Institute for Portfolio Alternatives

August 31, 2026

The Honorable Ron Wyden
Ranking Member, Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Institute for Portfolio Alternatives Comments on Proposal for the Taxation of Data Centers Senate Finance Committee Democratic Staff White Paper

Dear Ranking Member Wyden:

The Institute for Portfolio Alternatives ("IPA")[1] appreciates the opportunity to comment on the Senate Finance Committee Democratic Staff white paper, *Proposal for the Taxation of Data Centers*. The White Paper raises legitimate concerns regarding energy demand, water use, local infrastructure and the effects of technological change on workers. Those concerns deserve careful, evidence-based responses. We believe, however, that they do not justify blanket changes to the tax treatment of real estate investment trusts ("REITs") and Opportunity Zone investments, or the imposition of overlapping penalties on data-center development.[2]

IPA has significant concerns about the proposed REIT exclusion and Opportunity Zone prohibition. Both would reach beyond the large technology companies identified in the White Paper and affect real estate owners, investment vehicles and the investors they serve. We also have concerns with the proposed bonus-depreciation exclusion and gross-receipts excise tax. Any response to the local effects of data-center development should address demonstrated harm directly rather than single out an entire sector through the federal tax code.

I. The REIT Proposal Would Harm Investors Without Advancing the White Paper's Objectives

REITs allow regular investors to participate in professionally managed, income-producing real estate without purchasing, financing or managing property directly. Americans obtain this exposure through individual investments, mutual funds, exchange-traded funds, target-date funds and retirement accounts. Nareit estimates that nearly 170 million Americans live in households that own REITs.[3]

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[1] For more than 40 years, the IPA has served as the leading voice for global asset managers, distributors and service providers in the private markets and alternative investment industry. We deliver best-in-class education for practitioners and champion policies that expand investor access to wealth-building private market strategies, including real estate, credit, infrastructure, private equity and venture capital, among other asset classes. These investments offer lower correlation to public markets, strengthen retirement outcomes and enhance portfolio diversification while operating within robust investor-protection standards. Over the past 25 years, private market and alternative investments have driven more than $15 trillion in capital formation, playing a critical role in fueling national and local economic growth.

[2] Senate Finance Committee Democratic Staff, Proposal for the Taxation of Data Centers 2 (Aug. 6, 2026) (the "White Paper").

[3] Nareit, Nearly 170 Million Americans with REITs (Jan. 2024), https://www.reit.com/sites/default/files/2024-01/NumberofREITShareholders2023.pdf; see also I.R.C. sections 856(c)(2), 856(c)(3) and 857(a)(1).

The White Paper mischaracterizes the REIT regime as a special tax incentive for data centers. It is instead a longstanding framework intended to make diversified real estate investment broadly accessible. REITs must satisfy detailed income, asset, ownership and distribution requirements, including the obligation to distribute at least 90 percent of taxable income annually, providing investors with an economic proxy akin to rental streams from owning commercial real property. Distributed income is generally taxed at the shareholder level, producing treatment broadly comparable to real estate held through partnerships.

Excluding rents paid by new data centers would not apply equally across forms of real estate ownership. It would single out REITs while leaving other ownership structures untouched, potentially redirecting investment away from a widely accessible vehicle without reducing data-center development.[4] The burden would fall on REIT shareholders, including retirement savers, rather than remaining with the hyperscalers the White Paper seeks to target.

The proposal could also have consequences far beyond the affected rent. Depending on how legislation is drafted, treating data center rent as nonqualifying income could threaten a REIT's compliance with its income tests and affect the entire REIT and all of its shareholders. Rent from real property does not become less connected to real estate because the tenant uses the property to provide digital infrastructure. A tenant-specific exception would introduce substantial uncertainty into long-term leases and create a troubling precedent for other property sectors.

Data centers house infrastructure that supports essential services, including emergency response, hospital systems, banking, payroll and cloud storage. They also require long-term investment in secure, reliable and continuously modernized real estate. The federal tax code should not make this real estate less accessible to ordinary investors based solely on the business conducted by the tenant.

II. Opportunity Zones Should Retain the Flexibility to Support Different Communities

Opportunity Zones are now a permanent feature of the federal tax code and, by design, can support a wide range of productive investments in underserved communities.[5] That flexibility is foundational to the program. Communities differ in their economic needs, infrastructure and the types of projects capable of attracting private capital.

Against that backdrop, categorically prohibiting Qualified Opportunity Funds from investing in all new data centers would be unnecessarily broad. The White Paper does not establish that data centers are categorically incapable of advancing the objectives of the Opportunity Zone program. Nor does it explain why federal law should remove an entire class of potential projects from consideration regardless of their location, structure or community impact.

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[4] Everyday retail investors, including retirees, often rely on Exchange-Traded Funds ("ETFs") as a simple, low-cost way to gain diversified exposure to real estate. Many real estate ETFs are composed largely, or even entirely, of REITs. See, e.g., State Street's Real Estate Select Sector SPDR Fund (Ticker: XLRE), which holds more than 90% of its assets in REITs. State Street Global Advisors, *SPDR Fund: Real Estate Select Sector SPDR Fund*, https://www.ssga.com/us/en/intermediary/etfs/state-street-real-estate-select-sector-spdr-etf-xlre (last visited Aug. 31, 2026). Singling out REITs in the context of data center development therefore risks disproportionately disadvantaging everyday retail investors, while high-net-worth investors may retain access to data center investments through alternative ownership structures that are not practically available to most retail investors..

[5] I.R.C. sections 1400Z-1 and 1400Z-2.

Permanent employment is an important consideration, but it is not the only measure of community benefit. Depending on the project and location, data centers can support substantial construction activity, expand the local tax base and facilitate investment in energy, broadband and other infrastructure.[6] These effects may be particularly significant in rural communities, where the universe of projects capable of attracting substantial private capital may be more limited.

Not every data center is appropriate for every community. Energy, water, agricultural land, housing and infrastructure costs must be taken seriously. But those costs and benefits vary widely. States and local communities are better positioned to evaluate them through land-use, utility and economic-development decisions. The federal government should not foreclose an entire category of potential investment- and stand in the way of benefits that may be significant for some communities- without a clear and compelling basis.

The White Paper also does not define "new" data centers or address projects already under development. Any legislation should, at minimum, protect existing investments, binding commitments, planned expansions and projects with material development activity underway. A change that causes a Qualified Opportunity Fund to fall short of its statutory asset requirements could disrupt the fund and investments unrelated to the targeted project.

III. The Remaining Proposals Would Add Overlapping, Poorly Targeted Burdens

The proposed exclusion from 100 percent bonus depreciation raises similar concerns. Bonus depreciation is a timing rule for recovering capital costs, not a data-center-specific subsidy. The undefined phrase "build and supply" could reach assets acquired by independent developers, contractors, utilities and suppliers that are far removed from the large technology companies identified in the White Paper.[7]

The proposed excise tax would impose a gross-receipts tax without regard to profitability and could calculate deemed receipts using asset costs, rent, wages, electricity and a technology-industry profit markup. This approach could impute technology-company returns to independent real estate and infrastructure businesses with different economics. The White Paper asserts that the tax would fall most heavily on hyperscalers but provides no analysis demonstrating that the burden would not be passed to owners, developers, investors, customers or communities competing for infrastructure investment.

Taken together, the proposals could deny Opportunity Zone eligibility and bonus depreciation, exclude rent from the REIT regime and impose a new excise tax on the same project. That cumulative effect is neither narrowly targeted nor consistent with the White Paper's description of a low-rate tax focused primarily on the largest market participants.

IV. Conclusion

Data-center impacts differ across communities. Power constraints, water availability, land use, noise, grid costs and economic benefits depend on local conditions and facility design. Policies should therefore be tied to the issue being addressed. Utility regulation, permitting, water-use standards, zoning and infrastructure-cost requirements can address local concerns more directly than sector-specific federal tax penalties.

IPA urges the Committee not to proceed with the REIT exclusion, Opportunity Zone prohibition, bonus-depreciation carveout or Data Center Public Investment excise tax. If the Committee

[6] Virginia Joint Legislative Audit and Review Commission, Data Centers in Virginia, Report 598, at i-ii (Dec. 9, 2024).
[7] I.R.C. section 168(k).

continues developing legislation, it should first conduct a full economic and tax-incidence analysis, consult affected stakeholders and preserve existing investments and commitments. The federal tax code should not stand in the way of investments that may support investors and local communities without a clear showing that such broad restrictions are necessary.

IPA appreciates the opportunity to provide these comments and would welcome the opportunity to discuss these issues further.

Sincerely,

Anya Coverman
President & CEO
Institute for Portfolio Alternatives