National Multifamily Housing Council and National Apartment Association
Statement for the Record
Senate Committee on Finance
Tax Tools for Local Economic Development
July 30, 2024

On behalf of the nearly 100,000 combined housing providers and related businesses that are members of the National Multifamily Housing Council (NMHC)[1] and the National Apartment Association (NAA)[2], we write to submit a statement for the record for the Senate Committee on Finance's July 30, 2024, hearing, *Tax Tools for Local Economic Development*.

As the Senate Committee on Finance conducts this hearing, we appreciate the opportunity to offer the apartment providers' perspective on tax policies that would be beneficial in promoting workable and sustainable policies to address our nation's housing challenges. 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; and
- Encourage the adaptive reuse of underutilized commercial properties into multifamily housing.

Our goal is to ensure that apartment providers can meet the 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] The multifamily industry is committed to working together with Congress and the Administration to address America's housing supply crisis.

The Housing Imperative

Challenges 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

[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 96,000 members representing more than 12 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] 2022 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

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, high construction costs, and regulatory burdens all make it difficult, if not impossible, for developers to help remedy this problem. 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 and is growing, while others have been priced out of communities altogether.[5] 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.

In addition to the increased construction, material, and labor costs that make development financially difficult, significant increases in insurance costs, and state and local property taxes, payroll costs, and other line items 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. This slowdown has long-term implications.

As of July 2024, NMHC's Quarterly Survey of Apartment Market Conditions also recorded eight consecutive quarters of loosening market conditions (decreasing rent growth and increasing vacancy) and ten consecutive quarters in which equity financing became less available.[6] Furthermore, respondents reported decreasing sales volume for seven of the past nine quarters and worsening conditions for debt financing for ten of the past twelve quarters. Finally, according to the Census Bureau, multifamily starts were down 35 percent year-over-year in the second quarter of 2024.[7]

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. While we are at historic levels of apartment completions, they are a short-term fix for a long-term problem unless sustained over a longer period. 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:

[5] NMHC tabulations of 1985 American Housing Survey microdata, U.S. Census Bureau; 2021 American Housing Survey, U.S. Census Bureau.
[6] https://www.nmhc.org/research-insight/quarterly-survey/
[7] https://www.census.gov/construction/nrc/index.html

- **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. Levels tapered before the pandemic and have remained low, but a reversal of this trend would significantly increase apartment demand.

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 broad coalition of professionals and policy experts from various parts of the real estate community of committed to working together with Congress and the Administration to address America's housing affordability crisis. In April 2024, the coalition sent a letter[8] 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.

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 bipartisan proposals would have a positive impact on the housing affordability crisis and help increase the nation's housing supply.

Outlined below are key tax policy proposals 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.

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; and

[8] https://www.nmhc.org/globalassets/advocacy/comment-letters/2024/2024-04-29-housing-affordability-coalition-congressional-letter.pdf

- Encourage the adaptive reuse of underutilized commercial properties into multifamily housing.

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.[9] 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 and Representatives LaHood, DelBene, Wenstrup, Beyer, Tenney, and Panetta, this bipartisan bill, which is supported by a total of 34 Senators and 230 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.

We also strongly support LIHTC provisions in the *Tax Relief for American Families and* Workers *Act of 2024* (H.R. 7024), which the House on January 31 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.[10]

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.[11]

Finally, we encourage Congress to consider increasing the private activity bond volume cap to enhance the utilization of 4-percent LIHTC. According to February 2024 data by Tiber Hudson and Novogradac, 20 states and Washington, DC, are oversubscribed for the credit.[12] Authorizing these states to issue additional private activity bonds would enable the financing of additional 4-percent LIHTC projects.[13]

[9] https://rentalhousingaction.org/wp-content/uploads/2023/11/ACTION-NATIONAL-NOV-2023.pdf
[10] https://www.novoco.com/periodicals/news/low-income-housing-tax-credits-news-briefs-march-2024
[11] https://www.novoco.com/notes-from-novogradac/lihtc-pab-provisions-newly-reintroduced-ahcia-could-result-nearly-2-million-additional-affordable
[12] https://www.novoco.com/periodicals/articles/surge-in-pab-financed-affordable-housing-signals-need-to-expand-its-use.

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.[14] 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." [15]

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 and bicameral *Workforce Housing Tax Credit Act* (S. 3436 / H.R. 6686, sponsored by Chair Wyden and Senator Sullivan and Representatives Panetta and Carey. This legislation establishes a new tax credit to 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 Workforce Housing Tax Credit (WFHTC) 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

Enacted as part of the *Tax Cuts and Jobs Act*, Opportunity Zones are designed to provide tax incentives for investments in distressed communities. Opportunity Zones have held great promise for the development of multifamily housing. In fact, Novogradac in April 2024 reported that residential investment continued to be the leading investment area for Opportunity Funds. Funds tracked by Novogradac have helped finance over 175,000 homes in more than 200 cities across the United States.[16][17]

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[14] U.S. Census Bureau, Survey of Market Absorption.

[15] Harvard Joint Center for Housing Studies, *State of the Nation's Housing 2024, pg. 35, https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2024.pdf*.

[16] https://www.novoco.com/notes-from-novogradac/qof-investments-build-homes-across-hundreds-of-american-cities.

Under the program, state governors have designated over 8,700 qualified low-income census tracts nationwide as Opportunity Zones, which 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 5-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 shortly after the enactment of *TCJA*.

Opportunity Zones can be a helpful tool to incentivize housing production and, thereby, assist in addressing the nation's housing affordability crisis. However, to maximize the full 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 the 10-percent or 15-percent basis increase with respect to reinvested capital gains.

While Opportunity Zones are beneficial for new multifamily development, developers may find it difficult to 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 the value of any 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 developers are considering turning unused and underutilized commercial real estate, 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 and economic growth.

A segment of commercial real estate space could potentially be available to be converted into affordable housing. A [February 2023][18] 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.[19]

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.[20]

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, Senators Stabenow, Brown, Peters, and Padilla and Representatives Carey and Gomez on July 11 introduced the *Revitalizing Downtowns and Main Streets Act* (S. 4693 / H.R. 9002) that would establish a temporary and allocated 20-percent tax credit to convert commercial property into residential use. NMHC and NAA strongly support this legislation.

Conclusion

This is the bottom line: there is no silver bullet, but 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. Without it, we put both at risk. Solving this challenge should be mission critical for Congress.

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[18] 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/

[19] Ibid and https://dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N135303 and https://www.nyc.gov/site/officeconversions/index.page

[20] 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/