



October 24, 2023

Chairwoman Amy Klobuchar  
Senate Judiciary Subcommittee on  
Competition Policy, Antitrust, and  
Consumer Rights  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Ranking Member Mike Lee  
Senate Judiciary Subcommittee on  
Competition Policy, Antitrust, and  
Consumer Rights  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairwoman Klobuchar and Ranking Member Lee,

On behalf of the nearly 100,000 combined members of the National Multifamily Housing Council (NMHC)<sup>1</sup> and the National Apartment Association (NAA),<sup>2</sup> we are writing regarding the hearing titled, “Examining Competition and Consumer Rights in Housing Markets” to share the insights of the multifamily housing industry. NMHC and NAA are committed to working together with policymakers and the Administration to support consumers by addressing ongoing challenges in the housing market, in particular the housing affordability crisis in the United States.

NMHC and NAA members are focused on creating positive outcomes for renters and have demonstrated their commitment to working with a variety of communities to make housing options better. The relationship between a housing provider and a resident is already largely and appropriately regulated at the state and local levels, which consider the unique needs of local communities and their housing markets.

Residents are the customers of the rental housing industry; thus, the professionally managed apartment industry is, by definition, resident centered. The relationships between housing providers and residents, the community and the broader housing market are governed by layers of statutes, case law, regulations, and private contractual agreements, all of which provide specific protections and responsibilities. This includes renter protections in the application process, in building codes, contracts, landlord and tenant, fair housing, eviction, consumer reporting and debt collection laws, as well as enforcement provisions. Lease agreements outline the rights and responsibilities between residents and housing providers and are enforced by state and local courts.

### **Housing Affordability and the Market Dynamics of Supply and Demand**

While these protocols are well established, 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

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<sup>1</sup> 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 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.

<sup>2</sup> 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 92,000 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.

the United States are counting on the construction of 4.3 million new apartment homes by 2035. 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.

For more information on this research, please visit [www.weareapartments.com](http://www.weareapartments.com)

It is important to note that 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 trend will have long-term negative impacts on the supply of affordable 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:

- 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.

### ***Additional Federal Housing Regulations Increase the Cost of Housing and Exacerbate the Housing Shortage***

In January 2023, the Administration released the [White House Blueprint for a Renters Bill of Rights](#). This effort called on multiple agencies, including Consumer Financial Protection Bureau (CFPB), Department of Justice, Housing and Urban Development (HUD), Department of Defense, and Federal Housing Finance Agency (FHFA), to “development policies and practices that promote fairness for Americans living in rental Housing.” Our members strive to create thriving communities and successful resident experiences. As such, we appreciate the importance of federal, state, and local laws and regulations that are already in place that create rights and responsibilities for residents and housing providers alike.

Implementing an additional layer of federal regulation on top of what is already an overly complicated set of federal, state and local compliance responsibilities for housing providers specific to a given market is ill advised and will ultimately hurt renters. Doing so would serve to increase market uncertainty, and disincentivize investment in housing, especially federally-backed or federally-assisted affordable housing, where there is often greater risk and smaller margins. Instead, we should focus on solutions that encourage new housing supply and remove the true barriers to housing construction, preservation and rehabilitation.

As part of the Administration's call to action, several federal agencies requested public input as they consider federalizing landlord and tenant requirements and expanding federal regulation of the housing market. NAA and NMHC provided industry perspective in comments for all of these requests, including the FHFA's request for input on expanded landlord and tenant requirements for enterprise-backed properties<sup>3</sup>, HUD's advance notice of proposed rulemaking on Section 504 regulations<sup>4</sup>, and CFPB and Federal Trade Commission's (FTC) request for information on resident screening and consumer reporting in rental housing<sup>5</sup>. Additionally, our organizations work closely with our coalition partners to provide broader real estate perspective as the Administration considers changes to federal policy, including [coalition letter signed by 18 real estate organizations](#) responding to the FHFA Request.

The central theme in these comments is that existing federal, state and local laws already heavily regulate the relationship between a rental housing provider and their residents and provide protections to both parties in housing. Additional federal layers of regulation will only increase complexity and cost while creating disincentives for new development of much-needed rental housing. Rental housing is a low-margin business. On average, for every rent dollar collected in the U.S., \$0.93 is allocated towards the essential expenses necessary to operate rental communities. These expenses include property maintenance, employee salaries, property taxes, insurance, and capital improvements. This financial structure underscores the industry's commitment to providing quality housing while also reinforcing its vulnerability to operating cost increases. With such a slim margin, any substantial rise in operating costs can profoundly impact the sustainability of rental housing providers, potentially affecting housing stability for millions of Americans.<sup>6</sup>

## ***Sustainable Solutions to Housing Affordability Challenges***

### **1. Deploy the Housing Supply Action Plan**

NMHC and NAA urge Congress to work with the Biden Administration to implement provisions in the Housing Supply Action Plan issued in May 2022 that aim to address the myriad challenges to develop new housing and would dramatically increase much-needed supply, 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.

### **2. Reduce Barriers to Development**

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<sup>3</sup> See NAA and NMHC's joint comment letter at <https://www.naahq.org/sites/default/files/2023-08/NMHC%20Enterprise%20Tenant%20Protections%20Comment%20Letter%20Final.pdf>.

<sup>4</sup> See NAA, NMHC, National Leased Housing Association, and Council for Affordable and Rural Housing's comments at <https://www.regulations.gov/comment/HUD-2023-0029-0325>.

<sup>5</sup> See NAA and NMHC's joint comment letter at <https://www.nmhc.org/globalassets/advocacy/comment-letters/2023/2023-05-30-nmhc-naa-comments-to-ftc-cfpb-on-resident-screening-rfi.pdf>.

<sup>6</sup> <https://www.naahq.org/breaking-down-one-dollar-rent-2023>

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 the National Association of Home Builders \(NAHB\)](#).

Although smart regulations can play an important role in ensuring the health and wellbeing 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. 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, at a macro level, we urge Congress to redouble its efforts to incentivize states and localities to:

- Reduce barriers to housing production and rehabilitation;
- 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.

### **3. Reject Price Controls**

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.

With little to no ability to earn a profit, developers and investors will shift their investments to other non-rent regulated jurisdictions—the [NMHC/NAHB cost of regulations report](#) indicated 88 percent of respondents would avoid working in jurisdictions with rent control. A study conducted by ndp | analytics on behalf of NAA from December 2022 to February 2023 reveals significant adverse effects of rent control on housing providers and developers in markets with rent control policies. Interviews with entities ranging from large firms to small mom-and-pop businesses indicate that over 70% have been compelled to alter their investment strategies, including decreased investments, relocation of development plans, or complete withdrawal, due to these policies. This underscores the substantial influence of rent control on real estate investment and development activities.

In practice, rent control 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](#)

[a letter](#) to Director Sandra Thompson urging FHFA to reject imposing rent regulation as a condition of Enterprise-backed financing.

NMHC and NAA encourage lawmakers 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.

#### **4. Resist Efforts to Broadly Classify Fees as “Junk”**

NMHC and NAA members work tirelessly to provide consumers with housing that is affordable and have championed many efforts to expand the housing market to provide more options. As part of this work, NMHC and NAA members believe that transparency in the cost of rental housing is positive for renters and housing providers alike.

It is disappointing, however, that fees associated with the industry continue to be mischaracterized. Federal policymakers have [recently suggested](#) that rental housing residents are pervasively being taken advantage of by housing providers. This rhetoric comes on the heels of dozens of new proposals from federal agencies in the past two years, which would make it more costly to provide housing and to adequately address the needs in our communities and of our residents. Two weeks ago, the FTC issued a proposed rule related to “junk fees” that may add even more complexity to providing housing by creating opaque new requirements under the broad umbrella of its Unfair Deceptive and Abusive Practices (UDAP) authority.

In reality, fees that are assessed are not “junk fees,” nor hidden or misleading as suggested in the proposed rule. They reflect actual costs of doing business to manage and operate rental communities. Such fees include remunerations for services, amenities, offerings, and other activities associated with renting and are communicated and fully disclosed to residents during the leasing process. The Secretary of HUD also sent a [letter](#) targeting certain fees, such as application fees, without considering the legitimate business purpose they serve. Additionally, resident screening serves as a critical part of property management and operations and is often required by the Federal government at HUD and other government supported housing communities.

It allows housing providers to evaluate whether a potential resident is capable of and likely to fully comply with the terms of their lease. These foundational measures include evaluation of an individual’s ability to make timely and consistent rental payments, whether an applicant poses a foreseeable safety risk, and whether an applicant may infringe upon other residents’ rights or interfere with property operations. Moreover, screening helps identify and counter fraud – including the growing occurrence this practice resident screening ultimately benefits all residents, but there are costs associated with screening that must be covered in some way.

A narrow focus on certain fees in certain industries is a misguided approach to consumer protection that overlooks the larger picture of ensuring a vibrant marketplace that creates housing opportunities and options for consumers. We encourage policymakers to study the utility of fees in the housing market in a meaningful way, rather than labeling actions that cover valid operational and management expenses as “junk fees.”<sup>7</sup>

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<sup>7</sup> For more information, see the NMHC- NAA joint statement on rental fees for a recent Senate Banking and Urban Affairs Committee hearing entitled, “Taking Account of Fees and Tactics Impacting Americans’ Wallets.”

## **5. Avoid Policies That Limit Innovation and Technology**

Housing providers rely on a variety of processes and tools to ensure our properties are properly managed and residents have a successful experience. Resident application, lease renewal, rental pricing and other property management needs can be time-consuming, costly and inconsistent, despite the best efforts of property owners and managers. Some housing providers use, or are considering using, technology to address these issues. In other cases, housing providers are turning to new AI tools to combat rising operational threats that are difficult to address – such as applicant fraud – using traditional methods. These technologies can greatly assist with management and other housing-related obligations and ensure residents receive the best living experience possible.

As debate continues on the need for and structure of possible AI regulation moving forward, policymakers should recognize that AI may create efficiencies in process, cost effectiveness and accuracy within the housing landscape and it is important that federal policy not unduly limit innovation or undermine the benefits of new technology tools in the housing sector.

## **6. Reform the Section 8 Housing Choice Voucher Program**

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

Despite previous Congressional and Administrative attempts at reforming the program, it remains hamstrung and federal policymakers must again renew efforts to adopt common-sense reforms that could help control costs, improve the program for both renters and property owners, and increase private housing participation.

It is important that the program remain voluntary and reformed to ensure it can be used more widely and cost effectively by private rental housing providers. NMHC and NAA support the bipartisan and bicameral Choice in Affordable Housing Act (H.R. 4606; S. 32), which aims to enact many positive reforms to the Section 8 programs, and we would encourage the Administration and members of Congress to support the legislation.

## **7. 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. 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; and
- Promote the rehabilitation of multifamily housing located near transit.

Many of these proposals have bipartisan or bicameral support. While they fall outside the jurisdiction of this subcommittee, tax reforms are an important part of the solutions to improving the availability and affordability of housing.

## **8. Act to Stabilize Soaring Insurance Costs**

The apartment industry has faced a volatile insurance market for the better part of a decade, while the risk landscape for multifamily has only grown. As insurance costs are largely not controlled by developers, owners, and operators, but must be paid, the increases are just one of many things driving increases in rent. These dynamics are impacting valuations, disrupting transactions, and putting substantial pressure on the operating budgets of multifamily properties, often resulting in significant cost-cutting in other areas of operation or growing areas of uninsured risk.

The lack of affordability 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. In fact, a [2021 survey and report](#) sponsored by NMHC, NAA and other affordable housing-focused organizations found that 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. These steps are being taken as a last resort and at a time when the affordable housing crisis has never been more acute.

NMHC recently expanded on the 2021 research and took a broader look at costs impacting the industry in 2023—issuing the [State of Multifamily Risk Survey & Report](#) demonstrating that the impact of these soaring costs has only worsened and continue to strain property operations and negatively impact housing affordability. On average, the NMHC survey showed property insurance premiums soaring 26 percent year-over-year, but it is not uncommon 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.

The burden of escalating insurance costs is profoundly more challenging for providers of affordable housing, as revealed by a comprehensive survey examining the shifts in these providers' insurance premiums during the policy renewals of 2020, 2021, and 2022. This crucial study, commissioned by the National Leased Housing Association (NLHA) and conducted by ndp |analytics in August and September 2023, unveils that affordable housing providers are grappling with substantial hikes in premiums across various insurance categories. In the 2022-2023 policy renewal period, a significant 29 percent of these providers were subjected to premium surges of 25 percent or more, a stark increase from the 17 percent who faced similar hikes during the previous year's renewal phase. This data underscores the deepening financial challenge confronting those at the forefront of offering affordable housing solutions.<sup>8</sup>

Congress must take action to stabilize the insurance market and prevent growing exposure to taxpayers in the wake of unrelenting natural disasters. This will require partnership between policymakers and private sector stakeholders from real estate and insurance to advance solutions that improve climate resilience and sustainability and allow for properly functioning insurance and reinsurance markets to protect our nation's rental housing stock and the broader economy.

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<sup>8</sup> <https://ndpanalytics.com/wp-content/uploads/NDP-NLHA-Housing-Provider-Insurance-Costs-Report-Oct-2023-ExecSummary.pdf>

### **The Path Forward**

Given the multitude of factors that contribute to the state of the housing market, we are advocating for a multi-faceted approach to support the health and stability of the rental housing sector. An adequate supply of quality housing is critical to continued economic prosperity and household stability for Americans nationwide, and Congress should ensure that any new policies do not further exacerbate existing challenges and inadvertently harm consumers in the process.

NMHC and NAA are co-leaders of the Housing Affordability Coalition, a group of over two dozen national real estate associations representing a broad coalition of housing providers that are committed to working together with policymakers and the Administration to address American's housing affordability crisis. In May, the coalition sent a letter to the Hill urging Congress to work with the Biden Administration, housing providers and other stakeholders to pursue bipartisan solutions to increase the supply of housing in all markets and at all price points which will go a long way to helping make rents more affordable. The letter included bipartisan recommendations, some referenced here above, that policymakers should immediately take action on that we believe would have a positive impact on the housing affordability crisis and help increase the nation's housing supply.

On behalf of the multifamily industry and the nearly 40 million Americans we serve, we look forward to continuing to work with policymakers on balanced, sustainable and innovative policies to support the housing market. Thank you for your attention to these concerns.

Sincerely,



Sharon Wilson Géno  
President  
National Multifamily Housing Council



Robert Pinnegar  
President & CEO  
National Apartment Association