

April 7, 2020

Speaker Nancy Pelosi
House of Representatives
H-232, the Capitol
Washington, DC 20515

Majority Leader Mitch McConnell
U.S. Senate
S-230, the Capitol
Washington, DC 20510

Minority Leader Kevin McCarthy
House of Representatives
H-222, the Capitol
Washington, DC 20515

Minority Leader Chuck Schumer
U.S. Senate
S-221, the Capitol
Washington, DC 20510

Dear Speaker Pelosi, Leader McCarthy, Leader McConnell and Leader Schumer:

On behalf of the more than 80,000 combined members of the National Multifamily Housing Council (NMHC), the National Apartment Association (NAA) and the millions of residents who live in apartment homes, we thank you for your quick action on the Coronavirus Aid, and Economic Security Act, (CARES Act), which includes important provisions intended to stave off total economic collapse in the wake of the coronavirus crisis. However, our industry continues to face potentially dire economic circumstances that will devastate the affordability, availability and stability of the rental housing supply nationwide.

As the government extends nationwide social distancing and states implement stay at home orders, the apartment industry plays a critical role in responding to the COVID-19 outbreak in communities across the nation. Rental housing owners and operators provide homes for 108 million Americans and take seriously the responsibility to ensure our residents are safe and secure. NMHC and NAA members are working alongside public officials to put residents and employees at ease, pointing them to existing assistance and working to provide direct support.

We strongly support efforts to pass additional relief and stimulus legislation and ask that you include help for America's rental housing providers, housing professionals and our residents. This includes:

- Creating an emergency assistance fund for renter households;
- Aligning mortgage forbearance and eviction protections;
- Providing financial assistance for property owners and mortgage servicers;
- Expanding the SBA Paycheck Protection Program to include multifamily firms;
- Providing critical tax relief for multifamily property owners; and
- Enacting critical infrastructure programs to support economic recovery.

A record 10 million workers applied for unemployment benefits in the last two weeks. Given that number, the apartment industry is expecting a significant number of residents will be affected by furloughs or job loss, which could inhibit their ability to pay their rent—even with the assistance

provided by the CARES Act. The industry is also challenged by residents who are fully able to meet rental obligations but may be persuaded by rent strikes or misunderstand their continued requirements and the importance of making timely rental payments.

With that in mind, apartment firms are bracing for an uptick in late payments and skips for April and likely even bigger jumps for May and possibly June. According to Amherst Holdings research, in an extreme scenario, more than 25 percent of the households that rent in the U.S. may need help making payments because of the coronavirus, requiring up to \$12 billion a month in government support. Rental housing providers are gravely concerned about their ability to keep up with their financial responsibilities, which remain unchanged as more jurisdictions adopt renter protections with limited relief for housing providers. Owners and operators rely on rental income to pay employee payroll, mortgage payments, taxes, insurance and, importantly, use these funds to maintain continuity of essential services for apartment communities as many renters must shelter in place.

In addition to those pressing concerns, our nation was facing a housing affordability crisis – brought on by a housing supply shortage and crumbling infrastructure – long before the onset of the COVID-19 crisis. If lawmakers do not act, this ongoing crisis, paired with the economic downfall brought on by COVID-19, will only worsen. Apartment operators, employees and residents need additional economic relief to avoid a total collapse of the rental housing sector, which contributes \$3.4 trillion annually to the U.S. economy.

For this reason, NMHC and NAA are asking that you include the following proposals in the phase four recovery stimulus package:

Create an Emergency Rental Assistance Program: While the CARES Act includes a number of provisions for individuals and businesses, such as direct payments to individuals and families, expanded unemployment insurance and a small business loan/grant program that will be helpful to renters and the rental industry, these funds are not tied to housing obligations and will not be sufficient to address the financial challenges that both renters and the rental industry are now facing. More direct emergency rental assistance is necessary, particularly for those who do not presently receive federal housing assistance through the U.S. Department of Housing and Urban Development (HUD). Congress must create an emergency rental assistance program for those who are impacted by the COVID-19 crisis and struggle to cover housing expenses. To facilitate support for impacted households, Congress can look to lessons learned from past disasters such as Hurricane Katrina, where state and local housing agencies acted as a conduit, working with both residents and owners to ensure rent obligations go directly to the property.

Align Mortgage and Financial Forbearance and Eviction Protections and Provide Financial Assistance to Property Owners and Mortgage Servicers: Like other Americans, housing providers have financial obligations to meet on a regular basis including mortgages, utilities, payroll, insurance and taxes. And like many renters, the COVID-19 crisis is impacting large, medium and small housing providers, but could be especially devastating to smaller housing providers who ultimately make up the majority of rental property owners. These small businesses often function on low margins that cannot sustain substantial losses of rental income for any period of time. This could result in a reduction of housing quality and services as owners make tough decisions about reserves and reducing expenses. To protect both renters and rental property owners, Congress must address the following:

- **Clarify and Further Target Eviction Moratorium Protections:** Our industry understands the importance of housing stability and the benefits of minimizing displacement during this crisis, yet we believe any limitations on evictions must be narrowly tailored. As part of the CARES Act, Congress approved a 120-day moratorium on eviction filings, late fees and other penalties. And while the intention was to limit the moratorium to properties with a federally insured mortgages (Fannie Mae, Freddie Mac and FHA) and properties participating in a covered housing program, such as those administered by the U.S. Department of Agriculture's (USDA's Rural Development (RD), concerns have been raised about the scope of the legislative language and its reach to other types of loans. We believe Congress should make clear that the moratorium, as currently enacted, applies only to those cited above.

Another area of clarification that is needed pertains to the intent of the CARES Act to maintain the ability of property owners to move forward with evictions in cases of criminal activity or other activities that endanger the community. Following enactment of the CARES Act, there has been confusion amongst residents and housing providers, and we urge Congress to strengthen this language to specifically identify the ability of property owners to move forward with necessary evictions. This is crucial to maintaining the health and safety of rental housing communities.

Lastly, one particular area of concern with the CARES Act is that the protection provided by the eviction moratorium was not limited to those financially impacted by COVID-19. Congress must swiftly address this discrepancy by clarifying that the national eviction moratorium be limited to those negatively impacted by COVID-19. Protections offered should not only be limited to those adversely affected by the outbreak, but also require residents to officially notify the property owner of temporary financial hardship, request temporary assistance/relief from the property owner and acknowledge the contractual terms of the lease remain in effect.

- **Expand Mortgage Forbearance Protections to All Types of Mortgages and Property-level Financial Obligations:** The CARES Act provided forbearance protections for multifamily properties with federally backed mortgages for a 90-day period. This protection needs to be expanded to all types of mortgages and loans issued by a federally regulated financial institution (private bank, life company, CMBS, etc.). The forbearance should also be expanded to other property-level financial obligations such as property taxes, insurance payments, utility service, etc.
- **Reconcile Forbearance and Eviction Moratorium Timelines:** Congress and federal regulators must ensure that forbearance protections are in place for the same length of time as any local, state or federal eviction moratoriums. The Act presently limits forbearance to a 90-day time period, which is out of alignment with the 120-day eviction moratorium. Eviction protections also include a required 30-day delay before an eviction proceeding can be initiated. Thus, the actual eviction timeline is closer to 150 days plus time for court processing and execution. We urge Congress to allow notices to vacate to proceed at the conclusion of the initial forbearance period and within any additional required notice period as renter protections are already embedded in the local law and judicial process for evictions that do not allow for the immediate removal of a tenant. It is important that the timelines are realigned to stop the potential for financial delinquencies and defaults in the rental housing market.

- **Provide Financial Assistance and Protection for Financial Property Obligations:** In order for owners and operators to ensure viability of apartment and rental housing communities, financial assistance and protections should be expanded to other property-level financial obligations such as property taxes, insurance payments, utility service, and the like. This assistance and protection is needed to avoid any type of negative disruption or impact on renters or housing providers, which could include loan default, tax liens or other negative legal actions—and ultimately put the property and its residents at risk.
- **Amend Forbearance Repayment Schedules:** Borrowers who request forbearance should be given 12 months to bring the loan current or be allowed to alter the loan terms to add the cost to the back of the mortgage. Forbearance and eviction moratorium protections should not extend beyond the end of the national disaster declaration period and apply only to those experiencing financial hardship because of COVID-19.
- **Create a Federal Reserve Credit Facility for Mortgage Services:** Servicers of multifamily mortgages are an important part of the financial flows within the multifamily industry and have obligations to advance funds during mortgage forbearance. Congress should direct the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, pursuant to the authority granted under section 13(3) of the Federal Reserve Act, to extend credit to multifamily mortgage servicers and other obligated advancing parties that, in each case, have liquidity needs due to the COVID-19 emergency or due to compliance with the CARES Act with respect to multifamily mortgage loans and to extend further credit to mortgage servicers for other liquidity needs due to the actual or imminent delinquency or default on mortgage loans due to the COVID-19 emergency.

Expand the Small Business Administration’s Paycheck Protection Program to Include All Multifamily Businesses: Despite original Congressional intent to assist all lines of business with the PPP, the SBA issued an interim final rule on April 2 that specifically denies eligibility to rental housing developer and owner firms. We urge Congress to compel the SBA to reverse this decision and expand eligibility to rental housing firms and student housing operators so that they can protect their employees and their operations with these loan and grant funds.

Further, the CARES Act provided an eligibility-waiver for certain business concerns with more than 500 employees but with more than one physical location, such as in the hotel industry. The multifamily industry operates under a very similar business model to other sectors targeted for inclusion with this language but is not part of the North American Industry Classification System (NAICS) codes that were granted this exemption. Because of the common structure of multifamily property operation, we believe that it is critical that Congress also extend similar eligibility to multifamily and student housing businesses.

Provide Critical Tax Relief for Multifamily Property Owners: We urge Congress to address an unintended consequence of the *Tax Cuts and Jobs Act* (TCJA) that harms our industry’s ability to invest in housing production and rehabilitation. The TCJA included a drafting error that adversely impacts the depreciation of any property placed in service prior to 2018. The *Multifamily Depreciation Parity Act of 2019* (S. 2984 / H.R. 5313) has been introduced to address this issue and would allow multifamily firms to depreciate buildings placed in service prior to

2018 over the congressionally intended 30 years as opposed to 40 years (under TCJA). This would help increase cash flows for impacted owners. We believe this relief is appropriate in light of current events, as it would give many multifamily property owners access to immediate equity to use for immediate cash-flow needs.

Enact Critical Infrastructure Programs to Support A National Economic Recovery:

Our requests above are critical to addressing the immediate COVID-19 crisis. Once the outbreak is contained, however, the nation will need to turn its focus to the task of rebuilding the economy and putting Americans back to work. A major infrastructure package could help address severe apartment development and construction challenges created or exacerbated by this crisis, while furthering the nation's economic recovery.

Construction shutdowns, shortages of labor and materials, supply chain disruptions, financial uncertainty, shifting lending and transactional requirements and indefinite delays on land transactions and project entitlements are major obstacles for housing development and rehabilitation projects underway nationwide.

New mechanisms and federal incentives are immediately needed to avoid deepening of America's housing affordability crisis. The apartment industry can play a valuable role in this effort. As you consider infrastructure initiatives, we urge the inclusion of measures that support the interconnectivity between housing and infrastructure and promote housing development at all income levels, including:

- Investing in housing and infrastructure that includes solutions to address the nation's most pressing housing challenges;
- Incentivizing localities to reduce barriers and adopt policies to encourage private sector investment in housing;
- Expanding and enhancing the Low-Income Housing Tax Credit to enable greater production of affordable housing;
- Enacting a Middle-Income Housing Tax Credit (MIHTC) to support workforce housing;
- Enhancing Opportunity Zones to incentivize rehabilitation of housing units;
- Enacting the *Build More Housing Near Transit Act* and better leverage federal transportation dollars to support housing development;
- Enacting the *Yes in My Backyard Act (YIMBY Act)* to help eliminate discriminatory land use policies and remove barriers that depress production of housing;
- Supporting affordable and practical efficiency incentives that enable developers to invest in engineering as well as construction and development costs required to build high-performing multifamily homes; and

- Reducing regulatory barriers and invest in programs that have proven to increase voluntary property owner participation in the Section 8 Housing Choice Voucher (HCV) Program.

The enormity of the challenges we are facing as a nation and as an industry are evolving on a daily or even hourly basis. We remain committed to ensuring that the millions of Americans who live in apartments nationwide have a safe, secure place to call home; and we stand ready to work with you as you work to provide the assistance necessary to meet the challenges of the COVID-19 crisis.

Sincerely,



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President
National Multifamily Housing Council



Robert Pinnegar
President & CEO
National Apartment Association