International Council of Shopping Centers

THE COMMUNITY RECOVERY AND ENHANCEMENT (CRE) ACT - H.R. 1147

The Problem

Declining property values in the commercial real estate sector pose a significant economic hurdle for the nation. Commercial real estate values have fallen by approximately 42% since peaking in late 2007 and tens of thousands of commercial properties across the country are financially "underwater," with the borrower owing more than the property is worth. According to a February 2011 hearing by the Congressional Oversight Panel (COP) of the Troubled Asset Relief Program (TARP), approximately $1.4 trillion in commercial real estate debt is set to mature through 2013, with $2.8 trillion maturing through 2020. This is not simply an issue for large money center banks. Smaller regional and community banks, the primary sources of credit to small businesses, hold approximately two-thirds of this outstanding commercial real estate debt.

Last year, the FDIC shut down 157 commercial banks and hundreds more are expected to fail during the next few years as a result of losses from commercial real estate loans. As these losses in the banking sector persist, lending will remain subdued, slowing job creation and threatening the nation's economic recovery.

As property values have fallen and lenders have adopted more restrictive standards with lower debt ratios, the commercial real estate industry continues to need vast new sources of equity capital to remain viable. The Community Recovery and Enhancement (CRE) Act of 2011 (H.R. 1147) was introduced by Rep. Devin Nunes (R-CA) and Rep. Shelley Berkley (D-NV) on March 17. It is designed to attract new equity capital to commercial real estate, with the requirement that the new funds be used to pay down outstanding debt on the asset, reducing the excessive debt ratios that threaten both the commercial real estate and banking sectors, as well as the broader economy. Similar legislation was introduced last summer but saw no action.

The Solution

H.R. 1147 will provide temporary tax incentives to attract new equity for existing at-risk real estate projects. The incentives are simple: bonus depreciation on the new investment equity and deduction of losses that are not subject to passive loss limits. A key condition of the proposal is that at least 80% of the invested capital would be directed to reducing the outstanding balance of the commercial mortgage debt with the remainder used for capital improvements. The new equity investors would be able to take a 50% bonus depreciation on the amount invested. The immediate infusion of equity capital dedicated to paying down debt will lower loan-to-value ratios on existing loans and improve debt coverage ratios, easing debt market concerns and favorably impacting the broader economy.

The Success

The CRE Act will bring new equity to commercial real estate and enable banks to convert troubled loans into performing loans. The number of bank failures will be reduced (at a savings to the FDIC deposit insurance fund), and banks will be in a better position to extend new credit to support the economy.

ICSC supports the passage of H.R. 1147 in the 112th Congress. It is the most targeted proposal aimed at helping the largest sector of commercial real estate owners and developers – small to medium private businesses that own and operate commercial properties. This is a market-oriented approach and not a "bail-out" of the commercial real estate sector by the federal government. Washington does not have to invest or guarantee anything. However, taxpayers ultimately benefit by reducing bank failures, limiting revenue losses from failed banks, shopping centers, and other retail businesses, and avoiding the related loss of jobs.

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