



The Real Estate Roundtable

**STATEMENT OF
JEFFREY D. DEBOER
ON BEHALF OF
THE REAL ESTATE ROUNDTABLE**

**UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
AND SUBCOMMITTEE ON OVERSIGHT
JOINT HEARING**

***“GENERAL SERVICES ADMINISTRATION: OPPORTUNITIES TO CUT COSTS,
IMPROVE ENERGY PERFORMANCE, AND ELIMINATE WASTE”***

**DIRKSEN SENATE OFFICE BUILDING
ROOM 406
WASHINGTON, D.C.**

**WEDNESDAY, MARCH 30, 2011
10:00 AM**



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I. INTRODUCTION

Thank you Committee Chairman Boxer, Committee Ranking Member Inhofe, Subcommittee Chairman Whitehouse, Subcommittee Ranking Member Johanns, and members of the Committee, for conducting today’s hearing on the role and function of the General Services Administration (GSA) to cut costs, improve energy performance, and eliminate waste.

I am Jeffrey DeBoer, the President and Chief Executive Officer of The Real Estate Roundtable, an organization that represents the leadership of the nation’s top 130 privately-owned and publicly-held real estate ownership, development, lending and management firms, as well as the elected leaders of the 16 major national real estate industry trade associations. Collectively, Roundtable members hold portfolios containing over 5 billion square feet of developed property valued at over \$1 trillion; over 1.5 million apartment unit; and in excess of 1.3 million hotel rooms. Participating Roundtable trade associations represent more than 1.5 million people involved in virtually every aspect of the real estate business.

The GSA should be commended for developing a program for disposal of underutilized assets in the federal real estate portfolio. Aging properties that do not live up to their maximum potential are dead weight on the government's balance sheet and on real estate markets. While there is no cure-all measure to jump-start our nation's sluggish economic recovery, re-purposing buildings and putting them to more productive use can help reignite transactional activity and spur job creation in moribund markets.

To make the program as successful as possible, as I explain in greater detail below, any plans to sell-off GSA-controlled real estate must take the following into account:

- The economic problems presently confronting the commercial real estate sector largely concern depressed property values and the need to create more equity to increase those values. It is thus critical to accurately value federal assets for potential sale to the private sector.
- The GSA must be sensitive to the different reactions local markets will have when federal properties are released in terms of parochial economic and political impacts that might vary from region to region and community to community.
- Private sector participants with real estate expertise should be consulted by GSA as an important resource to increase the likelihood of success for any federal buildings disposal program.
- A federal property disposal program can provide great opportunities to improve the energy efficiency of the existing building stock. As aging federal assets are released by GSA, Congress should consider tax and other incentive programs to encourage interested purchasers to make these buildings more energy efficient.
- Potential buyers will not be attracted to a federal real estate sale that triggers burdensome and expensive regulations for building rehabilitation. In this regard, Congress must carefully consider the Environmental Protection Agency's plans to regulate renovation and remodeling activities in public and commercial buildings, arising from as yet unsubstantiated lead-paint hazards in those structures. Such regulations could greatly undermine the private sector's willingness to entertain purchases of older and underutilized federal properties.

II. COMMERCIAL REAL ESTATE AND ITS IMPACT ON THE ECONOMY

In considering the plans of the Obama Administration and GSA to identify and dispose of surplus federal properties – a large number of which will be commercial properties – it is important to provide an overview of the commercial real estate sector in terms of its impact on the national economy, as an agent to create jobs, its significance as an investment vehicle for Americans across the economic spectrum, and how my industry is faring in terms of recovery from the Great Recession.

When I speak of commercial real estate I refer to six principal property types: apartment, office, retail, industrial, health care and hotels. The commercial real estate market includes many diverse regional and local markets, as well as submarkets within these, each with their own dynamics. A common attribute through all is that they each depend on a healthy economy for occupancy and operating income (like rents and retail sales), and on a liquid financing market to facilitate investment, development and sales of properties.

The commercial real estate sector of the economy is large, in the range of \$5.2 trillion in value, and is supported by \$3.2 trillion in debt (much of which is coming due within the next five years). Before the recent economic crisis the value of commercial real estate in this country peaked at about \$6.7 trillion, and during the depths of the crash fell to about \$4.7 trillion, while the amount of supporting debt has remained relatively constant. In other words, there is a direct correlation between improving commercial property values and our national recovery from the recession. My industry's health is plainly vital to the economy and our nation's financial system. Estimates show commercial real estate constitutes 13% of GDP by revenue.

About nine million jobs are generated or supported by real estate — jobs in construction, planning, architecture, environmental consultation and remediation, engineering, building maintenance and security, management, leasing, brokerage, investment and mortgage lending, accounting and legal services, interior design, landscaping, cleaning services and more.

As we have seen during the nation's massive economic crisis of the last four years, when the real estate sector suffers – such as through rising defaults from a lack of refinancing options, falling property values, lower sales at retail outlets, and declining occupancy in office buildings and hospitality spaces and hence lower rents – a cascade of negative repercussions ripple throughout the economy:

- ***For millions of Americans whose pension funds invest directly or indirectly in approximately \$160 billion of commercial real estate equity***, increased loan defaults and lower property values will mean a smaller retirement nest egg.
- ***For millions of construction, hotel and retail workers***, lack of commercial real estate transactions, underscored by a liquidity vacuum where banks are both unable and unwilling to extend capital for investments, translates into cancelled or delayed projects, layoffs and pinched family budgets — exacerbating rising unemployment and declining consumer spending. This, in turn, will further hurt U.S. businesses and intensify falling demand for commercial real estate space.
- ***For state and local governments***, erosion of property values will mean less revenue from commercial property assessments, recording fees and transaction taxes resulting in bigger budget shortfalls.
- ***For the communities they serve***, it will mean cutbacks in essential public services such as education, road construction, law enforcement, and emergency planning.

III. THE CURRENT ECONOMIC PICTURE

Since the start of the Great Recession, we have painfully witnessed these negative consequences manifest themselves as property values have plummeted and the credit crisis has strangled the flow of capital throughout our regional, national, and global economies. While there is still a long way to go to achieve complete recovery and stabilize real estate values, at least we are starting to see some areas of the country rebound.

The Real Estate Roundtable's members recently confirmed, through our 1st Quarter 2011 Sentiment Index,¹ that some commercial real estate markets are slowly mending. This survey is the industry's most comprehensive measure of leading executives' confidence in financial and real estate markets. Conducted by FPL Advisory Group, it captures the perspectives of over 100 senior real estate executives, including CEOs, presidents, board members, and other executives from a broad set of industry sectors including owners and asset managers, financial services firms and operators.

The Sentiment Index portrays a bifurcated recovery for commercial properties. So-called "gateway" cities have come back strong while smaller, more mainstream markets still struggle. There is greatly improved access to functioning liquidity and improving values (particularly for "Class A" assets) in cities like New York, Washington, D.C., Boston, San Francisco, and western Los Angeles. Contrast this to still-weak capital formation and lackluster fundamentals elsewhere around the country. Smaller, more mainstream real estate markets continue to face big challenges.

In markets outside of our key urban areas, rent and occupancy rates are weak while construction remains at its lowest levels in the past 40 years. From a position of comparative balance in mid-2008, as the economy shed 8.6 million jobs, demand for commercial space fell precipitously. To make matters worse, 2 million new jobs were needed to absorb the new commercial space delivered through the development pipeline. This 10.6 million job shortfall reflected directly in vast oversupply, lack of demand, and declining rents. Since we hit bottom only about 1.3 million jobs have been added to the workforce, leaving jobs about 9.3 million short of striking a balance. Thus, even with a solid recovery, it will take three to four years to make up this 9.3 million job shortfall. Rents and occupancy will therefore remain weak, though improving, and development will remain muted for the next three to four years while the job gap is filled.

Until private sector job creation picks up, we are not out of the economic danger zone. Commercial real estate markets tend to recover from the top down, when higher quality markets attract new capital and eventually other markets are affected. But legitimate headwinds remain, such as an unacceptable unemployment level, a huge pipeline of maturing commercial mortgages and large fiscal issues at the state and local levels of government. There may be an up-tick in tone expressed by The Roundtable's 1Q 2011 Sentiment Index, but it is tempered by the ongoing economic risk of unemployment.

¹ Available at <http://www.rer.org/ContentDetails.aspx?id=10074>.

Looming just around the corner is the roughly \$1.5 trillion of commercial mortgage debt coming due in the next four years. Most commercial real estate loans have terms of 10 years or less, and therefore a significant percentage of outstanding debt matures each year which needs to be refinanced. Although the Commercial Mortgage-Backed Securities market is returning to life (with new issuance projected to reach as much \$45 billion this year) capacity remains far off the 2007 peak of \$237 billion – well below what is needed to refinance hundreds of billions of dollars in maturing debt.

The upcoming waves of debt coming due underscore the importance of improving commercial real estate values by injecting greater capital into the market. Consider this common situation. Assume an asset was purchased during better economic conditions at \$100, and financed with \$80 in debt. Now, under current conditions, the asset is “underwater” and only valued at \$60. An infusion of equity is needed to improve the debt-to-value ratio to encourage any sale or refinancing of the asset as the present \$80 mortgage becomes due. That is why, outside of this Committee and Subcommittee, The Roundtable has supported means to address the significant erosion of equity in the past two to three years and has advocated for a capital infusion of roughly \$1 trillion, to rebalance loans on properties that are upside down. A key way to fill this equity gap would be to amend the Foreign Investment in Real Property Tax Act of 1980, in a manner that encourages foreign investors to steer their money to U.S. commercial real estate markets (as opposed to emerging real estate markets in China, India, and elsewhere).

Despite this tangible need for more capital to improve commercial property values, there is a strong hope among the respondents of the Roundtable’s Sentiment Survey that 2011 will represent a return to a more typical marketplace in which buyers and sellers are actively competing for properties on reasonable valuations, with equity and debt providers each playing more normalized roles. One of The Roundtable’s CEOs offered the following market analogy: “It’s like a flywheel. You have to get the flywheel moving, get it to pick up momentum. Real estate has been slowly picking up speed, and I think this year we’ll have momentum. Maybe not as much as we like, but momentum nonetheless.”

Over the past four years, Congress and the Bush and Obama Administrations have taken extraordinary measures to calm financial markets, prevent the collapse of major institutions and encourage credit to flow again. I must stress the need for federal actions such as job creation measures, and new tax and incentive policies, before we return to a more typical marketplace. Until then, industry optimism will remain cautious due to weaknesses in the real estate sector that plague all but our marquee urban gateways.

On that note, “cautionism” is not a term you’ll find in Merriam-Webster. But dictionary words fail us and recent market experiences defy description. At least for the first quarter of 2011, “cautionism” captures the sentiments expressed by the real estate industry’s leaders who do business in these awkward and precarious economic times.

IV. DISPOSAL OF EXCESS FEDERAL PROPERTIES

Considering this current economic state of play, while there is no silver bullet to further enable economic recovery, federal plans to sell-off certain underutilized or excess assets (assuming they are properly priced) might help spur re-development and growth in some depressed markets. But the government must proceed carefully and deliberately with any building disposal process. According to the Government Accountability Office (GAO):

Excess properties are buildings that agencies have identified as having no further program use, and underutilized properties serve a program purpose that could be satisfied with only a portion of the property. In fiscal year 2009, 24 federal agencies including the Department of Defense reported 45,190 underutilized buildings that cost \$1.66 billion annually to operate. A June 2010 Presidential Memorandum continued government efforts to dispose of unneeded properties by establishing a new government target of \$3 billion savings through disposals and other methods by the end of fiscal year 2012.²

The obsolete offices, buildings, and land in the federal real estate portfolio present significant risks to the government. They are costly to maintain, threaten the financial viability of GSA's Federal Buildings Fund, waste taxpayer dollars, and could be put to more beneficial uses or sold on the private market to create revenue. Encouraging greater transactional volume, with concomitant job-creating impacts, would have a positive ripple effect at state, local and national levels. And, reducing the federal government's annual budget deficit by saving billions of dollars in operating costs would redound positively throughout the economy. On the other hand, a cumbersome and complex disposal process could discourage interest in property investments. Moreover, imprudent valuation of federal properties could have devastating impacts. In markets where recovery has not yet taken hold, the injection of *under*-valued properties could further depress asset values and aggravate poor real estate fundamentals. *Over*-valued federal properties that fall short of their potential to generate sufficient incomes will worsen the problem I discussed earlier, regarding assets that are "underwater" where outstanding debt coming due is greater than underlying value.

In short, as the largest owner of property in the United States, the federal government's disposal of surplus assets could have significant consequences – both positive and negative – on commercial real estate submarkets and in the entire sector writ large. Any process to identify, re-purpose and sell-off federal assets must be efficient and streamlined, but also nimble enough to react to local market conditions and import property valuation criteria that reflect each parcel's characteristics and potentials.

I accordingly urge that any panels or task forces convened to establish procedures for federal property disposal must include the voices of seasoned commercial real estate professionals. For this process to be successful in a manner that minimizes red tape and bureaucracy while simultaneously considering the uniqueness of assets, economic conditions, and community needs, the perspectives and experiences of the private real estate network is critical. As a starting point, I would recommend that GSA and other involved agencies should:

² United States Government Accountability Office, *What GAO Found* in "Federal Real Property – The Government Faces Challenges to Disposing of Unneeded Federal Buildings; Statement of David J. Wise, Director, Physical Infrastructure Issues," GAO-11-370T (Feb. 10, 2011) (hereafter "GAO Report").

- ***Make an inventory of potentially underutilized or excess federal properties accessible to the public for review.*** The GSA has received a bipartisan request from the House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings, and Emergency Management, for a list of all properties under the agency's control to help identify assets that may be sold-off. The House request seeks information on building addresses, square footage, estimated market value, how much the property costs the government to maintain, and the current use and capacity of buildings. This list should be made available to the private real estate sector to help identify assets that might be released from the federal portfolio, how they might best be valued, and whether they can indeed be put to more productive purposes.
- ***Allow market experts to consult that inventory list and advise on the quantity, location, and timing of asset disposal.*** With regard to the point I made earlier regarding the bifurcated recovery of the real estate sector, facility sell-offs in markets that are already characterized by excess vacancy rates should be carefully scrutinized and might need to be avoided. The exceptions are properties well-located in international gateways like Manhattan, central Boston, Washington, D.C., San Francisco and west Los Angeles, where capital markets are pricing well ahead of actual demand recovery. In the near term these markets should likely be the primary focus of any GSA disposal program. As the recovery deepens and capital markets expand their interest, other locations will become better positioned to absorb excess federal properties.
- ***Include lenders and appraisers in the process early.*** From a private investment perspective, the success of any disposal program leans heavily on the availability of credit for financing, which itself depends on the accuracy of appraisers to fully and fairly value assets. While the Obama Administration should have deficit reduction goals in mind as it sells-off properties, caution is warranted to make sure that asset valuation is not unduly inflated or overly ambitious just for the sake of meeting those deficit targets. GSA and other agencies must accordingly communicate openly and frequently with the lending and appraisal communities, and The Roundtable and our members are well-suited to facilitate that dialogue.
- ***Seek input of real estate professionals on how to best manage and address concerns of citizen advocates.*** Federal facilities are often the face of the built environment in many local communities. As a result, their disposal can be controversial and trigger interest and apprehension from numerous stakeholders. Private real estate developers understand the art of compromise, and what it takes to “get the deal done” by navigating the public hearings processes at community planning, zoning, and other local board meetings. These professionals with expertise in their local markets will be an invaluable resource in assisting GSA address concerns of community stakeholders.
- ***Start working now with private sector experts and other stakeholders with skills in addressing special challenges that have impeded past efforts for efficient asset disposal.*** Certain complex legal and regulatory issues have been barriers that obstruct the government's ability to effectively dispose of unneeded assets. For example, action plans should be underway as soon as possible – with participation from private sector professionals with special expertise – in handling federal properties that might be listed on the National Register of Historic Places, present environmental clean-up and

remediation issues, or may implicate imminent Environmental Protection Agency lead paint regulations on renovations in public buildings (see section VI of this statement). These assets might be among the most potentially valuable in the government's portfolio, but processes must be in place to handle such special considerations as informed by experts who have overcome these obstacles to culminate successful private sector transactions.

In my experiences with leading real estate executives, they are driven by an entrepreneurial spirit, are always scouting out that next deal, and will see many opportunities in a federal program to unload unwanted assets. They are precisely the audience to whom GSA should market any available properties for sale, and they should be included among the federal government's advisers in addressing the management challenges to create an effective real estate disposal program.

V. BUILDING ENERGY EFFICIENCY ISSUES

The Roundtable's policy is to encourage measurable, quantifiable, and verifiable improvements in the energy performance of our built environment. In this regard, it is worth noting that the federal government is the largest consumer of energy in the United States. Millions of dollars in fuel costs and energy resources are squandered to maintain unneeded real estate, which "reflects an infrastructure based on the business model and technological environment of the 1950s." GAO Report, fn. 1 at pp. 1, 4. GSA's property disposal program thus presents a unique opportunity to improve the energy efficiency of a significant portion of this country's building stock – in keeping with the Obama Administration's "Better Buildings Initiative" and its plans to "win the future" by out-innovating and out-building the rest of the world.³

- **Tax Incentives for Building Retrofits**

A meaningful and usable package of incentives should be created to encourage building owners, who might take-on unwanted aging federal properties, to retrofit these assets with energy efficiency upgrades. Indeed, considering the far greater expenses for developing nuclear power and renewable energy technologies like wind and solar projects, incentives to encourage deployment of building efficiency technologies deliver greater "bang for the buck" and are a much more cost effective, safer, and less controversial means to reduce consumption of fossil-based fuels.

Existing law, originally signed by President George W. Bush as part of the 2005 Energy Policy Act, provides a tax deduction to incentivize commercial building retrofits at section 179D of the Internal Revenue Code. However, in the years since its enactment, we have learned that section 179D has had an anemic effect to motivate transformation in the retrofit marketplace.

³ See <http://www.whitehouse.gov/the-press-office/2011/02/03/president-obama-s-plan-win-future-making-american-businesses-more-energy>.

The Real Estate Roundtable, in conjunction with our members, the U.S. Green Building Council, the Natural Resources Defense Council, and other groups, has carefully analyzed section 179D and has considered how it may be amended to have a meaningful impact to encourage building efficiency upgrades. As GSA develops its program to release excess properties into the marketplace, Congress should take complementary steps to enable retrofits of those assets by re-designing section 179D as follows:

- ***Use a “vintage-specific” baseline to measure savings as compared to a building’s own prior energy performance.*** Currently, section 179D rewards buildings that reduce the energy consumption of the whole building to 50 percent of the amount the building would use if it were built to a particular code (in this case, the ASHRAE 90.1 energy standard for commercial buildings as adopted in 2001). This is an arbitrary baseline for buildings that were constructed decades ago. Additionally, the current savings threshold of 50 percent better than this standard is too aggressive for existing buildings. For instance, the project at the Empire State Building, owned by Roundtable member Anthony Malkin, represents the gold standard for commercial building retrofits. This project makes a \$13.2 million investment in efficiency upgrades – but it would not meet the 179D tax deduction’s incentive threshold, despite the fact that the retrofit is guaranteed to reduce the building’s energy consumption by about 38 percent.⁴

Rather than the ASHRAE 90.1 standard, energy usage pre- and post-retrofit are more appropriate points of benchline comparison for the vintage of existing buildings that may be disposed from GSA’s portfolio. For example, many building owners today commonly use the Environmental Protection Agency’s Portfolio Manager⁵ tool to document the total energy use of a building. While Portfolio Manager is not available for certain building types, another benchmarking tool or protocol could be used for those assets as the basis to gauge a particular building’s energy performance for purposes of qualifying for a re-designed tax incentive for retrofits.

- ***Link the amount of the incentive to energy savings achieved.*** This would calibrate the tax benefit to the value created. The Roundtable recommends that the minimum amount of the incentive should correspond to 20 percent total energy savings compared to the building’s baseline energy consumption, and the maximum incentive should correspond to 50 percent savings. The amount of the incentive would increase for every 5 percent increase in energy savings within this range. This will encourage ambitious building upgrades while also rewarding projects that achieve meaningful yet more moderate levels of energy savings.
- ***Tie a portion of the tax incentive to implement efficiency measures and a portion to demonstrated energy savings.*** There are good reasons to reward a building owner for installing and implementing energy savings measures, and good reasons to reward energy savings actually realized at the utility meter level. We recommend that both should be incentivized by allowing the building owner to claim 60 percent of the deduction at the

⁴ See http://apps1.eere.energy.gov/news/news_detail.cfm/news_id=12387;
http://www.esbnyc.com/sustainability_project_finances.asp.

⁵ See http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfoliomanager.

time measures designed to save a certain percentage of energy (as certified by a professional engineer) are put in to service. The remaining 40 percent of the deduction would be available two years later, based on demonstrated energy savings (as measured using the ENERGY STAR Portfolio Manager tool or other more appropriate tools for certain building types).

- ***Allow owners or tenants to claim some incentive for improving a substantial space within a building.*** There is significant opportunity and appetite for building owners and tenants to improve energy efficiency during tenant build-out of office space, but current landlord-tenant arrangements seldom seize that opportunity. Similarly, there is also appetite and opportunity for building owners to improve the efficiency of a large space within a building, but where they do not necessarily have access to all tenant space. To encourage these objectives, Congress should direct the Departments of Treasury and Energy to develop guidance for how the tax incentive can be used for efficiency improvements for large defined spaces within an existing building.
- ***Make the tax incentive useable for a broad range of building owners and types, including REITS and multifamily buildings.*** Commercial office buildings are owned by a variety of organizations, some of which do not have appetite for conventional tax incentives. To gear a tax incentive for optimal benefit by Real Estate Investment Trusts (REITs), the full amount of the incentive should be available considering REITs' special tax requirements.⁶ Furthermore, we believe it is important to enable a range of building efficiency stakeholders to realize the value of the tax incentive when making investments in energy savings. Hence, we suggest clarifying section 179D's current language that the building owner be permitted to allocate the incentive to other parties related to the transaction, such as the contractor, architect, a tenant, or a source of financing. Additionally, multifamily buildings should remain eligible for any commercial building incentive given their similarity to commercial buildings with respect to ownership, structure, and application of energy codes. To capture a larger set of multifamily buildings within the scope of the incentive, it will also be critical to ensure that the retrofit incentive complements the rules of the existing low-income housing tax credit to encourage energy efficiency upgrades in the affordable housing stock.
- ***The tax incentive should include increased incentive amounts for energy efficient cool roofs and historic buildings as well as incentives for improvements in exterior lighting efficiency.*** The tax incentive should encourage improvements that multiply energy efficiency benefits – namely, the renovation of historic buildings and installation of “cool roofs” to mitigate urban heat island effects. It should also incent improvements in exterior lighting at commercial and multifamily properties, which are not reflected in current law.

In short, The Roundtable and our colleagues have done much creative thinking on how the existing 179D tax deduction for energy efficient commercial buildings might be better designed to encourage building retrofits on a larger scale. We would welcome the opportunity to discuss our ideas with interested members of the Committee and Subcommittee.

⁶ For example, see S. 3935, “Advanced Energy Tax Incentives Act” (111th Cong., introduced Sept. 29, 2010).

- **Department of Energy Loan Guarantees**

As GSA considers disposal of its excess properties, Congress and the federal agencies should enact policies that encourage commercial banks and energy efficiency financiers to extend financing for building retrofits. The Roundtable is working through a coalition that supports the Obama Administration's ideas to create a loan guarantee product designed to provide credit enhancement for building retrofit debt.

Under current law, at Title XVII of the 2005 Energy Policy Act, the Department of Energy administers a loan guarantee program geared to support debt that underwrites nuclear, large-scale solar, wind farm, and other renewable projects. We advocate that a loan guarantee should be created for less risky, less expensive and more cost-effective building retrofit projects. The idea is to scale such a program so that it is attractive to the lending community writ large (such as through pooling or securitizing retrofit debt), while also preserving the prime lien interest of first mortgagees in properties encumbered by prior financing. We will continue to work with stakeholders and the Administration to determine whether Congress might support such loan guarantee legislation. Ideally, such a loan guarantee should be created to coincide with the release of aging GSA buildings to encourage energy efficiency upgrades of such structures.

- **Green Appraisal Standard**

Currently, there is not a standardized metric for the real estate appraisal industry to value the energy efficiency attributes of buildings. The federal agencies in charge of financial regulation have existing legal authority to enact such a green real estate appraisal standard.⁷ A green appraisal standard can help provide data and property comparables, to draw the connection between higher-performing buildings and increased asset values. In turn, this can help banks release capital specifically for retrofit project financing. Under existing authorities, a green appraisal standard must be developed through a public comment process. This is critical to ensure buy-in from stakeholders in the real estate, financing, appraisal, and energy services industries.

The Roundtable will continue to encourage the Administration to start the process and formally accept stakeholder input towards development of a green real estate appraisal standard. Energy efficiency property valuation can be another tool that encourages modernizing the properties disposed by the GSA.

⁷ See Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), 12 U.S.C. §§ 3332, *et seq.* Under FIRREA, the "Federal financial institution regulatory agencies" have an obligation to "prescribe appropriate standards for the performance of real estate appraisals." *Id.* § 3339. FIRREA allows the financial regulatory agencies to develop new appraisal standards from time to time to suit changing economic conditions. The law states that "[e]ach agency ... may require compliance with *additional standards* if it makes a determination in writing that such additional standards are required in order to properly carry out its statutory responsibilities." *Id.*

- **U.S. Green Building Council: Leadership in Energy and Environmental Design, Existing Buildings Operations and Maintenance (LEED-EBOM)**

The GSA is committed to the U.S. Green Building Council’s LEED program as establishing the minimum sustainability standard for federal building construction and rehabilitation.⁸ For projects funded prior to FY2010 that are in the design phase, GSA now requires that LEED “Gold” be incorporated into ongoing designs where possible, after considering budget and schedule constraints on the current design and construction contracts. For GSA’s leased properties, the requirement remains at the LEED “Silver” certification for new construction lease projects that are 10,000 square feet or more.⁹

An impressive cross section of Roundtable members are also USGBC members and participants. LEED recognition has been an important tool in transforming the way we design, build, operate, and manage buildings, spaces, and communities. LEED’s existing buildings ratings product – EBOM – is evolving in such a way that will have particular resonance as GSA disposes of excess properties, and recognizes encourage energy efficient and sustainable retrofits of these assets.

Particularly, the present Energy and Atmosphere (“EA”) “Minimum Energy Efficiency Performance” requirement offers two alternative “cases” to obtain LEED EBOM recognition. Case 1 provides that if the building is eligible for a performance rating using EPA’s ENERGY STAR[®] Portfolio Manager tool, then it must receive a rating of at least “69.” See LEED Rating System Draft, BUILDING OPERATIONS & MAINTENANCE (redlined version; Nov. 2010), at p. 56 (hereafter “EBOM Draft”).¹⁰ Case 2 addresses buildings that are not covered by ENERGY STAR[®]. These structures can either demonstrate energy efficiency “at least 19% better than the average for typical buildings of similar type” against national average energy data. *Id.* at p. 57. Or, ineligible ENERGY STAR[®] buildings can use an alternative performance measurement method as set forth in the applicable LEED Reference Guide. *Id.*

The November 2010 draft EBOM proposal re-names this EA prerequisite to “Minimum Energy Performance.” Essentially, it retains the two alternative cases in the current system and provides a new “Option 3” as another compliance path, as follows:

**“OPTION 3. Demonstrate Energy Efficiency Improvement
Demonstrate energy efficiency improvement of at least 20%, normalized for climate and building use, by comparing the building’s site energy data for the previous 12 months with the data from three contiguous years of the previous five. Buildings without four consecutive years of site energy data are ineligible.”**

See EBOM Draft at p. 57. Similarly, a new Option 3 for the “EA Credit: Optimize Energy Efficiency” provides:

⁸ See <https://www.usgbc.org/ShowFile.aspx?DocumentID=1915>.

⁹ See <http://www.gsa.gov/portal/content/197325>; <https://www.usgbc.org/ShowFile.aspx?DocumentID=1915>.

¹⁰ For purposes of this statement, all EBOM Draft page references are to the redlined version available at <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=2360>.

“Demonstrate weather and building use normalized energy efficiency improvement comparing the building’s site energy data for the previous 12 months to the source energy consumption from three contiguous years of the previous five. Buildings without 4 consecutive years of site energy data are ineligible for this compliance path.”

EBOM Draft at p. 62. This credit goes on to suggest that increasing points can be awarded to a building that achieves “Percent Improvement[s]” in energy performance. Extra points are being considered starting at 25% improvements and growing in 4% intervals up to 56% improvements, although the precise number of incentive points has not been suggested. *Id.* at 63.

The Roundtable agrees with the intent behind Option 3 for both the EA Prerequisite and the EA Credit. We understand that the purpose of the new alternative EA prerequisite path is to provide an avenue for LEED recognition to buildings that are not among the industry’s higher relative scorers, but rather give recognition to buildings that actually and demonstrably improve performance regardless of relative standing. Currently, EPA recognizes buildings with a relative ENERGY STAR[®] rating of “75” or higher. And, the present EBOM rating establishes a minimum floor of an ENERGY STAR[®] rating of “69.” As a result, buildings that demonstrate dramatic gains in efficiency improvement – but do not rise to the level of at least a “69” rating – are unable to participate in the industry’s two leading energy recognition programs.

The Roundtable thus supports an additional option in the EA Prerequisite and Credit, to enable and recognize commercial properties that historically have not been among the top percentile of buildings on a comparative energy basis, but nonetheless tangibly reduce their energy consumption. Aging and inefficient properties released into the market by GSA may never garner an ENERGY STAR rating of “69” or higher, and thus would not receive LEED EBOM recognition under current standards. However, purchasers of these assets must be incented to make improvements in such buildings’ energy efficiency. The direction in which the EBOM system is headed can help chart a new course for the real estate industry based on energy efficiency improvements (as opposed to relative standing among like structures).

Like USGBC, The Roundtable wants to encourage measurable, quantifiable, and verifiable improvements in the energy performance of our built environment. The proposed changes to LEED EBOM are thus quite timely as GSA develops a process to dispose of underutilized and inefficient federal properties.

VI. RENOVATIONS IN PUBLIC BUILDINGS; IMMINENT LEAD PAINT RULES

The energy efficiency issues discussed in section V present great opportunities to encourage productive use of GSA-released assets. However, incentives to encourage purchase of underutilized federal assets could be wholly undermined by the regulatory agenda of the Environmental Protection Agency (EPA), with regard to its *Lead: Renovation, Repair and Painting (LRRP)* rules for public and commercial buildings.¹¹ The Roundtable submits that this

¹¹Lead Clearance Testing Revisions: <http://yosemite.epa.gov/opei/rulegate.nsf/byRIN/2070-AJ57>; LRRP Rules for Public and Commercial Buildings: <http://yosemite.epa.gov/opei/RuleGate.nsf/byRIN/2070-AJ56>; Lead Dust Hazard Standards: <http://yosemite.epa.gov/opei/RuleGate.nsf/byRIN/2070-AJ82>.

Committee, GSA, and others involved in the process to dispose of federal assets must carefully consider the impact of imminent LRRP Rules on the purchase and renovation of surplus federal buildings by the private sector.

EPA enacted LRRP rules for pre-1978 “target housing” in 2008. The agency is now undertaking actions that would expand the scope of the residential LRRP rule to institute new “clearance testing” obligations, which could require multiple dust-wipe tests using faulty field test kits, and examination of those wipes by EPA-accredited labs upon completion of renovation work. EPA is also looking to expand these very same LRRP rules to cover renovation and remodeling in commercial and public buildings. The Roundtable and our industry colleagues are tracking these components of EPA’s regulatory agenda:

- Proposed LRRP rules for lead-safe work practices for *exterior* renovations of public and commercial buildings are expected by June 15, 2012, with final action by February 15, 2014. The Roundtable understands that the exterior commercial renovations rule will be based on the same lead dust hazard standards used by EPA for target housing.
- EPA plans to propose regulations to address lead-based paint hazards for renovations public and commercial building *interiors* by the later of July 1, 2013, or 18 months from receiving a report from its Science Advisory Board (SAB).

As EPA itself has noted and a number of SAB panel members have previously observed, the development of lead hazard standards for public and commercial buildings is fraught with uncertainty due to the minimal data that are available regarding the prevalence of lead dust in these types of buildings. For example, EPA acknowledges the “scarcity of data related to dust exposures in public and commercial buildings and other non-residential settings.” *Approach for Developing Lead Dust Hazard Standards for Public and Commercial Buildings* (Nov. 5, 2010) at p. 32 (“EPA Approach”).¹² Likewise, EPA has noted that an extensive literature search “revealed relatively little information concerning typical levels of floor and window sill dust lead in public and commercial buildings.” *Id.* at 36.

This lack of data has led EPA to rely heavily on extrapolations from data and models that apply to residential settings. However, there appears to be little basis for making these assumptions. In fact, EPA acknowledges that:

the validity of the empirical models in predicting children’s blood-lead impacts depends crucially on the assumption that physical and behavioral determinants of exposure are the same (or very similar to) in public and commercial buildings as in residences. There is very little empirical evidence in support of this assumption, which adds to the inherent statistical uncertainty in these models.

Id. at 79.

¹² Available at <http://yosemite.epa.gov/sab/sabproduct.nsf/0/9C733206A5D6425785257695004F0CB1?OpenDocument>.

In light of this paucity of data, the Committee should observe that Congress required EPA, in the Toxic Substances Control Act (“TSCA”), to conduct a study to determine which of the “various types of renovation and remodeling activities . . . disturb lead and create a lead-based paint hazard on a regular or occasional basis” before promulgating any regulations concerning renovation, repair and painting activities. 15 U.S.C. § 2682(c)(2). This statutory requirement to conduct a certification study explicitly applies to commercial buildings and to public buildings constructed before 1978. 15 U.S.C. § 2682(c)(2).

To date, EPA has not conducted a study that focuses on activities in commercial buildings and public buildings constructed before 1978 and the potential of such activities to create lead-based paint hazards. EPA has requested comments in its Advanced Notice of Proposed Rulemaking regarding the extent to which it should rely on previous studies it has conducted regarding lead-based paint in residential settings. 75 Fed. Reg. 24848, 24856 and 24858 (May 6, 2010). These studies include the 2007 Characterization of Dust Lead Levels After Renovation, Repair and Painting Activities (the “Dust Study”) and the four-part study conducted by EPA between 1997 and 1999.

EPA cannot rely on such studies in undertaking regulatory activities concerning lead dust in public and commercial buildings because these studies did not focus on renovation, repair and painting activities in commercial buildings and public buildings constructed before 1978. Although the Dust Study may have included information on renovations at a school building frequently occupied by children, this is too limited a data set from which to draw any conclusions regarding RRP activities generally in public and commercial buildings. 75 Fed. Reg. at 24856. Indeed, EPA’s ENERGY STAR office recognizes the varied and heterogeneous composition of the commercial building stock. It has identified 14 unique types of commercial buildings for purposes of energy ratings – and even these represent only about 50% of the commercial floor space in the United States.¹³ Plainly, a dust study conducted at a single school is wholly insufficient as a basis to provide information on lead-paint hazards across the diverse suite of commercial and public building types.

The Roundtable respectfully suggests that, in light of TSCA’s congressional directive to EPA to study renovation activities that cause lead hazards in public and commercial buildings, the Agency should seek to fill some of these glaring data gaps. The panel chair, Dr. Buckley, himself stated in his August 20, 2010 Letter to Administrator Jackson conveying the comments of the panel members on EPA’s proposed approach that “[t]he lack of data to support the commercial building approach highlights the need for research and data collection efforts in this area.” We wholly agree with this assessment, especially considering the potential impacts of the LRRP Rules on GSA’s process to sell-off underutilized federal properties.

¹³ See http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfoliomanager. The 14 varied commercial building types that are eligible to receive ratings from EPA’s ENERGY STAR office are bank/financial institution; courthouse; data center; hospital; hotel; house of worship; K-12 school; medical office; municipal waste treatment plant; office; residence hall/dormitory; retail store; supermarket; and warehouse.

CONCLUSION

The Real Estate Roundtable hopes to serve this Committee, the GSA, and other involved agencies as a resource in developing and navigating the process for disposal of excess assets in the federal government's real estate portfolio. Towards that end, we urge the following:

- Smart decisions about when, how, and how many GSA-controlled properties should be released to the private sector must be informed by local market conditions and the state of the industry's economic rebound. To this end, the bifurcated nature of the commercial real estate recovery – which is characterized by a robust and optimistic outlook in select gateway cities while many other markets are still suffering – is a critically important point to underscore the criteria and procedures for selling-off excess federal assets.
- Seasoned real estate professionals must be part of panels to identify and manage GSA's real estate proposals. Their insights on property valuation, capital and lending constraints, dealing with community stakeholders, and other technical components associated with challenged properties will prove invaluable.
- Disposal of surplus assets presents a rare opportunity to make significant strides in improving the energy efficiency of our building infrastructure. To seize this chance, Congress must work with the Administration, and real estate and efficiency advocates, to re-design the current tax incentive on the books and gear it towards encouraging retrofits; develop a federal loan guarantee product for credit enhancement of retrofit financing; and start the public comment process to develop a green real estate appraisal standard that adequately values the energy efficiency attributes of real estate. Meanwhile, the U.S. Green Building Council must be encouraged to proceed down the path it is pursuing and revise its existing buildings rating product (LEED EBOM) in a manner that recognizes actual efficiency improvements in buildings.
- Regulatory mandates that EPA may impose through its "Lead; Renovation, Repair and Painting Rule" for public and commercial building could seriously dampen private sector interest in purchasing and upgrading GSA-released properties. Congress must press EPA to provide its statutorily mandated study of lead hazards in public and commercial buildings, as opposed to taking a regulatory approach that presumes all such building are hazardous and subject to regulation.

Thank you for the opportunity to testify today.