December 6, 2019

The Honorable John Thune
United States Senate
Washington, DC 20510

The Honorable Joseph Morelle
United States House of Representatives
Washington, DC 20515

The Honorable Brad Wenstrup
United States House of Representatives
Washington, DC 20515

Dear Senator Thune and Representatives Morelle and Wenstrup,

The undersigned real estate associations would like to take this opportunity to thank you for introducing the *Multifamily Depreciation Parity Act of 2019*. We strongly support this critical legislation to correct a drafting oversight in the *Tax Cuts and Jobs Act* (TCJA) that requires certain multifamily buildings to be depreciated over 40 years as opposed to the congressionally intended 30 years. We believe your bill should be included in any tax legislation that may be enacted this year, so that the multifamily industry can build the 328,000 new apartment units our nation needs annually between today and 2030.

By way of background, under the TCJA, multifamily real estate firms may elect out of limitations on interest deductibility so long as they agree to depreciate property under the Alternative Depreciation System (ADS). The TCJA also reduced the ADS recovery period for multifamily property from 40 years to 30 years.

Our view is that congressional intent was to apply this 30-year period to buildings in existence and subject to a 27.5-year depreciation period before enactment of the law, as well as to new property. However, due to a drafting oversight, the law subjects multifamily property in existence prior to 2018 to the old 40-year period rather than the intended new 30-year period. Firms able to abide by limits on interest deductibility will continue to depreciate multifamily property over 27.5 years.

This issue is of tremendous importance to the multifamily industry and directly impacts our ability to invest in the production and preservation of multifamily units. Owners of multifamily property placed in service prior to 2018 who elect to retain a full deduction of business interest must now take a 31.25 percent reduction in depreciation deductions (rather than the intended 8.33 percent reduction in depreciation deductions). This additional foregone deduction translates into the loss of funds that would otherwise be available to build new properties and address the nation's lack of housing supply or upgrade existing properties and ensure they are not lost to obsolescence.

There are few policy arguments for requiring real estate firms electing out of interest deductibility limits to depreciate existing buildings over 40 years (instead of the previously applicable 27.5 years), while allowing only new buildings to be depreciated over 30 years. Congress seems unlikely to have intended such a drastic change. Furthermore, because the interest disallowance rule in the TCJA applies with equal force to interest on both old debt and new debt, the ADS should be applied the same to old property and new property. Both should be determined based on the same recovery period. As a policy matter, Congress has decided that the appropriate ADS life for residential rental property should be 30 years. That life should also be used in applying the interest limitation election for all property subject to the limitation.

We strongly support your bill that clarifies that all multifamily property that was subject to a 27.5-year depreciation period prior to the enactment of the TCJA may be depreciated over 30 years for firms electing out of limits on interest deductibility. We are concerned that if not done quickly, many owners of existing multifamily assets will face disrupted cash flows and greater tax liabilities. This would result in reduced investment in both existing and new units and act to exacerbate the significant housing challenges the national already faces. Accordingly, we believe the *Multifamily Depreciation Parity Act of 2019* should be included in any tax legislation that may move forward this year.

Sincerely,

National Multifamily Housing Council
National Apartment Association
American Seniors Housing Association
International Council of Shopping Centers
NAIOP, the Commercial Real Estate Development Association
Nareit
National Association of Home Builders
NATIONAL ASSOCIATION OF REALTORS®
CCIM Institute
Institute of Real Estate Management
National Leased Housing Association
The Real Estate Roundtable