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Statement on Behalf of the National Multifamily Housing Council and National Apartment Association

House Committee on Ways and Means Tax Subcommittee *Tax Policies to Expand Economic Growth and Increase Prosperity for American Families*

The National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) respectfully submit this statement for the record for the House Committee on Ways and Means Tax Subcommittee's hearing, *Tax Policies to Expand Economic Growth and Increase Prosperity for American Families*.

For more than 26 years, NMHC and NAA have partnered 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 and local affiliates, NAA encompasses over 95,000 members representing more than 11.6 million apartment homes globally. One-third of all Americans rent their housing and 40.0 million of them live in an apartment home.

We appreciate the House Committee on Ways and Means Tax Subcommittee's focus on economic growth and American families. Given the key role housing and, in particular, rental housing plays in the economy by providing shelter to our nation's workforce, we write to offer our perspective on tax policies necessary 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 40.0 million Americans who live in apartment homes and continue to make significant contributions to the growth of our economy, which currently stands at \$3.4 trillion annually.^{1 2}

State of the Rental Housing Market

Supply/Demand Imbalance will Persist in the Long-term

The housing market has improved recently for renters with the largest surge in new completions in over 30 years, resulting in an influx of 405,367 units.³ The surge in supply has led to increased vacancies, which in turn triggered rapidly cooling rent growth. Annual rent growth has been steadily declining since the first quarter of 2022.⁴ The benefits to renters in terms of having access to a wider range of options are seen for the most part in those local areas with a 5 percent or greater increase in supply. However, in areas with lower supply, rents for Class B and C apartments are still increasing because there is a lower vacancy rate, giving renters fewer options.

¹ 2022 American Community Survey, 1-Year Estimates, U.S. Census Bureau, "Total Population in Occupied Housing Units by Tenure by Units in Structure".

² 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

³ <https://www.naaHQ.org/apartment-market-pulse-fall-2023>

⁴ Based on data from RealPage.

While the rental housing market is more favorable for renters in the short term in some markets, given the tumult of the pandemic, it is still on an overarching path toward unsustainability. There simply are not enough rental units to meet the growing consumer demand.

According to research conducted by Hoyt Advisory Services and Eigen10 Advisors, LLC, and commissioned by NMHC and NAA, residents across the United States are counting on the construction of 4.3 million new apartment homes by 2035.⁵ Other key findings from the study 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 percent increase in the homeownership rate.
- **Immigration.** Immigration is a significant driver of apartment demand, and levels tapered before the pandemic and have remained low. A reversal of this trend would significantly increase apartment demand.

Development Activity is Slowing

NAA and NMHC 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 trend will have long-term negative impacts on the supply of rental housing if it continues. NMHC's October 2023 *Quarterly Survey of Apartment Market Conditions* also indicates the following troubling statistics, all of which worsened from the July 2023 Quarterly Survey:⁶

- Over half of respondents (57 percent) reported lower sales volume from three months prior.
- 64 percent of respondents reported equity financing to be less available than three months ago, marking the seventh straight quarter of less availability; and
- 83 percent said it was a worse time for mortgage borrowing compared to three months earlier, the ninth consecutive quarter in which debt financing became less available.

Tax Policy Solutions to Spur Housing Supply

It is imperative we keep building new housing despite recent increases in completions if we want to avoid large rent increases in the future and have sufficient housing that meets the need of our growing population in the years to come. The apartment industry stands ready to help meet the rising need for attainably priced rental housing, but we cannot do it alone. It requires a strong partnership between the private and public sectors. First and foremost, we must seek solutions – tax and non-tax – that support increased supply—at all price points. Without investment in our

⁵ <https://www.weareapartments.org/pdf/NMHC-NAA-US-Apartment-Demand-through-2035.pdf>

⁶ <https://www.nmhc.org/research-insight/quarterly-survey/2023/nmhc-quarterly-survey-of-apartment-conditions-october-2023/>

nation's housing, we will continue to face housing instability and affordability challenges now and in the future. In addition to increased supply, we must also deliver short-term solutions to renter populations that need support. Increased subsidies and emergency housing support for those of modest means are critical to keeping struggling renters and their families afloat.

We believe that tax policy has a critical role to play in furthering our shared affordability goals. In this regard,

In the near-term, we strongly urge Congress to enact legislation that would:

- Expand and enhance the Low-Income Housing Tax Credit;
- Enact the Middle-Income Housing Tax Credit to support workforce housing;
- Encourage the adaptive reuse of underutilized commercial properties into multifamily housing;
- Renew a provision easing limitation on interest deductibility; and
- Extend 100 percent bonus depreciation.

Each of these proposals is briefly described in the pages that follow.

We also note that critical provisions, which benefit the pass-through entities and REITs that dominate the multifamily industry and were enacted as part of the *Tax Cuts and Jobs Act*, are set to expire at the end of 2025. These provisions include reduced marginal income tax rates and the 20 percent tax deduction for qualifying pass-through income. At the same time, the estate tax exemption will be reduced by 50 percent. NMHC and NAA strongly urge Congress to make these expiring provisions permanent so that capital available to spur housing production is not lost and that taxpayers have certainty with respect to the nation's tax laws. We are concerned that significant looming tax increases could leave funds vital for investment on the sidelines.

Proposals NMHC and NAA Support in a Near-Term Tax Bill

Expanding and Enhancing 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.⁷ The LIHTC program provides critical support to the nation's affordable housing production but could be made even more effective.

NMHC and NAA strongly support the *Affordable Housing Credit Improvement Act of 2023 (AHCIA)* (H.R. 3238 / S. 1557). Introduced by Representatives LaHood, DelBene, Wenstrup, Beyer, Tenney, and Panetta (and cosponsored by current Ways and Means Committee Members Blumenauer, Buchanan, Carey, Chu, Davis, Estes, Evans, Feenstra, Ferguson, Fitzpatrick, Higgins, Kelly, Kildee, Kustoff, Larson, Malliotakis, Miller, Blake Moore, Gwen Moore, Murphy, Pascrell, Sanchez, Schneider, Schweikert, Sewell, Smucker, Steel, and Van Duyne), this bipartisan

⁷ <https://rentalhousingaction.org/wp-content/uploads/2023/11/ACTION-NATIONAL-NOV-2023.pdf>

bill 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 Low-Income Housing Tax Credits.

In May 2023, it was estimated that over the 2023-2032 period, 1.94 million additional affordable homes, housing 4.5 million low-income people, could be financed across the United States and territories by AHICA's major provisions expanding and enhancing LIHTC authority and reducing the private activity bond financing threshold to 25 percent.⁸ Over that period, this enhanced financing could also create nearly 3 million jobs, \$333 billion in wages and business income, and \$115 billion in tax revenue.⁹

Finally, we would encourage the Ways and Means Committee to consider increasing the private activity bond volume cap to enhance the utilization of 4-percent Low-Income Housing Tax Credits. 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.¹⁰

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

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 second quarter of 2023 was \$1,763, a 9.4 percent increase from the same period in 2018.¹¹

For a renter to afford one of those units at the 30-percent-of-income standard, they would need to earn at least \$70,520 annually. Moreover, the share of apartment households making between \$30,000 and \$74,999 with at least moderate housing cost burdens rose from 47 percent in 2017 to 60 percent in 2022, while the share with severe burdens rose from 10 percent to 17 percent.¹²

Furthermore, based on 2021 American Community Survey data, we estimate that more than a quarter (26 percent) of middle-income renter households (81-100 percent of HUD Area Median Income) were cost burdened in 2021. This amounts to more than 1.2 million households.¹³

Accordingly, this is an issue affecting 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 Middle-Income Housing Tax Credit (MIHTC) that Senate Finance Committee Chair Wyden has introduced as part of the *Decent, Affordable, Safe Housing for All Act (DASH Act)* (S. 680) to address the shortage of workforce housing available to American

⁸ <https://www.novoco.com/notes-from-novogradac/lihtc-pab-provisions-newly-reintroduced-ahcia-could-result-nearly-2-million-additional-affordable>

⁹ <https://rentalhousingaction.org/wp-content/uploads/2023/05/AHCIA-One-Page-Bill-Summary-May-11-2023.pdf>

¹⁰ Tiber Hudson and Novogradac, *Volume Cap Scarcity*, March 2, 2023.

¹¹ U.S. Census Bureau, Survey of Market Absorption.

¹² NMHC tabulations of American Community Survey microdata.

¹³ IPUMS USA, University of Minnesota, ipums.org; 2021 HUD Median Family Incomes for FMR areas, metro areas and states.

households. Estimates indicate the proposal could finance 344,000 affordable rental homes over 10 years while also creating 560,400 jobs and generating over \$63.4 billion in wages and business income.¹⁴

Designed to complement the successful LIHTC program, the MIHTC 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 MIHTC would have to set aside 60 percent of units for households earning 100 percent or less of Area Median Income and must be kept affordable for up to 30 years.

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. According to a February 2023 study by the Urban Land Institute's Center for Real Estate and Economics and Capital Markets and sponsored by the NMHC Research Foundation and the Urban Land Institute's Terwilliger Center for Housing, *Behind the Façade: The Feasibility of Converting Commercial Real Estate to Multifamily*, "JLL Research found that between the onset of the pandemic and the second quarter of 2022, buildings delivered in 2015 or later had 86.8 million square feet of net absorption, while pre-2015 buildings had net negative absorption of 246.5 million square feet. Almost 80 percent of the negative net absorption was in buildings delivered in 1980 and earlier."¹⁵

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.

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, Representative Gomez, joined by Ways and Means Committee members Kildee and Larson, has

¹⁴ <https://www.novoco.com/notes-from-novogradac/dash-acts-middle-income-housing-tax-credit-would-finance-344000-affordable-rental-homes-households>

¹⁵ Kramer, Anita. *Behind the Façade: The Feasibility of Converting Commercial Real Estate to Multifamily*. Washington, D.C.: Urban Land Institute, 2023, pg. 5. https://www.nmhc.org/globalassets/research--insight/research-reports/conversion/behind-the-facade_conversion-report.pdf

introduced the *Revitalizing Downtowns Act* (H.R. 419) that would provide a 20 percent tax credit to convert office buildings into other uses, including residential use.

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 (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 Low-Income Housing Tax Credit.

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 *Yes In My Backyard Act (YIMBY Act)* (H.R. 3507 / S. 1688) introduced by Representatives Kilmer and Flood and Senators Young and Schatz and strongly supported by NMHC and NAA.

Interest Deductibility and Bonus Depreciation

As Congress looks to potential near-term tax legislation, interest deductibility and bonus depreciation are two provisions that NMHC and NAA strongly support to be included to benefit the multifamily industry. The House Ways and Means Committee in June 2023 approved the *Build It in America Act* (H.R. 3938) that would enable multifamily firms to deduct additional business interest before having to submit to longer depreciation periods on their buildings and extend 100 percent bonus depreciation.

- ***Deductibility of Business Interest:*** Under current law, taxpayers may deduct business interest subject to a limitation of 30 percent of earnings before interest and taxes (EBIT). Prior to 2022, the limitation was 30 percent of interest, taxes, depreciation, and amortization (EBITDA). Multifamily firms are able to elect out interest deductibility limits (and fully deduct business interest) so long as they depreciate buildings over 30 years as opposed to 27.5 years. The *Build It in America Act* would extend the 30 percent of EBITDA limitation through 2025 without affecting the option for real estate businesses to opt out of the limitation in exchange for the somewhat longer depreciation period.
- ***Bonus Depreciation:*** The *Build It in America Act* would extend 100 percent bonus depreciation through 2025 to enable taxpayers to deduct the full cost of certain capital investments with a class life of 20 years or less (e.g., equipment and machinery) included in multifamily buildings. Under current law, 80, 60, and 40 percent bonus depreciation are available in 2023, 2024, and 2025, respectively. The proposal retains 20 percent bonus depreciation for 2026.

Extending the EBITDA standard for interest deductibility would allow multifamily firms to deduct additional business interest before having to decide whether to elect out of limits on interest deductibility and accept longer depreciation periods on multifamily property. With interest rates far higher than in recent years, multifamily firms are paying more in interest. Forcing a tradeoff between fully deducting business interest and longer depreciation periods of multifamily buildings does not benefit development at a time when we need every new housing unit possible.

Bonus depreciation enables multifamily firms to immediately expense qualifying property placed into buildings. This helps to spur investment in properties and can benefit both new properties and the rehabilitation of existing properties. These investments ensure residents have the best possible place to call home.

Addressing Expiring Provisions in the Tax Cuts and Jobs Act

Tax Rates and 20 Percent Deduction for Qualifying Pass-Through Income

In 2017, as part of the *Tax Cuts and Jobs Act (TCJA)*, Congress reduced taxes on pass-through entities and REITs through 2025 by:

- Reducing marginal tax rates, including the top tax rate to 37 percent from 39.6 percent; and
- Providing a 20 percent tax deduction for qualifying pass-through income and REIT dividends, effectively reducing the top tax rate on qualifying business income to 29.6 percent.

The multifamily industry is dominated by “pass-through” entities (e.g., sole proprietorships, LLCs, partnerships and S corporations) instead of publicly held corporations (e.g., C corporations). Indeed, approximately three-quarters of apartment units are owned by pass-through entities. This means that a company’s taxable income is passed through to the equity owners, who pay taxes on their share of the income on their individual tax returns. Additionally, a significant number of industry participants are organized as REITs that generally pay no tax at the entity level and pass-through dividends to shareholders.

Congress should continue to promote the use of flow-through entities and investment in multifamily housing by making permanent the tax rate reductions and the 20 percent qualified pass-through income deduction enacted as part of the *TCJA*. This will provide the industry certainty with respect to tax policy and promote critically needed investment in housing while helping to ensure capital is not left on the sidelines.

Failure to extend today’s tax laws would result in a substantial tax increase and further exacerbate the nation’s housing challenges. Instead of facing a top rate of 29.6 percent on qualifying business income, such entities will be confronted by a 39.6 percent rate, a 33.8 percent increase. In contrast, the corporate tax rate will remain at 21 percent. The multifamily industry is extraordinarily capital intensive, and a sizable tax increase would undoubtedly act to remove funds available for investment.

Estate Tax

The apartment industry supports making permanent estate tax legislation agreed to in December 2017 as part of the *TCJA*. In *TCJA*, Congress, doubled the estate tax exclusion through 2025 while retaining a top tax rate of 40 percent and stepped-up basis rules. As many apartment executives prepare to leave a legacy to their heirs, today’s estate tax rules provide clarity and consistency in the tax code but only through 2025. The apartment industry supports making the estate tax rules enacted in 2017 permanent. We also strongly oppose any proposals that would repeal step-up in basis for inherited property.

The current-law step-up in basis rule is particularly important for the apartment industry because many industry executives' estates include significant amounts of depreciable real property. Without stepped-up basis, heirs could inherit an apartment property purchased long ago that today has relatively little basis and sizeable debt. If they sell it, they will face significant depreciation recapture taxes and capital gains taxes. This discourages heirs from investing further capital to maintain it and removes valuable affordable housing from the inventory.

Conclusion

On behalf of the multifamily industry and the millions of family, single, senior, student, veteran, and disabled households we serve, we applaud the Committee's efforts to explore solutions to the nation's most significant housing challenges. The increased supply of multifamily rental housing at all price points in all markets will play a vital role in promoting economic growth, encouraging household stability for all American households, and we look forward to working together as legislation to further these efforts is considered.