP and improving flood map accuracy.

Congressional Action

In June 2019, the House introduced the National Flood Insurance Program Reauthorization Act of 2019 which would reform and reauthorize the NFIP for five years. CCIM supports legislation that would both reform and provide long-term reauthorization of the NFIP.

Talking Points

- Commercial Properties shutting down due to flooding negatively impacts the economy. According to FEMA, 25% of businesses that close after a destructive event never reopen.
- Coverage options must be improved to allow multiple buildings to be covered under one policy.
- The mapping system used needs to be improved by employing modern technology that will improve accuracy.
- Pre-flood mitigation options must be more cost effective and should allow the policy owner to obtain a reduction in rates.

Professional Certification and Designation

Professional certification and/or designation allows the public to trust and distinguish between those professionals who have achieved a certifiable level of competency in their field and those who have not. Such designation allows both the public and industry colleagues to recognize individuals that have achieved the knowledge base necessary for specific professions (PCC White Paper). Recently, many states have introduced legislation that could threaten voluntary certification programs, such as the CCIM, by allowing state governments to provide competing programs or by affecting the use of the CCIM designation. Recognizing the threat of these state bills, CCIM Institute joined the Professional Certification Coalition in 2018, which comprehensively monitors and advocates against these bills. The negative impact on voluntary certification programs is often not the legislative intent of the bill's sponsor and the PCC has been working with state legislators to remedy the language of these problematic bills.

CCIM Position Statement

CCIM opposes state legislation that places restrictions on voluntary professional certification/designation programs, the use of such a designation or that would allow the government to establish competing programs.

Legislative Action

The PCC worked with the sponsors of a threatening Ohio bill in the fall of 2018 to provide amendatory language to the bill, which would have allowed for the establishment of government certification programs in direct competition with voluntary private programs. The PCC is also working on the regulatory implementation of a hastily passed Missouri law that could negatively impact the use of voluntary certifications. The PCC continues to monitor state legislation impacting professional certification and occupational licensing.

Talking Points

- Professional certification allows the public to trust and distinguish between those professionals who have achieved a certifiable level of competency in their field and those who have not. Such designation allows for the recognition of individuals that have achieved the knowledge base necessary for specific professions.
- State legislation that is introduced to relax the barriers of entry for certain professions should ensure it does not restrict the use of voluntary professional certifications or establish government run programs in direct competition with private certification and at great cost to taxpayers.

Terrorism Risk Insurance

In 2002, the Terrorism Risk Insurance Act was passed to ensure the availability of terrorism insurance by creating a program through which the federal government would cover a certain percentage of insurance premiums attributed to a terrorist event over a three-year period. The Terrorism Risk Insurance Act has since been expanded and reauthorized, with President Obama signing the most recent reauthorization with the Terrorism Risk Insurance Program Reauthorization Act of 2015, which expires on December 31, 2020.

CCIM Position Statement

CCIM supports legislation that maintains the availability of terrorism risk insurance and encourages Congress to pass legislation reauthorizing TRIA before its December 31, 2020 expiration. If a project is financed with terrorism coverage that subsequently expires or dramatically increases in price, the lender's risk will increase and the value and profitability of the property will be threatened.

Congressional Action

No reauthorization legislation has yet been introduced in the 116th Congress.

Talking Points

- Terrorism insurance is critical for the financing of numerous commercial real estate transactions, especially in high-risk areas. Over 80% of outstanding multi-family and commercial mortgage debt is subject to terrorism coverage.
- If a project is financed with terrorism coverage that subsequently expires or increases in price dramatically, the loan may default, the lender's risk will increase, and the value and profitability of the property could be threatened.

Community Development Incentives

CCIM supports community development tax incentives. Positive tax incentives to encourage healthy and sustainable development of both neighborhoods and viable older properties is a critical component to a robust commercial real estate sector. Investment in both the residential and commercial infrastructure of neighborhoods creates new demand for businesses and in turn fosters positive economic growth.

Historic Rehabilitation Tax Credit

The Historic Rehabilitation Tax Credit, established in 1976, incents the reuse and revitalization of pre-1936 older buildings by providing a 10 to 20% tax credit for their restoration. It has led to the rehabilitation of over 44,000 properties and has attracted over $96 billion in private capital in communities across the United States (National Park Service).

The Tax Cuts and Jobs Act of 2017 amended the program. The 20% credit for the rehabilitation of certified historic structures has been retained but must be taken in 4% intervals over a 5-year period, as opposed to the prior method in which the owner would receive the 20% as a lump sum. The 10% credit for non-certified, pre-1936 buildings was repealed. A fiscal year 2018 report from the National Park Services reported that the agency tracked over $6.9 billion in private investment in historic preservation and community renewal in FY 2018, including 12,527 new housing units and 6,994 rehabilitated housing units.

CCIM Position

CCIM supports the Historic Rehabilitation Tax Credit, including improvements to the credit, and believes it is critical to the revitalization of older buildings and preserving historic structures, which both add to the character of our communities and preserve resources. The changes made by the Tax Cuts and Jobs Act, along with cutting the corporate tax rate, makes the historic rehab tax credit less valuable, although evidence from 2018 suggests that the tax credit is still highly demanded by both developers and investors.

Congressional Action

The 115th Congress saw legislation introduced to eliminate the requirement that the taxpayer's basis in a building be reduced by the amount of the rehabilitation credit determined with respect to such building. The last Congress also introduced legislation to strengthen the credit.

Talking Points

- The Historic Rehabilitation Tax Credit program can make the rehabilitation of historic structures commercially viable for developers.
- Historic tax credits also spur the investment of billions of dollars of private capital and generates jobs.

Low-income Housing Tax Credit

The Low-income Housing Tax Credit was established in 1986 to incentivize the building of affordable housing through tax credits. This program has led to the construction of 2.4 million low-income housing units. The tax credits work out as 9% of the total construction cost per year for ten years or 4% if it is a rehabilitation project. While Low-Income Housing Tax Credits are used in mixed-used projects, no more than 10% of a building's eligible costs can be directed to constructing commercial space. The Tax Cuts and Jobs Act of 2017 has impacted the program. The decrease in the corporate tax rate is predicted to reduce the construction of homes under this program.

CCIM Position

CCIM supports the incentives the Low-income Housing Tax Credits provide to developers to build affordable housing. CCIM supports legislative efforts to strengthen the program by simplifying and streamlining the program's requirements.

Talking Points

- Affordable housing is a critical issue, and the Low-Income Housing Tax Credit financing allows commercial real estate developers to gain equity in affordable housing projects.
- Tax credits can sometimes bridge the financing gap for a real estate project to generate needed equity.

New Markets Tax Credits

The New Markets Tax Credit Program, established in 2000, authorizes Community Development Entities (CDEs) to collect and distribute investments for businesses within low-income communities. In turn, the investors may claim a tax credit equaling 39% of the total investment over a 7-year period. The tax credit will expire at the end of 2019 without congressional action.

CCIM Position

CCIM supports the New Market Tax Credit as a vital tool for encouraging investment in businesses within underserved communities. The tax credit will expire on December 31, 2019. CCIM supports legislation that would make the New Market Tax Credit permanent.

Congressional Action

The bipartisan New Market Tax Credits Extension Act (H.R. 1680/S. 750) was introduced in both the House and Senate on March 12, 2019 and would make the New Market Tax Credit permanent.

Talking Points

- The New Market Tax Credit was enacted to increase the flow of capital to businesses and low-income communities through a tax incentive to investors.
- Between 2003-2015, $42 billion in direct NMTC investments were made in businesses and these investments leveraged nearly $80 billion in total capital investment to business and revitalization projects in economically-distressed communities.
- The CDFI Fund, who operates the program at the Treasury, noted that in 2018 alone, nearly 9,500 permanent jobs and 30,000 constructions jobs were created in economically distressed communities.

Qualified Opportunity Zone Program

The Qualified Opportunity Zone program was enacted with the Tax Cuts and Jobs Act of 2017. This program incentivizes investment in qualified opportunity zones through the deferral or full exclusion of capital gains taxes. Opportunity zones are defined as economically distressed areas, and over 8,700 census tracks have been designated Qualified Opportunity Zones. The program encourages investment by allowing investors to defer their capital gains tax based on the length of time invested in the zone.

Investments in Qualified Opportunity Zones must be made through Qualified Opportunity Funds in order to receive the tax benefits. Opportunity Funds are IRS certified and must invest 90% or more of their holdings into qualified opportunity zones.

CCIM Position

CCIM supports the Opportunity Zone program, as it incentivizes investment in economically-distressed census tracts by significantly deferring and excluding capital gains that are reinvested in designated census tracks. The program provides robust tax incentives to investors and has the potential to positively impact communities throughout the United States.

Legislative/Regulatory Action

The Treasury Department released its first round of guidance on the Opportunity Zone program in October 2018. A second round of proposed regulations was released in April 2019, with final rules anticipated for summer 2019. Some of the issues that are still waiting for guidance include clarification on the "substantial improvement" definition for investments and how much flexibility will be allowed within Qualified Opportunity Funds to allow for reinvesting interim gains without penalty. Many states have introduced legislation to coordinate state tax laws to further enhance the federal incentive.

Talking Points

- The Qualified Opportunity Zone Program provides significant positive tax incentives for investments in economically distressed communities. The incentive is likely to bring new development, capital and jobs into these communities. Secretary Steve Mnuchin has estimated the program could spur nearly $100 billion in capital investment in these designated communities.
- The second round of proposed regulations were released in April and provided to further clarity on requirements of the legislation. Final rules on the program are eagerly anticipated.

Environmental

CCIM Institute supports positive incentives to address the growing threat of global warming and to be good stewards of the environment. CCIM Institute strongly supports positive incentives for energy conservation activities and programs like the Brownfields program, which cleans up and supports sustainable land use, the Energy Star Buildings Program and the Section 179D deduction to incent energy efficiency in commercial buildings.

Brownfield Redevelopment

The Environmental Protection Agency's Brownfields Program is an initiative to rehabilitate brownfields, land contaminated by hazardous materials, to be ready for redevelopment. The EPA issues grants ranging from $200,000 to $600,000 to assess and decontaminate the brownfields. The program started in 1995 and was expanded in 2002. It was recently reauthorized and reworked in 2018 by the Brownfields Utilization, Investment and Local Development (BUILD) Act. The BUILD Act allocated more grant money, made more entities eligible for grants, and emphasized a focus on renewable energy and energy efficiency projects. The program has assessed over 28,000 properties and has leveraged the creation of over 141,000 jobs.

CCIM Position

CCIM supports the Brownfields Program as an essential tool for encouraging the decontamination and redevelopment of brownfields sites. CCIM supports the former federal brownfields tax incentive and urges the reintroduction of such an incentive. CCIM opposes holding a present property owner liable for the actions of a former property owner. The federal government should continue to provide adequate funding for the clean-up and redevelopment of our nation's brownfields sites and enhance the cost recovery and environmental remediation and clean-up expenditures by providing either current deductions or short amortization period for those costs.

Legislative Action

Many states have enacted tax credits for redeveloping brownfields. CCIM supports the reintroduction of the brownfields tax incentive at the federal level.

Talking Points

- The Brownfields Program is essential to restoring otherwise unusable land and repurposing derelict sites into valuable assets.
- The Brownfields Program raises the value of real estate and has a positive impact on the economy and the environment.
- Property values rise when in proximity to a recently cleaned brownfield site. Such remediation efforts can positively incent infield development, which can have a positive economic impact on older communities within a metro area.

Energy Star Buildings Program

EPA's Energy Star program is a voluntary energy efficiency and greenhouse gas emission reduction program for commercial buildings. The voluntary government and industry partnership facilitates comprehensive energy management strategies for both new and existing commercial buildings for building owners and businesses. Energy Star also identifies energy-efficient products and technologies. Last August, the EPA updated the data and equations it uses for Energy Star ratings. The new scoring methodology was found to produce inconsistent results depending on a building's size and/or geographic location. The EPA is currently reconsidering its scoring methodology to ensure properties are scored accurately regardless of their size or geographic location (Real Estate Roundtable).

CCIM Position

CCIM supports positive incentives to improve energy efficiency in commercial buildings and encourages commercial property owners to voluntarily participate in the program.

Talking Points

- Energy Star increases energy savings which is a positive for both business and the environment.
- Energy Star assists private markets in operating more efficiently by providing information on ground-breaking energy-efficiency technologies and acting as a neutral and trusted evaluator of these technologies (Real Estate Roundtable).

Section 179D

Section 179D of the tax code provides a tax deduction for building owners who install qualifying buildings and systems. The provision allows a deduction for commercial buildings that reduce energy and power consumption by 50 percent compared to the American Society of Heating, Refrigerating, and Air Conditioning Engineers standard. The deduction equals the cost of energy efficient property installed during construction, with a maximum deduction of $1.80 per square foot of the building. Also, a partial deduction of 60 cents per square foot would be provided for buildings subsystems. The deduction expired on December 31, 2016 and was retroactively reauthorized in February 2018 through December 31, 2017. It is currently unclear if the deduction will be retroactively reauthorized for 2018. Legislation has been introduced that would extend the deduction through December 31, 2020. CCIM is working with Coalition groups to advocate for the permanent extension of this important deduction.

CCIM Position

The 179D deduction is an essential tool for encouraging commercial building owners to improve their building's energy efficiency. For the deduction to be most useful, it must be made permanent, so that commercial building owners can optimize their investment and improvement plans. Short-term reauthorization does not provide the certainty and timing to allow building owners to take full advantage of the deduction.

Congressional Action

CCIM is a member of the Coalition to Extend and Improve the Section 179D deduction for Energy Efficient Commercial Buildings. This coalition is part of a larger tax extenders coalition working with Congress to, at a minimum, retroactively extend the Section 179D deduction through 2019. In the 115th Congress, Rep. Reichert (R -WA) introduced the bipartisan HR 3507 to make the deduction permanent, and in the 116th Congress, a tax extenders bill was introduced that would extend the reduction through December of 2020.

Talking Points

- The Section 179D deduction encourages the construction and rehabilitation of new and existing buildings to state-of-the-art efficiency levels. Incentivizing these features improves the environment, optimizes value and encourages economic growth at low revenue costs.

- The deduction has been a temporary part of the tax law since 2005 and has expired and been reauthorized five times. For the tax deduction to be effective it must be made permanent

Finance and Credit

CCIM supports policies that encourage economic growth and sustain a healthy real estate sector, including access to capital and policies that incentivize robust and responsible investment.

EB-5 Regional Center Program

The EB-5 Regional Center Program is an initiative under the EB-5 foreign investor program. The program allows foreign investors with an EB-5 visa to receive their green card if they invest $500,000 into a new commercial enterprise that facilitates U.S. economic growth by creating at least 10 full-time jobs. The program has been reauthorized several times since its inception in 1992, and after a program lapse from December 22, 2018- February 15, 2019, the initiative was reauthorized through September 30, 2019

CCIM Position

CCIM supports the reform and reauthorization of the EB-5 Regional Center Program, including reforms to address national security concerns and combat fraud.

Congressional Action

No bills to enact long-term reauthorization and reform have yet been introduced in the 116th Congress.

Talking Points

- Without reauthorization, an estimated $6.8 billion in foreign investment and as many of $130,000 American jobs will be lost.
- It is estimated that the Regional Center program brought a total of $10.98 billion into the country and created more than 355,000 U.S. jobs (roughly 6% of all job gains), from 2014-2015.
- By stimulating the economy, the EB-5 program also stimulates real estate markets across the United States.

Government Sponsored Enterprises (GSE) Reform

GSEs, including Fannie Mae and Freddie Mac, are essential for a fully effective and operational rental housing market. During the housing crisis of 2008, both Fannie Mae and Freddie Mac were placed into conservatorship, which continues today. To end the conservatorship, various reform measures to the entities are being considered to protect the mortgage market, while also protecting taxpayers. In February 2019, Fannie Mae announced it would double its loan limit for small multi-family mortgages from $3 million to $6 million.

CCIM Position

The secondary mortgage market is critical to the stability of multi-family housing and necessary to continue to meet the ongoing demand for rental housing. GSEs have provided liquidity in this market and allowed housing providers to keep up with rental housing demand. CCIM believes the role of the government in the secondary mortgage market is necessary for a fully-functioning mortgage market for multi-family properties. CCIM supports GSE reforms that preserve what works in the current system while also protecting the taxpayer.

Talking Points

- GSEs are essential for a fully effective rental housing market, especially in markets where attracting reasonably priced capital can prove to be difficult.
- Today, Fannie Mae and Freddie Mac have a strong regulator in the FHFA with public oversight in Congress. They are restricted in the products they can purchase and in the size of their retained portfolios (NAR's Vision for Housing Finance Reform).

HVCRE Reforms

The Economic Growth, Regulatory Relief and Consumer Protection Act, passed in May 2018, rolled back many of Dodd-Frank's regulatory requirements, and included a Clarifying Commercial Loans provision, for which CCIM had been advocating. This measure clarifies which acquisition, development and construction loans are considered High Volatility Commercial Real Estate and assigned a heightened risk weight of 150% instead of 100%. The law characterizes which loans are subject to the new higher risk weight rules and when a loan is exempt from these rules. In response to the new law's enactment, federal banking agencies are enacting rules to conform to the new law.

CCIM Position

CCIM supports this clarification of the High Volatility Commercial Real Estate loan definition to ensure the fair treatment of impacted loans and properties.

Talking Points

- The new HVCRE measure is estimated to improve lending capacity by as much as $120 billion (Real Estate Roundtable 2019 Policy Agenda).
- The old rules on high-volatility loans were confusing and had a chilling effect on banks lending.

SBA Loans

The SBA 7(a) loan program allows small businesses to receive long-term, fixed-rate loans for expansion or modernization. In 2018, the SBA lowered its equity requirements for acquisition loans for the SBA 7(a) program from 25% to 10%. The SBA also recently made a series of modifications to its standard operating procedure to better streamline the process. The 504 or Certified Development Company (CDC) Loan Program supports small business by offering financing tools to build upon successful growth and development by providing financing for purchasing fixed assets. The SBA 504 loan program certifies Certified Development Companies (CDCs) to administer the loans. In 2016, the SBA 504 refinancing program was made permanent. SBA is authorized to approve up to $7.5 billion for the regular 504 Loan Program and $7.5 billion in lending authority under the 504 Debt Refinancing Program.

CCIM Position

CCIM supports the SBA loan programs, including the recent changes to the 7(a) program that should increase program capacity and allow more businesses to receive financing.

Talking Points

- In 2018, the SBA 7(a) loan program approved 60,353 loans totaling nearly $25.4 billion for small businesses, with the average loan equaling $420,401 (Congressional Research Service).
- SBA loans are long-term and fixed-rates so they offer significant savings to the borrower.

Infrastructure

A healthy physical infrastructure system is essential to a thriving real estate sector. High quality infrastructure systems, including transportation, water, utilities and telecommunications, are a crucial factor influencing real estate investment throughout the United States. CCIM supports investment and improvement in our infrastructure quality and views it as imperative to maintaining economic competitiveness in today's global economy.

Transportation Infrastructure

TIFIA (Transportation Infrastructure Finance and Innovation Act) was established in 1998 and incentivizes private investment in transportation infrastructure using credit assistance. The credit assistance is offered in the form of secured direct loans, loan guarantees, or standby lines of credit. The projects that qualify for federal assistance include highways, railroads, intermodal freights, and port access. Both private and public entities can apply for TIFIA assistance. The BUILD, Better Utilizing Investments to Leverage Development, Transportation Discretionary Grants program and the Capital Investment Grants program also provide transportation infrastructure grants.

The Highway Trust Fund was created in 1956 to fund the federal interstate system through a motor fuel tax. It now consists of both a Highway Account and a Mass Transit Account to support both the construction and maintenance of highways and mass transit systems. Without raising the tax at minimal rates to keep up with inflation, the fund's purchasing power will continue to diminish and eventually will become insolvent. Congress has had to transfer $140 billion in revenue to sustain the Highway Trust Fund.

Congress and President Trump have both expressed support for a major infrastructure bill to address our country's deteriorating infrastructure. In addition to investment, other infrastructure priorities could include streamlining permitting processes, supporting public-private partnerships and considering new models for sustaining the Highway Trust Fund.

CCIM Position

CCIM supports increased investment in transportation infrastructure. CCIM believes the federal gas tax, must be raised and indexed for inflation in order to ensure the effectiveness and sustainability of the Highway Trust Fund.

Congressional Action

The Build America Act of 2019, H.R. 180 (Hastings-FL) was introduced in January of 2019 and would provide funding for the national infrastructure investment program and the capital investment grant program. Introduced in January 2019, the Move America Act, S. 146 (Hoeven-ND, Weyden-OR) would create Move America Bonds to expand tax-exempt financing for public-private partnerships, and Move America Equity Credits, to leverage additional private equity investment and at a lower cost for States.

Talking Points

- The Highway Trust Fund cannot be sustained unless the gas tax is increased.
- Continued appropriation of funds for the TIFIA program, BUILD grants, and the Capital Investment grants program is critical to adequate infrastructure funding.
- The permitting process should be streamlined for both water and transportation infrastructure projects to allow for easier coordination among stakeholder entities.

Water Infrastructure

The Water Infrastructure Finance and Innovation Act (WIFIA) was established in 2014 to provide financial assistance through loans to water infrastructure programs. These loans can cover up to 49% of a project's total cost. Eligible entities include local, state, and federal government entities, partnerships, joint ventures, corporations, trusts, and clean water and drinking water state revolving fund programs.

The Water Resources Development Act (WRDA) was signed into law in October of 2018. The bill requires the Army Corps to consult with impacted stakeholders before beginning a project of navigation, flood control, hydropower, recreation, ports, harbors, inland waterways, water supply, or emergency management.

CCIM Position

CCIM supports legislation to increase investment dollars to for critical water infrastructure systems within the United States.

Congressional Action

The Build America Act of 2019, H.R. 180 (Hastings-FL) was introduced in January of 2019 and would provide funding for the national infrastructure investment program and the capital investment grant program. Introduced in January 2019, the Move America Act, S. 146 (Hoeven-ND, Weyden-OR) would create Move America Bonds to expand tax-exempt financing for public-private partnerships, and Move America Equity Credits, to leverage additional private equity investment and at a lower cost for States.

Talking Points

- The permitting process should be streamlined for both water and transportation infrastructure projects to allow for easier coordination among stakeholder entities.
- Continued appropriation of funds for the TIFIA program, BUILD grants, and the Capital Investment grants program is critical to adequate infrastructure funding.

Tax Policy

CCIM supports tax policies that acknowledge the risk involved in investing in real estate and that support and incent investment and responsible development, which is good for both CCIM members and the United States economy.

1031 Exchanges

1031, or tax-deferred, exchanges hold great advantages for CCIMs. An exchange is defined as a reciprocal transfer of real property that has certain tax advantages over a sale. "Like-Kind" is defined as any real property exchanged for any other real property if such property is held for productive use in trade or business or for investment.

Upon closing the sale of a property, there is a 45-day period in which an investor must identify properties they would like to exchange into and a 180-day period (which includes the 45 days) in which to close on the identified property. The new property price must be at least equal to the net sales price of the old property. The 2017 tax reform law maintained 1031 like-kind exchanges remain for the exchange of real property. The law repeals the rule for all property other than real estate. Thus, any gain on the exchange of personal property used in a trade or business is not eligible for the tax deferral benefits.

Position Statement

The 1031 Like-Kind Exchange is an integral part of a CCIM's transaction portfolio. Therefore, every phase of the transaction should be retained. The CCIM Institute opposes any federal regulatory or legislative action that jeopardizes the ability of investors to partake in this tax-deferred real property transaction. Safeguards should be available to protect the real estate investor's assets during every phase of the transaction, particularly during the phase when the qualified intermediary holds property and funds on behalf of the investor. CCIM opposes any regulation or legislation that would render the transaction more difficult for investors.

Talking Points

- 1031 like-kind exchange does not avoid taxation. Like-kind exchanges stimulate real estate transactions but also encourage U.S. businesses to reinvest in their domestic operations.
- Allowing capital to flow more freely among investments encourages commerce and supports economic growth and job creation.

Indexing of Capital Gains for Inflation

Proposals to index capital gains taxes for inflation have recently reemerged in the public debate. Indexing for inflation would increase the basis of property by the change in the price between the date of the property's purchase and the date of its sale. In 1992, President Bush considered indexing capital gains for inflation through Treasury Department regulation. The Bush administration's proposal for such indexing through regulation was dropped when legal opinion from the Justice and the Treasury Departments concluded that the administration did not have the authority to make this change – it had to be done through legislation. In 2018, the Trump administration renewed the discussion of whether the Treasury Department might be able to issue such regulation and several bills to index capital gains for inflation were introduced in the 115th Congress, such as the Capital Gains Inflation Relief Act and the Retirement Inflation Protection Act.

Position Statement

CCIM Institute believes that it is in our nation's best interest for Congress to encourage real estate investment by creating a tax system that recognizes inflation and creates a meaningful differential between the tax rates for ordinary income and those for capital gains. CCIM supports indexing capital gains for inflation.

Talking Points

- Indexing capital gains for inflation would encourage investment and contribute to positive economic growth.

- Indexing capital gains for inflation could make the market more fluid by lowering the lock-in effect that causes property owners to hold onto property to avoid paying taxes on these gains.

Carried Interest

Most real estate partnerships, particularly those engaged in real estate development, are organized with general partners, who contribute their expertise (and, occasionally, some capital) and limited partners who contribute money and property (capital) to the enterprise. Generally, the profits of the partnership are divided primarily among the limited partners who contribute capital. A common practice among real estate partnerships, however, is to permit the general partner to receive some of the profits through a "carried interest," even when the general partner has contributed little or no capital to the enterprise. The general partner's profits interest is "carried" with the property until it is sold.

During the time that the real estate is held, the general partner receives compensation in the form of ordinary income. The limited partners receive both ordinary income from operations and capital gains income from any profits generated during the year. When the property is sold, the limited partners receive their profits distributions (the earnings on the capital they have invested) as capital gains. The general partner also receives the value of its carried interest as capital gains income.

The Tax Cuts and Jobs Act of 2017 now mandates that for carried interest to be taxed as capital gains for investments they must be held for three years instead of one.

Position Statement

CCIM Institute opposes any proposal that would eliminate capital gains treatment for any carried interest of a real estate partnership.

Talking Points

- A carried interest is designed to act as an incentive for a general partner to maintain and enhance the value of the real estate so that the operation of the property is a value-added proposition.
- The capital gain treatment of carried interest recognizes the critical role general partners play in the improvement of property and incents such development.

Internet Sales Taxation (South Dakota v. Wayfair)

In June 2018, the Supreme Court issued a long-awaited decision holding that states have the authority to tax online purchases even if the retailer does not have a physical presence in the state. This decision overturned 26 years of precedent requiring of retailers a physical presence in a state to mandate the collection of sales tax on online purchases. The Supreme Court case arose from a South Dakota law requiring taxation on all online purchases regardless of whether the retailer had a physical presence in the state. The court noted that exempting these purchases unfairly gives online retailers a competitive advantage over their brick-and-mortar counterparts. The South Dakota law exempts small business with fewer than 200 annual customers or less than $100,000 in sales annually within South Dakota. Other states are expected to follow suit with similar restrictions on the taxation of small online merchants. States are expected to pass legislation with their online taxation parameters in 2019.

Position Statement

The CCIM Institute believes that economically equivalent transactions should bring similar tax consequences and supports a level playing field for local in-store retailers and remote/internet merchants. The CCIM Institute believes that loss of revenue due to failure to collect sales tax on goods sold over the Internet places pressure on state and local governments to find replacement revenue in the form of increased property taxes, income taxes, transfer taxes and/or impact fees. CCIM agrees with the *South Dakota v. Wayfair* holding that a physical nexus should not be required for the taxation of online sales purchases.

Congressional Action

In the 115th Congress, Senator Tester introduced the Stop Taxing Our Potential (STOP) Act (S. 3180). This legislation would impose strict regulations on what transactions a state could tax. CCIM opposes this bill and supports parity between online and brick and mortar transactions.

Talking Points

- Exempting e-commerce purchases from taxation gives online retailers a competitive advantage over their brick-and-mortar counterparts. The distinction created an online sales tax loophole especially unfair to local brick-and-mortar business that already might be struggling to compete with their digital counterparts.
- Not taxing internet sales as they increasingly have replaced brick-and-mortar retails has resulted in significant declines in sales tax revenue for state and local governments. States must make up for this lost revenue in higher taxes elsewhere or through the cutting of public services and amenities.

Pass-Through Treatment

Established in 2017 with the passage of the Tax Cuts and Jobs Act, the Section 199A deduction for owners of pass-through entities and the self-employed provides a 20% deduction for certain business-related income. Some personal service businesses do not qualify for the deduction if the owner's taxable income exceeds $207,500 (single) or $415,000 (joint), but real estate professionals can qualify for the deduction even above these limits. The Treasury Department released final rules on the deduction in January 2019 and clarified the process that owners of rental real estate must follow to claim the deduction. The rule requires that at least 250 hours per year spent on maintaining and repairing property, collecting rent, paying expenses, and conducting other typical landlord activities to claim the deduction.

Position Statement
CCIM Institute supports the Section 199A deduction for certain business-related income and encourages Congress to make the deduction a permanent part of the tax code.

Talking Points

- 20% deduction gives owners of pass-through entities and the self-employed more equal treatment under the law to reflect the lowering of the federal corporate tax rate.
- The deduction provides a significant tax benefit for real estate professionals who work for themselves or own S corporations, limited liability companies (LLCs) or partnerships.

Technology Policy

New technologies have the potential to revolutionize the commercial real estate industry, through facilitating the sharing and securing of transactional data and analysis. CCIM supports policies that facilitate the development of such technologies and protect consumers, without over-burdening professionals and businesses with unnecessarily cumbersome regulations

Blockchain

Blockchain technology operates as an electronic ledger. The technology tracks and verifies transactions made and stores the information in a ledger with all previous transactions. This ledger is secure, because it is operated and maintained by thousands of computers rather than just one, so if one computer shows a discrepancy in the ledger, it will be corrected by the other computers. Blockchain secures the data by using a system of advanced cryptography to encrypt the data.

Blockchain would benefit the commercial real estate market if standardized, because it allows for transactions that require discretion to be made remotely and securely. Blockchain can allow for signing contracts, property records, and deeds without the use of a middleman. Blockchain could eventually allow for the purchase of a property completely through the internet.

CCIM Position

CCIM supports the development and use of blockchain, because it would improve the transparency and efficiency of transactions and could create new models of investment opportunity.

Legislative Action

Several states have introduced the Blockchain Technology Act (IL HB3575, UT SB213) which would allow blockchain to be used in transactions. Other states have introduced legislation that would create blockchain committees to study its effects (FL SB1024, MD S200, OR HB2179, UT HJR19). Legislation has been introduced federally which would allow for the further use of blockchain within business (US HR528, US HR923).

Talking Points

- Blockchain could significantly benefit commercial real estate by improving efficiency and transparency in transactions.
- Blockchain has the potential to create new commercial real estate investment possibilities. Blockchain-enabled smart contracts could allow for new models of value and security for banks, which could create new types of investment opportunities.

***Data Security*:**

As digital technology has become standard part of everyday life, the amount of sensitive data at -risk of cyber-attack has exponentially increased. There has been an upswing in concern about data security due to several recent high-profile data breaches and the real threat to sensitive information. For the commercial real estate sector to take full advantage of innovative technologies, it must first make sure that the technology will keep consumer data secure.

Over thirty states have enacted or have pending legislation addressing data security. Some of this legislation would require businesses to inform consumers if data containing their personal information has been breached. The Gramm-Leach-Bliley Act was enacted in 1999 and requires financial institutions, real estate appraisers and real estate settlement service providers to supply a privacy notice to consumers that explains what sensitive information is requested by the company, how the information is used, and how the company protects this information.

In May 2018, the European Union General Data Protection Regulation (GDRP) went into effect. This rule prohibits the collection of personal data of any EU resident without that individual's explicit permission. Thus, companies need the consent of consumers to collect and use their data, an opt-in regime, instead of an opt-out regime on their websites, if there is the chance, they will be working with EU clients. The 116th Congress is considering a unified, national data privacy law to replace the patchwork of state laws and better protect consumers' privacy rights.

Position Statement

CCIM supports the standardization of data security laws to better streamline rules and facilitate compliance. CCIM believes protecting the consumer's personal information should be a top priority and supports policies that encourage reasonable date privacy and security safeguards. CCIM believes data privacy laws should be narrowly tailored to avoid burdening small businesses that lack the compliance resources of larger firms. CCIM also supports legislation to assist businesses in their efforts to improve data security for both their clients and employees.

CCIM recommends its members implement data security policies and communicate these policies to its clients. CCIM also recommends its members only request personal data that is necessary for a transaction or required by law.

Congressional Action

In the 115th Congress, the Data Breach Security and Notification Act was introduced to create a federal data security standard. Two bipartisan bills were also introduced to support small businesses in their efforts to improve data security, including the Small Business Development Center Cyber Training Acct and the Small Business Advanced Cybersecurity Enhancements Act.

Talking Points

- Data security is critical to protecting consumers. CCIM supports legislation that provides consistent data security policies and support business owners in their implementation of data security practices.
- CCIM urges Congress to enact comprehensive data security legislation that both protects consumers and is narrowly tailored as to not be unduly cumbersome for small businesses.

Net Neutrality

Net neutrality is shorthand for the concept that internet users should be in control of what content they view and what applications they use on the internet. Net neutrality provisions are critical in preventing broadband providers from implementing possibly discriminatory practices that could negatively impact real estate professionals use of the internet to market their listings and services. Net neutrality is crucial to small businesses that depend on open internet access to run their business and serve their customers. The removal of net neutrality rules could make it difficult for small real estate firms to compete with larger firms on the internet.

On June 11, 2018, the Federal Communications Commission repealed the Open Internet Rule which ensured net neutrality. This repeal will allow broadband providers to implement discriminatory practices towards consumers and businesses. In response, twenty-one state attorneys general have filed suits challenging the repeal, claiming that it violates federal laws. Legislators in thirty-four states have also introduced over 120 bills and resolutions requiring internet service providers to ensure various net neutrality principles and 5 states have enacted such legislation.

Position Statement

CCIM Institute believes that net neutrality is integral to a nondiscriminatory commercial real estate market and allowing small business to compete with larger firms on the internet. CCIM supports legislation protecting net neutrality.

Congressional Action

On March 6, 2019, the Save the Internet Act by Congressman Doyle (D-PA) was introduced, which would restore the 2015 Open Internet Order and restore net neutrality principles. In July 2018, Congressman Coffman (R-CO) introduced the 21st Century Internet Act to turn into law the principles of net neutrality. Senator Markey (D-MA) and Congressman Doyle (D-PA) have also introduced a Congressional Review Act resolution to overturn the Federal Communications Commission's (FCC) partisan decision on net neutrality.

Talking Points

- CCIM Support the 21st Century Internet Act to reinstate net neutrality.
- Net neutrality is important to small, main street businesses that depend on open internet access every day to run their business and serve their customers
- Removing net neutrality rules could make it difficult for small real estate firms to compete with larger entities on the internet.

Use of Unmanned Aerial Systems (Drones)

Advances in technology have made it possible to take high definition videos and pictures from unmanned aerial vehicles, often referred to as drones. These advances provide commercial realtors with an excellent tool for streamlining the research process for potential buyers. Drones offer commercial realtors with a multitude of applications such as photography, videos, heat-loss imaging, appraisals, and building management. These applications have the potential to transform the real estate market, and as the technology becomes more efficient and easier to use, it will likely become the standard within commercial real estate.

Federal law is attempting to catch up to the recent innovations in drone technology. On August 29, 2016, the Federal Aviation Administration's (FAA) small drone rule went into effect. This rule eased the restrictions on drone use for small businesses by creating a new FAA license called the "UAS Operator Certificate". This certificate does not require a pilot's license, thus making drones more accessible to small businesses.

Position Statement

CCIM supports federal regulations that allow for the commercial use of drones, while ensuring for safety and addressing privacy concerns, and believes drones provide a valuable tool for commercial real estate professionals.

Legislative/Regulatory Action

The FAA is drafting regulations for "micro UAS", a subset of smaller, lightweight drones and holding hearings and committees on micro UASs. The expansion of FAA regulations is a slow-moving process as there are multiple items that different agencies want as a part of these new regulations. In January 2019, the FAA issue proposed rules for over-crowd and night flights. The FAA is also still working on rules for using drone beyond the line of sight. Several states have also introduced their own drone legislation.

Talking Points

- CCIM supports federal regulations that allow for the commercial use of aerial vehicle technology by the commercial real estate industry.
- CCIM is committed to ensuring the safe use of such technology, protecting privacy and following best practices in drone usage.