The Senate has released its version of reconciliation legislation that includes a number of provisions that would benefit the multifamily industry. Consideration in the chamber is expected to begin later today. If passed, the bill will go to the House of Representatives, which could choose to pass it and send it to President Trump for enactment. Alternatively, the House could seek changes and look to its version of legislation passed in May.

While a full, preliminary comparison of provisions in the House-passed bill and Senate proposal are presented below, both bills address NMHC and NAA priorities of making permanent expiring ordinary income tax rates and the deduction for qualified business income (with the House-passed bill increasing the deduction to 23 percent), as well as also permanently enhancing the estate tax exclusion amount to $15 million.

Investment Incentives: Both bills also address other key incentives, including so-called bonus depreciation, limitations on the full deductibility of business interest, and enhancements to the Low-Income Housing Tax Credit (LIHTC). The House-passed bill offers temporary full expensing, relief from business interest limitations, and LIHTC boosts while the Senate proposal seeks to make permanent proposals affecting all three areas. Finally, both chambers seek to renew Opportunity Zones, though the details differ.

Revenue Raisers: Notably, neither the House-passed bill nor the Senate proposal addresses the current-law tax treatment of carried interest. Both would also continue to allow multifamily business owners to fully deduct their multifamily-related business income and property taxes. That said, while the House-passed bill would impose taxes on certain foreign investors, the Senate proposal drops this proposal.

Energy Tax Incentives: In terms of energy tax incentives, both the House-passed bill and the Senate proposal would eliminate several provisions, including the Clean Electricity Production Credit, the Clean Electricity Investment, and the New Energy Efficient Home Credit. The Senate proposal also seeks to eliminate the Energy Efficient Commercial Buildings Deduction.

Here is a preliminary description of the key tax provisions in the House-passed *One Big Beautiful Bill Act* and legislation proposed by the Senate.

<u>Tax Rates and Section 199A Deduction for Qualifying Pass-Through Income</u>

Absent Congressional action, reduced ordinary income tax rates and the 20 percent tax deduction for qualifying pass-through income enacted in 2017 as part of the *Tax Cuts and Jobs Act (TCJA)* expire at the end of 2025.

House Bill: The House-passed bill would:

- Make permanent current-law ordinary income tax rates, including the top 37 percent tax rate;

- Increase to 23 percent (from 20 percent) and make permanent the tax deduction for qualifying pass-through income and REIT dividends (commonly referred to as Section 199A), effectively reducing the top tax rate on qualifying business income to 28.49 percent before accounting for the limitation on itemized deductions described below.

Senate Proposal: The Senate proposal makes permanent current-law ordinary income tax rates and the 20-percent tax deduction for qualifying pass-through income and REIT dividends.

Estate Tax

The present-law estate tax exemption amount is $13.99 million ($27.98 million per couple) and set to be cut in half starting in 2026.

House Bill: The House-passed bill provides significant estate tax relief to multifamily participants. It would increase the estate tax exemption amount to $15 million for tax years beginning after 2025 and index that amount to inflation for subsequent years.

Senate Proposal: The Senate proposal follows the House-passed bill.

Revenue Raising Provisions

Multifamily participants have been concerned that lawmakers would include revenue-raising provisions that would have made it more difficult to develop and operate multifamily housing. In particular, we urged lawmakers not to tax carried interest at ordinary income tax rates or to restrict the deductibility of business income and property state and local taxes. Significantly, both the House-bill and the Senate proposal retain the current-law tax treatment of carried interest and would retain the deductibility of multifamily business-related income and property taxes. That said, they take varying approaches to other revenue-raising provisions.

House Bill: The House-passed bill includes notable revenue-raising provisions regarding excess business losses and itemized deductions:

- **Deductibility of State and Local Income and Property Taxes:** Generally does not restrict the Federal deductibility of multifamily-related state and local income and property taxes paid by multifamily business owners.
- **Limitation on Excess Business Losses:** Makes permanent the limitation on excess business losses by noncorporate taxpayers that is currently effective for taxable years beginning before 2029. In addition, it requires that excess business losses disallowed in taxable years beginning after 2024 be fully taken into account in determining a taxpayer's excess business loss in subsequent years.
- **Limitation on Itemized Deductions:** Limits itemized deductions taxpayers in the 37 percent tax bracket may take to $0.32 for each $1 of state and local taxes and $0.35

for every $1 of other itemized deductions as opposed to today's $0.37. This provision would take effect in taxable years beginning after 2025.

- **Taxation on Certain Foreign Investment:** Imposes a tax of up to 20 percentage points above otherwise prevailing tax rates on foreign entities that invest in U.S. assets, including multifamily real estate, and are domiciled in foreign countries that impose certain kinds of taxes on U.S. taxpayers perceived as unfair or discriminatory. The tax would take effect no earlier than the first day of the first calendar year beginning 90 days after the date of enactment, which is a delay from the effective date in the House-passed bill. While the provision is designed to protect the U.S. tax base against such foreign taxes, we have strong concern that the proposal could diminish foreign investment.

Senate proposal: The Senate proposal:

- **Deductibility of State and Local Income and Property Taxes:** Retains current law and does not restrict the Federal deductibility of state and local income and property taxes paid by multifamily business owners.
- **Limitation on Excess Business Losses:** Makes permanent the limitation on excess business losses by noncorporate taxpayers that is currently effective for taxable years beginning before 2029. In addition, it restores the original threshold at which the provision takes effect denying inflation adjustments since enactment in the *Tax Cuts and Jobs Act*.
- **Limitation on Itemized Deductions:** Limits itemized deductions taxpayers in the 37 percent tax bracket may take to $0.35 for each $1 of itemized deductions as opposed to today's $0.37. This provision would take effect in taxable years beginning after 2025.
- **Taxation on Certain Foreign Investment:** Retains current law and drops previous proposals imposing taxes on foreign entities that invest in U.S. assets, including multifamily real estate, and are domiciled in foreign countries that impose certain kinds of taxes on U.S. taxpayers perceived as unfair or discriminatory.

<u>Bonus Depreciation</u>

Under current law, 40 percent and 20 percent bonus depreciation is available in 2025 and 2026, respectively. Bonus depreciation enables taxpayers to more quickly amortize the cost of certain capital investments with a class life of 20 years or less (e.g., equipment and machinery) included in multifamily buildings.

House Bill: The House-passed bill would provide 100 percent bonus depreciation from January 20, 2025, through 2029.

Senate Proposal: The Senate proposal provides permanent 100 percent bonus depreciation for property acquired or placed in service on or after January 19, 2025.

Small Business Expensing

Under current law, small businesses may expense $1.25 million in qualifying property as opposed to having to recover costs through depreciation. The limit is reduced by the amount by which investment exceeds $3.13 million. Both amounts are adjusted annually for inflation.

House Bill: The House-passed bill would increase the expense limit to $2.5 million and the phase-out threshold to $4 million in 2025 and increase those amounts by inflation in subsequent years.

Senate Proposal: The Senate proposal follows the House-passed bill.

Deductibility of Business Interest

The *Tax Cuts and Jobs Act* limited the deductibility of business interest while simultaneously providing temporary and partial relief from those limits. The provision in effect from 2018 through 2021 used a broader definition of earnings (EBITDA) for purposes of the rule that limits deductible business interest to 30 percent of earnings. Since 2022, a more restrictive definition (EBIT) has artificially reduced earnings by certain accrued, non-cash expenses: depreciation and amortization.

House Bill: The House-passed bill reinstates the original EBITDA definition and extends it from 2025 through 2029. Reinstating the provision will allow many real estate businesses to deduct fully their business interest without operating under separate and more restrictive rules that allow a real property trade or business to fully deduct business interest in exchange for longer cost recovery periods (i.e. 30-year depreciation of buildings as opposed to 27.5 years).

Senate proposal: The Senate proposal follows the House bill but on a permanent basis.

Low-Income Housing Tax Credit

Both the House-passed bill and Senate proposal would significantly enhance the Low-Income Housing Tax Credit.

House Bill: The House-passed bill would augment Low-Income Housing Tax Credit authority by 12.5 percent between 2026 and 2029, as well as reduce the private activity bond financing threshold to 25 percent from 50 percent in 2026 through 2029, which is required to receive the full amount of 4 percent LIHTCs. The proposal would also provide a 30 percent basis boost for buildings that are located in Indian or rural areas and placed in service after 2025 and before 2031.

Senate Proposal: The Senate proposal would permanently both increase Low-Income Housing Tax Credit authority by 12 percent and reduce the private activity bond financing threshold to 25 percent from 50 percent beginning in 2026.

Opportunity Zones

Both the House-passed bill and Senate proposal would modify the current-law tax treatment of Opportunity Zone.

House Bill: Among other things, the House-passed bill would:

- Create a second round of Opportunity Zones with at least one-third of designated zones being in rural areas. The second round of Opportunity Zones would be effective from January 1, 2027, through December 31, 2033;
- Allow taxpayers to invest up to $10,000 of post-tax ordinary income into qualified opportunity funds.
- Provide a 10 percent step-up in basis for capital gains invested in traditional opportunity funds for at least five years and a 30 percent step-up in basis for capital gains invested in rural qualified opportunity funds for at least five years. Recognition of deferred capital gains would occur on December 31, 2033.
- Reduce the substantial improvement threshold to 50 percent (from 100 percent) in rural areas.
- Mandates reporting requirements.

Senate Proposal: The Senate proposal differs from the House-passed bill and, among other things, would:

- Create rolling 10-year Opportunity Zone designations beginning January 1, 2027, while maintaining the current-law Opportunity Zones designation process;
- Provide a 10 percent step-up in basis for capital gains invested in traditional opportunity funds and a 30 percent step-up in basis for capital gains invested in qualified rural opportunity funds. Investments would have to be held for at least five years, and recognition of deferred capital gains would occur in the fifth year.
- Reduce the substantial improvement threshold to 50 percent (from 100 percent) in rural areas.
- Mandates reporting requirements.

Energy Tax Incentives

Clean Electricity Production Credit (IRC Section 45Y) and Clean Electricity Investment Credit (IRC Section 48E): The *Clean Electricity Production Credit and the Clean Electricity Investment Credit* take effect in 2025 and are available to spur the production of zero carbon electricity and the construction of facilities producing zero carbon electricity. Both credits will begin to phase down in the later of 2032 or when the electric power sector emits 75 percent less carbon than it does in 2022. These new technology-neutral credits can include bonus-credit amounts if the project meets domestic-content requirements, is located in certain areas, or benefits certain communities.

House Bill: The House-passed bill would eliminate both credits (except with respect to nuclear facilities) for facilities with construction beginning 60 days after the date of enactment and placed in service after 2028. Neither credit is available for nuclear facilities constructed after 2028. Transferability of the credits is eliminated for facilities with construction beginning 60 days after the date of enactment.

Senate Proposal: The Senate proposal phases out both credits with respect to wind and solar with the credits being eliminated for property beginning construction after the date of enactment and placed in service after December 31, 2027.

New Energy Efficient Home Credit (IRC Section 45L): For multifamily units acquired after 2022, current law provides a base credit of $500 for units that participate in the ENERGY STAR Multifamily New Construction Program while meeting both national and regional program requirements. A base credit of $1,000 is available to multifamily homes certified as zero energy ready under the Department of Energy Zero Energy Ready Home Program. Bonus credit amounts totaling five times the base credit are available for taxpayers meeting applicable prevailing wage requirements. Finally, a provision is included so that the credit may be better used in conjunction with the Low-Income Housing Tax Credit. The tax credit is effective through 2032.

House Bill: The House-passed bill repeals the New Energy Efficient Home Credit effective for homes acquired after December 31, 2025, or December 31, 2026, in the case of any home for which construction began before May 12, 2025.

Senate Proposal: The Senate proposal repeals the New Energy Efficient Home credit for homes acquired after June 30, 2026.

Energy Efficient Commercial Buildings Deduction (IRC 179D): Under current law, taxpayers may deduct certain energy efficient commercial building property expenses ranging from $0.50 per square foot to $1 per square foot depending on energy reductions (these amounts are quintupled in prevailing wage and apprenticeship requirements are met).

House Bill: The House-passed bill does not address current law.

Senate Proposal: The Senate proposal terminates the provision with respect to property constructed beginning after June 30, 2026.