November 23, 2026

U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Notice of proposed rulemaking on 21st Century ROAD to Housing Act Prohibition on Large Institutional Investor Purchases of Single-Family Homes 31 CFR Part 36 [TREAS-DO-2026-0529] RIN 1505-AC96

To Whom it May Concern,

On behalf of the National Multifamily Housing Council ("NMHC"), the Real Estate Technology and Transformation Center ("RETTC"), and the National Apartment Association ("NAA") (the "Associations") and their members – owners, managers, developers, and financiers of the nation's multifamily housing industry, we are writing to provide our comments in response to the above-described notice of proposed rulemaking ("Proposed Rule") issued by the Department of the Treasury ("Treasury") on implementing Section 1001 of the 21st Century ROAD to Housing Act, Pub. L. 119-101 (the "Act"), which prohibits large institutional investors from purchasing single-family homes.

The Associations thank Treasury for publishing the Proposed Rule, and for its commitment to providing clarity to market participants before the effective date of the Act and consistent, with the charge given to Treasury by Congress, to act in order to "minimize market disruptions" and to "mitigate to the extent possible, negative impacts on consumer and communities."[1]

Our response is guided by a simple premise: the United States faces a shortage of available, quality, affordable housing. Further, we recognize that Congress did not prohibit institutional investment in single-family homes outright; rather, it paired the purchase prohibition with a series of excepted purchases designed to promote free-market solutions to increase housing supply, improve the quality of existing housing stock, and create pathways to homeownership. Those goals can only be met if the proposed rule is properly calibrated to align with how housing markets actually work and for each excepted purchase to work as Congress intended.

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[1] [1] 21st Century ROAD to Housing Act, Pub. L. No. 119-101, § 1001(b)(4)(A) (2026) (codified at 42 U.S.C. § 19521); see also Dep't of the Treasury, 21st Century ROAD to Housing Act Prohibition on Large Institutional Investor Purchases of Single-Family Homes, 91 Fed. Reg. 66,799, 66,800 & n.4 (proposed Oct. 23, 2026).

OUTLINE OF THE ASSOCIATIONS' RESPONSE

I. Excepted Purchase-Related Issues

A. Build-to-Rent
B. Redefining the Term "Structure"
C. Adding Clarity as to the Definition and Effect of the Term "Program"
D. Renovate-to-Rent

II. Ownership-Related and Operational-Related Concerns

A. Clarifying the Role of Passive Investors and Definition of Property Control Right
B. Proposed Rule § 36.15 should not treat passive equity holdings as a "business"
C. In the Business Of
D. Documentation Requirement
E. Addressing Structures with No Contributory Value Acquired for Redevelopment
F. Exceptions for Sales among Investors
G. Clarifying Application to Exclude Student and Other Types of Housing

III. Promoting Liquidity and Market Confidence

A. Promoting Compliance
B. Purchases from another large institutional investor each transaction stands on its own
C. Reliance on seller certifications
D. Rent Reporting

I. Excepted Purchase-Related Issues

A. Build-to-Rent

Build-to-Rent ("BTR") is an important and growing housing option in the marketplace and was correctly excepted from the ban on purchases of single-family rentals ("SFR") by large institutional investors. However, we fear the proposed regulations will work counter to this intent by Congress and may result in significant market disruption. Specifically, our concern lies in the definition of "newly constructed" in Proposed Rule Section 36.5.

Definition of "Newly Constructed" in Proposed Rule Section 36.5

We believe the exception for BTR housing is clearly embedded in Section 1001(a)(2)(B) of the *21st Century ROAD to Housing Act*[2]. Where the intent of the Act and the Proposed Rule diverge is in the definition of "newly constructed." The exception for BTR in the Act provides a definition of the purpose, investment, and operations of such a community:

> (B) *pursuant to a build-to-rent program where the large institutional investor purchases, constructs, or constructs and retains a newly constructed single-family homes to be managed as a rental property, whether as part of a community made up exclusively of renter-occupied single-family homes or as part of a community made up of single-family homes that are both owner- and renter-occupied*

In its definition of the exception for BTR communities, Proposed Rule § 36.5 defines "newly constructed" as a property that is purchased within 18 months from the receipt of its Certificate of Occupancy ("CO"). This definition appears arbitrary as there is no direct reference to such an approach within the statute itself and no convention or practice within the real estate industry for such an approach. Including a date certain for a decision to be made as to whether or not to sell or purchase a property to qualify for an exception creates scenarios that will disrupt the market and potentially drive out the very investors who are creating new housing.

We suggest defining newly constructed single-family homes in a way that is consistent with the Act's intent to exclude BTR from current and future restrictions on the purchase of single- family homes and maintain market liquidity:

Definition of newly constructed homes:

> *For the purposes of this Section 36.5, a newly constructed home is defined as any existing and future communities planned, built, operated, and financed as a rental property.*

This definition comports with Section 1001 (a) (2) (B) of the Act where the exception for BTR is defined:

> *pursuant to a build-to-rent program where the large institutional investor purchases, constructs or constructs and retains a newly constructed single-family homes to be managed as a rental property*

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[2] https://www.banking.senate.gov/imo/media/doc/bill_text_of_the_21st_century_road_to_housing_act.pdf

Moreover, builders and developers lease homes as a development continues to be built out. Homes within a BTR community—whether rented in advance of a large institutional investor (LII) purchase or vacant at the time of an LII purchase—do not compete with or diminish owner-occupied housing stock. Treasury's proposal, however, would unnecessarily preclude "renting-up" during construction and development, even though such a restriction is not required by statute. The Associations respectfully request that Treasury modify the BTR language to recognize that a BTR still qualifies as such even if the home is rented so long as the renter was the single-family home's first occupant.

Proposed Regulatory Language.

§ 36.5 Build-to-Rent Program.

A build-to-rent program as described in section 1001(a)(2)(B) of the Act is a program pursuant to which single-family homes—

(a) have not been occupied by an owner-occupant before being purchased;

(b) ~~are purchased within 18 months of the single-family home receiving its certificate of occupancy (or equivalent)~~ and

(c) *are~~, after the purchase,~~ first occupied by renters, whether as part of a community made up exclusively of renter-occupied single-family homes or as part of a community made up of single-family homes that are both owner- and renter-occupied.*

An alternative to striking (b) in its entirety to consider:

(b) were purchased by the large institutional investor directly from either a builder or developer who was responsible for constructing the single-family home;

The Proposed Rule creates two classes of investors – large institutional investors ("LII"), those that own, manage, or purchase 350 or more single family homes, and those investors that do not qualify as an LII ("non-LII"). Treasury also draws a distinction

between properties owned prior to enactment of the Act and those purchased after enactment. This is a critical nuance that impacts transactional activity among the LII and non-LII market participants and the purchase date of a particular property.

Without making the above-suggested changes to Proposed Rule § 36.5, non-LII owners of BTR will likely find themselves in situations in which they may be unable to sell a property to an LII. As drafted, the Proposed Rule may prevent any non-LII that owns a BTR property from selling to anyone other than another non-LII. Treasury states that it does not believe that the rule should apply to properties in place prior to enactment, but that premise leads to market disruption and displacement for non-LII owners. One LII can sell to another LII as described in Proposed Rule § 36.11 and could sell to a non-LII as well. However, in that latter scenario, the non-LII may no longer be able to sell to an LII. Another example arises where a non-LII could take advantage of Proposed Rule § 36.5 by building and selling within 18 months of CO, but not after that date, resulting in the artificially created time-bound timeline to sell that we oppose. The scenarios described are complex and difficult to track and will only lead to market disruptions if Proposed Rule § 36.5 is left unchanged. This simply provides further justification as to the reason for which Section 36.5 must be modified as we suggest.

B. Defining the Term "Structure"

The Proposed Rule does not include essential clarification about the definition of "single-family home," a key provision around which the entire Act revolves. Within the Act, a single-family home is defined as:

> *(5) SINGLE-FAMILY HOME.—The term "single-family home"—*
>
> *(A) means a structure that contains 2 or fewer dwelling units that are each intended for residential occupancy by a single household; and*
>
> *(B) does not include a manufactured home, as defined in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.5402).*

The definition introduces several terms not defined in the Act or commonly understood in the market. Absent clarification, the definition will leave market participants with a scant understanding of what does and does not count as a "single-family home" under the Act.

An unresolved area of the Proposed Rule relates to the fact that certain residential communities have been developed to include numerous single-family homes situated on a single plat. Where this occurs, local zoning regards the community, and the homes within that community, as "multi-family" housing. Under state or local law, these homes

cannot be sold separately without partitioning the plat, which requires local government approval. Even though these homes cannot be sold individually, the Act, nevertheless, treats such single-family homes as homes that can be sold separately. Where this occurs, local zoning regards the community, and the homes within that community, as "multi-family" housing. Under state or local law, these homes cannot be sold separately without partitioning the plat, which requires local government approval. Even though these homes cannot be sold individually, the Act, nevertheless, treats such single-family homes as homes that can be sold separately.

As Congress debated the bill that would eventually be enacted into law, Senate Banking, Housing and Urban Development Committee Chairman Tim Scott (S.C.), who was a principal author of the bill and whose committee holds jurisdiction over the bill, recognized this issue. On March 18, 2026, he delivered remarks on the Senate Floor, stating: *"a single-family home—as defined in the bill—would constitute a home on a single 'plat.' It is not our intent to preempt local zoning. However, if there are multiple homes on a single plat, it is our intent that these homes would be considered multi-family housing."*

Consistent with the stated intent of Congress and the Act, we request, that Treasury include in the final rule clarifying language to ensure that single family homes on a single plat be treated as multi-family housing, which is exempt from Section 1001.

Proposed Regulatory Language.

Add this section to the final rule:

> ***§ 36.12 Structure.***
>
> *A "structure" means a building consisting of dwelling units, where each unit is designed for occupancy as a permanent residence for a distinct household and for which all applicable permits and approvals have been obtained permitting occupation; which is presently compliant with applicable building code and zoning regulations, and where the unit(s) are readily capable of being conveyed to an individual homebuyer without need for any additional governmental approval, including approval to partition the parcel of land upon which the structure is situated.*

C. Adding Clarity as to the Definition and Effect of the Term "Program"

The Associations appreciate the opportunity to address questions posed by Treasury in relation to § 36.3 and the definition of "program." There are two areas where the

Associations believe additional language is necessary. First, Treasury has struck the right balance in terms of providing large institutional investors with the needed flexibility to tailor their respective programs and documentation to the large institutional investor's business operations, how the program is managed, the properties they would seek to acquire, and to the unique characteristics of the communities they serve. That said, the final rule should make clear that "program" does not mean a governmental program, such as one adopted by a State or local government, as that could lead to stringent requirements and a narrowing as to the flexibility that Treasury has sought to provide. Second, where a large institutional investor has adopted a program, consistent with the final rule, and its business practices and operations are undertaken in good faith and consistent with the exercise of reasonable judgment, the large institutional investor should enjoy a safe harbor in terms of compliance. The penalties in Section 1001 in relation to non-compliance are severe, so much so that they have the potential to lead to significant disruptions in the housing market. The Associations would note that Treasury has the authority to adopt the above recommendation to create a safe harbor standard given the statutory charge given by Congress under Section 1001(b)(4), namely that Treasury is empowered to *"issue regulations… including regulations to minimize market disruptions upon identifying a risk of material negative impact on the housing market…."*

Proposed Regulatory Language.

> **§ 36.3 Program.**
> *For purposes of sections 1001(a)(2)(B) to (E) of the Act, a program is a set of written policies or written procedures that are—*
> *(a) adopted by a large institutional investor before the purchase of single-family homes pursuant to such program; and*
> *(b) reasonably designed and implemented to ensure that all purchases of single-family homes pursuant to the program satisfy the applicable requirements of the Act, this part, and the program.*
>
> *Where a large institutional investor has adopted a program in substantial compliance with this rule and, thereafter, acts in good faith and exercises reasonable judgment in order to comply with the program, the large institutional investor shall be considered to be in compliance with the relevant*

requirements related to the excepted purchase that is the subject of the program.

D. Renovate-to-Rent

In the proposed rule, Treasury states: "the renovate-to-rent exception is focused on substantial rehabilitation of single-family homes that do not meet structural or core system elements of local building codes, and a denominator focused on the value of the structure is better aligned with that statutory construct than a denominator that includes the value of the purchased land." We agree with this approach and the standard related to the denominator.

Treasury has also stated in the proposed rule that, "Appropriate activities for each single-family home purchased under this exception would generally be expected to include identifying, before or at the time of purchase, whether the single-family home does not meet structural or core system elements of local building codes… and ensuring that the 15 percent threshold described above is satisfied." We would note that ensuring that renovate-to-rent works properly, and consistent with congressional intent, is important to many communities. These communities benefit whenever seriously distressed homes can be rehabilitated and rented, as this expands the tax base that supports the community. That said, certain homes are so distressed that individual buyers, and even many investors, are unwilling to take on the risk of rehabbing those homes. With a limited pool of investors possessing the necessary expertise to take on that kind of risk, it is important for Treasury to build in appropriate flexibility into the renovate-to-rent requirements.

Therefore, we respectfully suggest that the home renovation process is not as straightforward as the proposed rule would suggest. Even when a distressed home shows serious, outward signs of structural problem, investors who purchase these homes often do so with only limited, if any, ability to inspect the home prior to the purchase. We recommend that Treasury build in greater flexibility in the final rule to permit a renovate-to-rent purchase to move forward based on a reasonable, good faith belief that a home suffers from "structural or core system" deficiencies even if the extent, or exact nature, of those deficiencies can not be determined prior to purchase, so long as the 15 percent threshold is still met.

In the proposed rule, Treasury proposes using "local building codes to determine whether the home has relevant deficiencies [such that these] would [be used to] identify the categories of local building code elements that constitute structural or core systems for purposes of the renovate-to-rent exception." We welcome this approach and recognize that Treasury is looking to the statute when discussing local building codes, however,

certain areas of the country, particularly rural, unincorporated areas, may not have local building codes. Further, often times building standards are based on federal rules and guidelines, or statewide mandatory codes. For this reason, we would request that Treasury permit large institutional investors to meet their 15 percent obligation under the renovate-to-rent program by also relying not only on local building codes, but building codes generally, as well as other applicable codes related to health, safety, and hazard mitigation.

Treasury also establishes in the proposed rule that a renovate-to-rent program: "would require the large institutional investor to substantially rehabilitate the single-family home, including by resolving all material deficiencies in structural or core system elements of local building codes. This requirement is consistent with the text of the Act and is intended to ensure that the purchaser in fact rehabilitates the single-family home." Treasury states that: a "renovation that leaves material deficiencies in structural integrity, habitability, life safety, or major building systems unresolved would not constitute substantial rehabilitation for purposes of the Act or the proposed rule."

We respectfully would suggest that the proposed rule is inconsistent with the requirements of the statute. First, while the statute requires, "substantial completion," Treasury's standard goes further to require that "all" deficiencies or defects be resolved, and without distinguishing between "known" and "unknown" deficiencies. That is not consistent with the meaning of "substantial completion." Substantial rehabilitation means "the work is complete, sufficient to permit an individual to safely occupy or use the premises for its intended purpose, even if minor repairs remain still left to complete." Substantial does not mean "all" and it does not extend to unknown issues. Second, when a building code is updated, many existing structures may not meet the latest standard. Nevertheless, when this occurs, pre-existing homes are typically "grandfathered," where it is not required for the owner to update the home each time the code changes. Treasury's rule, however, fails to make this distinction and seems to require renovate-to-rent homes to meet the latest standards, even if the home is grandfathered and the local building code does not otherwise require this. We, therefore, would respectfully request that Treasury apply a standard truly reflective of what "substantial completion" means and, further, to build in greater flexibility that recognizes that homes may be grandfathered.

Proposed Regulatory Language.

§ 36.2 as pertains to "Structural or core system"
"Structural or core system" means systems or areas of a single-family home that substantially affect structural integrity, habitability, life safety, or the functioning of major building systems.~~,~~ ~~which~~ These may include but are not limited to the following: (1) fire safety; (2) waterproofing and flood

prevention including exterior components such as retaining walls; (3) light; (4) ventilation, including heating and air conditioning; (4) structural loads and seismic design, foundation systems, materials standards, construction components; (5) glass; (6) mechanical; (7) plumbing, ~~and~~ electrical, natural gas, telecommunications, and other utility systems, including related to power generation and power storage; and (8) any external improvements on the property that are related to any of the foregoing systems.

§ 36.6 Renovate-to-rent program.

~~(a)~~ A renovate-to-rent program as described in section 1001(a)(2)(C) of the Act is a program pursuant to which the large institutional investor—

(1) substantially rehabilitates ~~(including by resolving all materials deficiencies in)~~ a single-family home~~s~~ that does not meet structural or core system elements of local building code~~s~~, or, where a local building code is silent or ambiguous, the large institutional investor elects to undertake rehabilitation in accordance with any other relevant code such as relates to: (A) structural or core systems; (B) rehabilitation standards, including those developed by the Department of Housing and Urban Development; (C) systems maintenance and upkeep; or (D) health, safety, or protections against loss stemming from casualty or natural disaster; and

(2) where costs for ~~makes~~ improvements, including those that ~~under~~: (A) are described in paragraph (1); (B) pertain to testing and inspections, permitting, design, demolition, and project management costs; or (C) are necessary to restore the home following any structural or core system repairs, ~~to each single-family home in an~~ in the aggregate ~~dollar amount of~~ are not less than 15 percent of the purchase price of the single-family home.

~~(b) A large institutional investor that makes improvements to structural or core system elements of a single-family home that does not meet structural or core system elements of local building codes at the time of purchase in an aggregate dollar amount of not less than 10 percent of the purchase price of the single-family home, and that resolves all material deficiencies in such structural or core system elements, shall be deemed to have satisfied paragraph (a)(1).~~ .

III. Ownership-Related and Operational-Related Concerns

A. Clarifying the Role of Passive Investors and Definition of Property Control Right

We support Treasury defining what constitutes a "passive investor" for purposes of providing clarity to market participants. However, the language in Proposed Rule § 36.16 would likely classify as non-passive a broad range of investors who traditionally invest as passive investors—including insurance companies, private funds and others —that are passive by any ordinary, commercial, or established federal legal understanding of the term, including under Treasury's own regulations.

Proposed Rule § 36.16 provides that a passive investor is one who (i) does not share personnel or other leadership with the second entity in the ownership for single-family homes and (ii) does not have a "property control right" as defined in § 36.2 with respect to single-family homes over which the second entity has direct or indirect investment control. This second part of the passive investor description is of great concern.

Most passive investors in residential real estate retain certain customary protective rights over key decisions that might significantly and adversely impact their investment. This typically includes the right to approve changes in property management agents, decisions to sell or expand the property, to remove the general partner, and bankruptcy declarations. The definition of "property control right," would seemingly include all of these types of protective decisions; it includes any right, "directly or indirectly," to "prevent" a decision regarding the purchase, sale, holding, leasing, renovation, or management of a home—including, according to the Proposed Rule's preamble, covenants and restrictions.

None of these rights, however, allow an investor to direct the day-to-day acquisition, leasing, or management of specific homes. They are the rights a prudent passive investor obtains to protect its capital against conflicts, mandate drift, and fundamental changes. Treasury itself acknowledges that "payment rights, default remedies, information rights, audit rights, inspection rights, and standard covenants" should not generally be property control rights, and that an investor's right to reduce or liquidate its investment should not be either.[3] The protective rights listed above are of the same character. The Proposed Rule does not allow for any protective-rights safe harbor and leaves these investors with no reliable path to passive status.

This expansive definition of a passive investor also appears to exceed the plain language of the Act, specifically Section 1001(a)(3)(B) which lists five ways an entity has investment control over a home:

[3] Proposed Rule, Section II.B.2.

- (i) it owns the home, or has "**primary** authority or fiduciary responsibility to make **material** investment or management decisions";
- (ii) it is or, directly or indirectly, controls the general partner or managing member;
- (iii) it is or controls the investment manager or adviser;
- (iv) it owns or controls more than 25% of any class of equity, "unless such entity is a passive investor";
- (v) it "otherwise controls" the owner.

Every way of being active is covered in (i), (ii), (iii), and (v). The natural reading of "passive" in (iv) is therefore an investor that does not fit any of those other categories. Congress drew the line at *primary* authority over *material* decisions, or at control. As shown above, however, Treasury's "property control right" covers any right to "prevent" a decision "directly or indirectly" which goes much further than the Act's language. The rule would effectively create a new kind of active investor, contrary to the plain language in the Act.

The Act at § 1001(b)(4)(B) provides that Treasury's regulations may not "amend the definitions" in subsection (a), "including to … (iii) add any category of large institutional investor as an eligible class if not determined by this section." Narrowing the passive investor exception turns passive limited partners into a new category of LII, which is contrary to the Act. Further, after *Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024)*, Treasury's interpretation must reflect the best reading of "passive investor," which in ordinary and legal usage does not exclude minority holders with customary protective rights.

By way of example, in Low-Income Housing Tax Credit ("LIHTC") development transactions, the passive limited partner or limited liability company investor holds a 99.99% ownership interest so it can benefit from the tax credits. It also retains protective decision rights. However, the passive investor does not control the owner by making day-to-day decisions. Under Treasury's Proposed Rule, no limited partner investor in a LIHTC transaction could be considered a passive investor for purposes of the Proposed Rule.

We respectfully urge Treasury to revise the definition so that it captures investors that participate in day-to-day decisions about single-family homes, while preserving passive treatment for investors whose only rights are the customary protective rights that accompany virtually every institutional minority investment.

A passive investor definition should be consistent with Treasury and other executive agency precedent.

Internal Revenue Code Section 469 presumes that limited partners do not *materially* participate. Treasury's CFIUS regulations at 31 C.F.R. 800.208(c) expressly enumerate minority-shareholder protections that do not constitute control. Other federal regimes (SEC, FTC/DOJ, and Federal Reserve) draw the same line. While Treasury seeks to distinguish section 469, asserting that adopting it "in an entirely unrelated context, without the relevant interpretive history, may cause significant uncertainty," [4] we respectfully disagree.

Section 469 addresses the same question the Act poses—whether an owner of an interest in a real estate business participates in its operations—and does so for the same asset class. Section 469(c)(2) treats rental activity as passive per se, and section 469(c)(7) separately identifies real estate professionals who materially participate. Congress has thus already drawn, in the federal tax code, the line between passive capital and active real estate operators.[5]

We do not ask Treasury to import section 469 or cross-reference it. We simply ask that the final rule be consistent with its core principle—that a limited partner or other non-managing equity holder who does not participate in day-to-day operations is passive—and with a safe harbor for protective-rights framework described above.

Proposed Regulatory Language.

> ***§ 36.2 Property Control Right definition.***
>
> Add at the end of the definition: "*…provided that* a protective right described in § 36.16(c) is not a property control right."
>
> **§ 36.16 Passive Investor**
>
> *(a) A first entity is a passive investor in a second entity if, with respect to the single-family homes of the second entity, the entity is not described in section 1001(a)(3)(B)(i), (ii), (iii), or (v) of the Act.*
>
> *(b) An entity is deemed to satisfy paragraph (a) if the first entity does not, directly or through any person acting on its behalf, participate in the day-to-day management or operational decisions of the second entity with respect to the purchase, sale, leasing, renovation, or management of specific single-family homes.*

[4] Proposed Rule, Section II.L.1, n.17.

[5] 26 U.S.C. 469(c)(2), (c)(7).

(c) A passive investor may retain typical investor protective rights to protect its investment in the second entity so long as such rights do not constitute primary authority over material decisions or control over the owner, as described in section 1001(a)(3)(B)(i), (ii), (iii), or (v) of the Act. For avoidance of doubt, protective rights may include consent, approval, or other rights over significant decisions pertaining to a rental property that are intended to protect the passive investor's investment but do not involve day-to-day operations.

(a) in the case where the first party has the right to elect one or more directors to serve on the board of the second entity, the first party's designated directors, acting in concert, lack governing or board control over the second entity, as determined in accordance with the second entity's governing documents. For purposes of this rule, a "director or officer of the second entity" does not include a director that has only observer or advisor rights.

a. Add § 36.15(c)

"(c) An entity is not engaged, in whole or in part, in the business of investing in, owning, renting, managing, or holding single-family homes as described in section 1001(a)(3)(A)(i)(I) of the Act solely by reason of holding equity interests in a second entity with respect to which it is a passive investor under § 36.16.

B. Proposed Rule § 36.15 should not treat passive equity holdings as a "business"

As currently drafted, Proposed Rule § 36.15(a) treats an entity as in the business of single-family home activities if it holds homes, "directly or indirectly," for the purpose "in whole or in part" of any "investment gains" or "other type of income or financial gain." Under that test, every investor in a rental-housing entity is "in the business," and the Act's use of the term "business" would have no meaning.

Federal law has long distinguished between conducting a business and investing in one. The Supreme Court has held that managing one's own investments is not a trade or

business for tax purposes, regardless of the scale of the activity;[6] that investing in a corporation, without more, is not a trade or business;[7] and that a business requires activity pursued with continuity and regularity.[8] Although the Act lists "investing in" among covered activities, it requires that an entity be engaged in the *business* of investing, which implies the active, regular conduct of that activity—not the passive receipt of returns on capital provided to an operator.

Treasury should clarify that an entity is not in the business of investing in, owning, renting, managing, or holding single-family homes solely because it holds equity interests in an entity in which it is a passive investor. This clarification is also responsive to Question 114. Absent such clarification, the passive investor exception would be the only barrier between a pension plan's limited partnership interest and large-institutional-investor status—which makes the over-inclusiveness of § 36.16 even more consequential.

C. In the Business Of

We support the proposed application of the term "in the business of" via the Proposed Rule § 36.15 (b) to correctly acknowledge that circumstances exist where ownership of a property can occur "on a temporary and incidental basis" in order to conduct a bona fide business activity that is not related to any "regular or continuing investment strategy or portfolio management activity."

As one example, employers and third-party organizations involved with relocation-related home sale programs are not in the business of holding single family homes for the purpose of "a regular or continuing investment strategy or portfolio management activity." Rather, they hold these single-family homes only on a temporary and incidental basis to facilitate an employer-initiated employee's move and do so only to the extent reasonably necessary to conduct that business.

Treasury should also explicitly state that mortgage lenders and servicers are not considered "in the business of investing in, owning, renting, managing, or holding single-family homes." The existence of Exception (G) in the Act ("undertaken by a mortgage servicer, lender, or other entity that has a legal right to a single-family home, for the purpose of loss mitigation or compliance with servicing or investor obligations, and not as a long-term investment strategy,") and § 36.10 of the Proposed Rule ("Loss mitigation or compliance") make clear that such entities are not intended to be viewed as LIIs. If they were, a foreclosure or other act of taking possession of a property would not be considered

[6] *Higgins v. Commissioner*, 312 U.S. 212 (1941).
[7] *Whipple v. Commissioner*, 373 U.S. 193 (1963).
[8] *Commissioner v. Groetzinger*, 480 U.S. 23, 35 (1987).

a "purchase," as the lender/servicer would already be considered an "investor" in the property.

Making clear that a mortgage loan is not considered "investing in" or "holding" a property will ensure that mortgage lenders are not inappropriately scoped into the Act.

D. Documentation Requirement

Section 7 (Documentation) of the Proposed Rule's "in the business of" discussion highlights a challenge among many of the exceptions. For most entities that are not large institutional investors in single-family homes (whether they be servicers, build-to-rent developers, employee relocation organizations, or others), their activities in these markets are incidental at most. A requirement that they develop and maintain evidence that they are not a large institutional investor of single-family homes would be a major imposition. Rather than requiring entities to "prove a negative," Treasury should remove the requirements for documentation that proves that an entity is not subject to the prohibition and instead establish a clear, consistent set of requirements that would demonstrate that an entity is a LII in single-family homes.

This is especially important as, in the case of a BTR development, the seller of an excepted property may not be an LII and therefore would not be subject to the rule and would have little reason to develop the required documentation.

Building on this, within the Paperwork Reduction Act section of the proposal, the "affected public" is defined as "Large institutional investors seeking to make certain types of excepted purchases of single-family home," with an estimated burden of just one hour per year affecting a total only 100-300 such firms. This cannot be the case if the Act were to scope in a) owners of existing BTR communities, b) mortgage servicers, c) owners of properties that could potentially be purchased in the future by large institutional investors, and others and d) true passive investors. Clarifying this will help ensure the Act achieves what Congress and the President intended.

E. Structures with No Contributory Value Acquired for Redevelopment

Question 15 asks whether the final rule should address circumstances in which the land value equals or exceeds the purchase price of the property. It should, because that circumstance is not an anomaly of assessment practice; it is the ordinary case when an older house, or a structure beyond its useful life or reasonable ability to repair or renovate is acquired for demolition and redevelopment. In that transaction, the structure has no contributory value: the purchaser is paying for the land, the structure will be razed, and an appraiser applying the highest-and-best-use analysis that USPAP requires will allocate the entire price to land. The statutory definition in section 1001(a)(5)(A) is of "a structure."

A purchase in which the structure is worth nothing and is acquired to be removed is not, in substance, a purchase of that structure; it is a purchase of land on which a structure happens to stand.

Treating such a transaction as outside Section 1001 is consistent with every purpose the Act stated. The structure is not being removed from the owner-occupant supply by an investor who will rent it; it is being replaced, in the transactions that developers undertake to deliver hundreds of units, frequently with affordable set-asides required by the local entitlement, where a handful of rental houses stood. Question 118 asks whether the final rule should address entities that hold single-family homes for "redevelopment." It should, and that the cleanest vehicle is a provision that a purchase is not a purchase of a single-family home where (i) a qualified appraisal attributes no value, or only nominal value, to the structure, and (ii) before the purchase the purchaser has adopted a written redevelopment plan, or obtained land-use approvals, for demolition of the structure and construction of housing other than single-family homes within a stated period. If Treasury prefers to proceed under § 36.15, the same conditions can define a holding that is "temporary and incidental" to the bona fide business of multifamily development and "not … a regular or continuing investment strategy" in single-family homes.

Proposed Regulatory Language

(a) A purchase of real property on which a structure described in section 1001(a)(5)(A) of the Act is situated is not a purchase of a single-family home if—

(1) a qualified appraisal described in § 36.2 attributes no value, or only nominal value, to the structure, and determines that the highest and best use of the property is a use other than as a single-family home; and

(2) before the purchase, the purchaser has adopted a written plan, or has obtained land-use approvals, for the demolition of the structure and the construction on the property of housing other than single-family homes within thirty-six months after the purchase, or such longer period as is required by the applicable land-use approval process.

(b) For purposes of section 1001(d)(1) of the Act, where the purchase price of the property has been allocated between land and structure under § 36.2, the purchase price of the property involved is the portion allocated to the single-family home.

F. Exceptions for Sales among Investors

The Act and certain sections of the Proposed Rule allow single-family homes to be excepted from the Act if they meet certain requirements. For example, a single-family home can be excepted from the Act under Section 36.11 of the proposed rule if a LII purchases a property from another LII if the seller owned the property on the day of enactment of the Act or if the property was in compliance with the Act. The Proposed Rule discusses the application of the exception if there are multiple investors in a purchase. This clarification is helpful in most instances, but there are no examples for determining if a transaction complies with the Act if there are multiple investors that have different classifications.

Specifically, what is missing from the Act and the Proposed Rule are situations in which there is a mix of LII and non-LII in either the purchasing or selling party. This situation is not unique. For example, often a non-LII may be a co-General Partner ("coGP") along with an LII. This same situation could arise if there are multiple limited partners in a purchase, but they may be a mix of LII and non-LII organizations. In both examples, it remains unclear how a purchase or sale would be treated in qualifying for one of the exceptions. We urge Treasury to provide clarification to assist LIIs and non-LIIs to determine their classification under the Rule, and whether a purchase or sale is among an LII or a non-LII since the exceptions are all written as if both sides of this trade are uniform in their investors. As demonstrated in our examples, this may not be true, resulting in confusion in determining whether the exception can be taken.

Proposed Regulatory Language.

> *Based on the above concerns, we recommend that Treasury provide clarifying language to explain the above, including various scenarios involving LIIs and Non-LIIs as joint owners of single-family homes.*

G. Clarifying Application to Exclude Group Living and Student Housing

Consistent with Treasury's statement describing the "Purpose of the Proposed Rule," namely to *"promote clarity for market participants and other stakeholders"* by *"clarify[ing] the application of certain terms that are used but not defined in the Act'* and consistent with Congressional directives that Treasury seek to *"minimize market disruptions upon identifying a risk of material negative impact on the housing market… and… mitigate, to the extent possible, negative impacts on consumers and communities,"*

we would respectfully request that an additional definition is needed as applied to certain types of housing, specifically group living and student housing. Section 1001's definition of *"single-family home"* includes the requirement that the single-family home be *"intended for residential occupancy by a single household,"* but neither the term *"residential occupancy"* or *"single household"* are defined in statue or in the proposed rule. We believe additional clarity is needed in relation to these two requirements, specifically to clarify that certain types of housing are not covered within the definition of single-family home due to the unique nature of the housing such that they are not used for *"residential occupancy"* by a *"single household."*

There are several specific housing arrangements where occupants have not either established residency in relation to their occupancy or where the nature of the occupancy is not occurring in relation to a single household. Types of housing arrangements where this is the case, and to which, Section 1001 should not apply, includes student housing:

Group Living Housing/Student Housing. In the case of group living housing and student housing, the occupants may reside in a single structure but often do not establish this as a permanent residence. In many cases, it is because an individual will only live in the home for a semester or a school year. Further, occupants are typically not a single household under the applicable local zoning code. Common examples of group living include: (1) boarding-houses, co-housing, and single-room occupancy housing, where the structure is not leased by an individual dwelling unit but is instead leased by subunits, such as an individual bedroom, each to unrelated persons, under separate contract, but with shared kitchen or bath facilities; (2) dormitories, residence halls, fraternity and sorority housing, convents, and monasteries, where the housing may consist of a single structure that houses persons based on common or shared attributes, for example, the occupants are all faculty members or students enrolled at the same college or university; and (3) congregate care or assisted living, where residents need specialty care that is provided in conjunction with their housing.

We would respectfully request that Treasury adopt definitions to properly exclude group-living and student housing from the scope of the single-family home definition. To accomplish this, Treasury could adopt two new definitions consistent with the plain meaning of the terms "residential occupancy" and "single household," giving clarity to housing market participants.

Proposed Regulatory Language.

> ***§ 36.13 Definitions of Residential Occupancy and Single Household.***
>
> *The test for whether a structure constitutes a "single-family home" is met where each dwelling unit in the structure is: (1) occupied by a "single household;" and (2) designed for "residential occupancy."*
>
> *For purposes of this definition, "single household" shall mean: (1) one person living alone; (2) or a group of individuals occupying a single dwelling unit who function together as one, single integrated domestic and housekeeping unit—where all persons in a household share common living, sleeping, cooking, and dining facilities the access to which is provided under a single lease or unified financial arrangement, based on a stable, domestic bond rather than to independent roomers, boarders, or commercial tenants.*
>
> *For purposes of this definition, "residential occupancy" means housing designed for permanent, continuous, physical habitation of the single-family home by at least one adult who meets applicable legal criteria to establish the home as their primary, permanent, and legal domicile with the bona fide intent to remain indefinitely, characterized by actual living, sleeping, and keeping of personal effects on-site, to the exclusion of any commercial, transient, or seasonal use, as may be evidenced by official government identification, tax filings, voter registration, or other documentation. For purposes of clarity, housing characterized under applicable local zoning regulations designed for a purpose other than permanent housing, such as for temporary housing, short-term housing, group living housing, student housing, or similar use, are not housing designed for residential occupancy.*

II. Promoting Liquidity and Market Confidence

A. Promoting Compliance

We recognize that Treasury is considering future rulemaking to address enforcement actions more fully, and we strongly encourage Treasury to proceed with that rulemaking. In the meantime, we are concerned that § 36.17, as drafted, could have unintended

consequences, including consequences of constitutional dimension. We respectfully urge Treasury to revise it before the prohibition takes effect on January 7, 2027.

Section 1001(d)(1) of the Act authorizes an action against a large institutional investor that violates section 1001(b) for a civil penalty of not more than $1,000,000 per violation, or 3 times the purchase price of the property involved, whichever is greater. Proposed Rule § 36.17 would deem a purchase that violates the Act with respect to more than one large institutional investor to be a single violation. That way, a single home purchase cannot produce total penalties above the statutory limit merely because more than one large institutional investor took part. That is the right principle. But the proposal applies to only one narrow fact pattern.

The proposal leaves the unit of violation undefined. By only addressing the multi-investor case, and not defining what constitutes a "violation," Proposed Rule § 36.17 implies that every other unit of conduct is a separate violation. The Act defines "purchase" to include mergers, acquisitions, and bulk purchases, and section 1001(b) prohibits both purchasing and entering into a contract to purchase. Read together with the Proposed Rule § 36.17, each of the following could be treated as a separate violation:

- each home in a bulk or portfolio purchase;
- each home held by an entity whose ownership interests are acquired;
- both the contract and the closing for the same home.

Because the penalty operates per violation, stacking can produce penalties larger than the transaction itself. Consider a portfolio purchase of 1,000 homes averaging $300,000 each, or $300 million in total. If each home is a separate violation, the maximum penalty per home is $1,000,000, because that exceeds three times $300,000. The total exposure is $1 billion, more than three times the entire purchase price. If the contract and closing are counted separately, exposure doubles to $2 billion.

That exposure would be identical for two very different investors. One acts willfully. The other, in good faith, misjudges whether it was a large institutional investor based on the make-up of the owner parties or whether an upstream investor qualifies as "passive." While we understand that Congress may have wanted to give Treasury a strong enforcement mechanism, fines that so grossly exceed the funds involved in a transaction raise serious constitutional concerns. The Eighth Amendment prohibits excessive fines. This is especially true for unintentional violations.

Treasury has already recognized the problem. It asks whether the purchase-price definition should provide different rules for portfolio and bulk purchases (Question 10). It asks how that definition should account for mergers and acquisitions (Question 9). It asks whether further guidance is needed when a purchase violates the Act "with respect to more than one large institutional investor" (Question 132). We ask Treasury to indeed institute reasonable enforcement penalties and procedures for these situations.

The Supreme Court has affirmed multiple times that the protection against excessive fines is "fundamental to our scheme of ordered liberty." *Timbs v. Indiana*, 586 U.S. 146 (2019). The Court recently granted review in *Jouppi v. Alaska*, No. 25-246 (argument set for December 1, 2026), to decide whether gravity is judged by the offense in the abstract or by the specific defendant's wrongdoing. A penalty framework that makes no distinction between willful and good-faith conduct is especially vulnerable under the latter approach. Treasury may need to adapt its enforcement approach once *Jouppi* is decided.

We note that the language in the Act is permissive. It creates a ceiling for enforcement of civil penalties that Treasury or the Attorney General "**may**" seek. It does not require the maximum penalty in all circumstances, and Treasury should be reasonable in developing and applying rules regarding such enforcement to be consistent with the Eighth Amendment.

Recommendations. We urge Treasury to make the following changes:

1. Adopt a definition of "violation" under which a single covered transaction is a single violation. This would apply regardless of the number of homes, the number of participating large institutional investors, whether the conduct consists of the contract, the closing, or both, and whether homes are acquired directly or through an acquired entity.
2. Measure "the purchase price of the property involved" by reference only to the single-family homes acquired in violation of the Act. It should exclude excepted purchases and assets other than single-family homes.
3. Adopt penalty factors that distinguish knowing or willful violations from good-faith ones and limit the penalties Treasury will seek for violations that are not knowing or willful.
4. Provide written notice and a reasonable opportunity to cure before any enforcement action. A cure mechanism directly serves the Act's purpose of making single-family homes available to families. It also falls squarely within Treasury's authority under section 1001(b)(4)(A) to pass rules that minimize market disruptions and to mitigate negative impacts on consumers and communities.

Proposed Regulatory Language.

> ***§ 36.17 Enforcement***
>
> *(a) Definitions. For purposes of this section and section 1001(d) of the Act:*
> *(1) Covered transaction means a single purchase, or a single contract to purchase, directly or indirectly, of one or more single-family homes by or on behalf of one or more large institutional investors. The term includes a purchase effected*

through a merger, an acquisition of equity or other ownership interests in an entity, or a bulk or portfolio purchase. It includes all closings and other steps taken to consummate the purchase or contract. Two or more purchases or contracts entered into pursuant to a single plan of acquisition with the same seller or group of affiliated sellers shall be treated as a single covered transaction.

(2) Violation means a covered transaction in which one or more single-family homes are purchased, or contracted to be purchased, in contravention of section 1001(b) of the Act.

(3) A violation is knowing or willful if the large institutional investor knew, or acted in reckless disregard of, the fact that the covered transaction was prohibited by section 1001(b) of the Act.

(b) Unit of violation. Each covered transaction that is a violation shall constitute a single violation for purposes of section 1001(d)(1) of the Act, regardless of:

(1) The number of single-family homes involved in the covered transaction;

(2) The number of large institutional investors that participate in the covered transaction;

(3) Whether the violation consists of entering into a contract to purchase, consummating the purchase, or both; or

(4) Whether the single-family homes are purchased directly or are held by an entity whose ownership interests are acquired.

(c) Purchase price of the property involved. For purposes of section 1001(d)(1) of the Act, the purchase price of the property involved in a violation means the sum of the purchase price of the property, as defined in § 36.2, of each single-family home purchased, or contracted to be purchased, in contravention of section 1001(b) of the Act in the covered transaction. It does not include consideration attributable to any single-family home whose purchase is an excepted purchase or is otherwise not prohibited by section 1001(b) of the Act, or to any asset other than a single-family home. If consideration is not separately stated for each single-family home, it shall be allocated on a reasonable basis consistently applied, such as the allocation in the transaction documents, an independent appraisal, or relative tax-assessed values.

(d) Penalty factors. In determining whether to bring, or to request that the Attorney General bring, an action under section 1001(d) of the Act, and the amount of any civil penalty to seek, Treasury shall consider:

(1) Whether the violation was knowing or willful;

(2) Whether the large institutional investor maintained, at the time of the covered transaction, policies and procedures reasonably designed to ensure compliance with the Act and this part;
(3) Whether the large institutional investor reasonably relied in good faith on an interpretation of the Act or this part;
(4) Whether, and how promptly, the violation was cured;
(5) The number of single-family homes involved and the effect of the violation on the availability of single-family homes to owner-occupants; and
(6) Any history of prior knowing or willful violations.
Treasury shall not seek a civil penalty that is grossly disproportional to the gravity of the violation, considering the specific conduct of the large institutional investor.
(e)Violations that are not knowing or willful. For a violation that is not knowing or willful, Treasury shall not seek, or request that the Attorney General seek, a civil penalty greater than five (5) percent of the purchase price of the property involved, as determined under paragraph (c) of this section.
(f)That any civil penalty paid shall result in the covered transaction deemed to be in compliance with the Act.
(g) Notice and opportunity to cure.
Given the steep nature of the statutory penalties associated with purchases that violate the Act, these rules should, at a minimum: (1) provide large institutional investors with advanced and detailed notice of any suspected violation; (2) provide the large institutional investor with sufficient time to investigate and respond to a notice of suspected violation; (3) establish an interactive process between Treasury, or the Department of Justice, that is sufficiently protective of a large institutional investors due process rights; (4) that establishes a proper adjudicative process that guarantees a sufficient appeals process to allow a large institutional investor to seek in-agency review of any adjudication; and (5) which provides the large institutional investor with an opportunity to cure alleged violations of the Act in lieu of any statutory penalties.

These changes would preserve a strong deterrent against deliberate evasion, which we understand to be Congress's aim. They would also give market participants a clear and proportionate rule before January 7, 2027, and reduce the risk that enforcement under the Act is invalidated under the Eighth Amendment.

B. Purchases from another large institutional investor each transaction stands on its own

The chain-of-title problem in § 36.11 (Q107–Q109)

We support Treasury's reading of section 1001(a)(2)(H) that compliant homes may be transferred among large institutional investors more than once, and support the clarification that a purchase "in compliance with" the Act includes a pre-effective-date purchase, any excepted purchase, and a reorganization under section 1001(b)(2)(B). We ask Treasury to reconsider the sentence that follows: that a later sale "would not satisfy proposed § 36.11" if the selling investor "acquired the single-family home in violation of the Act." 91 Fed. Reg. at 66817.

Read with the chain-transfer rule, that sentence makes every (H) purchase depend on every prior purchase back to July 11, 2026. The second buyer's exception turns on the first buyer's compliance; the third buyer's exception turns on the second buyer's, which turns on the first buyer's; and so on for fifteen years. No public record discloses whether a prior purchaser was a large institutional investor, whether a prior purchase was excepted, or whether a program under § 36.3 existed on the date of a prior purchase. Those facts are private, and after one or two transfers they are unobtainable. The rule thus conditions a statutory exception on facts the purchaser cannot know. Real property law abandoned chain-of-title forfeiture against innocent purchasers centuries ago for exactly this reason; the bona fide purchaser doctrine exists because a market cannot function if title is only as good as the least documented link in its history.

The text does not require that result. Section 1001(a)(2)(H) excepts a purchase "from another large institutional investor that either owned the single-family home on the date of enactment … or purchased the single-family home in compliance with this section." The condition is stated about the seller and the ***seller's purchase***, not about the ***seller's seller***. A seller that acquired the home under (H), in reliance on the facts available to it, "purchased the single-family home in compliance with this section" even if a remote predecessor did not; the compliance inquiry is one step deep, which is the only depth at which it can be conducted. And the statute already supplies the remedy for the original violation: section 1001(d)(1) authorizes an action against "a large institutional investor that violates subsection (b)," which is the entity that made the prohibited purchase. That liability does not lapse when the home is resold. Shifting it downstream does not add a remedy against the violator; it adds a penalty on a party that did not violate anything, which is the "unwarranted increase in the total penalty" the preamble to § 36.17 says Treasury wishes to avoid.

We ask that § 36.11 provide that a purchase satisfies section 1001(a)(2)(H) if, at the time of the purchase, the seller is a large institutional investor and either owned the home on the date of enactment or acquired it in a transaction that, as to the seller, was a pre-effective-date purchase, an excepted purchase, a (b)(2)(B) reorganization, or a purchase made in reliance on a certification below; and that a violation by a prior owner is remedied against that owner and does not affect the eligibility of a subsequent purchase. The same rule should apply, with the same one-step inquiry, to indirect purchases under §§ 36.9(b) and 36.10(b) (Questions 101, 102, and 106): the purchaser's exception depends on the status of its seller, not on how the seller's seller came to hold the home.

Proposed regulatory language.

> *(a) A large institutional investor purchases a single-family home from another large institutional investor pursuant to section 1001(a)(2)(H) of the Act if, at the time of the purchase, the seller is a large institutional investor and either—*
>
> *(1) owned the single-family home on the date of enactment of the Act; or*
>
> *(2) acquired the single-family home in a transaction that, as to the seller, was a purchase made before the seller was subject to section 1001(b) of the Act, an excepted purchase (including a purchase under section 1001(a)(2)(A-K)), a purchase described in section 1001(b)(2)(B) of the Act, or a purchase made in reliance on a certification under § 36.13.*
>
> *(b) The eligibility of a purchase under this section is determined by reference to the seller and the seller's acquisition of the single-family home. A violation of section 1001(b) of the Act by a prior owner of the single-family home is remediable against that owner under section 1001(d) of the Act and does not affect the eligibility of a subsequent purchase under this section.*
>
> *(c) A purchase that satisfies the requirements of an excepted-purchase category is an excepted purchase notwithstanding that another purchase made pursuant to the same program did not satisfy those requirements.*

C . Reliance on seller certifications

Question 111 asks what due diligence a purchasing large institutional investor should perform to determine whether its seller purchased in compliance with the Act, whether the final rule should permit reliance on seller representations, certifications, covenants, or indemnities, under what circumstances, and whether purchasers should be required to divest homes acquired in reliance on false certifications.

We believe that a written seller certification should be a sufficient basis for reliance, and that the final rule should say so in terms, for four reasons.

First, every exception that turns on the seller's status or the seller's conduct, (F), (G), (H), and (I), depends on facts that are peculiarly within the seller's knowledge and that the purchaser cannot verify from any public source: whether the seller is a large institutional investor, when the seller acquired the home and under what exception, whether the seller holds a written program, whether the seller acquired through a default-related process. A rule that conditions an exception on those facts without permitting reliance on the one party who knows them is a rule that cannot be complied with at acceptable risk.

Second, certification regimes are how comparable federal requirements that turn on counterparty status are administered: the Foreign Investment in Real Property Tax Act operates on a seller's non-foreign certification (26 U.S.C. 1445(b)(2)), and beneficial-ownership, sanctions, and anti-money-laundering programs operate on counterparty certifications backed by a knowledge standard.

Third, the Act's definition of "purchase" includes entry into a contract, so the compliance determination must be capable of being made at signing on the basis of what the seller represents; a certification delivered at contract and brought down at closing is the instrument that makes that possible.

Fourth, a seller that provides a false certification is exposed: if it is a large institutional investor, to action under section 1001(d) for its own violation; in every case, to contractual indemnity and to the consequences of a false statement made to induce a transaction. The deterrent against false certification therefore sits with the party in a position to lie, which is where it belongs.

The rule should be conditioned, and we propose these conditions. The certification should be in writing, delivered at contract and confirmed at closing, and should state the facts on which the exception depends (for (H), that the seller is a large institutional investor and either owned the home on July 11, 2026, or acquired it in a compliant purchase; for (F) and (G), the default-related basis of the seller's acquisition). The purchaser must not have actual knowledge that the certification is false. The purchaser should be required to retain the certification for the period Treasury prescribes under its recordkeeping rules. No further investigation should be required; a "reasonable inquiry" overlay would reintroduce, under another name, the unknowable-facts problem the certification exists to solve, and Treasury can address evasion through the actual-knowledge condition and through enforcement against the certifying party.

On divestiture, the answer should be no. Section 1001(d) provides for civil penalties; it contains no disposition remedy. A purchaser that relied in good faith on a false certification has not violated subsection (b) and is not a proper object of any remedy; requiring it to sell is a forced disposition of a lawfully acquired asset that the statute does not authorize and that would, for a home within a rental community, often be impossible without subdivision. The appropriate consequence of a false certification is enforcement against the certifier.

Proposed regulatory Language

> *(a) A large institutional investor that purchases a single-family home in reliance on a certification described in paragraph (b) is treated as having made an excepted purchase under the applicable subparagraph of section 1001(a)(2) of the Act if the large institutional investor does not have actual knowledge that the certification is false.*
>
> *(b) A certification under this section is a written statement, signed by the seller or its authorized representative, delivered at or before the execution of the contract of sale and confirmed at closing, stating the facts on which the applicable excepted-purchase category depends, including, as applicable, the seller's status as a large institutional investor or as an investor not covered under section 1001 of the Act, the date and basis on which the seller acquired the single-family home, and the default-related basis of the seller's acquisition under section 1001(a)(2)(F) or (G) of the Act.*
>
> *(c) No inquiry beyond the certification is required. The large institutional investor shall retain the certification for the period prescribed under this part.*
>
> *(d) A large institutional investor that has relied on a certification in accordance with this section is not required to divest the single-family home if the certification is later determined to be false. A person that provides a false certification is subject to action under section 1001(d) of the Act to the extent it is a large institutional investor that violated section 1001(b) of the Act.*

D. Rent Reporting

The Act's proposed homeownership programs require positive reporting of rental payments to consumer reporting agencies. While the Act's provision focuses on SFR, it is important to acknowledge that rent reporting has been a practice among multifamily housing providers for decades. Renter payment history reporting presents great opportunity for both operators and renters. We believe rent reporting is a strong affordability tool. This practice can kickstart an individual's financial profile and help

them secure other credit opportunities. This, in turn, creates more equitable outcomes for renter populations and helps improve their economic mobility and household affordability.

Yet picking the right approach to renter reporting matters. Because housing affordability challenges are intensifying, NMHC, RETTC, and NAA caution against onerous, one size fits all, mandates that inject more cost into the rental housing process.

Understanding the Future of the Renter Outreach Resource

We understand that the "renter outreach resource" described in Section 1001(c) of the Act will be administrated principally by the Department of Housing and Urban Development ("HUD"), we anticipate that renters may attempt to use the renter outreach resource to obtain answers to questions about the Act's homeownership programs, as described in Section 1001(A)(2)(D) and (E). In expectation of these types of questions, we respectfully request that Treasury and HUD work collaboratively to develop clear guidance to assist industry in addressing renters' questions that are raised via the renter outreach resource process.

Conclusion

The Associations are also generally concerned about the Act and associated regulations potential to harm the industry's ability to continue to provide rental housing for all Americans. Therefore, we urge Treasury to monitor and analyze for market impacts during the period following enactment and report to Congress.

NMHC, NAA, and RETTC appreciate the opportunity to provide our comments on the Proposed Rule, if you have any questions, please contact David Borsos at dborsos@nmhc.org, 202.974.2336

Sincerely,





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