Support H.R. 3123, Parity for Non-Traded REIT Act of 2021

Dear Member of Congress,

The undersigned associations urge you to support H.R. 3123, Parity for Non-Traded REIT Act of 2021. H.R. 3132 will increase the flow of critically needed capital to help meet the growing need for multifamily housing and particularly workforce housing.

On May 11, 2021, Congressmen Tom Suozzi (D-NY) and Darin LaHood (R-IL) introduced H.R. 3123, bi-partisan legislation providing parity between publicly traded and public non-traded REITs, which provides a greater incentive for foreign capital to flow into U.S. real estate markets. This targeted legislation will increase the supply of affordable housing, ensure the U.S. tax code keeps pace with evolutions in the marketplace, and support the development of the U.S. real estate market and post-pandemic recovery.

A foreign person who is not engaged in a trade or operation of a business in the United States generally is not subject to U.S. tax on capital gains from U.S. sources. One exception is the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), which treats a foreign person's gain from the sale of real property in the U.S. as taxable at the income tax rates applied to a U.S. citizen, including capital gains. This treatment also applies to the stock in certain U.S. companies that primarily own U.S. real estate, such as any real estate investment trusts (REITs) and certain regulated investment companies (RICs). FIRPTA was enacted because of concerns in the late 1970s with foreign investors buying U.S. real estate and was intended to discourage such activity.

FIRPTA has been an effective deterrent to foreign persons investing in U.S. real estate. The combination of the high relative tax rate, the enormously burdensome withholding requirements and the uncertainty created by the lookback and look-through provisions has discouraged many foreign investors from investing in U.S. real estate or REITs. As a result, the federal government receives very little in tax receipts from FIRPTA. Between fiscal year 2009 and 2013, the federal government's total gross receipts were $13.5 trillion, while FIRPTA net receipts during that same period were less than $50 million per year according to the Joint Committee on Taxation.

Congress enacted changes to FIRPTA in 2015 as part of the Protecting Americans from Tax Hikes (PATH) Act. The PATH Act increased the FIRPTA withholding rate, exempted certain foreign pension funds from FIRPTA restrictions, and increased the amount of publicly traded REITs a foreign investor may own without triggering FIRPTA application. These changes resulted in a significant increase in foreign pension fund and foreign person investment in publicly traded REITs.

Congress made these changes to allow additional capital to flow to areas of critical need such as multifamily housing. One study showed foreign pension funds immediately and significantly increased their investments in U.S. publicly traded REITs because of the changes made by the PATH Act.

The PATH Act's changes did not apply to non-traded REITs. Public non-traded REITs are similar to public traded REITs. Public exchange-traded REITs are registered with the Securities and Exchange Commission (SEC), and their shares trade on national securities exchanges such as the New York Stock Exchange or NASDAQ. Public non-traded REITs are similarly registered with the SEC, and their shares are sold directly to investors through federally registered financial advisors.

In 2015, foreign investors showed little interest in public non-traded REITs. Recent market developments have attracted new internationally recognized institutions to sponsor and manage non-traded REITs and have drawn significant interest from foreign investors—at a time when new capital is critically needed in the commercial real estate market. The taxation and regulatory burdens of FIRPTA, however, remain a barrier to these investments. Extending the FIRPTA treatment of traded REITs to non-traded REITs will inject this much-needed additional capital into the commercial real estate market.

Recent surveys of public non-traded REITs indicated that approximately 63% of their investments in multifamily housing support workforce housing, defined as multifamily housing with rent less than 25% of mean family income in the surrounding area. Multifamily housing made up 17.3% of non-traded REIT holdings as of June 30, 2020.

Private estimates show that extending the FIRPTA treatment of exchange-traded REITs to public non-traded REITs would reduce federal revenues by approximately $36 million over 10 years, consistent with the limited federal revenue generated by FIRPTA.

Granting non-traded REITs parity with the FIRPTA treatment of exchange-traded REITs offers an opportunity to increase the flow of capital into U.S. commercial real estate significantly with minimum impact on federal revenues. We urge you to support H.R. 3123.

For more information on H.R. 3123, please contact Conor Walsh in Rep. Suozzi's office at conor.walsh@house.mail.com or Sam Dybas in Rep. LaHood's office at samantha.dybas@mail.house.gov.

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