SUPPORT THE INVEST IN AMERICA ACT

November 21, 2018

Dear Representative:

The undersigned organizations urge you to cosponsor and support the bipartisan *Invest in America Act* (H.R. 6726) recently introduced by Representatives Kenny Marchant and Joseph Crowley.

The *Invest in America Act* will create 150,000 – 280,000 new, well-paying jobs in the United States by spurring greater inbound investment in U.S. real estate and infrastructure. Today, much of the Nation's infrastructure is crumbling and there are tremendous demands on the federal budget. The *Invest in America Act* will mobilize private capital for transportation and infrastructure projects, cost effectively, by removing outdated tax barriers to foreign investment.

The legislation would repeal the arcane and punitive *Foreign Investment in Real Property Tax Act* (*FIRPTA*) *of 1980*. The FIRPTA regime is an anti-competitive outlier that deflects global capital to other markets. It imposes U.S. tax on gain realized by a foreign investor on the disposition of an "interest" in U.S. real property. In a 2008 announcement, the IRS expressed its view that many of the governmental licenses and permits issued in connection with the leasing of transportation and infrastructure assets should be treated as real property for FIRPTA purposes. As a result, the discriminatory FIRPTA tax can subject foreign investment in U.S. real estate and infrastructure to a much higher tax burden than applies to a foreign investor purchasing a U.S. stock or bond, or an investment in any other asset class. The ambiguity of FIRPTA's application to public-private infrastructure projects dissuades potential market entrants. Private investors cite FIRPTA as a principal obstacle to attracting greater foreign capital for infrastructure projects.

The complex rules, withholding requirements, and onerous tax rate under FIRPTA increase the cost of investment and reduce potential investment returns. The damage caused by FIRPTA is greatest in midsize markets, where the scale and profitability of individual projects is not sufficient to overcome the administrative and tax burden FIRPTA creates. Many smaller investors, particularly those willing to invest outside major markets, choose to avoid investing in the United States altogether.

While the costs and distortions of FIRPTA are substantial, the economic benefits of the *Invest in America Act* are overwhelming. Repeal of FIRPTA would unlock capital and stimulate real estate and infrastructure investment in midsize and regional markets throughout the country. University of California-Berkeley Professor Ken Rosen recently estimated the net impact on the U.S. economy of repealing FIRPTA. His study and findings, published in *Tax Notes*, are summarized in the table below:

Economic Indicator	**Change from *FIRPTA* Repeal**
Foreign investment	+ $65 – 125 billion
U.S. GDP	+ 10 – 30 basis points
Jobs	+ 147,000 – 284,000
Income	+ $8 – 16 billion

In short, FIRPTA repeal would expand the availability of capital, improve market liquidity, and directly create jobs in construction, finance, and real-estate related industries, as well as supporting industries that provide goods and services.

Finally, the *Invest in America Act* should have little, if any, negative effect on federal tax revenue. Because FIRPTA so effectively deters investment activity, the actual amount of tax revenue generated by FIRPTA is minimal. Historically, FIRPTA has produced $50 million or less in revenue per year.

With an estimated $4.6 trillion in infrastructure investment needed over the next 10 years and only $2.5 trillion of public and private funding available from existing sources, innovative solutions are critically needed. Private and foreign investment can help fill the funding gap, and policymakers should act to remove tax and regulatory obstacles facing infrastructure projects. The *Invest in America Act* is a cost-effective and commonsense step Congress can take to unlock capital for productive real estate and infrastructure investment. We urge you to support and cosponsor this important legislation.

Sincerely,

The Real Estate Roundtable
Alternative & Direct Investment Securities Association
American Hotel & Lodging Association
American Institute of Architects
American Land Title Association
American Resort Development Association
American Seniors Housing Association
Appraisal Institute
Associated General Contractors of America
Building Owners and Managers Association International
Federation of Exchange Accommodators
Institute for Portfolio Alternatives
International Council of Shopping Centers
Mortgage Bankers Association
NAIOP, the Commercial Real Estate Development Association
National Apartment Association
National Multifamily Housing Council