NATIONAL MULTIFAMILY HOUSING COUNCIL

NATIONAL APARTMENT ASSOCIATION

DEPRECIATION OF EXISTING BUILDINGS

NMHC/NAA Viewpoint

Congress should pass legislation or Treasury should revisit Rev. Proc. 2019-08 and clarify through the regulatory process that all multifamily buildings may be depreciated over 30 years for firms electing out of limits on interest deductibility.

The *Tax Cuts and Jobs Act* limits the ability of taxpayers to deduct business interest. Small businesses (i.e., businesses with average annual gross receipts of $25 million or less in the previous three years), including multifamily small businesses, may qualify for an exemption from this limitation. Multifamily real estate firms may also elect out of limitations on interest deductibility, so long as they agree to depreciate real property under longer periods provided for under the Alternative Depreciation System (ADS). However, proposed Treasury regulations limit this election to multifamily firms that do not qualify for the small business exemption. Firms able to abide by limits on interest deductibility or that qualify for the small business exemption will continue to depreciate multifamily property over 27.5 years.

At the same time the Act required ADS depreciation for firms electing out of interest deductibility limits, it also reduced the ADS recovery period for multifamily property from 40 years to 30 years. Congressional intent was to apply this 30-year period to buildings in existence before enactment of the law, as well as to new property. However, due to a drafting oversight, the law subjects multifamily property in existence prior to 2018 to the old 40-year period rather than the intended new 30-year period. Treasury in December 2018 confirmed this interpretation when it issued Rev. Proc. 2019-08.

Requiring 40-year depreciation of existing property would unnecessarily disrupt cash flows and increase the tax liability of multifamily firms, reducing their ability to invest in their assets or develop new properties.

To correct this error, Congress should pass legislation or Treasury should revisit Rev. Proc. 2019-08 and clarify that multifamily properties in existence prior to 2018 may be depreciated over 30 years.

Requiring 40-year depreciation of existing property would unnecessarily disrupt cash flows and increase the tax liability of multifamily firms, reducing their ability to invest in their assets or develop new properties. That result would be contrary to the goal of the tax reform bill, and it must be prevented.