



NATIONAL
MULTIFAMILY
HOUSING
COUNCIL



NATIONAL APARTMENT ASSOCIATION

The National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) respectfully submit this statement for the record for the Senate Finance Committee’s July 20, 2022, hearing titled *The Role of Tax Incentives in Affordable Housing*.¹

ADDRESSING THE HOUSING AFFORDABILITY CHALLENGE

The apartment industry today plays a critical role in housing this nation’s households by providing apartment homes to 36.8 million residents, contributing \$3.4 trillion annually to the economy while supporting 17.5 million jobs.^{2 3} At the same time, it is apparent that the nation is experiencing a significant challenge surrounding housing affordability that is exacerbated by an insufficient supply of multifamily housing.

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 30 years later, these shares of cost-burdened and severely cost-burdened households increased to 35.8 percent and 18.0 percent, respectively.⁴ The multifamily industry has faced even greater challenges: The total share of cost-burdened apartment households increased steadily from 42.4 percent in 1985 to 54.6 percent in 2019. During this period, the total share of severely cost-burdened apartment households increased from 20.9 percent to 29.9 percent.⁵

A historic unmet demand for multifamily housing reflects the nation’s overall housing affordability challenges. The United States needs to build 4.3 million new apartments by 2035 to meet both future demand and the existing shortage of apartments.⁶ Yet, rising costs, construction delays and labor shortages are making it increasingly difficult to build housing that is affordable to a wide range of income levels. Fully 97 percent of apartment developers reported experiencing construction delays in NMHC’s most recent Quarterly Survey of Apartment Construction & Development Activity. A majority of respondents (83 percent) reported that deals have been repriced up over the past three months while 40 percent said labor costs increased more than expected. According to the Harvard Joint Center for Housing Studies, between 2012 and 2019, the price of vacant commercial land doubled, while the combined costs of construction labor, materials and contractor fees increased by 39 percent.⁷ For comparison, the overall price level rose 11 percent.⁸

High regulatory costs are further constraining supply. Recent research published by NMHC and the National Association of Home Builders found that regulation imposed by all levels of government

¹ For more than 20 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered in a joint legislative 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 141 state, local, and global affiliates, NAA encompasses over 92,000 members representing more than 11 million apartment homes globally. One-third of all Americans rent their housing, and 36.8 million of them live in an apartment home.

² NMHC tabulations of 2020 American Community Survey microdata.

³ Hoyt Advisory Services, National Apartment Association and National Multifamily Housing Council, “The Contribution of Multifamily Housing to the U.S. Economy”, <https://www.weareapartments.org/>.

⁴ NMHC tabulations of American Housing Survey microdata (1985 – 2019).

⁵ Ibid.

⁶ Hoyt Advisory Services, “Estimating the Total U.S. Demand for Rental Housing by 2035.” (2022), <https://www.weareapartments.org/>.

⁷ Harvard Joint Center for Housing Studies, “America’s Rental Housing” (2020), available at https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf

⁸ US Bureau of Labor Statistics, CPI for All Urban Consumers (CPI-U), seasonally adjusted.

accounts for an average of 40.6 percent of multifamily development costs.⁹ The research, which was based on a survey of 49 developers, finds that three quarters (74.5 percent) of respondents said they encountered “Not In My Backyard” (NIMBY) opposition to a proposed development. Confronting that opposition adds an average of 5.6 percent to total development costs and delays the completion of those new properties by an average of 7.4 months.¹⁰ Identifying duplicative and unnecessary regulatory costs is a critical factor as we work to address the critical shortage of affordable housing facing this nation.

While housing affordability is a significant challenge, the multifamily industry has long been at the forefront of addressing this issue. NMHC published its Housing Affordability Toolkit with HR&A Advisors in 2018 with the goals of both providing background on the underlying causes of the apartment industry’s affordability crisis and providing specific tools that could be used to help defray the cost of building new apartments, allowing more units to be built at a variety of price points.¹¹

We cited three main reasons for the worsening affordability conditions: (1) a chronic demand/supply imbalance; (2) a rise in the “lifestyle” renter (or renter by choice); and (3) an increase in overall development costs including materials and regulatory compliance. Together, these factors created a scenario that put the brakes on affordable housing production. It became increasingly challenging to buy land and build a property at rates that were broadly affordable. Furthermore, it was exceedingly difficult for lower-income renter households to find an apartment without becoming cost-burdened. In the time since the publication of the Affordability Toolkit, there has been a pandemic-induced economic downturn, one that put lower-income apartment residents particularly at risk financially.¹²

TAX POLICY CAN PLAY A KEY ROLE IN PROMOTING HOUSING SUPPLY

The multifamily industry wishes to work with Congress and the Biden Administration, which in May released a thoughtful *Housing Supply Action Plan*, to address these challenges.¹³ While it will take a variety of tax and non-tax approaches to increase supply, we believe tax policy can play a critical role in this regard. To this end, we strongly urge Congress to:

- Expand and enhance the Low-Income Housing Tax Credit;
- Enact the Middle-Income Housing Tax Credit to support workforce housing;
- Enhance Opportunity Zones to incentivize the rehabilitation and preservation of multifamily buildings;
- Encourage the adaptive reuse of underutilized commercial properties into multifamily housing;
- Promote the rehabilitation of multifamily housing located near transit; and
- Support measures to help property owners retrofit properties to meet building performance goals in line with our national climate policy.

Each of these proposals is briefly described in the pages that follow, and we note that many have bipartisan support.

⁹ National Association of Home Builders and National Multifamily Housing Council, *Regulation: 40.6 Percent of the Cost of Multifamily Development*, <https://www.nmhc.org/globalassets/research--insight/research-reports/cost-of-regulations/2022-nahb-nmhc-cost-of-regulations-report.pdf>

¹⁰ Ibid.

¹¹ <https://housingtoolkit.nmhc.org/>

¹² <https://www.nmhc.org/research-insight/research-notes/2020/which-apartment-residents-are-most-affected-by-job-losses>

¹³ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-biden-announces-new-actions-to-ease-the-burden-of-housing-costs/>

OVERVIEW OF PROPOSALS TO SUPPORT THE DEVELOPMENT AND PRESERVATION OF MULTIFAMILY HOUSING

Housing production is not a zero-sum game; we need to produce housing at prices that are broadly affordable across the income spectrum. Our nation's supply of multifamily properties is aging. In fact, 46 percent of apartment units were built prior to 1980, and 76 percent were built prior to 2000.¹⁴ The country must build 4.3 million new apartment homes by 2035 to meet both projected demand and the existing shortage of apartments.¹⁵ To address housing production and preservation, we recommend Congress enact the following policies:

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. Since its inception in 1986, the LIHTC program has according to the A Call To Invest in Our Neighborhoods (ACTION) Campaign financed 3.6 million apartments and served 8 million households. The LIHTC program provides critical support to the nation's affordable housing production but could be made even more impactful.

NMHC and NAA strongly support the ***Affordable Housing Credit Improvement Act of 2021*** (*S. 1136 / H.R. 2573*). Introduced by Senate Finance Committee Members Maria Cantwell, Todd Young, Ron Wyden, and Rob Portman (and cosponsored by other committee members), this bipartisan bill would, among other provisions, make permanent the increased LIHTC credit authority enacted in March 2018 to enable the production of new units and further augment credit authority by 50 percent. The ACTION Campaign estimates this legislation would “result in the production of over 2 million additional affordable homes over the next decade, support the creation of nearly 3 million jobs, and generate more than \$346 billion in wages and business income and nearly \$120 billion in additional tax revenue.”¹⁶

Additionally, it should be noted that Congress enacted a 12.5 percent increase in credit authority for years 2018-2021. Given that this increase has now expired, the nation is experiencing a decrease in LIHTC resources. If Congress cannot agree to a substantial increase in credit authority over 2021 levels, it should at a minimum restore the reduction in credit authority.

Finally, the multifamily industry encourages Congress to enact the ***LIHTC Financing Enabling Long-term Investment in Neighborhood Excellence Act (LIFELINE Act)*** (*S. 4181 / H.R. 7078*). Introduced by Senators Patrick Leahy and Susan Collins and cosponsored by Senate Finance Committee members Michael Bennet, Catherine Cortez Masto, Margaret Hassan, Sheldon Whitehouse, and Ron Wyden, this legislation would facilitate the use of the Coronavirus State and Local Fiscal Recovery Fund (SLRF) with the LIHTC program. Although the Treasury Department's final rule governing the SLRF technically enables funds to be used for affordable housing, it is either extremely challenging or impossible to do so in the context of a LIHTC development. The LIFELINE Act would address this issue by permitting states and localities to use SLRF to make long-term loans to LIHTC developments. Given the shortage of affordable housing and rising construction costs confronting the nation, it only makes sense to allow SLRF to be used to help make LIHTC projects financially feasible.

¹⁴ [NMHC tabulations of 2020 American Community Survey microdata.](#)

¹⁵ Hoyt Advisory Services, “Estimating the Total U.S. Demand for Rental Housing by 2035.” (2022), <https://www.weareapartments.org/>

¹⁶ <https://rentalhousingaction.org/wp-content/uploads/2021/10/AHCIA-One-Page-Summary-September-2021.pdf>

Enact the Middle-Income Housing Tax Credit (MIHTC) to Support Workforce Housing

Housing affordability is an issue threatening the financial wellbeing of solidly middle-income households in addition to low-income families. According to the Joint Center for Housing Studies of Harvard University, “the median asking rent for an apartment completed in the second quarter of 2021 was \$1,669, a 17 percent increase from the same period in 2016.”¹⁷ For a renter to afford one of those units at the 30 percent of income standard, they would need to earn at least \$66,760 annually. Moreover, the Joint Center reports that “Although much lower, the cost-burdened share of middle-income households increased the most in 2014-2019. The share of renters making between \$30,000 and \$74,999 with at least moderate housing cost burdens rose 4 percentage points to 41 percent, while the share with severe burdens rose from 7 percent to 8 percent.”¹⁸ ¹⁹ Accordingly, this is an issue impacting those workers who comprise the very fabric of strong communities nationwide, including teachers, firefighters, nurses and police officers.

Tax policies to spur the production of multifamily housing targeted to middle-income Americans should be a part of any legislation that seeks to address housing affordability on a comprehensive basis. We urge Congress to strongly consider the ***Middle-Income Housing Tax Credit*** that Senate Finance Committee Chair Ron Wyden introduced as part of the ***Decent, Affordable, Safe Housing for All Act (DASH Act)*** (S. 2820) to address the shortage of workforce housing available to American households. A worthy complement of measures to expand and improve LIHTC, the Middle-Income Housing Tax Credit (MIHTC) takes over where LIHTC leaves off. LIHTC is currently designed to serve populations of up to 60 percent of area median income. MIHTC is designed to benefit populations earning below 100 percent of area median income.

Enhance Opportunity Zones to Incentivize Rehabilitation of Housing Units

Enacted as part of tax reform legislation in 2017, Opportunity Zones are designed to provide tax incentives for investments in distressed communities. Opportunity Zones hold great promise for the development of multifamily housing. Under the new program, Governors have designated over 8,700 qualified low-income census tracts nationwide as Opportunity Zones. Up to 25 percent of a state’s qualified census tracts may qualify as Opportunity Zones, with each state having to designate a minimum of 25 Zones.

While we expect the Opportunity Zones program to be beneficial in spurring the production of new multifamily housing, the program could be improved with respect to incentives for the rehabilitation and preservation of existing multifamily units. Current regulations work against using this program to rehabilitate properties for affordable housing since the developer must double her basis in the property without consideration of the cost of land. In many cases, such significant renovation is unnecessary to preserve buildings and units that might otherwise be lost to obsolescence. Congress

¹⁷ Joint Center for Housing Studies of Harvard University, *America’s Rental Housing 2022*, pg. 28. https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf

¹⁸ Joint Center for Housing Studies of Harvard University, *America’s Rental Housing 2022*, pg. 32. https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf

¹⁹ NMHC has also done some additional tabulations of 2020 American Community Survey microdata. Looking at the 50 most populous metro areas in the 2020 American Community Survey microdata, just 4.4 percent of apartment units built in 2019 or 2020 were affordable (30 percent of monthly income or less) to apartment households making 60 percent of their metro’s median apartment household income; 7.8 percent of apartment units built in 2019 or 2020 were affordable to apartment households making 80 percent of their metro’s median apartment household income; and 16.8 percent of apartment units built in 2019 or 2020 were affordable to apartment households making 100 percent of their metro’s median apartment household income. For this calculation, NMHC calculated the median apartment household income separately by unit type (e.g., studio, one-bedroom, or two-bedroom) and assumed that households would only consider living in an apartment of a similar unit type.

could leverage the Opportunity Zones program to promote the rehabilitation and preservation of multifamily units and, thereby, positively address the shortage of apartment units.

NMHC and NAA recommend that Congress consider statutory modifications to reduce the basis increase necessary to qualify a multifamily rehabilitation project for Opportunity Zone purposes. It is noteworthy that to qualify for an allocation under the LIHTC, owners must commit to rehabilitations valued at the greater of: (1) 20 percent of adjusted basis of a building; or (2) \$6,000 (\$7,400 in 2022 as adjusted for inflation) per low-income unit.

Encourage the Adaptive Reuse of Underutilized Commercial Properties into Multifamily Housing

With the COVID-19 pandemic modifying where Americans work and shop, the multifamily industry believes there is great promise in proposals to convert underutilized properties into multifamily housing. Office buildings, shopping centers, and hotels, for example, can be transformed into new units in places Americans want to live.

Notably, Senate Finance Committee member Debbie Stabenow, joined by Senate Finance Committee member Sherrod Brown as a cosponsor, has introduced the ***Revitalizing Downtowns Act*** (S. 2511) that would provide a 20 percent tax credit to convert office buildings into other uses, including residential use. Rep. Jimmy Gomez has introduced companion legislation (H.R. 4759) in the House of Representatives. The multifamily industry is interested in working with Congress on this type of proposal but would like to see it modified to enable other types of commercial properties (e.g., shopping centers and hotels) to qualify for the tax incentive, as well as to ensure REITs could utilize the benefit.

Alternatively, the multifamily industry would encourage Congress to explore whether tax-exempt private activity bonds could be used as a means of promoting adaptive reuse. Housing finance agencies could issue such bonds to help facilitate adaptive reuse of underutilized properties, particularly in areas that have a plan to track discriminatory land-use policies as envisioned by the ***Yes In My Backyard Act (YIMBY Act)*** (S. 1614 / H.R. 3198).

Promote the Rehabilitation of Multifamily Housing Located Near Transit

NMHC and NAA strongly support bipartisan legislation that would provide a new tool aimed at encouraging greater community development and inclusive neighborhood revitalization. Introduced by House Ways and Means Committee member Earl Blumenauer and cosponsored by committee members Mike Kelly, Dan Kildee, and Darin LaHood, the ***Revitalizing Economies, Housing and Business Act (REHAB Act)*** (H.R. 1483) provides:

- a 15 percent tax rehabilitation credit for buildings that are more than 50 years old, not certified historic structures, and are within one-half of a mile of a public transportation station;
- expanded credit eligibility to include building expansion on the same block; and
- a bonus credit of 25 percent for expenses related to public infrastructure upgrades and rent-restricted housing.

Strengthen Communities through Policies that Support Resiliency

Building utility costs are second only to debt service in terms of property expenses. Efficient use of resources, including updating building systems and appliances, is key to ensuring that housing remains affordable for residents. The multifamily industry has a long history of support for building-performance benchmarking and water and energy conservation and favors incentive-based strategies that improve building energy performance and community-wide resiliency efforts.

Building performance standards that overlook the age of the existing apartment stock and fail to consider the inherent efficiencies of compact development that is the hallmark of multifamily design buildings will exacerbate the shortage of affordable apartment units. Policies that provide financial assistance for owners to reinvest in higher-performing building systems and components outside of replacement *pro formas* will be critical to advancing building performance goals. Layering additional conditions on these investments, including requirements about the workforce that must be employed to make these renovations, will eliminate the utility of the efficiency incentives that have been available under Sec. 45L or Sec. 179D.

As Congress considers legislation to promote resilience and reduce greenhouse gas emissions across the economy, programs that address building energy performance are an essential element. Policymakers should resist applying one-size-fits-all efficiency mandates that will exacerbate the shortage of affordable housing in the near term. Incentives that enable developers to invest in engineering, construction and development costs that are required to build/rehab multifamily apartment homes will speed the development of higher-performing, more resilient housing that is affordable for renter households.

Make Permanent the New Energy Efficient Homes Credit (Sec. 45L): This tax credit has provided a necessary incentive for builders of apartment buildings (3 stories or fewer) to install higher performance building systems and upgraded appliances than they otherwise could justify within the pro forma for developing the property. While this credit was extended through 2021, it has subsequently expired and should be made permanent as an essential part of a national plan to boost production of high-performance buildings and reduce greenhouse gas emissions.

Improve the Energy Efficient Commercial Buildings Deduction (Sec. 179): This tax deduction has primarily been used to encourage energy-efficient new construction. However, since 179D's initial enactment in 2005, the intent has also been to encourage private-sector and non-profit owners to retrofit existing buildings. In this regard, Sec. 179D can be improved. Considering the age of current high-rise apartment building stock, Sec. 179D should be strengthened to encourage retrofits and, thereby, maximize the incentive's potential as an engine for sound tax, jobs, energy and environmental policy. Title I of the ***Energy Efficiency Tax Incentives Act*** (S. 2189), introduced by Senators Ben Cardin, Dianne Feinstein, and Brian Schatz in the 113th Congress, preserves the deduction's application for new construction and public buildings, while also meaningfully incentivizing private-sector and non-profit retrofits.