August 11, 2017

Internal Revenue Service
Attn: CC:PA:LPD:PR (REG-136118-15)
Room 5207
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Proposed Treasury regulations sections 301.6221(a)-1 et. seq.

Dear Sir or Madam,

On behalf of the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA), we appreciate the opportunity to comment on proposed Treasury regulations sections 301.6221(a)-1 through 301.6227-3 and 301.6241, rules designed to implement the partnership audit provisions enacted as part of the Bipartisan Budget Act of 2015.

By way of introduction, for more than 20 years, NMHC and NAA have partnered in a joint advocacy program to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of more than 160 state and local affiliates, NAA is comprised of over 73,000 members representing nearly 9 million apartment homes globally.

The multifamily housing industry is dominated by "pass-through" entities (e.g., LLCs, partnerships and S corporations) instead of taxable publicly held C corporations. Indeed, over three-quarters of apartment properties are owned by pass-through entities. Developers often form investment partnerships as a means of raising the capital necessary to finance the construction of multifamily properties. Moreover, just under half of all investment partnerships economy-wide are real estate partnerships. Given the critical role partnerships play in the multifamily housing industry and commercial real estate, it is essential that regulations implementing the partnership audit provisions do not create barriers to investment, distort investment decisions, or complicate tax compliance and administration.

Almost all the provisions in the proposed regulations will affect the members of NMHC and NAA to some extent. However, we would like to focus our comments on one particular issue. Under the new audit rules, partnerships have two choices with respect to entity-level adjustments of partnership items by the IRS. Under section 6225, the partnership could pay any imputed underpayment with respect to the adjustment at the entity level. Alternatively, under section 6226, the partnership may elect to "push out" the adjustment to the partners of the partnership, who then generally pay any tax

owed with respect to their allocable share of the adjustments. At issue is the treatment of any adjustment that is pushed out to a partner that itself is a partnership. Specifically, the issue is whether such upper tier partnership may further push out an adjustment to its partners or it is required to pay an entity-level tax with respect to the adjustment.

The preamble to the proposed regulations points out that the *General Explanation of Tax Legislation Enacted for 2015* (the "Bluebook" prepared by the staff of the Joint Committee in Taxation) would seem to indicate that any tax attributable to an adjustment that is pushed out to a partnership under section 6226 must be paid by that partnership-partner. However, as also pointed out by the preamble, in December 2016, the senior Members of the tax-writing committees of both the House of Representatives and the Senate introduced technical corrections bills (H.R. 6439 and S. 3506, respectively) that would clarify that any adjustment pushed out to a partnership as a partner could be further pushed out by that partnership to its partners.

Given the lack of legislative clarity on the treatment of pushed-out adjustments to partners that are partnerships, the proposed regulations reserve on this issue.

Tiered partnership arrangements are common in real estate investment. In some cases, they allow different real estate firms to combine their respective skill sets in a joint venture with respect to a project. In other cases, they provide lower tier partnerships with pools of capital for investment, and provide upper tier partnerships with investment diversity and diminution of risk. The partnership audit regulations should not discourage tiered partnership arrangements by requiring a partnership-level tax liability whenever a lower-tier adjustment is pushed out to a partnership as a partner.

Upper tier partnerships should have the same choices available to all other partnerships. The partnership audit rules enacted in 2015 contemplate that partnerships should have a choice between satisfying any IRS adjustment by way of a tax payment or by pushing out the adjustment to the partnership's partners. It is important that this choice remain available to upper tier partnerships in a tiered structure.

Congress, in the original legislation and the proposed technical corrections, recognized that partnerships need the flexibility to push out audit adjustments to their partners. Imposing an entity-level tax on the partnership reduces the capital available to fund operations and investments. Moreover, an entity-level tax fundamentally changes the historical relationship between a partnership as a flow-through entity and its partners as taxpayers. These policy concerns equally apply, and are important, to upper tier partnerships as they are to lower tier partnerships.

We recognize the need for the Treasury and the IRS to develop an administrable tax regime for partnerships. We believe that some of the provisions in the proposed regulations (e.g., the reporting requirement attendant to the push-out election and the safe harbor amount applicable to push-out adjustments in prop. Treas. reg. sec. 301.6226) are appropriate steps in that direction. We would be happy to work with Treasury and the IRS in the development of other rules and safe harbors that act to minimize the

compliance burdens of taxpayers and the administration burdens of the IRS while preserving the historic tax policy principles underlying partnership taxation.

Thank you for your attention to this important matter. Please do not hesitate to contact Matthew M. Berger, Vice President of Tax at the National Multifamily Housing Council, at 202-974-2362 if you have any questions or comments regarding this submission.

Sincerely,

National Multifamily Housing Council

National Apartment Association