April 18, 2024

The Honorable Sherrod Brown
Chairman
United States Senate Committee on
Banking Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tim Scott
Ranking Member
United States Senate Committee on
Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 2051

Dear Chairman Brown and Ranking Member Scott:

On behalf of the nearly 100,000 combined members of the National Multifamily Housing Council (NMHC)[1] and the National Apartment Association (NAA)[2], we are writing in advance of the hearing entitled, Oversight of Federal Housing Regulators" to share the views of the multifamily housing industry. We are committed to working together with Congress and the Administration to address America's housing supply crisis.

As the Senate Committee on Banking, Housing, and Urban Affairs conducts this hearing, we offer our perspective on efforts needed to promote workable and sustainable policies to address our nation's housing challenges. Our ultimate goal is to be sure that apartment providers can meet long-term housing needs of the 40 million Americans who live in apartment homes[3] and continue to make significant contributions to the growth of our economy, which currently stands at $3.9 trillion annually.[4]

Specifically, we believe that HUD's and FHFA's top focus should be addressing our nation's housing affordability crisis.

The Housing Imperative

Challenges may present themselves differently from community to community, but it will come as no surprise to Americans nationwide that we are facing a widespread housing affordability challenge. No wonder communities are feeling pinched—we simply do not have enough housing to go around. Today, in more and more communities, hard-working Americans are unable to rent homes due to increased costs driven by a lack of supply, barriers to development, and regulatory burdens. The total share of cost-burdened households (those paying more than 30 percent of their income on housing) increased steadily from 28.0 percent in 1985 to 36.9 percent in 2021

[1] Based in Washington, D.C., NMHC is a national nonprofit association that represents the leadership of the apartment industry. Our members engage in all aspects of the apartment industry, including ownership, development, management and finance, who help create thriving communities by providing apartment homes for nearly 40 affordable housing million Americans, contributing $3.4 trillion annually to the economy. NMHC advocates on behalf of rental housing, conducts apartment-related research, encourages the exchange of strategic business information and promotes the desirability of apartment living.
[2] The NAA serves as the leading voice and preeminent resource through advocacy, education, and collaboration on behalf of the rental housing industry. As a federation of 141 state and local affiliates, NAA encompasses over 93,000 members representing more than 11 million apartment homes globally. NAA believes that rental housing is a valuable partner in every community that emphasizes integrity, accountability, collaboration, community responsibility, inclusivity and innovation.
[3] 2021 American Community Survey, 1-Year Estimates, U.S. Census Bureau, "Total Population in Occupied Housing Units by Tenure by Units in Structure".
[4] Hoyt Advisory Services, National Apartment Association and National Multifamily Housing Council, "The Contribution of Multifamily Housing to the U.S. Economy", https://weareapartments.org/pdf/Economic_Impact.pdf

and is growing, while others have been priced out of communities altogether. This is not sustainable, particularly in a period of higher inflation. Wage stagnation in conjunction with barriers to new supply – for instance, onerous regulatory hurdles, antiquated and often discriminatory zoning and land use policies at the local level, and local opposition to development (also known as NIMBYism or "Not in My Backyard" opposition) – has led the nation to this juncture. It has taken many decades to get to this point, and it will take time to reverse these trends, but it is critical that we start now to enact new and innovative policies that will incentivize new housing production.

In addition, continued economic instability poses a serious threat to the ability of housing providers to leverage the private-market capital necessary to generate needed housing. Higher interest rates have contributed to a period of economic volatility, which is driving up the cost of building new housing, discouraging new investment, and pushing some in our sector out of the market altogether.

Increased construction, material and labor costs, significant increases in insurance costs, and state and local property taxes have made the current operating environment extremely challenging. NMHC and NAA members are reporting that current economic and regulatory challenges are causing them to cut back significantly on development activities, in some cases, by as much as 50 percent. This slowdown has long-term implications.

As of January of this year, NMHC's Quarterly Survey of Apartment Market Conditions also recorded seven consecutive quarters of decreasing sales volume and eight consecutive quarters in which equity financing became less available. Respondents did report improved conditions for debt financing in January, but this comes after nine straight quarters of worsening conditions (Oct. 2021 – Oct. 2023).

Housing Affordability: Growing Demand vs. Supply Challenges

It is essential that we build housing at all price points to meet the wide range of demand. According to research conducted by Hoyt Advisory Services and Eigen10 Advisors, LLC, and commissioned by NMHC and NAA, **the U.S. is facing a pressing need to build 4.3 million new apartment homes by 2035.**

Key findings include:

- **Shortage of 600,000 Apartment Homes.** The 4.3 million apartment homes needed includes an existing 600,000 apartment home deficit because of underbuilding after the 2008 financial crisis.
- **Loss of Affordable Units.** The number of affordable units (those with rents less than $1,000 per month) declined by 4.7 million from 2015 to 2020.
- **Homeownership.** Apartment demand also factors in a projected 3.8% increase in the homeownership rate.
- **Immigration.** Immigration is a significant driver of apartment demand. Levels tapered before the pandemic and have remained low, but a reversal of this trend would significantly increase apartment demand.

Operational Costs Continue to Rise

Operating apartments has become increasingly challenging, highlighted by rising expenses. Industry data shows an average expense increase of 9.3% for the 12 months ending June 30, 2023, with insurance, state and local taxes, repairs/maintenance, administrative and payroll costs taking the lead.[5] Other cost drivers seeing significant increases, especially in urban markets, are utilities and the provision of security.

One of the most challenging operational costs that has increased dramatically in recent years is insurance. The lack of affordability and availability of insurance options for property owners, of all types, increasingly puts needed insurance coverage out of reach or limits the ability of property owners to make needed investments in their properties. Two new data sets show the significant impact of insurance costs on housing operations and affordability. First, NMHC released the State of Multifamily Risk Survey & Report[6] in June of 2023 which looked across all types of multifamily housing and showed, on average, property insurance premiums soaring 26 percent year-over-year. Yet, it is common to hear of triple-digit property premium increases in certain parts of the country. Other lines of coverage are also troublesome and impacting property operations.

As problematic as this has been across the broader housing ecosystem, the challenge is even more daunting in the affordable and middle-income housing space. A new survey and report released in September[7], commissioned by the National Leased Housing Association (NLHA), and supported by NMHC, NAA and other affordable housing organizations, focused on the impact of the current insurance market challenges on affordable housing providers. The survey found that rental housing businesses are facing much higher premiums—nearly one in every three policies had rate increases of 25% or more. These conditions have led to negative impacts on both housing providers and renters, with most housing providers indicating that they would take action to mitigate cost increases due to higher insurance premiums by increasing insurance deductibles, decreasing operating expenses, and being forced to increase rent.

Insurance is not the only area of property operations seeing an acute increase in costs. Based on data from NAA's Income/Expense IQ, property taxes have surged by an average of 6.5% from 2021 to 2022. Notably, cities like Orlando, Norfolk, Va., Minneapolis, Riverside, Calif., and Salt Lake City have experienced double-digit increases.

Data from the 2022 Income/Expense IQ also revealed that costs for utilities experienced the highest increase, up 14.3% year-over-year. Natural gas and heating fuel came out on top, increasing by 41.8% and 19.1%, respectively. Additionally, electricity, internet/wireless and water/sewer all rose by double digits. Total repairs and maintenance were up 13.7% with a median cost of $950, driven by appliances, painting/decorating, and general repairs, all of which increased by 20% or more.[8]

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[5] https://www.yardimatrix.com/Publications/Download/File/4486-MatrixResearchBulletin-Expenses-September2023

[6] https://pages.nmhc.org/rs/676-UDD-714/images/NMHC_InsuranceReport_2023.pdf

[7] https://www.nmhc.org/globalassets/research--insight/research-reports/insurance/ndp-nlha-housing-provider-insurance-costs-report-oct-2023.pdf

[8] NAA's 2022 Income/Expense IQ Executive Summary https://www.naahq.org/challenging-times-rental-housing-industry

Payroll and other administrative expenses increased by 8.5% for the rental housing industry. Labor market challenges have plagued the industry for years, particularly for on-site staff, but the red-hot job market that was kickstarted by the pandemic recovery and stayed strong through 2022, only exacerbated the problems.

It is critical that Congress and policymakers at all levels of government understand the significant financial headwinds facing housing operators that are negatively impacting housing affordability and explore consensus-driven solutions to alleviate these pressures.

The Regulatory Environment is Increasingly Challenging

Despite the economic and market headwinds facing multifamily housing developers, owners and operators, federal regulators have recently moved forward with proceedings that aim to upend the existing, and appropriate, state, and local regulation of housing.

Specifically, the White House's Blueprint for a Renters Bill of Rights, recognizes more than two dozen commitments from agencies and Fannie Mae and Freddie Mac (collectively "the enterprises") to examine and potentially implement sweeping changes to federal housing policy in line with Blueprint principles. These include a commitment by the Federal Housing Finance Agency (FHFA) to consider federalizing landlord and tenant laws, including possible rent control for enterprise-backed properties. This would have devastating impacts on housing markets and ultimately result in even fewer quality and affordable, rental housing options for renters. NMHC and NAA have continued to engage with the Administration on these proposals and filed joint comments as well as led a coalition of 18 national real estate organizations expressing deep concern with this approach.

Rent Control is Not the Answer to Housing Affordability

One particularly harmful proposal considered is rent control. Decades of research and real-world case studies show that rent regulation devastates rental housing and harms affordability. Rent regulation will not add a single new unit of housing. In fact, it has the opposite effect. Rent controls distort the housing market by deterring or discouraging the development of rental housing and investment in maintenance and rehabilitation.

A new study by Dr. Arthur C. Nelson, Professor Emeritus at the University of Arizona, provides a comprehensive review of peer reviewed academic articles which examine various rent control and other rent regulation laws across the United States and abroad. This review reaffirms that these programs reduce the supply of housing in communities resulting in, among other things, increased housing costs.

Dr. Nelson's work reinforces an earlier 2018 paper following similar methodology by Dr. Lisa Sturtevant. Since Dr. Sturtevant's literature review was conducted, additional research has been published that looks at the impacts of more recent rent regulation models that may not appear to be as restrictive as older rent control programs. Dr. Nelson finds that the results of these newer rent control efforts have harmful effects on renters and those seeking rental housing including:

- Disincentivizing investment in the rental community, resulting in fewer rental units;

- Inhibiting mobility, thus creating a barrier to entry for new renters seeking housing in rent-controlled communities;
- Distributing the limited benefits of rent regulation disproportionally to higher-income, older and white residents, respectively;
- Substantially reducing the value of rent-regulated properties as well as nearby unregulated rental properties, thereby reducing real estate tax revenue to the locality; and
- Failing to address, if not negatively impacting, eviction prevention, renter well-being, renter educational attainment opportunities and neighborhood quality.

With little to no ability to earn a profit, developers and investors will shift their investments to other non-rent regulated jurisdictions—the NMHC/National Association of Home Builders (NAHB) cost of regulations report[9] indicated 88% of respondents avoid working in jurisdictions with rent control. In practice, these policies have the effect of increasing the cost of all housing by forcing a growing community to compete for fewer housing units and reducing the quality of rental housing. This is why NMHC, NAA and other national real estate trade organizations recently sent the letter linked here[10] to FHFA Director Sandra Thompson urging FHFA to reject imposing rent regulation as a condition of Enterprise-backed financing.

NMHC and NAA encourages this Committee and policymakers at all levels of government to promote proven alternatives to rent control that address the critical affordable housing shortage, making rents more affordable to lower-income residents and encouraging development of new housing at a variety of rental levels.

Pursuing federal rent control or other policies that inhibit efficient business practices, and implementing additional layers of federal regulation on top of what is already an overly complicated set of regulations and landlord-tenant laws at the state and local levels will only disincentive investors further exacerbating the supply shortage, ultimately hurting our nation's renters.

Opportunity Abounds: Sustainable Solutions to Housing Affordability

The good news: There is a clear path to solving this challenge. Congress must prioritize increasing our nation's housing supply and support pro-housing policies that will in turn ensure greater housing stability and affordability for renters at a variety of income levels for decades to come.

NMHC and NAA are leaders of the **Housing Affordability Coalition**, a group of national real estate associations that represent a broad coalition of housing providers committed to working together with Congress and the Administration to address America's housing affordability crisis. In May 2023, the coalition sent a letter[11] urging Congress to work with the Biden Administration, housing providers, lenders, and other stakeholders to pursue bipartisan solutions to increase the supply of housing in all markets and at all price points.

[9] https://www.nmhc.org/research-insight/research-report/nmhc-nahb-cost-of-regulations-report/

[10] https://www.nmhc.org/globalassets/advocacy/comment-letters/2023/2023-08-10-rent-control-coalition-letter-to-fhfa.pdf

[11] https://www.nmhc.org/globalassets/advocacy/comment-letters/2023/2023-08-10-rent-control-coalition-letter-to-fhfa.pdf

While there is no one silver bullet, a multifaceted approach can be effective in easing market constraints. The letter outlines bipartisan recommendations that include a combination of tax policy, regulatory reform, rental assistance, and development incentives to chip away at current affordability constraints. Enacting these types of bi-partisan proposals would have a positive impact on the housing affordability crisis and help increase the nation's housing supply.

Outlined below are policy areas that are of particular importance as the Committee looks at the housing challenges facing our nation and explores steps that policymakers can take to improve affordability and drive new supply.

Deploy the Housing Supply Action Plan

NMHC and NAA urge Congress to work with the Biden Administration to implement provisions included in the Administration's Housing Supply Action Plan[12] that aim to address the myriad challenges to the development of new housing, such as:

- Reward jurisdictions that have reformed zoning and land-use policies with higher scores in certain federal grant processes, for the first time at scale;
- Deploy new financing mechanisms to build and preserve more housing where financing gaps currently exist;
- Expand and improve existing forms of federal financing, including for affordable multifamily development and preservation; and
- Work with the private sector to address supply chain challenges and improve building techniques.

Reduce Barriers to Development

Rental housing providers stand ready to help meet current and future demand but cannot do so alone. Federal, state, and local policymakers also must play a role. Regulatory, administrative, and political obstacles at all levels of government prevent us from delivering the housing our country so desperately needs.

Even in communities that want and desperately need rental housing development, we face hurdles like zoning restrictions, rent control and other onerous local requirements (e.g., building code provisions that have nothing to do with health or safety, land or infrastructure donation requirements and ill-fitting transportation and parking mandates). All of which account for an average of 40.6 percent of multifamily costs further impacting affordability – according to research released by NMHC and NAHB.[13]

Although smart regulations can play an important role in ensuring the health and well-being of the American public, the NMHC-NAHB research found that many regulations can go far beyond those important goals and impose costly mandates on developers that drive housing costs higher.

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[12] https://nlihc.org/resource/white-house-announces-new-action-plan-boost-housing-supply#:~:text=The%20%E2%80%9CHousing%20Supply%20Action%20Plan%E2%80%9D%20includes%20a%20series,sources%20to%20help%20lower%20costs%20and%20speed%20development.

[13] https://www.nmhc.org/research-insight/research-report/nmhc-nahb-cost-of-regulations-report/?utm_medium=email&utm_source=apartmentwire&utm_campaign=nmhc_news

Easing regulations could go a long way to addressing the housing affordability challenges faced by communities across the nation while making critical investments in infrastructure of all types. Looking forward, we urge the Committee to support the Pro Housing Grant Program and redouble its efforts to incentivize states and localities to remove or mitigate local barriers to development of rental housing. Examples include:

- Streamline and fast track the entitlement and approval process;
- Provide density bonuses and other incentives for developers to include workforce units in their properties;
- Enable “by-right” zoning and create more fully entitled parcels;
- Defer taxes and other fees for a set period of time;
- Lower construction costs by contributing underutilized buildings and embrace new technology driven construction advancements; and
- Encourage higher density development near jobs and transportation.

To this end, NMHC and NAA strongly support the Yes in My Backyard (YIMBY) Act (H.R. 3507/S. 1688). This legislation would help eliminate barriers to development by requiring Community Development Block Grant (CDBG) recipients to report periodically on the extent to which they are removing discriminatory land use policies and promoting inclusive and affordable housing. Exclusionary land use policies like zoning and density restrictions, onerous parking requirements and other development regulations exacerbate both the housing supply and affordability crisis. We urge this Committee to support the YIMBY Act.

Return Housing and Eviction Policy Back to the State and Local Level

The CARES Act established a temporary 120-day moratorium on evictions due to nonpayment of rent, applicable to federally backed and federally assisted housing. This section of the CARES Act also instituted what should have been a temporary notice procedure, requiring housing providers to notify covered residents 30 days before filing for eviction after the moratorium ended on July 24, 2020.

Throughout the pandemic, rental housing professionals worked to both help residents resolve their hardships and to advance policies to provide renters with essential resources to meet their housing needs. Now that Congress and the President have terminated the federal COVID-19 public health emergency, it is time to end the CARES Act 30-day notice-to-vacate requirement. We urge this Committee to support H.R. 802/S. 3755, the Respect State Housing Laws Act, returning eviction policies back to the state and local level.

Fully Fund and Reform Federal Housing Support & Affordability Programs

While increasing supply is critical to the goal of addressing the Nation’s housing affordability crisis, it is equally important to ensure that policymakers take the steps necessary to ensure assistance is available for those that simply cannot afford the housing they so desperately need. In that regard, our industry continues to advocate for funding for multiple critical programs that focus on housing affordability, such as the Section 8 Housing Choice Voucher Program (HCV), Project Based Rental Assistance (PBRA), Rental Assistance Demonstration (RAD), Homelessness Programs, HOME, Community Development Block Grants (CDGB) and Rural

Housing programs. However, we believe that many of these programs would benefit from reform efforts to ensure the programs are operating in a cost effective and efficient manner.

Improve the Section 8 Housing Choice Voucher (HCV) Program

Since developing new housing can take some time due to the number of barriers to development, by filling the gap between the cost to provide housing and what families can afford to pay, improving the Section 8 HCV program is a crucial step to increase housing affordability in the short-term.

NMHC and NAA strongly support the Section 8 HCV Program, which has long served as America's primary method for aiding 2.1 million low-income households with rental assistance. This public/private partnership helps millions of Americans find homes in communities near good schools, jobs, and transportation services, but reforms are needed to expand private industry participation.

NAA recently surveyed frontline rental housing providers about their experiences, challenges, and recommendations regarding the HCV program. The survey findings revealed five key reasons why housing providers are leaving the HCV program[14]:

1. The administrative burden and paperwork requirements were the most significant challenge that led to rental housing providers leaving the HCV program.
2. Burdensome inspection and approval processes ranging from inconsistent inspection processes to lengthy application processes.
3. Inefficient communication and a lack of timely responses from PHAs as major stumbling blocks in their interactions.
4. Systemic issues associated with the voucher program such as liability for damages and repairs in residences occupied by voucher recipients.
5. Increased administrative costs to accept vouchers increased financial strain caused by higher insurance costs attributable to accepting vouchers.

To address these concerns and bring private sector participants back to the Section 8 program, NMHC and NAA strongly support the bipartisan and bicameral Choice in Affordable Housing Act (H.R. 4606/S. 32), which would enact common-sense reforms that could help improve the program for both renters and property owners and increase housing provider participation overall. Key elements of this legislation include:

- Enabling PHAs to make one-time incentive payments to recruit housing providers into the program;
- Allowing PHAs to pay for security deposits for voucher holders;
- Awarding bonus payments to PHAs that hire "landlord liaisons" to contact, recruit, retain and generally support private housing providers;
- Permitting units in buildings that have been inspected in the last year under other federal housing programs to meet the HCV inspection approval;

[14] https://www.naahq.org/unveiling-reality-rental-housing-providers-insights-housing-choice-voucher-program

- Expediting the inspection progress by creating a 60-day "pre-inspection" approval for housing providers who anticipate participating in the HCV Program;

We strongly encourage the Committee and HUD to support the Choice in Affordable Housing Act.

Residents could also benefit from increased subsidies. Just as the Section 8 Housing Choice Vouchers help the neediest households cover the cost of rent to maintain their homes, security deposit subsidies can help the neediest household obtain rental housing in the first place.

Enact and Enhance Tax Policy That Promotes Housing Supply

While it will take a variety of tax and non-tax approaches to increase supply, the rental housing industry believes 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 Workforce Housing Tax Credit Act 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; and
- Promote the rehabilitation of multifamily housing located near transit.

Each of these proposals is briefly described below, and we note that many have bipartisan or bicameral support.

Expand and Enhance the Low-Income Housing Tax Credit

The Low-Income Housing Tax Credit (LIHTC) is a public/private partnership that leverages federal dollars with private investment to produce affordable rental housing and stimulate new economic development in many communities. Between its inception in 1986 and 2022, the LIHTC program has, according to the A Call To Invest in Our Neighborhoods (ACTION) Campaign, developed or preserved 3.85 million apartments, served 8.97 million low-income households, supported 6.33 million jobs for one year, generated $257.1 billion in tax revenue, and produced $716.3 billion in wages and income.[15] The LIHTC program provides critical support to the nation's affordable housing production but could be made even more impactful.

NMHC and NAA support the *Affordable Housing Credit Improvement Act of 2023* (*AHCIA*) (S. 1557 / H.R. 3238). Introduced by Senators Cantwell, Young, Wyden, and Blackburn, this bipartisan bill, which is supported by a total of 30 Senators and 218 Members of the House, would, among other provisions, make permanent the now-expired 12.5 percent increase in LIHTC authority for 2018-2021 to enable the production of new units and further augment credit authority by 50 percent. Additionally, the bill would lower the private activity bond financing threshold to 25 percent from 50 percent required to receive the full amount of 4 percent LIHTC.

[15] https://rentalhousingaction.org/wp-content/uploads/2023/11/ACTION-NATIONAL-NOV-2023.pdf

We also strongly support LIHTC provisions in the *Tax Relief for American Families and* Workers *Act of 2024* (H.R. 7024), which the House recently approved by a bipartisan 357-70 vote. Provisions included in H.R. 7024 would augment credit authority by 12.5 percent between 2023 and 2025, as well as reduce the private activity bond financing threshold to 30 percent from 50 percent in 2024 and 2025. These provisions would create over 200,000 new multifamily units and represent a critical step toward addressing this nation's affordable housing supply crisis.[16]

Enacting the primary unit financing provisions in the *Affordable Housing Credit Improvement Act* could finance up to an additional 1.94 million affordable units over 10 years. Over that period, this enhanced financing could also support nearly three million jobs, $333 billion in wages and business income, and $115 billion in additional tax revenue.[17]

Finally, we would encourage Congress to consider increasing the private activity bond volume cap to enhance the utilization of 4 percent LIHTC. According to March 2023 data by Tiber Hudson and Novogradac, 18 states and Washington, DC, are oversubscribed. Authorizing these states to issue additional private activity bonds would enable the financing of additional 4 percent LIHTC projects.[18]

Enact the Bipartisan Workforce Housing Tax Credit Act

Housing affordability is an issue threatening the financial wellbeing of both middle-income and low-income households across the nation. According to the U.S. Census Bureau's Survey of Market Absorption, the median asking rent for apartment units completed in the third quarter of 2023 was $1,833, a 12.23 percent increase from the same period in 2018.[19] For a renter to afford one of those units at the 30 percent of income standard, they would need to earn at least $73,320 annually.

Furthermore, Harvard University's Joint Center for Housing for Housing Studies reported in January 2024 that "Renter households with annual incomes of $45,000 to $74,000 have seen the fastest growth in their burden rates, both over the longer term and during the pandemic. Indeed, 41 percent of renter households in this income category were burdened in 2022, a 5.4 percentage point increase since the start of the pandemic, nearly doubling their 2001 rate."[20]

Accordingly, this is an issue impacting those workers who comprise the very fabric of strong communities nationwide, including teachers, firefighters, nurses, and police officers whose wages are not keeping pace with costs. 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 enact the bipartisan *Workforce Housing Tax Credit Act*, sponsored in the Senate by Finance Committee Chair Ron Wyden and Dan Sullivan (R-Alaska), along with Reps. Jimmy Panetta and Mike Carey in the House. This legislation establishes a new tax credit to

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[16] https://www.novoco.com/periodicals/news/low-income-housing-tax-credits-news-briefs-march-2024
[17] https://www.novoco.com/notes-from-novogradac/lihtc-pab-provisions-newly-reintroduced-ahcia-could-result-nearly-2-million-additional-affordable
[18] Tiber Hudson and Novogradac, *Volume Cap Scarcity*, March 2, 2023.
[19] U.S. Census Bureau, Survey of Market Absorption.
[20] Harvard Joint Center for Housing Studies, *State of the Nation's Housing 2024*.

produce affordable rental housing for households earning 100 percent or less of the area median income (AMI).

Designed to complement the successful LIHTC program, the WFHTC program would enable state housing agencies to issue credit allocations to developers that would subsequently be sold to investors. Investors would receive a dollar-for-dollar reduction in their federal tax liability over a 15-year period, and developers would invest the equity raised to build apartments. The equity raised would cover 50 percent of the cost of constructing qualifying units. A development project eligible for WFHTC would have to set aside 60 percent of units for households earning 100 percent or less of AMI and must be kept affordable for up to 30 years.

Enhancing Opportunity Zones to Incentivize Rehabilitation of Housing Units

Under the leadership of Senators Tim Scott and Cory Booker and 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 program, Governors have designated over 8,700 qualified low-income census tracts nationwide as Opportunity Zones. Opportunity Zone designations remain in effect through 2028. Real estate developers and others may establish Opportunity Funds to construct and rehabilitate multifamily property that are eligible for two tax incentives:

First, taxpayers may defer taxes capital gains that are reinvested in Opportunity Funds to the earlier of the date an investment in an Opportunity Fund is disposed of or December 31, 2026. Notably, gains deferred for five years are eligible for a 10 percent basis step up, while gains deferred for seven years are eligible for an additional five percent basis step up.

Second, post-acquisition capital gains on investments held in Opportunity Funds for at least 10 years may be permanently excluded from income.

While taxpayers may continue to invest capital gains in Opportunity Funds through June 28, 2027, it is already too late to meet requirements for a step up in basis attributable to newly deferred capital gains. In addition, the economy has changed since Opportunity Zones were originally designated.

Opportunity Zones can be a helpful tool to incentivize housing production and, thereby, assisting to address the nation’s housing affordability crisis. However, to fully maximize the potential of Opportunity Zones, Congress should:

- Enable States to recertify and/or redesignate Opportunity Zones to account for current economic realities and changes since Zones were originally designated; and
- Establish new investment deadlines so that taxpayers are incentivized to receive both a longer deferral period and the potential for a 10 percent or 15 percent basis increase with respect to reinvested capital gains.

While Opportunity Zones are beneficial for new multifamily development, taxpayers may find it difficult use Opportunity Zone benefits to rehabilitate existing properties. To qualify for Opportunity Zone benefits for renovations, the basis of an existing asset must be doubled excluding land. Although property that is added to and improves an asset can count toward this threshold, doubling the basis can still be a high hurdle. Accordingly, Congress should reduce the basis increase necessary to qualify a multifamily rehabilitation project for Opportunity Zone purposes.

Encouraging the Adaptive Reuse of Underutilized Commercial Properties into Multifamily Housing

Given the nation's shortage of affordable rental housing, many are considering turning unused and underutilized commercial real estate structures, including offices, hotels, and retail spaces into housing. Not only would such repurposing help address the nation's housing supply challenge, but it would also create jobs and boost local property tax revenues.

A segment of commercial real estate space could potentially be available to be converted into housing. A February 2023[21] Urban Land Institute study commissioned by the NMHC Research Foundation provided case study examples of successful conversions, and several large jurisdictions, including Washington, DC, and New York City, have recently embarked on plans to incentivize office-to-residential conversions.[22]

Changing consumer preferences and online shopping are also changing the real estate landscape. Estimates show between several hundred million and 1 billion square feet of surplus and obsolete retail space. Slower post-pandemic business travel is also challenging a portion of the nation's hotel stock.[23]

Unfortunately, converting commercial real estate into housing can be extremely challenging and can be more complicated than typical ground-up development. Costs associated with property acquisition and conversion, including addressing structural building issues (e.g., beams, columns, ceiling heights, utilities, and floor layouts), can quickly add up and make the difference between a viable or unfeasible project. This is in addition to other barriers that may arise, including permitting, zoning rules, and NIMBYISM.

A Federal tax incentive to encourage property conversions would be greatly beneficial in helping to overcome these obstacles and spurring additional housing supply. In addition, it would help revitalize distressed commercial property and stabilize the surrounding communities. Notably, Senator Stabenow, joined by Senator Brown as a cosponsor, last Congress 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. This Congress, Representative Gomez has introduced this legislation (H.R. 419) 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, among other things, enable other types of commercial properties

[21] Kramer, Anita. *Behind the Facade: The Feasibility of Converting Commercial Real Estate to Multifamily*. Washington, D.C.: Urban Land Institute, 2023. https://www.nmhc.org/research-insight/research-report/behind-the-facade-the-feasibility-of-converting-commercial-real-estate-to-multifamily/
[22] Ibid and https://dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N135303 and https://www.nyc.gov/site/officeconversions/index.page
[23] Kramer, Anita. *Behind the Facade: The Feasibility of Converting Commercial Real Estate to Multifamily*. Washington, D.C.: Urban Land Institute, 2023. https://www.nmhc.org/research-insight/research-report/behind-the-facade-the-feasibility-of-converting-commercial-real-estate-to-multifamily/

(e.g., shopping centers and hotels) to qualify for the tax incentive; ensure REITs could utilize the benefit; and clarify that the credit does not reduce other tax benefits including the LIHTC.

Additionally, 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 S. 1688, *Yes In My Backyard Act (YIMBY Act)*. NMHC and NAA strongly support this legislation which requires recipients of Community Development Block Grants to provide information on how they are reducing local barriers to housing development.

Promoting 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 last Congress by Representative Blumenauer and cosponsored by Representatives Kelly, Kildee, and 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.

Conclusion

This is the bottom line: there is no silver bullet, but we think a multi-faceted approach to improving housing affordability and increasing housing supply is our best bet. The health and stability of the rental housing sector is paramount to that of our overall economy. And, importantly, the sufficient supply of quality housing is necessary in ensuring the continued economic prosperity and household stability for Americans nationwide and providing household stability. Without it, we put both at risk. Solving this challenge should be mission critical. It certainly is for our industry.

On behalf of the multifamily industry and the nearly 40 million Americans we serve, we applaud the Senate Committee on Banking, Housing, and Urban Affairs for its commitment to finding solutions to the nation's most significant housing challenges.

Sincerely,

Sharon Wilson Geno
President
National Multifamily Housing Council

Robert Pinnegar
President & CEO
National Apartment Association