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May 29, 2026

VIA ELECTRONIC SUBMISSION

Internal Revenue Service
Attn: CC:PA:01:PR (Notice 2026-23) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Recommendations for 2026-27 IRS Priority Guidance Plan/Notice 2026-23

In response to Notice 2026-23, Nareit appreciates the opportunity to offer our suggestions regarding regulatory guidance to be placed on the 2026-27 IRS Priority Guidance Plan (2026-27 PGP).

Nareit®, the National Association of Real Estate Investment Trusts®, serves as the worldwide representative voice for real estate investment trusts (REITs)[1] and real estate companies with an interest in U.S. real estate. Nareit's members are REITs and other real estate companies throughout the world that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study, and service those businesses.

Executive Summary

Nareit's recommendations are listed in order of priority:

1) Provide guidance that certain assets acquired during the construction phase of data center development and related prepaid deposits are qualifying real estate assets for purposes of the 75% asset test of Section 856(c)(4)(A)[2].
2) Resolve uncertainty associated with a potential harmful interpretation of the "double downward" constructive ownership rules applicable to the determination of "related party rent" by REITs.

[1] REITs invest in America's future. Through the diverse array of properties they own, finance, and operate, REITs help provide the essential real estate that revitalize neighborhoods, enable the digital economy, power community essential services, and build the infrastructure of tomorrow, while creating American jobs and economic activity along the way. REITs of all types collectively own more than $4.5 trillion in gross assets across the U.S., with public REITs owning $2.5 trillion in assets. U.S. listed REITs have an equity market capitalization of more than $1.6 trillion. REITs provide everyday Americans the opportunity to invest in real estate, and 170 million Americans live in households that benefit from ownership of REITs through stocks, 401(k) plans, pension plans, and other investment funds. reit.com/nareit.

[2] Unless otherwise noted, references to "Section" in this letter refer to sections of the Internal Revenue Code of 1986, as amended (the Code).

3) Withdraw Section 2 of Notice 2007-55 (treating certain REIT liquidating distributions as capital gain dividends subject to FIRPTA for certain non-U.S. shareholders but as sales or exchanges of stock for U.S. shareholders) and treat REIT liquidations and redemptions as sales/exchanges of stock for all shareholders.
4) Clarify that overnight Treasury reverse repurchase agreements subject to the clearing mandate issued by the SEC and cleared through the centralized clearing procedures of the Fixed Income Clearing Corporation (FICC) (or any similar SEC-regulated and approved centralized clearinghouse) are not treated as securities subject to the 5% asset test of Section 856(c)(4)(B)(iv)(I).
5) Establish a workable standard for REITs to deploy renewable, nuclear, and other on-site energy in a manner consistent with the REIT rules.
6) Incorporate into precedential guidance the conclusions of certain existing taxpayer-specific private letter rulings, including by treating subsidiaries of publicly offered REITs as publicly offered and thereby exempt from the preferential dividend rule of Section 562(c)(1); by providing guidance for late taxable REIT subsidiary elections and revocations; and by exercising authority under Section 856(c)(5)(J) to treat certain income as qualifying or excluded gross income for purposes of the REIT gross income test calculation, which would lessen the burden on the IRS from private ruling requests sought by taxpayers who may seek private rulings on the same topics.
7) Exempt transfers to regulated investment companies (RICs) and REITs of appreciated assets by foreign corporations not otherwise subject to U.S. tax from the built-in gain rules of Treas. Reg. § 1.337(d)-7.
8) Allow electronic filing of Form 8875 (Taxable REIT Subsidiary Election), including electronic signatures.

Discussion

Confirm that certain assets acquired during the construction phase of data center construction and related prepaid deposits are qualifying real estate assets.

First, Nareit recommends that the IRS and Treasury Department provide guidance regarding the application of the REIT asset tests under Section 856(c)(4) to property interests and expenditures related to data center development,[3] including during construction and commissioning phases. In particular, guidance would be helpful in clarifying how a REIT should treat assets and development-

[3] These issues are especially consequential for data center REITs given their distinctive development timelines, asset profiles, and power infrastructure requirements. Prompt guidance is particularly important in this sector because uncertainty could impede the deployment of capital to strategically significant digital infrastructure, thereby undercutting the Administration's stated objective, reflected in the President's executive order discussed below, of accelerating the buildout of AI data centers and related infrastructure.

stage costs associated with data center projects (including improvements, equipment, and other project components) for purposes of determining compliance with the REIT asset tests and related limitations applicable to taxable REIT subsidiaries and other non-qualifying assets.[4]

More specifically, Nareit's members have requested that the IRS and Treasury Department issue guidance that provides clarity on the application of certain REIT asset tests to the construction of a data center. In particular, the guidance should conclude that cash deposits (or prepayments) for contracts to acquire materials and components are "cash and cash items (including receivables)" under Section 856(c)(4)(A) and that construction-in-progress accounts are "real property" under Sections 856(c)(4)(A) and 856(c)(5)(A)-(B). We note that the Trump Administration has issued an executive order providing that it is a priority of the Administration "to facilitate the rapid and efficient buildout of [AI data centers and infrastructure] by easing Federal regulatory burdens."[5]

In constructing a data center, there is often a significant amount of lead time between ordering and receipt of materials and components for the data center building. Because of those long lead times, the REIT must make advance payments to most of the relevant suppliers, with initial payments due at the time of initial contracting or shortly thereafter, and additional payments occurring at different time milestones prior to delivery. Some of the advance payments are deposits (*i.e.,* a prepayment to the supplier of a portion of the purchase price for the relevant material or component) and other payments represent soft costs (such as engineering design work) that are recorded as part of the purchase cost of a component.

In due course, the materials and the components are delivered to and received by the REIT (at which time the remaining balance of the purchase price becomes due). Upon receipt, items included in the materials and the components typically are stored by the REIT or by its agents (*e.g.*, the general contractor) at an appropriate location (often onsite) to prevent any damage or deterioration until such time as the items are installed and permanently affixed into the data center building that is under construction. This integration and permanent affixation often (but not always) occurs in the same

[4] *See* discussion *infra* also recommending guidance that would provide an administrable standard for on-site energy generation under the REIT rules in connection with data center development, including in a manner that may alleviate strain on the grid.
[5] Executive Order 14318, 90 Fed. Reg. 35385, "Accelerating Federal Permitting of Data Center Infrastructure" (signed on July 23, 2025) (revoking Executive Order 14141, 90 Fed. Reg. 5469 (signed on Jan. 14, 2025)). The Administration previously identified the promotion of American leadership in AI as a paramount goal for the administration and has issued an executive order and guidance directing federal government agencies to "develop public AI strategies that elevate AI adoption and innovation as a priority, while increasing transparency to the American public, civil society, and industry." OMB Memorandum M-25-21, "Accelerating Federal Use of AI through Innovation, Governance, and Public Trust," (April 3, 2025), *implementing* Executive Order 14179, 90 Fed. Reg. 8741, "Removing Barriers to American Leadership in Artificial Intelligence" (signed on Jan. 23, 2025) (revoking Executive Order 14110, 88 Fed. Reg. 75191 (signed on Oct. 30, 2023)). *See also* OMB Memorandum M-25-22, "Driving Efficient Acquisition of Artificial Intelligence in Government" (April 3, 2025).

calendar quarter as delivery, and in most cases occurs within a few months (up to a calendar quarter or two) after delivery.

Once the materials and components are installed and permanently affixed into a data center building, it is clear that they are counted as "real property" within the meaning of Treasury Regulation § 1.856-10. Until that point, however, it is not clear under existing authorities whether the deposit accounts and construction-in-progress accounts are qualifying assets under the 75% REIT asset test in Section 856(c)(4)(A) (the 75% Asset Test). Achieving clarity for those accounts is vitally important to the REIT satisfying the 75% Asset Test for each calendar quarter. In constructing its first data center, the REIT's existing real property asset base is just starting, and the value of the materials and the components that it is acquiring (including deposits and prepayments in respect thereof) will be material to its 75% Asset Test compliance for some time. Those issues are particularly acute when the REIT is building its own power generation infrastructure on or adjacent to the data center site.

Our members have requested that the IRS and Treasury Department issue guidance that provides certainty that the deposit accounts will be viewed as "cash and cash items (including receivables)" within the meaning of Section 856(c)(4)(A) and that the construction-in-progress accounts that pertain to unaffixed assets (whether for materials or for components) should be properly treated as "real property" under Sections 856(c)(4)(A) and 856(c)(5)(A)-(B).[6] We welcome the opportunity to discuss this issue further and, as with all recommendations in this letter, to provide additional background and information, including, in this case, suggested draft guidance.

Mitigate consequences of a potential harmful interpretation of the "double downward" constructive ownership "related party rent" rules applicable to REITs.

Second, Nareit recommends that the Treasury Department and the IRS exercise their direct, unambiguous authority under Section 856(c)(5)(J) with respect to the characterization of otherwise qualifying rental income in connection with the application of Section 856(d)(5) for purposes of REIT income tests to address unintended consequences that may arise from an expansive interpretation of the "double downward" constructive ownership rules as applied to "related party rent" for REITs, particularly in common modern ownership structures that include partnerships, disregarded entities, and intermediate holding companies.

Interpretive uncertainty around constructive ownership in the REIT context can create compliance risk for REITs that is disproportionate to potential policy concerns. Indeed, this uncertainty raises the specter of interpretations that extend "double downward" attribution through multiple tiers of entities,

[6] Sullivan & Worcester LLP has posted a detailed technical memorandum addressing both of these issues. https://878449.fs1.hubspotusercontent-na1.net/hubfs/878449/Memo-to-File-re-REIT-Tax-Issues-in-Constructing-a-Data-Center.pdf.

producing cascading attribution and related-party rent outcomes in fact patterns that raise limited policy concern and were not contemplated when the REIT rules were enacted.

Specifically, these outcomes have implications for the determination of related-party rent under Section 856(d), where constructive ownership principles may cause rent to be treated as nonqualifying in circumstances not typically associated with control or influence. As a result of this interpretive uncertainty, taxpayers face an increased risk of inadvertent foot faults that can give rise to disproportionate consequences not applicable in other contexts, including the potential loss of REIT status in circumstances where the REIT may have no practical visibility into or control over ultimate ownership, and the resulting inability to re-elect REIT status for a five-year period. Without further clarification, this concern exists even in attenuated attribution situations where there is no economic relationship or benefit associated with the constructive attribution of remote parties.

Nareit recognizes Treasury's and the IRS's interest in ensuring that the constructive ownership rules are applied in a manner consistent with their underlying policy objectives, and we do not take lightly any concerns that may motivate close attention to these issues. At the same time, the REIT context presents unique considerations, including the significant consequences that can arise from ownership determinations and the complex, multi-tiered structures common in modern real estate investment arrangements. We therefore welcome the opportunity to engage with Treasury and the IRS on an administrable approach that addresses legitimate compliance concerns without producing unintended cascading attribution outcomes or undermining the stability of longstanding REIT ownership structures.

Withdraw Section 2 of IRS Notice 2007-55 and treat REIT liquidations and redemptions as sales/exchanges of stock for all shareholders.

Third, as Nareit has requested in its 2025 letter to the IRS and Treasury Department, Nareit recommends the withdrawal of Section 2 of Notice 2007-55, which holds that REIT liquidating distributions and redemptions are treated as capital gain distributions that are subject to the Foreign Investment in Real Property Tax Act (FIRPTA) if paid to certain foreign shareholders but as a sale of stock if paid to U.S. shareholders.

As more fully presented in a comment letter by the American Bar Association Tax Section (the Tax Section) dated June 10, 2008, Section 2 of Notice 2007-55 is not the best reading of the relevant statutory provisions. Thus, the Notice is inconsistent with the Supreme Court's decision in Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024), which requires a court to determine not just whether an agency has developed a reasonable reading of a statute, but actually the best reading of the statute at issue. Further, Notice 2007-55 is nearly 20 years old, contemplated future regulations that were never issued, and is therefore an outdated sub-regulatory pronouncement. As a result, withdrawal of the Notice would be appropriate under Executive Order 14219 (90 FR 10583).

Clarify that certain overnight Treasury reverse repurchase agreements are not treated as securities that are subject to the 5% asset test of Section 856(c)(4)(B)(iv)(I).

Fourth, we recommend that the IRS and the Treasury Department clarify that Overnight Treasury Reverse Repos cleared on the Fixed Income Clearing Corporation (the FICC) (or any similar SEC-regulated and -approved centralized clearinghouse) not treated as securities that are subject to the 5% asset test for REITs.

Mortgage REITs, as part of their ordinary course cash management and interest rate risk management strategies, may invest in reverse repurchase agreements (Reverse Repos) on U.S. Treasury securities. Under a Reverse Repo, the REIT "purchases" Treasury securities from a counterparty and simultaneously agrees to resell those same securities back to the counterparty on the next business day for the initial selling price plus a spread that is intended to represent interest. These "Overnight Treasury Reverse Repos" are economically equivalent to a demand loan made by the REIT to the counterparty that is secured by a Treasury security.

Currently, Overnight Treasury Reverse Repos can be cleared either 1) through the FICC, a federally regulated centralized clearinghouse that serves as the central counterparty (CCP) for all repurchase agreements cleared between its participants, or 2) in private, bilateral contracts with other private third parties. The FICC, whose credit ratings are in line with those of the U.S. government, effectively operates as a securities exchange, interposing itself—and thus its creditworthiness and liquidity—as CCP in lieu of other private counterparties. Through its clearing procedures and regulations, the FICC virtually eliminates counterparty credit risk (i.e., risk of loss in the case of a default by a counterparty) on the transactions it clears. As a result, Overnight Treasury Reverse Repos cleared through the FICC are highly safe and highly liquid, akin to putting money in a bank account.

In December 2023, the SEC adopted a rule[7] requiring Treasury repurchase agreements entered into by members of SEC-approved clearinghouses to be cleared through those clearinghouses, effective as of June 30, 2027 (the New SEC Rule). Although the New SEC Rule is intended to proliferate the counterparty-risk-reduction benefits of the FICC throughout the repurchase agreement market, this rule has potential unintended negative consequences for mortgage REITs. In particular, if FICC-cleared Overnight Treasury Reverse Repos are required to be treated as "securities" issued by a single issuer (the FICC), mortgage REITs could be unduly restricted in their ability to invest in such repos and to effectively manage their interest rate risk. This result is incorrect for technical reasons

[7] 17 CFR § 240.17ad-22(e)(18)(iv)(A), (B) (2024); Exchange Act Release No. 34-102487 (Feb. 25, 2025), 90 FR 11134 (March 4, 2025); Exchange Act Release No. 34-99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) ("Adopting Release").

and fails to address the policy objectives of the 5% asset test—indeed, by requiring a mortgage REIT to divert its investment from highly safe and secure Overnight Treasury Reverse Repos to other significantly more risky investments merely because they are issued by different issuers, the policy behind the 5% asset test would be undermined. Accordingly, we recommend that the IRS and the Treasury Department clarify that Overnight Treasury Reverse Repos cleared on the FICC (or any similar SEC-regulated and -approved centralized clearinghouse) are not treated as securities that are subject to the 5% asset test.

Establish a workable legal standard to enable REITs to deploy renewable, nuclear, and other on-site energy.

Fifth, as noted in Nareit's May 30, 2025 letter to the IRS, Nareit agrees with the analysis and recommendation of Sullivan & Worcester LLP in their April 18, 2024 submission with respect to the 2024-25 PGP and recommendation that the IRS issue precedential guidance that i) confirms that the revenue generated by a REIT providing electricity to its tenants from energy that is produced onsite does not constitute Section 856(d)(7)(A) "impermissible tenant service income" (ITSI)[8] and ii) enables a REIT to deploy renewable energy infrastructure during periods of ramp up or tenant vacancies pursuant to an "appropriate in size" for the building (or other property) legal standard.[9] Currently, some REITs may generate energy on-site for tenant usage through solar panels, and, more recently, there has been discussion regarding the possibility of powering data centers with nuclear power generated on-site.[10]

[8] For example, a REIT may plan to generate energy at a particular property in order to provide that energy to tenants in connection with their rental property. The IRS has indicated in the preamble to 2016 regulations concerning the definition of real property for purposes of the REIT rules that income from income attributable to such on-site generated energy would not be considered "ITSI" if, among other things, the REIT was a net buyer of energy from the grid. However, during certain unplanned situations – for example, the ramp-up of completing a property and delays in moving in tenants and/or financial trouble at a particular tenant or a pandemic-like situation – the REIT may be generating more energy than it needs. If so, it could run the risk of generating ITSI and potentially disqualifying all rental income from the property from being treated as "rents from real property" under Section 856(c)(2) and (3).
[9] The detailed legal discussion is posted on Sullivan & Worcester's webpage here.(https://878449.fs1.hubspotusercontent-na1.net/hubfs/878449/Renewable%20Energy%20Safe%20Harbor%20-%20Thought%20Piece.pdf).
[10] "Data Center Owners Turn to Nuclear as Potential Electricity Source," U.S. Energy Information Administration (Oct. 1, 2024); https://www.eia.gov/todayinenergy/detail.php?id=63304; and "Is Nuclear Energy the Answer to AI Data Centers' Power Consumption?," Goldman Sachs (Jan. 23, 2025); https://www.goldmansachs.com/insights/articles/is-nuclear-energy-the-answer-to-ai-data-centers-power-consumption.

Issue precedential guidance that incorporates the conclusions of certain existing taxpayer-specific rulings.

Sixth, in order to conserve IRS resources and provide clear guidance to taxpayers, we recommend that the IRS and Treasury Department incorporate the conclusions of existing private letter rulings into precedential guidance in the following areas:

a) **Confirm current exemption from preferential dividend rules for publicly offered REITs extends to their subsidiary REITs.** As suggested in our May 30, 2025 letter, Nareit recommends that the IRS and Treasury Department issue public guidance affirming the conclusions of two private letter rulings (PLRs) [11] that Section 562(c) regarding preferential dividends does not apply to subsidiaries of publicly offered REITs if the financial data of such subsidiaries is required to be included in the parent entities' Securities and Exchange Commission (SEC) 1934 Act filings.

   In addition, or in the alternative, Nareit recommends adoption of a revenue procedure to address foot faults in cases in which the preferential dividend rule would still apply, similar to the draft revenue procedure attached to Nareit's recommendation in its May 17, 2017 letter with respect to the 2017-2018 Priority Guidance Plan.

b) **Provide precedential guidance for relief of late taxable REIT subsidiary (TRS) elections and/or requests for revocation.** A REIT generally may not qualify as such if it owns more than 10% of the securities of a corporation unless, among other things, the REIT and that corporation make a timely election for the corporation to be treated as a TRS. Failure to file a timely election, which, pursuant to the instructions for IRS Form 8875, must be within two months and 15 days of the desired effective date,[12] could result in a potentially catastrophic REIT status failure, particularly for a publicly offered REIT. Over the years, taxpayers have requested, and the IRS has granted, more than 50 taxpayer-specific private rulings[13] extending the time to make a valid TRS election or treating a late-filed

[11] PLRs 202051005 (https://www.irs.gov/pub/irs-wd/202051005.pdf) and 201924003 (https://www.irs.gov/pub/irs-wd/201924003.pdf).
[12] The relevant statute does not include specific information regarding the timeliness of the TRS election; it is set forth by the IRS in the instructions only.
[13] See, e.g., PLRs 202517012 (https://www.irs.gov/pub/irs-wd/202517012.pdf); 200152010 (http://www.irs.gov/pub/irs-wd/0152010.pdf - REIT and TRS employee incorrectly calculated insufficient postage); 200304011 (http://www.irs.gov/pub/irs-wd/0304011.pdf - CFO inadvertently failed to sign Form 8875 in a timely manner); 200419010 (http://www.irs.gov/pub/irs-wd/0419010.pdf - despite intended TRS election, Form 8875 not filed because officer of REIT incorrectly believed election was due at time of filing of Form 1120-REIT); 200539018 (http://www.irs.gov/pub/irs-wd/0539018.pdf - due to clerical error, incorrect companies listed on Form 8875); 200615013 (http://www.irs.gov/pub/irs-wd/0615013.pdf - relevant officer inadvertently failed to sign Form 8875; effective date mistakenly left blank); 200805002 (http://www.irs.gov/pub/irs-wd/0805002.pdf - due to a communication mix-up between REIT and its outside tax advisor, REIT and affiliate inadvertently failed to make the necessary election on time).

TRS election as valid. However, this process has required significant resources on the part of the IRS to evaluate specific situations.

Nareit reiterates its 2012 request to liberalize the election procedures with respect to which a REIT and its subsidiary make and revoke taxable REIT subsidiary (TRS) elections in line with existing rules for other elections, such as by adding the TRS election to the list of elections in Treas. Reg. § 301.9100-2(a)(2) with respect to which an automatic 12-month extension of time is granted so long as the taxpayer takes the appropriate corrective action or alternatively, following the currently-existing model for late “check-the-box” elections under Treas. Reg. § 301.7701-3(a) (relating to entity classification) under Rev. Proc. 2009-41, 2009-39 I.R.B. 439. If certain conditions are met, Rev. Proc. 2009-41 allows an entity to obtain automatic IRS approval of a late-filed election without needing a private ruling. [14]

Such guidance would provide flexibility for REITs and their affiliates in connection with inadvertent errors and would reduce the need to allocate IRS resources to issue private letter rulings granting relief under Section 9100.[15]

c) **Exercise Section 856(c)(5)(J) authority to clarify whether certain items of income are either qualifying REIT income or excluded from REIT gross income test calculation under Sections 856(c)(2) and (3).**[16] Examples include, but are not limited to:

i) Confirming that income attributable to a REIT’s recovery of damages (i) is qualifying income under the REIT Income Tests to the extent it represents amounts that would have been treated as qualifying income under the REIT income tests, and (ii) is excluded from gross income for purposes of the REIT income tests to the extent not otherwise treated as qualifying income for purposes of the REIT income tests under the foregoing clause;

[14] In Nareit’s Jan. 21, 2025 letter, we provided comments on Form 8875 and incorporate those comments by reference. In particular, we recommend that the retroactivity period under Form 8875 (two months and 15 days) conform to that under Form 8832 re Entity Classification (75 days) in order to avoid inadvertent foot faults that result in additional requests for relief to the IRS. https://www.reit.com/sites/default/files/2025-01/01212025%20Nareit%20Submission%20Re_Forms_1120-REIT_and_8875.pdf

[15] Technical details are included in Nareit’s 2012 submission. https://www.reit.com/sites/default/files/media/Files/Policy/IRS-Business-Plan-2012-5-1-12.pdf.

[16] This request is consistent with recommendations on pps. 7-8 of the Real Estate Committee of the American Bar Association (ABA) Section on Taxation’s June 3, 2024, 2024-2025 Priority Guidance Plan Recommendations to the IRS. https://www.regulations.gov/comment/IRS-2024-0009-0059. Note also that the purpose of this particular guidance under Section 856(c)(5)(J) would primarily be to lessen the administrative burden related to repeated but typically granted private letter ruling requests on both the IRS and taxpayers.

ii) Confirming that a REIT's "self-charged" income and assets is excluded for purposes of the REIT income and asset tests;[17]

iii) Confirming that income from a change in method of accounting under Section 481(a) is excluded from gross income for purposes of the REIT income tests and treating a distribution of any amount by which such income exceeds the associated earnings and profits (E&P) adjustment as having been made from E&P;[18] and

iv) Confirming that income from forfeited deposits for the sale of real property that is not property described in Section 1221(a)(1) and income from forfeited deposits for the lease of real property is treated as qualifying income for purposes of the REIT income tests or, alternatively, are excluded from gross income for purposes of such tests.

Exempt transfers to RICs and REITs of appreciated assets by foreign corporations not otherwise subject to U.S. tax from the built-in gain rules of Treas. Reg. § 1.337(d)-7.

Seventh, as Nareit discussed in our May 30, 2025 letter to the Treasury Department and IRS, Nareit encourages the Treasury Department and the IRS to finalize its work on the revision of Treas. Reg. § 1.337(d)-7 regarding the built-in gain treatment of certain foreign corporations. This revision was most recently included in the IRS' 2020-21 Priority Guidance Plan but was not included in subsequent Priority Guidance Plans.

Allow for E-filing (and E-signatures) of Form 8875.

Eighth, Nareit appreciates the IRS's progress in allowing electronic filing of Form 1120-REIT. We respectfully request that the IRS also allow electronic filing (and electronic signatures) for Form 8875 (Taxable REIT Subsidiary Election).

Conclusion

Nareit's recommendations are consistent with the considerations outlined in Notice 2026-23. Collectively, they seek guidance in areas in which existing rules are unclear, outdated, or unnecessarily burdensome, and they would improve the administrability of the REIT rules in a manner that would benefit both the government and taxpayers, including with respect to data center

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[17] See, e.g., PLRs 202506007 (https://www.irs.gov/pub/irs-wd/202506007.pdf - self-charged management fees excluded for purposes of REIT gross income tests); 202102002 (https://www.irs.gov/pub/irs-wd/202102002.pdf - similar); and 201620001 (https://www.irs.gov/pub/irs-wd/201620001.pdf - similar).

[18] See, e.g., PLR 202235006 (https://www.irs.gov/pub/irs-wd/202235006.pdf); PLR 202213003 (https://www.irs.gov/pub/irs-wd/202213003.pdf); PLR 202035008 (https://www.irs.gov/pub/irs-wd/202035008.pdf); PLR 202024003 (https://www.irs.gov/pub/irs-wd/202024003.pdf); PLR 201652012 (https://www.irs.gov/pub/irs-wd/201652012.pdf); PLR 201537020 (https://www.irs.gov/pub/irs-wd/201537020.pdf).

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development, on-site energy deployment, reverse repurchase arrangements, and the application of longstanding REIT rules in modern ownership structures.

Certain recommendations also identify existing guidance that should be withdrawn, revised or replaced because it has become outdated or produces unnecessary burdens or unintended economic distortions, including, in particular, Section 2 of Notice 2007-55. In addition, several recommendations would adopt in published guidance existing private letter rulings or provide administrable standards (e.g., for TRS elections, preferential dividend rules, and Section 856(c)(5)(J) requests), thereby reducing the need for taxpayer-specific rulings and unnecessary burdens on IRS resources.

Taken together, these recommendations would reduce uncertainty and controversy, provide clear and uniform standards capable of consistent administration, and lessen unnecessary compliance burdens for both taxpayers and the IRS, consistent with Executive Order 14192's emphasis on reducing regulatory burdens. They affect a broad segment of the REIT industry and, in certain cases, support broader national priorities by facilitating infrastructure investment, energy development, prudent cash and risk management, and technological innovation. Accordingly, the requested guidance would promote sound tax administration and is well suited for inclusion on the 2026-27 Priority Guidance Plan.

We would be pleased to discuss these comments if you believe it would be helpful. Please feel free to contact me at (202) 739-9446 or dbernstein@nareit.com; Catherine Barré, Nareit Executive Vice President, Policy & Public Affairs & General Counsel, at (202) 739-9422 or cbarre@nareit.com; or Cameron Arterton, Nareit Deputy Executive Vice President of Policy & Public Affairs, at (202) 739-9432 or carterton@nareit.com.

Respectfully submitted,

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