



June 20, 2024

Mr. Joseph Baker
Director
Ohio Common Sense Initiative
77 S. High St
Columbus, OH 43215

Dear Mr. Baker:

The Ohio Housing Council (OHC) appreciates the opportunity to comment on draft rule 5703-25-20, the procedure for valuation of federally subsidized residential rental property.

OHC was pleased to devote considerable time and resources to offer the Ohio Department of Taxation (ODT) draft rules and suggestions which served as the model for the rules ODT initially proposed. We continue to be grateful for that and their willingness to meet with us as we continue to seek clarity, consistency, and predictability in the valuation of federally subsidized residential rental properties in Ohio. For many years, both property owners and County Auditors have been frustrated with the valuation methodology which has led to a rash of valuation appeals at both the Board of Revision (BOR) and Board of Tax Appeals (BTA). We are encouraged by the newly enacted statute which, if properly administered, will provide a simpler, more equitable, and more transparent valuation process, and should dramatically reduce the volume of appeals. We are concerned, however, that none of the comments we submitted after the draft was published were incorporated in the draft that was submitted to the Common Sense Initiative. While we believe these represent a solid start, we are concerned that they unnecessarily leave issues unresolved that will undermine the intent of the statute to remove ambiguity and reduce appeals.

The Ohio Housing Council is a statewide association of affordable housing professionals, including developers, owners, managers, architects, attorneys, accountants, and underwriters, who share the goal of making a difference in Ohio's affordable housing industry. We advocate and educate on behalf of our members to increase the quality and supply of affordable housing in the State of Ohio. As a diverse group representing many different interests, when we come together in consensus to speak on policy, we hope to deliver a powerful message.

Given the importance of how these properties are valued for the purposes of property taxation, several years ago we formed a working group of our members who have expertise on property taxation, most of whom own properties in multiple Ohio counties and in

multiple states. Because it is a diverse group with varied interests, when we come together to speak on policy, we only offer comments on those areas in which there is consensus in the hope that it delivers a powerful message.

Affordable Housing Valuation Calculator

As our working group has been discussing how best to comply with these newly enacted statutes and how they will impact their operations, we realized it would be tremendously helpful to have an online tool which calculates the valuation using the new methodology. While the formula required by ORC 5715.01 to determine the value of federally subsidized residential rental property is fairly prescriptive, we are concerned that its complexity makes it very likely that both property owners and county auditors will inadvertently apply it incorrectly. An online calculator that mirrors the statutory requirements would ensure that the initial application of the formula is consistent and accurate while relieving both property owners and County Auditors of the burden of creating their own versions that are likely to be less reliable. Failure to provide an online calculator creates an unnecessary risk that this new law will be applied inconsistently – and incorrectly – throughout the state.

We understand ODT is uncertain it has the statutory authority to mandate the use of an online calculator. Even if this interpretation of ODT's authority is correct, **we strongly encourage ODT to host an online calculator that is optional for property owners and County Auditors to use** or, in the alternative, work with another state agency such as the Ohio Housing Finance Agency to host one.

(A)(2) Affordable Housing Valuation Calculator definition

Our comments on this definition are conditioned upon whether ODT decides to host – or allow another state agency to host – an online calculator. If ODT includes an online calculator, we think this is a good definition. If, however, the Affordable Housing Valuation Calculator is not referenced elsewhere within the administrative rule, it would be appropriate to strike its reference within the definitions section of the rules.

(A)(4) Capitalization Rate definition

We agree it is appropriate for the Tax Commissioner to set the capitalization rate. However, we suggest that ODT eliminate the reference to the Appraisal Institute as the source of the capitalization rate information, as we do not believe the Appraisal Institute publishes such a number. If they do, it likely requires a paid subscription to their service as they do not appear to publish it. Over the course of many conversations between OHC and representatives of the County Auditors Association of Ohio (CAAO), we identified RealtyRates.com as a source that is easily accessible to all stakeholders at no cost. Specifically, **we suggest using RealtyRates.com's national multifamily capitalization rate which can be found at <https://www.realtyrates.com/commentaryg.html>**. Please

see the first column on that page referencing “Apts” for apartments, and note that as of February 16th, the most current data available is from 2023 Q3 where the national apartment capitalization rate is reported as 8.49%.

The timing of when the Tax Commissioner sets the capitalization rate is important and challenging. In a perfect world, the Tax Commissioner would set the capitalization rate that was applicable as of January 1st. Unfortunately, there is an inherent lag in the availability of that capitalization rate information, and it is likely that RealtyRates.com won’t publish the capitalization rate for the first quarter until after the March 1 submission deadline.

Therefore, **we suggest that the Tax Commissioner rely on the most recent RealtyRates.com capitalization rate as of the second day of January every year** (recognizing that January 1st is a national holiday).

Should you determine that setting the rate on January 2nd is too early, we respectfully request that the Tax Commissioner publish the applicable capitalization rate no later than February 1st, so that owners have time to complete their own valuation calculations in conformance with ORC 5715.01.

Finally, we believe that the capitalization rate only needs to be updated annually.

(A)(11) Other Income Definition

We appreciate that the proposed rule includes a definition of the terms “other income” and “income derived from other sources.” However, **we respectfully request that ODT eliminate the phrase “but not limited to” so that the definition includes an exhaustive list of those items that count as “other income.”** We believe a definition that lists all the sources of income that will count as “other income” will provide certainty and reduce disputes between the property owners and county auditors.

Pass-Through Grant Income

Failure to create an exhaustive list in the definition could lead some to incorrectly believe that pass-through grant income is included in “other income.” Many federally subsidized residential rental properties serve highly vulnerable households where it is necessary to provide case management or deliver supportive services to its residents. It is common for these properties to receive grants to fund these services and these grants are typically reflected as “other income” on the financial statements. Recognizing that these are just pass-through monies with a corresponding expense to staff these activities, we don’t believe it is appropriate to inflate the property’s income without accounting for the corresponding expense for the case management or service coordination for these vulnerable households. The cleanest way to do this within the structure of the proposed rule is to **create an exhaustive list of sources of income that count as “other income” and leave pass-through grants off that list.**

Interest Income on Restricted Accounts

OHC members are also concerned with inclusion of “interest income” in the definition of “other income,” as this overly broad term could be interpreted to include earnings on restricted Replacement Reserve and Operating Reserve accounts. While we believe it appropriate to count interest earnings on a property’s standard Operating account because owners may use this interest income for the property’s operations, OHC members believe it is not appropriate to include interest income on the restricted accounts.

Federally subsidized residential rental properties are likely to have Replacement Reserve accounts specifically for large capital expenditures in the future (e.g., roof replacement, boiler replacement, appliance replacement, etc.). Because these properties tend to operate with little to no excess cash due to the deed restrictions, these properties also often have Operating Reserve accounts, which are funded by the investors in the property for the limited purpose of safeguarding against periodic extraordinary expenses that could place the property at risk of failing to pay its mortgage. Since both the Replacement and Operating Reserve accounts are restricted accounts, the owner does not have access to those monies without approval and consent from either the lender or the regulatory agency (and sometimes, both). As such, any interest income earned from these restricted accounts are not available for property operations and as such, **we strongly believe that the definition of “Other Income” and “Income derived from other sources” should include only interest income from Operating, Insurance Escrow, Real Estate Tax Escrow, and Tenant Security Deposit Escrow accounts and that interest earnings on restricted accounts should be specifically excluded from the “other income” calculations.**

In the hopes that it is helpful, when all our suggestions about (A)(11) are combined, **our recommendation is that it be changed to:**

“Other income” and “Income derived from other sources” means income other than rental income from residential units, including rent from commercial tenants, interest income from Operating, Insurance Escrow, Real Estate Tax Escrow, and Tenant Security Deposit Escrow accounts, laundry and vending income, tenant charges, non-sufficient fees, late fees, and application fees, so long as the income is attributable to the operations of the property.

(A)(15) Unimproved Land Value Definition

ORC 5701.15(A)(4) requires that the minimum value for federally subsidized residential rental property take the “unimproved land value” into account. The proposed rule defines this term to be the “land value for each parcel as reflected on the most recent tax list.” This land value on the most recent tax list takes the improvements (e.g., utilities) into account and thus overstates the “unimproved land value.” While we understand that there is no

easily accessible data source or method to determine the true unimproved land value, we still contend that there is a significant difference in these two values. However, because we are hopeful that the value established by the formula will produce the highest valuation, we don't believe the calculation using the unimproved land valuation will come into play and we are not advocating for any specific change to the definition of unimproved land at this time. But we would like to reserve the right to raise this issue in the future should it prove to be problematic with future valuations.

(B)(1)(b)(i) Method of Filing

In OHC's original draft of the proposed rules, we used the following language which we now find somewhat unclear: "...if it is certified that the package...was provided to the United States postal service..." The use of the word "certified" may suggest that certified mail be required which was not our intent. **We suggest alternate language as follows: "...if it is postmarked or otherwise time stamped on or before 11:59 pm eastern standard time on the first day of March;".**

(B)(1)(b)(ii) Method of Filing

We appreciate that the draft rule allows for the submission of the required information via email. Because the time it takes for an email to reach the recipient's email box is out of the sender's control (much like the time it takes for a physical letter to be delivered to the recipient is out of the sender's control), **we believe that it would make more sense if the requirement to provide the information by March 1 of each year was satisfied by the email being sent by 11:59 pm eastern standard time rather than the email being received by that time.**

(B)(2)(a)(ii) Applicability of Requirement to File

For the HUD and RD properties, we believe that waiting for the Certificate of Occupancy to be the trigger for filing notice to the County Auditor is likely very late in the process and that date may not align well with the valuation cycles. Therefore, **we recommend modifying that language to read: "If a HUD or RD property, upon the issuance of the HUD or RD regulatory Agreement with corresponding Rental Contract or Schedule that demonstrates the amount of the subsidized rents."**

(B)(3) Forms

Based on our recent conversations with the ODT, we recognize that the final Administrative Rules will not be finalized before the March 1st deadline for submitting information to County Auditors. We wanted to acknowledge our mutual understanding that any good faith effort by an owner to submit the required information on the transmittal page will be

considered valid as the official forms from the ODT will not be available prior to the March 1st deadline.

(B)(5)(c) Audited information

As some of our members have begun gathering the required information in advance of filing, we realized that requiring an owner to submit a proforma or initial budget when the property is under construction – and thus has no income – could give a false impression of the income of the property and thus create a false impression of the value for the purpose of property taxation. **We recommend that ODT modify the trigger in this provision to read “In the instance where a property has commenced operations but has not yet generated financial statements...”** This will ensure that the county auditors will have the most accurate financial picture of the property.

(B)(6)(a) Valuation by the County Auditor

References to the “established value” in this section only make sense if there is an Affordable Housing Valuation Calculator which is used to calculate the valuation of the property based on the on the very prescriptive methodology under ORC 5715.01. As we envision the process, the owner will enter information into the Affordable Housing Valuation Calculator and include the resulting output with the other required information. Therefore, the valuation would be known at that time, unless the owner elected to provide additional information to challenge any of the preemptive values. If the process works that way, a reference to the “established value” makes sense, as it is a known number. Under the current draft rule, however, the property owner won’t know the valuation until several months later when the County Auditor establishes it.

If the final rule does not include an Affordable Housing Valuation Calculator, we suggest striking the current (B)(6)(a) and modifying (B)(6)(b) to read as follows: “Upon receipt of the forms under division (B)(3) of this section, the County Auditor will consider the challenge of the property owner to the presumptive amounts as indicated on the transmittal page pursuant to ORC 5715.01(A)(4)(a) or (b), and will calculate the value under this rule consistent with the requirements of ORC 5715.01. The auditor will also take into account any additional information supplied by the property owner by May 15th in support of their challenge of the presumptive amounts.”

(B)(6)(c) Valuation by the County Auditor

We appreciate that Section (d) adds clarity to the process by establishing September 1 as the deadline for the owner to meet with the County Auditor to discuss any concerns with the proposed valuation. We believe that Section (c) should similarly establish a firm date by which the County Auditor is required to communicate its proposed valuation back to the

owner. **We suggest this date be July 15th, but recognizing that this may not be feasible, it not be later than August 1st, and the County Auditor be required to use the contact information included on the transmittal page to ensure that the proper person representing ownership is notified.**

(C)(2) Operating Income / Expenses

ORC 5713.031(B) generally requires owners of federally subsidized residential rental property to submit three years' worth of financial information. However, ORC 5715.01(A)(4) is silent on which year – or years – are to be included for the purpose of determining the “Operating Income” and “Utilities” for the property. Without clarification in the rule as to which year – or years – are used for this calculation, we are concerned that property owners and County Auditors will select whichever combination of years is most favorable to their preferred outcome, leading to an increase in disputes and appeals. Because we know that a single year could be an outlier (e.g., an exceedingly mild – or harsh – winter may produce abnormally low – or high – utility expenses), **we suggest using the three-year averages of Gross Rental Income, Other Income, and Utilities as the inputs into the valuation calculation.**

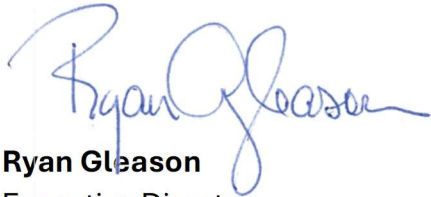
(C)(3) Method for Determining Value

It is not clear from the statute or draft rule whether a property owner who fails to meet the March 1 deadline to submit information as part of the normal triennial update or reappraisal years is able to submit information in a subsequent year and receive the benefit from this valuation methodology in those future years. We understand that a County Auditor is not required to use the new valuation methodology in that year when a property owner fails to file the required information by the March 1st deadline. However, we believe it is exceedingly punitive to prohibit the property owner who fails to submit the required information by March 1 in the first year of the triennial update or reappraisal years from submitting information and getting the benefit of the valuation method for three years. Therefore, **we suggest that the rule allow for only a one-year penalty for failing to file by March 1 in the required year and allow for a submission in subsequent years if the initial year is missed.**

We appreciate your consideration of our concerns and hope that you will give us, the County Auditors, and the Tax department another opportunity to improve these draft rules for the betterment of all involved. We would welcome the opportunity to discuss any of this with you further should you find it helpful to do so.

Thank you for your consideration of our request.

Sincerely,

A handwritten signature in blue ink that reads "Ryan Gleason". The signature is fluid and cursive, with the first name "Ryan" and last name "Gleason" clearly legible.

Ryan Gleason

Executive Director

Ohio Housing Council