VI. The Stop Predatory Investing Act: Shifting Incentives in the U.S. Housing Market

Introduction

The United States' housing market is experiencing a consistently widening gap between supply and demand, currently standing at a shortage of 5.5-6.8 million housing units.[1] The shortage is attributable to various factors including supply-chain disruption, zoning barriers, and demographic shifts.[2] Not only are builders struggling to obtain vital building materials like lumber and steel, but stringent zoning requirements for new housing projects create barriers to increased supply.[3] Additionally, the rise of the short-term rental market has made it difficult for local governments to maintain a steady supply of affordable housing for permanent residents.[4] Companies like Airbnb facilitate a market in which investors purchase single-family properties for the purpose of using them as short-term rentals.[5] While this provides a certain benefit, particularly for visiting renters, it only increases the shortage of available housing for long term residents.[6] Finally, local zoning regulations often favor low-density housing, like single-family homes, as opposed to high-density housing like multi-family homes or apartment buildings.[7] These zoning restrictions further limit housing

---

[1] Marco Santarelli, *Housing Shortage in the US: Challenges and Solutions*, NORADA REAL ESTATE INVESTMENT (Sept. 12, 2023), https://www.noradarealestate.com/blog/housing-shortage-in-america/ ("According to the National Association of Realtors, the United States is currently experiencing a housing shortage of between 5.5 and 6.8 million units, with the gap between supply and demand widening every year.") [https://perma.cc/X5XK-LBP9].

[2] *Id.* (describing various causes of the housing shortage in the United States).

[3] *Id.* (describing various causes of the housing shortage in the United States).

[4] Dana George, *4 Reasons Airbnbs Are Partly to Blame for the Housing Crisis*, THE MOTLEY FOOL (Jan. 25, 2023, 8:00 AM), https://www.nasdaq.com/articles/4-reasons-airbnbs-are-partly-to-blame-for-the-housing-crisis ("The overwhelming number of Airbnbs makes it difficult to provide enough housing for permanent area residents.").

[5] *Id.* (discussing the impact of Airbnb on the housing market).

[6] *Id.* (discussing the impact of Airbnb on the housing market).

[7] Jenny Shuetz, *To improve housing affordability, we need better alignment of zoning, taxes, and subsidies*, BROOKINGS (Jan. 7, 2020), https://www.brookings.edu/articles/to-improve-housing-affordability-we-need-better-alignment-

supply and force individuals and families into an increasingly unaffordable single-family housing market.[8]As a consequence of the shortage, housing prices for rentals and home buyers have skyrocketed.[9] Rent in single-family homes increased by 12.4 percent year over year in the first quarter of 2021, and 67 of the top 100 housing markets experienced record appreciation rates in 2022.[10]

Aside from supply-chain issues, zoning barriers, and the boom in short-term rentals, the presence of large investors also impacts the housing market.[11] The Stop Predatory Investing Act defines large investors as those who own 50 or more single-family rental homes at once.[12] However, other organizations define the terms differently, including simply defining all companies, corporations, or LLCs as institutional investors.[13] The market share owned by institutional investors in the single-family home market increased from 11.8 percent in 2020 to 13.2 percent in 2021, and the share was even higher in some markets.[14] Large investors tend to focus their resources on markets that are already seeing increased home appreciation, where they can sell or

---

of-zoning-taxes-and subsidies/#:~:text=City%2Dwide%20zoning%20reforms%20that,accessible%20to%20many%20more%20families ("local zoning regulations prohibit building anything other than single-family detached communities on three-quarters of land in most U.S. cities.") [https://perma.cc/MFT8-V8RS].

[8] *See id.* ("Single-family houses use more land per home than other housing types. Therefore, in places where land is expensive, building multiple homes on a given lot is the most direct way to reduce housing costs, because it spreads the cost of land across multiple homes.").

[9] *The State of the Nation's Housing*, Joint Center For Housing Studies of Harvard University, 1 (2022), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf [https://perma.cc/G4M2-UFNW].

[10] *Id.* ("Home price appreciation nationwide hit 20.6 percent in March 2022—topping…Meanwhile, rents for apartments in professionally managed properties were up 12 percent nationally in the first quarter of 2022").

[11] *See id.*

[12] S. 2224, 118th Congress (as introduced by Senate, July 11, 2023).

[13] *Impact of Institutional Buyers on Home Sales and Single-Family Rentals*, Nat'l Ass'n of Realtors Rsch. Grp., 3 (May 2022), https://www.nar.realtor/research-and-statistics/research-reports/impact-of-institutional-buyers-on-home-sales-and-single-family-rentals (defining institutional buyers and discussing their impact on the housing market) [https://perma.cc/UA2D-JQEP].

[14] *Id.* ("we found that institutional buyers purchased 13.2% of residential properties in 2021, up from 11.8% in 2020.").

rent that home at a higher price.[15] The National Association of Realtors identified ten factors that attract investors to a housing market, some of which include a high density of renters, a high density of minority groups, fast home appreciation, and fast rent growth.[16] The impact of large investors on the community has proven to be both positive and negative.[17] In neighborhoods where the same investor owned five or more properties, the investors were able to make various quality-of-life improvement to the properties at a lower cost, and the neighborhoods averaged less crime reports to the police in that area.[18] However, those same neighborhoods saw the average rent increase by 5.2% and the eviction rate increase by 4.4%.[19]

A. Stop Predatory Investing Act

In response to the ongoing housing shortage, Senator Brown of Ohio introduced the Stop Predatory Investing Act ("The Act").[20] If enacted, the Act would amend the Internal Revenue Code to preclude investors who accumulate 50 or more single-family rental homes from

---

[15] *Id.* ("Institutional buyers tend to purchase in markets with rising household formation, strong housing and rental markets, high income markets…").

[16] *Id.* ("We analyzed ten factors that we hypothesized are likely to attract institutional investors to a market area. We found that institutional buyers are attracted to areas with: 1. higher household formation; 2. high density of minority groups especially Black households; 3. high density of renters; 4. high density of the Millennial age group; 5. high income and education; 6. many people moving into the area; 7. fast rent growth; 8. fast home appreciation ; 9. fast home sales growth; and 10. lower rental vacancy rate.").

[17] Clark Merrefield, *How neighborhoods fare when institutional investors buy single-family homes: A research roundup,* THE JOURNALIST'S RESOURCE (Feb. 21, 2023), https://journalistsresource.org/home/single-family-homes-institutional-investors/ (finding that institutional investors have wide ranging impacts on the neighborhoods in which they invest) [https://perma.cc/FXR2-2DJT].

[18] Id. ("Across neighborhoods where there was an acquisition that netted five or more properties for the acquiring firm, average rents increased 5.2% while crime reports to law enforcement decreased 5.5% for the following year… Eviction rates in those neighborhoods affected by an acquisition that netted five or more properties also increased, by 4.4%.").

[19] *Id.* ("Across neighborhoods where there was an acquisition that netted five or more properties for the acquiring firm, average rents increased 5.2% while crime reports to law enforcement decreased 5.5% for the following year… Eviction rates in those neighborhoods affected by an acquisition that netted five or more properties also increased, by 4.4%.").

[20] S. 2224.

taking advantage of interest and depreciation deductions on those properties.[21] In order to encourage home ownership and investment, interest on mortgage or rental property payments can generally be deducted from the owner's taxable income.[22] Similarly, depreciation allows owners of rental property to deduct the value of the property over its useful lifetime.[23] While the Act would limit these various tax benefits for large investors, it does carve out two exceptions for investors with 50 or more single-family homes who: (1) build homes specifically financed using Low-Income Tax Credits ("LIHTC"); and (2) own build-for-rent single-family homes.[24] Additionally, an investor can still deduct interest and depreciation for the year in which the property was sold if they sell their property to a homebuyer or qualified nonprofit.[25] Finally, the Act would not impact single-family rental homes purchased prior to its enactment.[26]

In discussing the goal of the Act, Senator Brown explained, "Our bill will help prevent corporate landlords from driving up local housing prices and put power back in the hands of working families, who need a safe, affordable place to live and raise their children."[27] Senator Brown, the Chair of the Senate Banking, Housing, and Urban Affairs Committee, represents the state of Ohio, where two large investors own more than 12,000 single-family homes in three markets.[28] Senator Brown was joined by seven other Democratic Senators in introducing the Act.[29] The Act was introduced and read twice on July 11, 2023, and

---

[21] *Id.*

[22] I.R.S., TOPIC NO. 505, INTEREST EXPENSE (last visited Nov. 6, 2023), https://www.irs.gov/taxtopics/tc505 [https://perma.cc/4EC7-34DK].

[23] I.R.S., PUB. 946, HOW TO DEPRECIATE PROPERTY (last visited Nov. 6, 2023) https://www.irs.gov/publications/p946#:~:text=Overview%20of%20Depreciation [https://perma.cc/QJ7T-LMA6].

[24] S. 2224.

[25] *Id.*

[26] *Id.*

[27] Press Release, Senator Sherrod Brown, Brown, Colleagues Introduce Bill to Crack Down on Big Corporate Investors That Buy Up Local Homes, Drive Up Housing Prices (July 11, 2023), https://www.brown.senate.gov/newsroom/press/release/sherrod-brown-colleagues-bill-crack-down-corporate-investors-buy-local-homes-housing-prices [https://perma.cc/2BY8-2TXF].

[28] *Id.* ("Right now, two big investors own more than 12,000 homes in just three Ohio markets.").

[29] *Id.* ("Today, U.S. Senator Sherrod Brown (D-OH), Chair of the Senate Banking, Housing, and Urban Affairs Committee, along with Senator Ron

was referred to the Senate Finance Committee.[30] If approved by the Senate Finance Committee, the Act would then need to pass the Senate, the House, and be approved by the President before it became law.[31]

B. Investor Incentives in the Housing Market

1. Current Incentive Structure

Large investors enjoy particular advantages in the single-family housing market as a product of their access to capital and alternative financing mechanisms.[32] Unlike individual home buyers, especially first-time buyers, large investors have the ability to purchase single-family homes on an accelerated timeline by conducting all-cash transactions and bypassing many of the traditional steps in the home buying process.[33] Furthermore, large investors have a particular advantage in the market for single-family homes that require various levels of repair.[34] These investors have the capital to buy homes in disrepair at a lower price and improve the property to then sell or rent at a much higher price on the open market.[35] These investors are not only further decreasing the supply of more affordable single-family homes on the market, but they are then contributing to the increase of purchase or rent prices by improving the property and selling or renting it at a much higher price.[36]

Wyden (D-OR), Chair of the Senate Finance Committee, and Senators Tina Smith (D-MN), Jeff Merkley (D-OR), Jack Reed (D-RI), John Fetterman (D-PA), Elizabeth Warren (D-MA) and Tammy Baldwin (D-WI).").

[30] S. 2224, *supra* note 12.

[31] S. 2224.

[32] *Institutional Investors Outbid Individual Homebuyers*, Off. of Pol'y Dev. and Rsch. (last visited Nov. 6, 2023), https://www.huduser.gov/portal/periodicals/em/winter23/highlight1.html ("institutional investors, with their access to capital, may be better able to efficiently renovate properties after purchase") [https://perma.cc/U93Z-UR47].

[33] *Id.* ("these investors often can outbid prospective individual homeowners with all-cash offers and fast-track their purchases by waiving common steps in the buying process.").

[34] *Id.*

[35] *Id.* ("institutional investors, with their access to capital, may be better able to efficiently renovate properties after purchase").

[36] *Id.* ("In addition to preventing individual buyers from purchasing homes, investor activity lowers the overall availability of homes for purchase and raises prices for the remaining homes in the market.").

Aside from their advantages in the market based on their access to capital, large investors also particularly benefit from the tax incentives related to home ownership.[37] Under the current tax structure, a homeowner can deduct interest on the mortgage of a primary or secondary residence as an itemized deduction, limited to mortgage debt up to $750,000.[38] Unlike homeowners with primary or secondary residential homes, owners of rental properties have the same tax benefit without the limitation on the amount of debt.[39] Under this model, investors can continue to purchase rental properties and deduct the mortgage interest on those properties, without limitation on their deductions.[40] Furthermore, rental property owners may use depreciation to deduct the value of their property over its useful lifetime.[41] In order to claim a depreciation deduction for a property, the person must be the legal owner, the property must be used for business, the property must have a determined useful life, the property must be expected to last, and the owner must expect to own it for more than a year.[42] Depreciation

---

[37] S. 2224.

[38] *Rental Property Tax Deductions*, NAT. ASS'N OF RELATORS (last visited Nov. 6, 2023), https://www.nar.realtor/rental-properties/rental-property-tax-deductions#:~:text=Any%20tenant%20screening%20costs%20can,Lawn%20care ("However, for owners who live in a residence with a mortgage, the interest is an itemized deduction (reported on Schedule A) and the interest deduction is generally limited to mortgage debt of $750,000.") [https://perma.cc/Q8QU-UVSD].

[39] *Id.*

[40] *Id.* ("Owners of rental properties, on the other hand, will report any mortgage interest paid as an expense on Schedule E of Form 1040 or on a partnership or corporate tax form. And unlike those who itemize mortgage interest deductions, rental property owners are not subject to a limit on the amount of the debt.").

[41] Ben Luxton, *Understanding Rental Property Depreciation and Depreciation Recapture*, LANDLORD STUDIO, (Dec. 4, 2022), https://www.landlordstudio.com/blog/depreciation-and-depreciation-recapture ("Depreciation in real estate then allows you to deduct the value of the rental property over what is deemed its useful lifetime by the IRS, which is, for residential rentals, 27.5 years.") [https://perma.cc/4S2E-J2Y9].

[42] *Id.* ("Rental properties generally fit into the bracket of depreciable assets as long as they meet the following requirements: You are the legal owner of the property (you are deemed the owner even if the property is leveraged and subject to debt). The property is used for business or as an income-producing activity (eg. rented out or used as office space). The property has a determinable useful life (the IRS deems the useful life of a residential rental to be 27.5 years and 39 years for commercial property). The property is expected to last and you

essentially allows the owner to recover the cost of wear and tear, deterioration, or obsolescence.[43] While the Act aims to limit the interest and depreciation tax incentives, large investors also enjoy additional tax incentives not mentioned by the Act.[44] Owners of rental properties can also enjoy deductions relating to property tax and operating expenses.[45]

2. *Proposed Shift in Incentive Structure*

The Act aims to shift incentives for investment in the housing market away from buying up affordable single-family homes that could otherwise be purchased as starter homes for individual buyers.[46] The Act does this by both (1) eliminating the existing tax deductions once an investor owns 50 or more single-family homes, and (2) by using exceptions to encourage investors to increase the supply of single-family homes while also prioritizing investment in low-income housing.[47] The Act incentivizes prioritization of low-income housing by maintaining the tax incentives for investors who build homes using low-income housing tax credits ("LIHTC").[48] LIHTC is a tax credit that allows developers to finance construction or acquisition of low-income housing by seeking investors who then receive a tax credit for their investment.[49] In Massachusetts, an investor who funds a building

---

will own it for more than one year. (eg. the property must still be used for business purposes after a full year has passed).").

43 I.R.S., TOPIC NO. 505.

44 I.R.S., TIPS ON RENTAL REAL ESTATE INCOME, DEDUCTIONS AND RECORDKEEPING (last visited Nov. 6, 2023), https://www.irs.gov/businesses/small-businesses-self-employed/tips-on-rental-real-estate-income-deductions-and-recordkeeping (describing various tax benefits for real estate investors) [https://perma.cc/4C32-VVHD].

45 *Id.*

46 Brown, *supra* note 25 ("This bill will end the federal tax break for this practice—and incentivize investors to put houses they do own back onto the market to expand housing availability and bring prices down…").

47 S. 2224.

48 *Id.*

49 *Low Income Housing Tax Credit (LIHTC)*, Exec. Off. of Housing and Livable Communities, (last visited Nov. 6, 2023), https://www.mass.gov/info-details/low-income-housing-tax-credit-lihtc-0 ("The tax credit provides a means by which developers may raise capital for the construction or acquisition and substantial rehabilitation of housing for low income persons. Under the federal income tax code, investors in low income rental housing are permitted to take a credit against taxes owed the federal government.") [https://perma.cc/DP5U-MTXT].

project through the LIHTC program is eligible for either a 9% or 4% tax credits, which can be claimed for 10 years.[50] To be eligible for these tax credits, investors must partake in projects where a certain percent of the units are reserved for individuals who fall at or below a certain income threshold.[51] Accordingly, the LIHTC exception incentivizes investors to allocate a portion of their projects to low-income housing in exchange for tax credits, while allowing them to maintain space in those projects for more lucrative units where they can collect high rent. [52]

However, a potential flaw in the LIHTC program is the danger of a secondary market on which the initial investor can sell their share of the low-income property to a different investor, who may choose to abandon the low-income purpose for a more lucrative business model.[53] One way in which the LIHTC program works is non-profit organizations apply for the LIHTC funding from the state government, and then sell those tax credits to an investor who will finance the project.[54] The investor then receives the tax credits and other tax benefits, including depreciation and interest deductions.[55] Once the contract allows, the non-profit can buy back the investor's interest in the property at a relatively low price.[56] However, some investors choose not to sell their interest in the property to the existing non-profit, but they opt to sell their interest to another investment firm.[57] This new investor

---

[50] *Id.* ("In exchange for providing development funds, the investors receive a stream of tax credits. Projects can qualify for two types of credits: a 9% credit, or a 4% credit.").

[51] *Id.* ("At least 20% of the units must be reserved for persons with incomes at/or below 50% of the area median income adjusted for family size; or at least 40% of the units must be made affordable for persons with incomes at/or below 60% of the area median income adjusted for family size. In addition, the project must be retained as low-income housing for at least 30 years.").

[52] *See id.*

[53] Beth Healy & Christine Willmsen, *Investors Mine for Profits in Affordable Housing, Leaving Thousands of Tenants at Risk*, WBUR, (April 29, 2021), https://www.wbur.org/news/2021/04/29/investors-low-income-housing-boston-south-end (describing the rise of a secondary market for LIHTC funded homes among large investors) [https://perma.cc/C53E-AQN7].

[54] *Id.* ("Under these deals, a nonprofit forms a partnership with an investor (often a large bank) that provides funding in exchange for tax breaks. At the end of 15 years, the nonprofit generally gets to buy out the investor's stake, taking ownership of the property for well below market value.").

[55] *Id.*

[56] *Id.*

[57] *Id.* ("some project funders began selling off their partnership interests to investment firms with more aggressive profit motives.").

may choose to force those low-income units to be sold on the market after the mandated 30-year period under the LIHTC program, trading in the affordable housing model for a higher profit on the units.[58] These types of transactions not only put long standing affordable housing recipients at risk of losing their housing, but they often result in costly litigation for the non-profit, further limiting their ability to execute their mission.[59]

Additionally, the Act carves out an exception for owners of build-for-rent single-family homes.[60] Build-for-rent homes follow the same model as an apartment building but take the form of a housing development community.[61] They are clusters of single-family homes in one development with various communal amenities.[62] Build-for-rent homes are generally all assembled together, creating a rapid increase in housing supply.[63] This quick and efficient method of building is especially important as the housing market continues to experience a single-family housing shortage.[64] Additionally, build-for-rent housing creates an affordable alternative for those who wish to purchase a home but cannot yet afford it.[65] The detached single-family style of housing, along with the amenities and community feel, allows for a good

---

[58] *Id.* ("If investors are successful and properties are sold on the open market, the risk is that new owners could eventually abandon the affordable housing mission, charge higher rents or convert apartments to expensive condos.").
[59] *Id.* ("With a lack of federal or state oversight, these feuds are largely being decided in courts, where conflicting rulings on contract language only add to the confusion.").
[60] S. 2224.
[61] Kristi Waterworth, *The Rise of Build-for-Rent*, U.S. NEWS (Feb. 10, 2023), https://realestate.usnews.com/real-estate/articles/the-rise-of-built-for-rent (describing the characteristics of build-for-rent homes).
[62] *Id.*
[63] *Id.* ("Because the homes in BFR communities are put together all at once, and in bulk, they can, in theory, go up a lot faster than single-family subdivisions.").
[64] *Id.* ("The housing market continues to be incredibly tight for home buyers, with just 2.7 months of available housing supply for sale as of November 2022, but it's also not been a picnic for renters, who are fighting for units in an increasingly tightening (and expensive) market. Real estate investors have come up with a sort of middle ground solution to both of these issues: built-for-rent (BFR) housing.").
[65] Barbara Ballinger, *Build-to-Rent Is Transforming the Landscape*, NAT. ASS'N OF RELATORS, (April 25, 2023), https://www.nar.realtor/magazine/real-estate-news/commercial/build-to-rent-is-transforming-the-landscape.

alternative to buying.[66] The Act would allow investors of build-for-rent developments to maintain their interest and depreciation deductions, further encouraging investors to shift their resources towards increasing supply of single-family rental homes.[67] Finally, the Act would allow investors who sell one of their properties to homeowners or non-profit organizations to maintain their tax deductions for that year.[68] By including this provision, the Act incentivizes investors to put single-family homes back in the hands of individual homeowners or organizations with a charitable purpose.[69]

C. Conclusion

The Act does not attempt to solve many of the ongoing challenges that plague the United States' housing market and contribute to the current housing shortage.[70] The market will likely continue to suffer from supply chain limitations, stringent zoning restrictions, and the rise of secondary markets.[71] However, the Act does attempt to address the influence of large investors in the single-family housing market by shifting market incentives away from investor driven shortages and price increases, and towards increased housing supply, particularly for low-income buyers.[72]

If passed, the Act would change portions of the tax code, providing fewer tax incentives for investors to buy and keep single-family units, and potentially influencing these investors to sell their single-family homes to traditional homebuyers or non-profits.[73] However, the Act may also give rise to unintended consequences, evidenced by the creation of secondary markets among investors with LIHTC funded properties, that mitigate some of its other benefits.[74] Accordingly, while the act would likely be a positive step towards

---

[66] *Id.* ("In the burgeoning build-to-rent and single-family rental niches, homes typically are new, resemble their for-sale counterparts, and offer a taste of homeownership without steep purchase prices, maintenance costs, real estate and school taxes, or homeowners association fees.") [https://perma.cc/HH3W-FXYB].
[67] S. 2224.
[68] *See id.*
[69] *See id.*
[70] *See id.*
[71] *See* Santarelli, *supra* note 1; George, *supra* note 4.
[72] *See* Brown, *supra* note 25.
[73] *See* S. 2224.
[74] *See* Healy, supra note 48.

addressing the ongoing housing crisis, the impact of large investors in the market will likely not be mitigated without continued policy change.

Erin Hunter[75]

[75] Student, Boston University School of Law (J.D. 2025).