NATIONAL MULTIFAMILY HOUSING COUNCIL
NATIONAL APARTMENT ASSOCIATION

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)

NMHC/NAA Viewpoint

Congress should repeal FIRPTA to promote foreign investment in the U.S. multifamily industry, helping to meet the growing demand for rental housing.

In 1980, Congress passed the Foreign Investment in Real Property Tax Act (FIRPTA) to tax foreigners' gains on the income they earn from, and then the sale of, U.S. real estate and other real property. FIRPTA imposes significant costs on foreign investors in U.S. real estate, thereby serving as a significant barrier to such investment.

As part of tax legislation enacted in late 2015, Congress reduced FIRPTA's negative impact on U.S. real estate investment by increasing from five percent to ten percent the ownership stake that a foreign investor may take in a U.S. publicly traded REIT without triggering FIRPTA. Congress also removed a tax penalty FIRPTA imposed on foreign pension funds investing in U.S. real estate. While these provisions represent real progress, repealing FIRPTA could unlock billions in foreign capital that could help to refinance real estate loans and drive new investment while creating tens of thousands of new jobs.

By treating foreign real estate investments differently than other U.S. investments foreigners can make, they discourage such investments. For example, foreign investors do not have to pay capital gains taxes when they sell stocks and bonds in non-real estate U.S. companies.

According to a Rosen Consulting Group study, FIRPTA repeal would lead to an increase of between $65 billion and $125 billion in international investment in U.S. commercial real estate and infrastructure as well as create between 147,000 to 284,000 new jobs.

Not only does FIRPTA levy a tax not required of non-real estate investments, it also creates costly administrative burdens. Under FIRPTA, among other things, a buyer who purchases a property from a foreign seller must withhold 15 percent of the sales price in escrow to ensure taxes are collected. This is particularly costly if the foreign seller is selling the property at a loss or if the tax liability will be less than the 15 percent withholding. Foreign sellers are also then required to file tax returns with the IRS.

In addition, because the tax is only triggered by the sale of a U.S. property, FIRPTA may encourage foreign investors to hold onto real estate based only on tax considerations.

Foreign investors can avoid U.S. taxes and reduce their worldwide tax burden simply by investing in U.S. equities instead or in real estate outside the U.S. The discriminatory and punitive tax regime created by FIRPTA precludes U.S. real estate companies from tapping into an important source of capital for developing, upgrading and refinancing properties. Ultimately, it does so to the detriment of job creation and the overall economy.