January 14, 2025

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 offer the multifamily housing industry's perspectives to the House Ways and Means Committee for its January 14, 2025, hearing on the need to make permanent the Trump tax cuts for working families. 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 exemption should be made permanent. At the same time, we encourage Congress to use 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 studies *TCJA's* efficacy, 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 40.3 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]

The Housing Imperative

Challenges 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 challenge. 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, high construction costs, and regulatory burdens all make it difficult, if not impossible, for developers to help remedy this problem.

Affordability has been a longstanding problem in housing. In 1985, 28.0 percent of all households were cost-burdened (paying over 30 percent of their income on housing), while 12.1 percent had severe cost-burdens (paying over half of their income on housing). Over thirty years later, these shares of cost-burdened and severely cost-burdened households increased to 37.3 percent and 19.1 percent, respectively.[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

[1] Based in Washington, D.C., NMHC is where rental housers and suppliers come together to help meet America's housing needs by creating inclusive and resilient communities where people build their lives. We bring together the owners, managers, developers and suppliers who provide rental homes for 40 million Americans from every walk of life—including seniors, teachers, firefighters, healthcare workers, families with children and many others. NMHC provides a forum for leadership and advocacy that promotes thriving rental housing communities for all.

[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 95,000 members representing more than 12.5 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] 2023 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.

[5] NMHC tabulations of 1985 American Housing Survey microdata, U.S. Census Bureau; 2023 American Housing Survey, U.S. Census Bureau.

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.

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. While we are at historic levels of apartment completions, they are a short-term fix for a long-term problem unless sustained over a longer period. 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:

- **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: Enact and Enhance Tax Policy that Promotes Housing Supply

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 it will take a variety of tax and non-tax approaches to increase supply, tax policy continues to 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 individual tax rates, the 20-percent qualified business income deduction (Section 199A), and the expanded estate-tax exemption.

- Use 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; and
    - 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 2025 tax legislation that would disrupt capital flows to the multifamily industry and make it more costly to develop, preserve, and operate housing units. These include:

    - Eliminating deferral of taxable gain from like-kind exchanges;

- o Taxing carried interest as ordinary income;
- o Imposing the net investment income tax (NIIT) on active income while potentially increasing the NIIT rate;
- o Requiring 100-percent recapture of depreciation deductions as ordinary income for real estate; and
- o Restricting the deductibility of state taxes by pass-through entities.

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), rather than 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. Finally, 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. These entities are subject to 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 retirement accounts generally and non-profit organizations, are exempt from taxes on those dividends.[6]

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

- Reducing marginal individual 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 (commonly referred to as Section 199A), 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 individual tax rate reductions and the 20-percent Section 199A 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) introduced in the 118th Congress that would make permanent the 20-percent qualified business income deduction. Introduced by Representative Smucker and Senator Daines, this legislation had 194 House cosponsors and 34 Senate cosponsors.

[6] 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, https://www.taxnotes.com/featured-analysis/whos-left-tax-grappling-dwindling-shareholder-tax-base/2024/03/29/7j9cr.

Furthermore, on September 9, 2024, the S Corporation Association released an EY study highlighting the millions of jobs and economic activity that will be at risk if the 20-percent qualified business income tax deduction is allowed to expire as scheduled at the end of 2025. Specifically, the EY study finds that "the total U.S. economic activity supported by the Section 199A deduction in 2024 is estimated to be 2.6 million workers earning $161 billion and generating $325 billion of GDP."[7] While these numbers include the impact of related supplier activity and consumer spending, EY finds that the 199A deduction directly supports 1.1 million workers at pass-through businesses who are estimated to earn $65 billion in employee compensation and generate $132 billion of GDP.

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 while retaining a top tax rate of 40 percent and stepped-up basis rules. As many apartment executives plan for the continuity of the housing properties in the hands of their heirs, today's estate tax rules provide clarity and consistency in the tax code, but only through 2025. The apartment industry supports making permanent the estate tax rules enacted in 2017.

Allowing the estate tax exemption to be cut in half beginning in 2026 would expose many more taxpayers to the levy, making it more difficult to transfer businesses to future generations and forcing taxpayers to engage in costly planning that diverts capital from their businesses.

HOUSING AFFORDABILITY TAX INCENTIVES

As mentioned above, housing tax policy can play a key role in spurring housing supply. Accordingly, a 2025 tax bill presents a critical opportunity to enact 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 2023, the LIHTC program – according to the A Call To Invest in Our Neighborhoods (ACTION) Campaign – has developed or preserved 4 million apartments, served 9.28 million low-income households, supported 6.6 million jobs for one year, generated $268.1 billion in tax revenue, and produced $746.5 billion in wages and income.[8] The LIHTC program provides

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[7] EY, *Economic activity supported by the Section 199A deduction*, August 2024, pg. i, https://s-corp.org/wp-content/uploads/2024/09/EY-SCA-Economic-activity-supported-by-Section-199A-deduction-August-2024-FINAL.pdf

[8] https://rentalhousingaction.org/wp-content/uploads/2024/11/ACTION-NATIONAL-NOV-2024.pdf .

critical support to the nation's affordable housing production but could be improved to have an even greater impact.

NMHC and NAA support the *Affordable Housing Credit Improvement Act of 2023* (*AHCIA*) (H.R. 3238 / S. 1557). This bipartisan bill – introduced in the 118th Congress by Representatives LaHood, DelBene, Wenstrup, Beyer, Tenney, and Panetta and Senators Cantwell, Young, Wyden, and Blackburn (with 273 cosponsors in the House and 34 cosponsors in the Senate) – would make a number of far-reaching reforms to the LIHTC. Among other provisions, the bill would make permanent the now-expired 12.5-percent increase in LIHTC allocation authority that applied between 2018 and 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 provisions in the *Affordable Housing Credit Improvement Act* concerning primary unit financing could allow up to 1.94 million additional affordable units to be financed 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]

Finally, we encourage Congress to consider increasing the private activity bond volume cap to enhance the utilization of 4-percent LIHTC. According to May 2024 data by Tiber Hudson and Novogradac, 19 states and Washington, DC, are oversubscribed for private activity bonds.[10] Authorizing these states to issue additional private activity bonds would enable the financing of additional 4-percent LIHTC projects.

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 first quarter of 2024 was $1,746, an 8.9 percent increase from the same period in 2019.[11] For a renter to afford one of those units at the 30-percent-of-income standard, the renter would need to earn at least $69,840 annually.

Furthermore, Harvard University's Joint Center for Housing for Housing Studies reported in December 2024 that "Affordability challenges have grown most rapidly for middle-income renters. Indeed, 70 percent of renters earning $30,000–44,999 had cost burdens in 2023, an increase of 1.9 percentage points in one year and 3.5 percentage points since 2019. Cost burdens among households earning $45,000–74,999 increased an even more striking 3.3 percentage points in just one year to 45 percent, up 7.7 percentage points from before the pandemic."[12]

Accordingly, affordable housing 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 housing costs. Tax policies to spur the production of multifamily housing targeted to

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

[10] Novogradac, Michael J., Testimony before the Senate Committee on Finance, *Tax Tools for Local Economic Development*, July 30, 2024, pg. 28 https://www.finance.senate.gov/imo/media/doc/07302024_novogradac_testimony.pdf.

[11] U.S. Census Bureau, Survey of Market Absorption, https://www.census.gov/data/developers/data-sets/soma.html.

[12] https://www.jchs.harvard.edu/blog/housing-cost-burdens-climb-record-levels-again-2023?utm_medium=email&utm_source=member_news_alerts&utm_campaign=nmhc_news&mkt_tok=Njc2LVVERC03MTQAAAGXN6rWvdn3xSwS03oZtL4wQ9DYbdKxpQYCTC-mERoIn7R5P7AnUetZHhunIETLzg_tvEhL0StARGWgTmzAY6a0GQXiXA4jZaSGTagHfpFb5Q.

middle-income Americans should be 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 in the 118th Congress by Representatives Panetta and Carey and Senate Finance Chair Wyden and Senator Sullivan. This legislation establishes a new Workforce Housing Tax Credit (WFHTC) to produce affordable rental housing for households earning 100 percent or less of area median income (AMI).

Designed to complement the successful LIHTC, the WFHTC 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 qualifying affordable 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 have held great promise for the development of multifamily housing. In fact, Novogradac in October 2024 released data illustrating that residential investment continued to be a critical investment area for Opportunity Funds. Funds tracked by Novogradac have helped finance 192,166 housing units across the United States.[13]

Under the program, state governors have designated over 8,700 qualified low-income census tracts nationwide as Opportunity Zones, which 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 on 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 5-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 shortly after the enactment of *TCJA*.

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

[13] https://www.novoco.com/notes-from-novogradac/qof-fundraising-sees-largest-quarterly-jump-since-early-2023-total-nears-40-billion.

- 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 the 10-percent or 15-percent basis increase with respect to reinvested capital gains.

Introduced in the 118th Congress by Representatives Kelly, Kildee, Miller, and Sewell, the *Opportunity Zones Transparency, Extension, and Improvement Act* (H.R. 5761) includes provisions consistent with these priorities.

While Opportunity Zones are beneficial for new multifamily development, developers may find it difficult to 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 the value of any 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 developers are considering turning unused and underutilized commercial real estate, 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 and economic growth.

Notably, a February 2023[14] 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 efforts to catalyze office-to-residential conversions.[15]

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, in the 118th Congress, Representatives Carey and Gomez and Senators Stabenow, Brown, Peters, and Padilla introduced the *Revitalizing Downtowns and Main Streets Act* (H.R. 9002 / S. 4693) that would establish a temporary and allocated 20-percent tax credit to convert commercial property into residential use. NMHC and NAA strongly support this legislation.

[14] 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.

[15] https://dmped.dc.gov/page/housing-downtown-hid-program and https://www.nyc.gov/site/planning/plans/city-of-yes/city-of-yes-housing-opportunity.page.

OPPOSE ONEROUS REVENUE RAISERS DISRUPTING CAPITAL FLOWS TO THE MULTIFAMILY INDUSTRY

We strongly support the extension of *TCJA* provisions affecting individual tax rates, the 20-percent qualified business income deduction, and the expanded estate-tax exemption, 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, including those below, that 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.

Eliminate Deferral of Taxable Gain from Like-Kind Exchanges

Ensuring the nation has sufficient housing is an important public policy goal, and one that can be pursued through housing and tax policy. A critical way that the nation's tax laws support investment in real estate is through Section 1031 like-kind exchanges. NMHC and NAA strongly believe that Congress should retain current-law like-kind exchange rules as opposed to limiting deferral from a like-kind exchange.

Appropriately retained for real property as part of the *TCJA*, the like-kind exchange rules encourage investors to remain invested in real estate by allowing property owners to defer tax on capital gains if, instead of selling their property, they exchange it for another comparable property. As long as the taxpayer remains invested in real estate, tax on any gain is deferred. When the taxpayer ultimately does sell the asset, the tax relating to the gain on the property is due.

Like-kind exchange rules play a crucial role in supporting the multifamily sector by encouraging investors to remain invested in real estate while still allowing them to balance their investments to shift resources to more productive properties, change geographic location, or diversify or consolidate holdings.

In addition, without like-kind exchanges, property owners would be deterred for tax reasons from selling assets that need capital investment. Exchange rules allow those owners to transfer the property to new owners who can invest the necessary capital to revitalize the asset. Thus, like-kind exchange rules facilitate job-creating property upgrades and improvements.

Like-Kind Exchange Example: Taxpayer A owns a 10-unit multifamily property worth $2 million. Her tax basis, or current investment interest, in the property is $1 million, leaving a $1 million taxable gain if she were to sell it. Taxpayer A wants to sell this property and use the proceeds to help purchase a $3 million, 15-unit apartment building. If she were to sell the first building and buy the second, she would have to pay tax on the $1 million gain, which at a minimum would reduce the capital available to invest in the new property and may otherwise discourage her from pursuing the transaction.

With a like-kind exchange, she can exchange the assets and defer capital gains. In this transaction, she exchanges her property for the new one (with a loan to account for the remaining $1 million purchase price), and her tax basis in the new property increases to $2 million. The $1 million in capital gain from the sale of the 10-unit property is deferred until she sells the new asset. A like-kind exchange allows her to continue investing in job-creating real estate instead of being forced to hold properties solely for tax considerations.

Tax Carried Interest as Ordinary Income

Some have proposed to tax carried interest at ordinary income rates, regardless of how long an asset is held, instead of at long-term capital gains tax rates. Such a change would adversely affect not only the apartment industry, but also the entire real-estate industry, given that 49.6 percent of all partnerships are real-estate related.[16]

NMHC and NAA believe that carried interest should be treated as a long-term capital gain if the underlying asset is held for at least one year. The multifamily industry strongly opposed the extension of the holding period to three years, which was included in *TCJA*, but we note that final regulations released in January 2021 exclude Section 1231 gains (which generally relate to gains from property used in a trade or business, including real estate) from the extended holding period.

Carried interest should receive capital gains tax treatment because it represents a return on an underlying, long-term capital asset, as well as risk and entrepreneurial activity. This is in contrast to any fees that managing partners receive in payment for operations and management activities, which are taxed as ordinary income.

Real-estate development carries considerable financial risks. In fact, one in 10 multifamily projects never breaks ground. Because of the risks involved, many real-estate partnerships use "carried interest" to encourage innovation and entrepreneurship.

Also called a "promote," carried interest has been a fundamental part of real-estate investment partnerships for decades. Managing partners receive a carried interest, or a share of profits once an asset is sold, in recognition of both the value they bring to the venture and the risks they take. In addition to their management expertise, managing partners often make initial capital contributions to the venture and assume responsibility for recourse debt, litigation risks and cost overruns, among other risks.

A higher tax rate on carried interest will discourage real-estate partnerships from investing in new construction at a time when demand for apartments continues to grow and chronic underbuilding has limited new housing supply. In fact, as noted above, research commissioned by NMHC and NAA shows that the nation will need to build 4.3 million new apartment homes by 2035.

Impose the Net Investment Income Tax (NIIT) on Active Income while Potentially Increasing the NIIT Rate

One revenue raiser some have explored would expand the net investment income tax (NIIT) to encompass active business income as well as potentially increase the NIIT rate. This counterproductive proposal would impose a significant tax increase on the multifamily industry and both reduce capital available to address the nation's housing supply shortage and leave far less operating capital for existing real estate.

Under current law, the 3.8-percent NIIT applies to certain types of passive income (e.g., interest, capital gains, dividends, annuities, royalties, and rents) for single taxpayers earning over $200,000 in modified adjusted gross income and married filers earning over $250,000 in modified adjusted gross income. Taxpayers facing the NITT are subject to a 3.8-percent tax rate increase on top of applicable marginal income tax or long-term capital gains rates depending on the type of passive income earned.

One proposal would impose the NIIT on interest, capital gains, dividends, annuities, royalties, and rents earned in the ordinary course of a trade or business. Additionally, some could seek to increase today's 3.8

[16] Internal Revenue Service, SOI Tax Stats – Partnership Statistics by Sector or Industry, All Partnerships, Table 1: All Partnerships: Total Assets, Trade or Business Income and Deductions, Portfolio Income, Rental Income, and Total Net Income (Loss), by Industrial Group, 2021.

percent NITT rate. The result of this type of tax increase is that affected owners and developers of multifamily real estate who are actively involved in operating their enterprises would see increased tax rates of 3.8 percent on income directly attributable to their businesses. Put simply, higher taxes mean fewer dollars to build new units and preserve our existing housing stock.

Require 100 Percent Recapture of Depreciation Deductions as Ordinary Income for Real Estate

Under current law, depreciation deductions are "recaptured" when real-estate assets are sold, with recapture amounts taxed at a 25-percent rate. NMHC and NAA believe Congress should retain this rate as opposed to taxing depreciation recapture at ordinary income tax rates.

After decades of operations, many multifamily owners have a very low tax basis in their properties. If they were to sell them, even under current law they would have significant depreciation recapture tax liabilities. To avoid such tax bills many current owners not only avoid selling their properties, but they are also reluctant to make additional capital investments in properties with little value. The result is deteriorating properties that are lost as safe, affordable housing. Any proposal to increase depreciation recapture taxes would only worsen the problem.

Restrict the Deductibility of State Taxes by Pass-Through Entities

Following *TCJA*, many states enacted policies allowing pass-through entities to remit state taxes at the entity level, which effectively allowed them to deduct such taxes at the Federal level without regard to the $10,000 cap applicable to individual taxpayers. This is consistent with how corporations are able to treat their state taxes and should not be modified. Denying or limiting such deductions would impair capital availability and put pass-through entities at a disadvantage relative to major corporations.

Conclusion

NMHC and NAA appreciate the opportunity to provide members of the House Ways and Means Committee our views on the state of the multifamily housing industry and the various proposals to improve it, as well as proposals that would be detrimental to solving the nation's affordable-housing situation. Here 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 course of action. 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 as well as 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 40 million Americans we serve, we applaud the House Ways and Means Committee for examining the efficacy of *TCJA* and exploring options for improving upon that important legislation. We look forward to working with Congress to ensure tax policy promotes solutions to address the nation's most significant housing challenges.