April 11, 2024

The Honorable Jason Smith
Chairman
Committee on Ways and Means
U.S. House of Representatives

The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
U.S. House of Representatives

Dear Chairman Smith and Ranking Member Neal:

On behalf of the nearly 100,000 combined members of the National Multifamily Housing Council (NMHC)[1] and the National Apartment Association (NAA)[2], we write to submit a statement for the record for the House Committee on Ways and Means' April 11, 2024, hearing, *Expanding on the Success of the 2017 Tax Relief to Help Hardworking Americans*, to share the views of the multifamily housing industry. We strongly believe that *Tax Cuts and Jobs Act (TCJA)* provisions affecting tax rates, the 20 percent qualified business income deduction, and the estate tax should be made permanent. At the same time, we encourage the Congress to use potential 2025 tax legislation addressing expiring *TCJA* provisions to enact tax incentives to ameliorate the nation's housing supply crisis while avoiding the enactment of counterproductive and onerous revenue raisers.

As the House Ways and Means Committee conducts this hearing, we start from the premise that tax policy has a critical role to play when it comes to promoting workable and sustainable policies to address our nation's housing challenges. Our ultimate goal is to ensure that apartment providers can meet the long-term housing needs of the 40.0 million Americans who live in apartment homes[3] and continue to make significant contributions to the growth of our economy, currently totaling $3.9 trillion annually.[4]

Addressing our nation's housing challenges, in general, and more specifically our housing affordability crisis, is crucial to promoting economic opportunity in our country and will require strong collaboration and partnership between policymakers and the private sector. Before exploring the essential role tax policy, and *TCJA* in particular, plays in multifamily housing markets, we would like to present members of the Committee an overview of the industry and current challenges and conditions.

[1] Based in Washington, D.C., NMHC is a national nonprofit association that represents the leadership of the apartment industry. Our members engage in all aspects of the apartment industry, including ownership, development, management and finance, who help create thriving communities by providing apartment homes for nearly 40 affordable housing million Americans, contributing $3.4 trillion annually to the economy. NMHC advocates on behalf of rental housing, conducts apartment-related research, encourages the exchange of strategic business information and promotes the desirability of apartment living.

[2] The NAA serves as the leading voice and preeminent resource through advocacy, education, and collaboration on behalf of the rental housing industry. As a federation of 141 state and local affiliates, NAA encompasses over 96,000 members representing more than 12 million apartment homes globally. NAA believes that rental housing is a valuable partner in every community that emphasizes integrity, accountability, collaboration, community responsibility, inclusivity and innovation.

[3] 2021 American Community Survey, 1-Year Estimates, U.S. Census Bureau, "Total Population in Occupied Housing Units by Tenure by Units in Structure."

[4] Hoyt Advisory Services, National Apartment Association and National Multifamily Housing Council, "The Contribution of Multifamily Housing to the U.S. Economy," https://weareapartments.org/pdf/Economic_Impact.pdf

## The Housing Imperative

Challenges may present themselves differently from community to community, but it will come as no surprise to Americans nationwide that we are facing a widespread housing affordability crisis. No wonder communities are feeling pinched—we simply do not have enough housing to go around. Today, in more and more communities, hard-working Americans are unable to rent homes due to increased costs driven by a lack of supply, barriers to development, and regulatory burdens.

The total share of cost-burdened households (those paying more than 30 percent of their income on housing) increased steadily from 28.0 percent in 1985 to 36.9 percent in 2021 and is growing, while others have been priced out of communities altogether.[5] This is not sustainable, particularly in a period of higher inflation. Wage stagnation in conjunction with barriers to new supply – for instance, onerous regulatory hurdles, antiquated and often discriminatory zoning and land use policies at the local level, and local opposition to development (also known as NIMBYism or "Not in My Backyard" opposition) – has led the nation to this juncture. It has taken many decades to get to this point, and it will take time to reverse these trends, but it is critical that we start now to enact new and innovative policies that will incentivize new housing production.

In addition, continued economic instability poses a serious threat to the ability of housing providers to leverage the private-market capital necessary to generate needed housing. Higher interest rates have contributed to a period of economic volatility, which is driving up the cost of building new housing, discouraging new investment, and pushing some in our sector out of the market altogether.

Increased construction, material and labor costs, significant increases in insurance costs, and state and local property taxes have made the current operating environment extremely challenging. NMHC and NAA members are reporting that current economic and regulatory challenges are causing them to cut back significantly on development activities, in some cases, by as much as 50 percent. This slowdown has long-term implications.

As of January 2024, NMHC's Quarterly Survey of Apartment Market Conditions also recorded seven consecutive quarters of decreasing sales volume and eight consecutive quarters in which equity financing became less available. Respondents did report improved conditions for debt financing in January, but this comes after nine straight quarters of worsening conditions (Oct. 2021 – Oct. 2023).[6]

## Housing Affordability: Growing Demand vs. Supply Challenges

It is essential that we build housing at all price points to meet the wide range of demand. According to research conducted by Hoyt Advisory Services and Eigen10 Advisors, LLC, and commissioned by NMHC and NAA, the U.S. is facing a pressing need to build 4.3 million new apartment homes by 2035.

Key findings include:

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5 NMHC tabulations of 1985 American Housing Survey microdata, U.S. Census Bureau; 2021 American Housing Survey; U.S. Census Bureau.

6 https://www.nmhc.org/research-insight/quarterly-survey/2024/nmhc-quarterly-survey-of-apartment-conditions-january-2024/

- **Shortage of 600,000 Apartment Homes.** The 4.3 million apartment homes needed includes an existing 600,000 apartment home deficit because of underbuilding after the 2008 financial crisis.

- **Loss of Affordable Units.** The number of affordable units (those with rents less than $1,000 per month) declined by 4.7 million from 2015 to 2020.

- **Homeownership.** Apartment demand also factors in a projected 3.8 percent increase in the homeownership rate.

- **Immigration.** Immigration is a significant driver of apartment demand. Levels tapered before the pandemic and have remained low, but a reversal of this trend would significantly increase apartment demand.

## Opportunity Abounds: Sustainable Solutions to Enhance Housing Supply and Address Housing Affordability

The good news: There is a clear path to solving this challenge. Congress must prioritize increasing our nation's housing supply and support pro-housing policies that will in turn ensure greater housing stability and affordability for renters at a variety of income levels for decades to come.

While there is no one silver bullet, a multifaceted approach can be effective in easing market constraints. This statement for the record focuses on the critical role provisions in *TCJA* play in addressing housing supply. We also present additional proposals Congress should consider as part of potential 2025 tax legislation addressing *TCJA* to further enhance housing supply and ease the housing affordability crisis.

## Enact and Enhance Tax Policy That Promotes Housing Supply

While it will take a variety of tax and non-tax approaches to increase supply, the rental housing industry believes tax policy can play a critical role in this regard. To this end, we strongly urge Congress to:

- Make permanent critical provisions enacted as part of *TCJA,* namely those pertaining to tax rates, the 20 percent qualified business income deduction, and the estate tax.

- Use potential 2025 tax legislation addressing expiring *TCJA* provisions to enact other tax incentives to boost housing supply, including those that would:

    - Expand and enhance the Low-Income Housing Tax Credit;
    - Enact the *Workforce Housing Tax Credit Act* to support workforce housing;
    - Enhance Opportunity Zones, which were enacted as part of *TCJA*, to incentivize the rehabilitation and preservation of multifamily buildings; and
    - Encourage the adaptive reuse of underutilized commercial properties into multifamily housing.

- Avoid including revenue-raising provisions in potential 2025 tax legislation that would disrupt capital flows to the multifamily industry and make it more costly to develop and preserve housing units.

Each of these proposals is briefly described below.

**EXPIRING *TCJA* PROVISIONS**

***Make Permanent TCJA Tax Rates and the 20 Percent Qualified Business Income Deduction***

The multifamily industry is dominated by "pass-through" entities (e.g., sole proprietorships, LLCs, partnerships and S corporations) instead of publicly held corporations (e.g., C corporations). Indeed, approximately three-quarters of apartment units are owned by pass-through entities. This means that a company's taxable income is passed through to the equity owners, who pay taxes on their share of the income on their individual tax returns, regardless of whether the owner receives any cash distribution of the income or it is reinvested in the business. Additionally, a significant number of industry participants are organized as REITs that generally pay no tax at the entity level and pass-through dividends to shareholders.

The tax treatment of pass-through entities contrasts with the taxation of large publicly held corporations, so called C corporations, which generally face two levels of tax. Those entities remit tax at the corporate level under the corporate tax system. Taxable shareholders are then taxed upon the receipt of dividend income. Notably, some shareholders of corporate stock, including certain retirement accounts and non-profit organizations, are exempt from taxes on those dividends.[7]

In 2017, as part of *TCJA*, Congress lowered taxes on pass-through entities and REITs through 2025 by:

- Reducing marginal tax rates, including the top tax rate to 37 percent from 39.6 percent; and
- Providing a 20 percent tax deduction for qualifying pass-through income and REIT dividends, effectively reducing the top tax rate on qualifying business income to 29.6 percent.

Unfortunately, absent Congressional action, pass-through entities will see a substantial tax increase at the end of 2025 when the tax provisions benefiting pass-through entities expire. Instead of facing a top rate of 29.6 percent on qualifying business income, such entities will be confronted by a 39.6 percent rate, a 33.8 percent increase. In contrast, the corporate tax rate will remain at 21 percent.

Congress should continue to promote the use of flow-through entities and investment in multifamily housing by making permanent the tax rate reductions and the 20 percent qualified pass-through income deduction enacted as part of the *TCJA*. To this end, the multifamily industry strongly supports the *Main Street Tax Certainty Act* (H.R. 4721 / S. 1706) that would make

[7] Rosenthal, Steven M. and Mucciolo, Livia, *Who's Left to Tax? Grappling with a Dwindling Shareholder Tax Base*, Tax Notes Federal, Volume 183, April 1, 2024.

permanent the 20 percent qualified business income deduction. Introduced by Representative Smucker and Senator Daines, this legislation has 170 House cosponsors and 32 Senate cosponsors.

Failure to extend today's tax laws would result in a substantial tax increase and further exacerbate the nation's housing challenges. Put simply, higher taxes mean fewer dollars to build new units and preserve our existing housing stock.

### *Make Permanent TCJA Estate Tax Rules*

Because many apartment firms are small businesses, often family owned, estate planning is a major consideration for company principals. A critical part of planning focuses on the estate tax imposed on the transfer of their assets to their heirs.

As part of *TCJA*, Congress doubled the estate tax exclusion through 2025. As many apartment executives prepare to leave a legacy to their heirs, today's estate tax rules provide clarity and consistency in the tax code but only through 2025. The apartment industry supports making the estate tax rules enacted in 2017 permanent.

The estate tax rules include three key elements:

- Exemption level: The estate tax exemption level is the amount that a donor may leave to an heir without incurring any federal estate tax liability. In 2024, the law establishes a $13.61 million exemption ($27.22 million per couple, indexed for inflation).

- Tax rate: The estate tax rate applies to the value of an estate that exceeds the exemption level. Under the rules, the maximum rate is 40 percent.

- Basis rules: The basis rules determine the tax basis of inherited property. The estate tax today features stepped-up basis rules, which reset the tax basis of inherited property to reflect the fair market value of the property at the time of the inheritance. This is particularly important for the apartment industry because many industry executives' estates include significant amounts of depreciable real property.

Without stepped-up basis, the tax basis of inherited property can be quite low if the property was purchased long ago and has been depreciated over a number of years. As a result, heirs could inherit an apartment property with no basis and sizeable debt. If they sell it, they will face significant depreciation recapture taxes and capital gains taxes. This discourages heirs from investing further capital to maintain it and removes valuable affordable housing from the inventory.

## HOUSING AFFORDABILITY TAX INCENTIVES

As mentioned above, housing tax policy can play key role in spurring housing supply. Accordingly, a 2025 tax bill could be a vehicle for enacting tax proposals designed to expand the Low-Income Housing Tax Credit, establish a Workforce Housing Tax Credit, reinvigorate opportunity zones, and create a new incentive for adaptive reuse.

***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. Between its inception in 1986 and 2022, the LIHTC program has, according to the A Call To Invest in Our Neighborhoods (ACTION) Campaign, developed or preserved 3.85 million apartments, served 8.97 million low-income households, supported 6.33 million jobs for one year, generated $257.1 billion in tax revenue, and produced $716.3 billion in wages and income.[8] The LIHTC program provides critical support to the nation's affordable housing production but could be made even more impactful.

NMHC and NAA support the *Affordable Housing Credit Improvement Act of 2023* (*AHCIA*) (H.R. 3238 / S. 1557). Introduced by Representatives LaHood, DelBene, Wenstrup, Beyer, Tenney, and Panetta and Senators Cantwell, Young, Wyden, and Blackburn, this bipartisan bill, which is supported by a total of 222 Members of the House and 34 Senators, would, among other provisions, make permanent the now-expired 12.5 percent increase in LIHTC authority for 2018-2021 to enable the production of new units and further augment credit authority by 50 percent. Additionally, the bill would lower the private activity bond financing threshold to 25 percent from 50 percent required to receive the full amount of 4 percent LIHTC.

Enacting the primary unit financing provisions in the *Affordable Housing Credit Improvement Act* could finance up to an additional 1.94 million affordable units over 10 years. Over that period, this enhanced financing could also support nearly three million jobs, $333 billion in wages and business income, and $115 billion in additional tax revenue.[9]

We also strongly support LIHTC provisions in the *Tax Relief for American Families and Workers Act of 2024* (H.R. 7024), which the House approved on January 31 by a bipartisan 357-70 vote. Provisions included in H.R. 7024 would augment LIHTC authority by 12.5 percent between 2023 and 2025, as well as reduce the private activity bond financing threshold to 30 percent from 50 percent in 2024 and 2025. These provisions would create over 200,000 new multifamily units and represent a critical step toward addressing this nation's affordable housing supply crisis.[10]

Finally, we would encourage Congress to consider increasing the private activity bond volume cap to enhance the utilization of 4 percent LIHTC. According to March 2023 data by Tiber Hudson and Novogradac, 18 states and Washington, DC, are oversubscribed. Authorizing these states to issue additional private activity bonds would enable the financing of additional 4 percent LIHTC projects.[11]

[8] https://rentalhousingaction.org/wp-content/uploads/2023/11/ACTION-NATIONAL-NOV-2023.pdf

[9] https://www.novoco.com/notes-from-novogradac/lihtc-pab-provisions-newly-reintroduced-ahcia-could-result-nearly-2-million-additional-affordable

[10] https://www.novoco.com/periodicals/news/low-income-housing-tax-credits-news-briefs-march-2024

[11] Tiber Hudson and Novogradac, *Volume Cap Scarcity*, March 2, 2023.

### *Enact the Bipartisan Workforce Housing Tax Credit Act*

Housing affordability is an issue threatening the financial wellbeing of both middle-income and low-income households across the nation. According to the U.S. Census Bureau's Survey of Market Absorption, the median asking rent for apartment units completed in the third quarter of 2023 was $1,833, a 12.23 percent increase from the same period in 2018.[12] For a renter to afford one of those units at the 30 percent of income standard, they would need to earn at least $73,320 annually.

Furthermore, Harvard University's Joint Center for Housing for Housing Studies reported in January 2024 that "Renter households with annual incomes of $45,000 to $74,000 have seen the fastest growth in their burden rates, both over the longer term and during the pandemic. Indeed, 41 percent of renter households in this income category were burdened in 2022, a 5.4 percentage point increase since the start of the pandemic, nearly doubling their 2001 rate."[13]

Accordingly, this is an issue affecting those workers who comprise the very fabric of strong communities nationwide, including teachers, firefighters, nurses, and police officers whose wages are not keeping pace with costs. Tax policies to spur the production of multifamily housing targeted to middle-income Americans should be a part of any legislation that seeks to address housing affordability on a comprehensive basis.

We urge Congress to enact the bipartisan and bicameral *Workforce Housing Tax Credit Act* (H.R. 6686 / S. 3436), sponsored by Representatives Panetta and Carey and Senators Wyden and Sullivan. This legislation establishes a new tax credit to produce affordable rental housing for households earning 100 percent or less of the area median income (AMI).

Designed to complement the successful LIHTC program, the WFHTC program would enable state housing agencies to issue credit allocations to developers that would subsequently be sold to investors. Investors would receive a dollar-for-dollar reduction in their federal tax liability over a 15-year period, and developers would invest the equity raised to build apartments. The equity raised would cover 50 percent of the cost of constructing qualifying units. A development project eligible for WFHTC would have to set aside 60 percent of units for households earning 100 percent or less of AMI and must be kept affordable for up to 30 years.

### *Enhance Opportunity Zones to Incentivize Rehabilitation of Housing Units*

Enacted as part of *TCJA*, Opportunity Zones are designed to provide tax incentives for investments in distressed communities. Opportunity Zones hold great promise for the development of multifamily housing. In fact, Novogradac reports that residential investment (and specifically multifamily housing) continued to be the leading investment area in 2023 for Opportunity Funds. Funds tracked by Novogradac have raised $20.5 billion for multifamily housing and have been or will be invested in 972 developments.[14]

[12] U.S. Census Bureau, Survey of Market Absorption.
[13] Harvard Joint Center for Housing Studies, *State of the Nation's Housing 2024*.

[14] https://www.novoco.com/notes-from-novogradac/multifamily-residential-development-continues-to-dominate-qof-investment-tracked-by-novogradac

Under the program, Governors have designated over 8,700 qualified low-income census tracts nationwide as Opportunity Zones. Opportunity Zone designations remain in effect through 2028. Real estate developers and others may establish Opportunity Funds to construct and rehabilitate multifamily property that are eligible for two tax incentives:

First, taxpayers may defer taxes capital gains that are reinvested in Opportunity Funds to the earlier of the date an investment in an Opportunity Fund is disposed of or December 31, 2026. Notably, gains deferred for five years are eligible for a 10 percent basis step up, while gains deferred for seven years are eligible for an additional five percent basis step up.

Second, post-acquisition capital gains on investments held in Opportunity Funds for at least 10 years may be permanently excluded from income.

While taxpayers may continue to invest capital gains in Opportunity Funds through June 28, 2027, it is already too late to meet requirements for a step up in basis attributable to newly deferred capital gains. In addition, the economy has changed since Opportunity Zones were originally designated.

Opportunity Zones can be a helpful tool to incentivize housing production and, thereby, assisting to address the nation's housing affordability crisis. However, to fully maximize the potential of Opportunity Zones, Congress should:

- Enable States to recertify and/or redesignate Opportunity Zones to account for current economic realities and changes since Zones were originally designated; and

- Establish new investment deadlines so that taxpayers are incentivized to receive both a longer deferral period and the potential for a 10 percent or 15 percent basis increase with respect to reinvested capital gains.

While Opportunity Zones are beneficial for new multifamily development, taxpayers may find it difficult use Opportunity Zone benefits to rehabilitate existing properties. To qualify for Opportunity Zone benefits for renovations, the basis of an existing asset must be doubled excluding land. Although property that is added to and improves an asset can count toward this threshold, doubling the basis can still be a high hurdle. Accordingly, Congress should reduce the basis increase necessary to qualify a multifamily rehabilitation project for Opportunity Zone purposes.

***Encourage the Adaptive Reuse of Underutilized Commercial Properties into Multifamily Housing***

Given the nation's shortage of affordable rental housing, many are considering turning unused and underutilized commercial real estate structures, including offices, hotels, and retail spaces into housing. Not only would such repurposing help address the nation's housing supply challenge, but it would also create jobs and boost local property tax revenues.

A segment of commercial real estate space could potentially be available to be converted into housing. A February 2023[15] Urban Land Institute study commissioned by the NMHC Research Foundation provided case study examples of successful conversions, and several large jurisdictions, including Washington, DC, and New York City, have recently embarked on plans to incentivize office-to-residential conversions.[16]

Changing consumer preferences and online shopping are also changing the real estate landscape. Estimates show between several hundred million and 1 billion square feet of surplus and obsolete retail space. Slower post-pandemic business travel is also challenging a portion of the nation's hotel stock.[17]

Unfortunately, converting commercial real estate into housing can be extremely challenging and can be more complicated than typical ground-up development. Costs associated with property acquisition and conversion, including addressing structural building issues (e.g., beams, columns, ceiling heights, utilities, and floor layouts), can quickly add up and make the difference between a viable or unfeasible project. This is in addition to other barriers that may arise, including permitting, zoning rules, and NIMBYISM.

A Federal tax incentive to encourage property conversions would be greatly beneficial in helping to overcome these obstacles and spurring additional housing supply. In addition, it would help revitalize distressed commercial property and stabilize the surrounding communities. Notably, Representaitve Gomez has reintroduced the *Revitalizing Downtowns Act* (H.R. 419) that would provide a 20 percent tax credit to convert office buildings into other uses, including residential use. Senator Stabenow introduced the measure (S. 2511) last Congress.

The multifamily industry is interested in working with Congress on this type of proposal but would like to see it modified to, among other things, enable other types of commercial properties (e.g., shopping centers and hotels) to qualify for the tax incentive; ensure REITs could utilize the benefit; and clarify that the credit does not reduce other tax benefits including the LIHTC.

Additionally, the multifamily industry would encourage Congress to explore whether tax-exempt private activity bonds could be used as a means of promoting adaptive reuse. Housing finance agencies could issue such bonds to help facilitate adaptive reuse of underutilized properties, particularly in areas that have a plan to track discriminatory land use policies as envisioned by the *Yes In My Backyard Act (YIMBY Act)* (H.R. 3507 / S. 1688). NMHC and NAA strongly support this legislation which requires recipients of Community Development Block Grants to provide information on how they are reducing local barriers to housing development.

## OPPOSE ONEROUS REVENUE RAISERS DISRUPTING CAPITAL FLOWS TO THE MULTIFAMILY INDUSTRY

[15] Kramer, Anita. *Behind the Facade: The Feasibility of Converting Commercial Real Estate to Multifamily*. Washington, D.C.: Urban Land Institute, 2023. https://www.nmhc.org/globalassets/research--insight/research-reports/conversion/behind-the-facade_conversion-report.pdf

[16] https://dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N135303 and https://www.nyc.gov/site/officeconversions/index.page

[17] Kramer, Anita. *Behind the Facade: The Feasibility of Converting Commercial Real Estate to Multifamily*. Washington, D.C.: Urban Land Institute, 2023. https://www.nmhc.org/globalassets/research--insight/research-reports/conversion/behind-the-facade_conversion-report.pdf

We strongly support the extension of *TCJA* provisions affecting tax rates, the 20 percent qualified business income deduction, and estate tax rules, while also encouraging Congress to use a potential 2025 tax bill to include incentives boosting housing supply. We are concerned, however, about revenue-raising proposals that would negatively affect the housing industry and ultimately limit the supply of housing. Specifically, we urge Congress to reject proposals such as those in President Biden's Fiscal Year 2025 Budget that would limit capital flowing to the multifamily industry, including those that would:

- Increase the top marginal income and capital gains tax rates;
- Limit deferral of taxable gain from a like-kind exchange;
- Tax carried interest as ordinary income;
- Expand the net investment income tax to encompass active business income while increasing the applicable tax rate;
- Tax unrealized capital gains at death; and
- Require 100 percent recapture of depreciation deductions as ordinary income for real estate.

These types of proposals would directly affect the operations of housing providers by reducing real estate investment and inhibiting the capital flows that are so critical to the development and preservation of critically needed housing.

## **Conclusion**

This is the bottom line: there is no silver bullet, but we think a multi-faceted approach to improving housing affordability and increasing housing supply is our best bet. The health and stability of the rental housing sector is paramount to that of our overall economy. And, importantly, the sufficient supply of quality housing is necessary in ensuring the continued economic prosperity and household stability for Americans nationwide and providing household stability. Without it, we put both at risk. Solving this challenge should be mission critical. It certainly is for our industry.

On behalf of the multifamily industry and the nearly 40 million Americans we serve, we applaud the House Ways and Means Committee for examining the efficacy of *TCJA* and look forward to working with Congress to ensure tax policy promotes solutions to address the nation's most significant housing challenges.