



May 19, 2021

The Honorable Sherrod Brown
Chairman
U.S. Committee on Banking, Housing and
Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Patrick J. Toomey
Ranking Member
U.S. Committee on Banking, Housing and
Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Brown and Ranking Member Toomey:

The National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) represent the apartment industry that provides apartment homes for 40 million residents, contributing \$3.4 trillion annually to the economy. Our nation has faced unprecedented challenges over the past year, which have strained housing providers and our residents and exacerbated an existing need for attainable and affordable housing. We are committed to not only stabilizing the housing sector but leveraging pandemic recovery efforts to improve the state of housing nationwide. As the Committee gathers for a hearing entitled "21st Century Communities: Expanding Opportunity Through Infrastructure Investments," we strongly urge Congress to use this historic opportunity to pass a comprehensive infrastructure plan that reinvests in America's infrastructure, creates jobs and addresses the nation's pressing housing needs.

Infrastructure and housing are linked in significant ways. Both the existing building supply and new apartment development are directly dependent on the condition and availability of suitable transportation options, reliable water and utility infrastructure, and broadband and telecommunications services. Moreover, successful new housing development relies on sustained funding for infrastructure and the modernization of infrastructure assets.

Importantly, any discussion of infrastructure policy must also include consideration of the nation's current and future housing needs. Before COVID-19, the country was facing a nationwide housing affordability challenge and a historic demand for new rental housing. Beginning in the mid-2000s, the nation experienced the greatest renter wave in its history, as the number of households who rent rose by more than 7 million.¹ Fueled by this extraordinary demand for apartment homes, recent NMHC and NAA research finds that we need to build 4.6 million new apartments by 2030 to meet the nation's housing needs.²

To meet this demand, we will need to build an average of 328,000 apartments (in buildings with five or more units) per year through 2030 just to keep up annual demand from new households and losses to the stock. And while we have reached that level in the most recent four years, more construction is needed to accommodate the many years when completions were a fraction of that annual demand. COVID-19 has further frustrated apartment production and the resulting supply-demand imbalance has seriously jeopardized housing affordability, limited housing choice and undermined broader economic growth.

To facilitate this necessary, new construction, we encourage a cooperative approach to housing development and infrastructure planning. The contemporaneous consideration of housing demands

¹ U.S. Census Bureau, Various Surveys.

² Hoyt Advisory Services; NMHC and NAA, "U.S. Apartment Demand – A Forward Look", May 2017.

and infrastructure needs maximizes community benefit and promotes efficiencies in transportation, land use and public works. Early alignment of these priorities can help ensure that infrastructure assets are best serving both the current and future needs of local communities.

As you consider infrastructure initiatives, we urge the inclusion of the following measures within the Committee's jurisdiction that support the interconnectivity between housing and infrastructure and promote housing development at all income levels, including:

- Incentivize government at all levels to remove barriers to apartment development, eliminate exclusionary zoning and other discriminatory land use requirements and streamline regulatory burdens;
- Invest in rehabilitating existing communities; and
- Promote more housing construction via density bonuses, fast-track review and by-right development.

Incentivize Localities to Reduce Barriers and Adopt Policies to Encourage Private Sector Investment in Housing

Rising costs and regulatory burdens at all levels of government depress apartment development and rehabilitation nationwide. A recent industry study found that 32 percent of multifamily development costs are attributable to compliance with local, state and federal regulations.³ In a quarter of cases, that number can reach as high as 42.6 percent. The most significant barriers are often imposed by state and local governments. Additional industry research⁴ indicates that Not In My Back Yard (NIMBY) activism, rising land and labor costs and complex approval systems top the list of such barriers. Land and labor costs alone comprise 35 percent of total building costs. These barriers feed housing affordability challenges which creates loud public outcry and, in more and more cases, an embrace of detrimental and counterproductive "solutions" such as rent control.

Additionally, as communities struggle with inadequate transportation, poor quality drinking water, sewage and other public systems, they are increasingly looking for ways to pass infrastructure improvement costs to developers by making project approvals contingent on infrastructure investments. This translates into higher rents for households and does nothing to solve the underlying infrastructure needs of our communities.

However, there is a role the federal government can play in lowering development costs, reducing barriers to construction and allowing more rental housing to be built. As you consider an infrastructure package, we urge the inclusion of several previously introduced bills:

- ***The Housing is Infrastructure Act.*** Recognizing that the most significant impediments are often imposed by state and local governments, the bill incentivizes localities to remove or reduce burdensome regulations, shorten entitlement processes and reduce barriers by providing new federal funding through competitive grants. The bill's \$10 billion Community Development Block Grant (CDBG) set-aside program is of particular benefit to help jurisdictions streamline and eliminate structural barriers to housing including increasing zoned capacity, eliminating off-street parking requirements, and eliminating or reducing impact fees. These and similar efforts by Congress are needed to incentivize localities to overhaul antiquated and counterproductive

³ National Multifamily Housing Council and National Association of Home Builders, "Regulation: Over 30 Percent of the Cost of a Multifamily Development", June 2018.

⁴ National Apartment Association, Hoyt Advisory Services, Dinn Focused Marketing, Inc. and Eigen 10 Advisors, LLC "US Barriers to Apartment Construction Index," May 2019.

measures that deter or slow the construction of multifamily rental housing nationwide, making it increasingly unaffordable.

- ***The Housing Supply and Affordability Act.*** This bipartisan bill establishes a new grant program “to support the development and implementation of comprehensive plans to expand the supply and affordability of housing, reduce barriers to new housing development, and avoid the displacement of current residents.” The bill also provides technical assistance to help communities effectively form and implement housing reforms.
- ***The Yes In My Backyard (YIMBY) Act.*** This bipartisan bill was reintroduced in both the House and the Senate earlier this month and passed the House last Congress. The legislation would require Community Development Block Grant (CDBG) recipients to be more transparent as to their efforts, or lack of efforts, to adopt specific pro-affordability housing policies. The housing affordability challenge is national in scope and requires an active role by the federal government in the pursuit of solutions.
- ***The Build More Housing Near Transit Act.*** This bill leverages federal dollars to support housing development by minimally adjusting the evaluation criteria for the Federal Transit Administration Fixed Guideway Capital Investment Grants program to include a housing feasibility assessment. This analysis would help to identify and acknowledge local land use policies serving to deter new development.
- ***The Better Planning and Land-Use for Accessible Neighborhoods (PLAN) Act.*** This bill would foster alignment of transportation, housing and economic development strategies in a way that promotes new housing production, affordability and better land use practices.

In addition, there are other key policies that can enable the public and private sectors to work collaboratively and increase the likelihood of producing viable solutions to meet our housing affordability housing challenges, including:

Expand and Enhance the Low-Income Housing Tax Credit

The Low-Income Housing Tax Credit (LIHTC) is a public/private partnership that leverages federal dollars with private investment to produce affordable rental housing and stimulate new economic development in many communities. Since its inception in 1986, the LIHTC program has according to the ACTION Campaign financed 3.3 million apartments and served 8 million households. The LIHTC program provides critical support to the nation's affordable housing production but could be made even more impactful.

NMHC and NAA strongly support the ***Affordable Housing Credit Improvement Act of 2019*** (H.R. 3077 / S. 1703). This bipartisan bill would make permanent the increased LIHTC credit authority enacted in March 2018 to enable the production of new units and further augment credit authority by 50 percent.

Enact the Middle-Income Housing Tax Credit (MIHTC) to Support Workforce Housing

Housing affordability is an issue threatening the financial wellbeing of solidly middle-income households in addition to low-income families. Consider that the Joint Center for Housing Studies of Harvard University found in its America's Rental Housing 2020 report that the median asking rent for an apartment constructed between July 2018 and June 2019 was \$1,620. For a renter to afford one of those units at the 30 percent of income standard, they would need to earn at least \$64,800 annually. Accordingly, this is an issue impacting those supporting the very fabric of communities nationwide, including teachers, firefighters, nurses and police officers.

As such, incentives to develop multifamily housing targeted to middle-income Americans should be a part of any infrastructure bill. We urge Congress to strongly consider the ***Middle-Income Housing Tax Credit Act of 2018*** (S. 3365) that was introduced during the 115th Congress to address the shortage of workforce housing available to American households. A worthy complement of measures to expand and improve LIHTC, the Middle-Income Housing Tax Credit (MIHTC) takes over where LIHTC leaves off. LIHTC is currently designed to serve populations of up to 60 percent of area median income. MIHTC is designed to benefit populations earning below 100 percent of area median income.

Enhance Opportunity Zones to Incentivize Rehabilitation of Housing Units

Enacted as part of tax reform legislation in 2017, Opportunity Zones are designed to provide tax incentives for investments in distressed communities. We believe that Opportunity Zones hold great promise for the development of multifamily housing. Under the new program, Governors have designated over 8,700 qualified low-income census tracts nationwide as Opportunity Zones. Up to 25 percent of a state's qualified census tracts may qualify as Opportunity Zones, with each state having to designate a minimum of 25 Zones.

While we expect the Opportunity Zones program to be beneficial in spurring the production of new multifamily housing, it could be improved to further incentivize the rehabilitation of existing multifamily units. This is particularly the case given the acute shortage of multifamily housing the nation faces. Current regulations work against using this program to rehabilitate properties for affordable housing since the developer must double her basis in the property without consideration of the cost of land. This puts additional financial pressure on already expensive redevelopment costs.

NMHC and NAA recommend that Congress consider statutory modifications to reduce the basis increase necessary to qualify a multifamily rehabilitation project for Opportunity Zone purposes. It is noteworthy that to qualify for an allocation under the LIHTC, owners must commit to rehabilitations valued at the greater of: (1) 20 percent of adjusted basis of a building; or (2) \$6,000 (\$7,100 in 2021 as adjusted for inflation) per low-income unit.

Promote the Rehabilitation of Multifamily Housing Located Near Transit

NMHC and NAA strongly support bipartisan legislation that will provide a new tool aimed at encouraging greater community development and inclusive neighborhood revitalization. The Revitalizing Economies, Housing and Business Act (REHAB Act) (H.R. 1483) provides:

- a 15 percent tax rehabilitation credit for buildings that are more than 50 years old, not certified historic structures, and are within one-half of a mile of a public transportation station;
- expanded credit eligibility to include building expansion on the same block; and
- a bonus credit of 25 percent for expenses related to public infrastructure upgrades and rent-restricted housing.

Repeal Foreign Investment in Real Property Tax Act

In 1980, Congress passed the Foreign Investment in Real Property Tax Act (FIRPTA) to tax foreigners' gains on the income they earn from, and then the sale of, U.S. real estate and other real property. In doing so, FIRPTA imposes significant costs on foreign investors in U.S. real estate, thereby serving as a significant barrier to such investment. The discriminatory and punitive tax regime created by FIRPTA precludes U.S. real estate companies from tapping into an important source of capital for developing, upgrading and refinancing properties.

While Congress addressed some of FIRPTA's burdens in 2015 tax legislation, a full repeal of FIRPTA could unlock billions in foreign capital that could help to refinance real estate loans and drive new investment. NMHC and NAA strongly support FIRPTA repeal legislation introduced in the 116th Congress, ***Invest in America Act*** (H.R. 2210), and believe it would represent a beneficial component of any future infrastructure package.

Support Affordable and Practical Energy Efficiency Policies

Apartment firms have a significant business interest in reducing the costs of operating apartment communities, which also helps to keep housing affordable. Utility costs are second only to debt service in terms of property expenses. Efficient use of resources, including updating building systems and appliances, is key to ensuring that housing and related utility expenses remain affordable for residents. The multifamily industry has a long-history of support for voluntary energy conservation and sustainability and supports incentive-based strategies that improve building energy performance and community-wide resiliency efforts. Any legislative efforts focused on reducing energy and water consumption should consider the inherent efficiencies of apartment design and operation resulting from compact design, small unit size and concentration of infrastructure, and further promote dense and sustainable development.

As Congress considers legislation to promote resilience and reduce greenhouse gas emissions (GHG) across the economy, programs that address building energy performance are an essential element. Policymakers must also consider the unique characteristics of the multifamily sector and avoid one-size-fits-all efficiency mandates that exacerbate the shortage of affordable apartment housing. Instead, efficiency measures should be cost-effective, technically feasible and support industry-specific research, technology development and demonstrations programs.

NMHC and NAA support practical approaches to building resiliency and sustainability in the nation's rental housing stock. Incentives that enable developers to invest in engineering, construction and development costs that are required to build high performing multifamily apartment homes will speed the development of higher performing, more resilient housing that is affordable for renter households.

Make Permanent the New Energy Efficient Homes Credit (Sec. 45L). This credit has provided a necessary incentive for builders of apartment buildings (3 stories or fewer) to install higher performance building systems and upgraded appliances than they otherwise could justify within the pro forma for developing the property. While this credit has been extended through 2021, it should be made permanent as an essential part of a national plan to boost production of high-performance buildings and reduce greenhouse gas emissions.

The Energy Efficient Qualified Improvement Act (H.R. 2346) is smart climate and infrastructure policy that will assist with costly energy efficiency retrofits in commercial and multifamily residential buildings. H.R. 2346 offers a uniform 10-year, straight line depreciation period to building owners for the installation of high-performance energy efficient building components including heating and cooling systems, lighting and building envelope components like windows and roofs.

Support Low-Income and Workforce Housing Broadband Infrastructure

The pandemic has forced millions of Americans to face the reality of home schooling and teleworking on a daily basis. It has also laid bare the challenges many families still face in gaining access to the internet at home. In urban or suburban low-income and workforce housing communities where broadband service often does exist, adoption can be hindered by affordability, the quality and

reliability of that service. In all too many cases, low and middle-income renters are faced with the choice of using limited funds, even with subsidies, to pay for broadband service that is slow, unreliable, and unable to support modern demands such as e-learning, remote work or video streaming.

To improve the reliability and quality of the broadband service at low-income and workforce rental properties, significant investments and upgrades are needed. Housing owners and operators of affordable units are often small firms or individual owners operating with little-to-no profit margin and must provide essential services such as property maintenance, security, etc. The result of these financial hurdles, coupled with a lack of financial investment by most broadband providers, is subpar and dated infrastructure remaining in place and unable to meet current and future needs.

As Congress and the Biden Administration look to make bold investments in broadband infrastructure in order to ensure universal access to high-quality and high-speed broadband, NMHC and NAA urge policymakers to extend these resources to providers of low-income and workforce housing. Only with robust financial support of the Federal government can many low-income and workforce housing residents realize the promise of high-speed and reliable internet service.

Conclusion

Housing is an integral part of our nation's infrastructure needs. We applaud the Biden Administration's and Congressional efforts to explore this relationship and find solutions to the nation's most significant housing challenges. Policymakers at every level of government have a role to play in removing obstacles to housing production, easing costs and creating a supportive environment for the providers of apartment homes. Across all markets, the supply of multifamily rental housing at a variety of price points will play a vital role in promoting economic growth, attracting and retaining talent and encouraging household stability for all American families. Using a combination of incentive-based programs, streamlined regulatory burdens and innovative solutions, we stand ready to work with Congress and the Administration to address the housing affordability challenges faced by communities across the nation while making critical investments in infrastructure of all types.

Sincerely,



Douglas M. Bibby
President
National Multifamily Housing Council



Bob Pinnegar
President & CEO
National Apartment Association