



## 2009 Legislative Priorities

### CAPITAL AND CREDIT

As a consequence of the collapse of financial markets in 2008, the availability of credit to refinance existing debt on performing commercial loans has become severely constrained. Banks have been forced to tighten lending standards in the face of significant losses, and are under pressure to reduce their overall real estate exposure. At the same time, the commercial mortgage-backed securities (CMBS) market, which is the source for much of the financing for commercial real estate projects, is at a standstill. Combined, banks and the CMBS market account for 75 percent of all outstanding commercial real estate loans.

In 2009, hundreds of billions of dollars of *performing* commercial real estate debt will mature and will need to be refinanced. With the continued unavailability of credit due to the problems in the banking system and in the CMBS market, commercial real estate faces a severe liquidity shortfall unless strong action is taken by the federal government.

As a first step, the federal government, through the actions of the Department of the Treasury and the Federal Reserve, should establish a credit facility for commercial real estate debt, or extend the existing Term-Asset Backed Securities Loan Facility (TALF) created to purchase consumer-debt backed credit to include commercial mortgage backed securities and commercial mortgage debt. In addition, accounting rules requiring that assets held by financial institutions be "marked-to-market" are having the effect of worsening the capital condition of these institutions, undermining federal efforts to foster increased lending. These rules should be adapted so as to take into account the current conditions of the financial markets and ensure that refinancing of performing loans that mature in 2009 can occur.

### TAXES

**Carried Interest**, is compensation provided to a general partner that is tied to the ultimate success of a development venture. This potential compensation is not guaranteed income and should not be compared to salary that is taxable at ordinary income rates. NAIOP opposes legislative changes to the tax treatment of "carried interest" that would increase taxes from a capital gains rate of 15 percent to rates as high as 35 percent. If enacted, this could significantly hinder development across the country and would be devastating to our members and harmful to the overall economy.

**Leasehold improvement depreciation**, also known as tenant improvement depreciation, is the ability to deduct the cost of the customized improvements a building owner makes to a rental space to configure it for a tenant's needs. These improvements characteristically last five to ten years across all commercial sectors, or the average length of a lease term. In late 2008, Congress reenacted the provision, which had expired at the end of 2007, on a temporary basis through the end of 2009. NAIOP supports the *permanent* reduction of tenant improvement depreciation to 15 years to provide economic certainty for our members.

**Brownfields remediation expensing**, allows the costs incurred in cleaning up a brownfields site to be immediately expensed by a developer. Failure to extend the provision will result in clean-up expenses being deductible only for sites located within empowerment zones and low-income tracts. Clean-up costs for all other sites will only be recovered if and when the land is sold, creating a barrier to revitalizing these properties. Brownfields remediation expensing creates an important incentive to revitalizing contaminated properties around the country. As with leasehold improvements depreciation, Congress reenacted the provision in 2008 on a temporary basis, through the end of 2009. NAIOP supports *permanent* enactment of brownfields remediation expensing provisions.

## **ENERGY**

Becoming more energy-efficient is an important consideration in today's commercial real estate industry. At a time when energy costs are unpredictable and likely to increase over the long-term, both developers and their tenants understand that it makes economic sense to develop properties that lower their operating costs, thereby keeping them competitive in the marketplace.

Energy efficiency and increased use of non-carbon based fuels will also result in lower carbon dioxide emissions associated with the commercial building sector. This can be achieved through a combination of forward-thinking building development, retrofits, operational practices and positive incentive based changes in public policy. NAIOP believes, however, that the government should not mandate buildings to reach arbitrary energy efficient targets which would cause significant economic harm to the industry.

Due to significant financial and technical barriers, NAIOP opposes attempts by the federal government to force states to update their building codes to reach 30 percent energy efficiency over ASHRAE 90.1 (2004) by 2010 and 50 percent by 2020.

## **TRANSPORTATION / INFRASTRUCTURE**

The success of commercial real estate projects depends largely on infrastructure investments and viable connectivity strategies that incorporate different modes of transportation, including highways, roads, rail and mass transit. A new national strategy is needed to address future transportation needs to incorporate innovative funding solutions in order to update and maintain our nation's infrastructure.

The current transportation authorization act (SAFETEA-LU) is set to expire in August of 2009. Congress needs to enact a new transportation bill that fully funds our nation's transportation and infrastructure needs. NAIOP believes that increasing federal transportation and infrastructure funding is paramount to a thriving real estate industry and national economy.

NAIOP supports creation of public-private partnerships where federal, state and local governments can enter into agreements with private companies to construct, operate and maintain transportation and infrastructure projects. This would be an additional source of revenue for these projects. In terms of the movement of goods, the federal government should develop a national goods movement strategy with increased federal funding provided for port expansion.