



## The Daily Dish

# Potholes in the ROAD to Housing Act

DOUGLAS HOLTZ-EAKIN | APRIL 20, 2026

Private equity has long been a [target](#) for the economically irrational political left. Recently, however, the criticism and policy assault has shifted to both sides of the aisle, especially with regard to investments in residential housing. President Trump issued an [executive order](#) (EO) noting:

*Hardworking young families cannot effectively compete for starter homes with Wall Street firms and their vast resources. Neighborhoods and communities once controlled by middle-class American families are now run by faraway corporate interests. People live in homes, not corporations. My Administration will take decisive action to stop Wall Street from treating America's neighborhoods like a trading floor and empower American families to own their homes.*

*To preserve the supply of single-family homes for American families and increase the paths to homeownership, it is the policy of my Administration that large institutional investors should not buy single-family homes that could otherwise be purchased by families.*

The EO then went on to direct multiple cabinet secretaries to undertake actions that would seek to reduce or prevent such transactions. In addition, the EO directed the Deputy Chief of Staff for Legislative, Political and Public Affairs to pursue legislation seeking to limit private equity investments.

So it was hardly a coincidence that Chairman Scott and Ranking Member Warren of the Senate Banking Committee introduced the [21st Century ROAD to Housing Act](#). It included sweeping restrictions on large institutional investors, preventing purchases by any entity that controls 350 or more single-family homes. There are exceptions, but even those purchases must be sold within seven years of purchase.

These provisions make no economic sense. Demand is demand, regardless of whether the source is an individual, family, firm that controls under 350 properties, or firm that controls more than 350 homes. They may also be unconstitutional. A [white paper](#) by former Solicitor General [Paul Clement](#) prepared for the Real Estate Roundtable argues:

*The forced-sale provision runs afoul of the Takings Clause of the Constitution. Under the Takings Clause, the government is permitted to appropriate private property for a public use but only if it pays just compensation to the property owner. The forced-sale provision suffers two defects under the Takings Clause. First, it effects takings while providing no mechanism for compensation. ... Second, the forced sales fail the threshold requirement that takings be only for public uses without regard to the amount of compensation afforded.*

Also:

*Apart from its Takings Clause difficulties, the Act raises serious concerns under the equal-protection component of the Fifth Amendment's Due Process Clause. While the federal government generally enjoys substantial flexibility in drawing classifications in economic legislation, that is less true when it comes to fundamental rights, such as owning and disposing of property. Here, by imposing special burdens on a specific subset of corporate property owners (and them alone) when it comes to something as fundamental as the ownership and disposition of private property, the federal government has impermissibly discriminated against such investors and pursued an illegitimate policy goal. The Fifth Amendment does not permit the federal government to discriminate in such matters, let alone pursue discrimination for the sole purpose of giving benefits to preferred parties.*

The fact that the House version of the legislation does not contain the bans on institutional investors has been viewed as a legislative headwind to enactment. It appears that there are legal potholes as well.