2011 Legislative & Regulatory Priorities

National Apartment Association
National Multi Housing Council

Joint Legislative Program

NAA/NMHC Joint Legislative Program

Joint Legislative Committee

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NAA/NMHC Joint Legislative Program

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The NAA/NMHC Joint Legislative Program

A Unified Voice for the Apartment Sector

In a unique relationship, the National Apartment Association (NAA) and the National Multi Housing Council (NMHC) have worked together for 20 years on a Joint Legislative Program. This partnership creates a clear, consistent voice for the apartment industry on Capitol Hill.

The NAA/NMHC Joint Legislative Program ensures that apartment firms are able to engage government officials in constructive, ongoing dialogues and participate in policy decisions affecting their ability to provide housing to millions of Americans.

Additionally, the Joint Legislative Program, in concert with 12 other national real estate organizations, is actively involved with the Congressional Real Estate Caucus (CREC) on Capitol Hill.

The Joint Legislative Program will remain in the vanguard of bringing key issues before legislators and regulators in the ongoing debate over the federal government's role in supporting apartment living.

The National Apartment Association

The National Apartment Association (NAA) is America's leading advocate for quality rental housing. Based in Arlington, Va., NAA is a federation of nearly 170 state and local affiliated associations representing more than 51,000 members responsible for more than 6 million apartment homes nationwide. It is the largest broad-based organization dedicated solely to rental housing. NAA members include apartment owners, management executives, developers, builders, investors, property managers, leasing consultants, maintenance personnel, suppliers and related business professionals throughout the United States and Canada. NAA strives to provide a wealth of information through advocacy, research, technology, education and strategic partnerships. NAA sponsors the annual Capitol Conference that culminates in lobby day, where hundreds of industry leaders descend on Capitol Hill to advocate for industry issues with their members of Congress. NAA provides six national designation programs; publishes units magazine and other industry publications; holds an annual Education Conference and Exposition; and promotes industry professionalism.

The National Multi Housing Council

For more than 30 years, NMHC has provided strategic leadership to the apartment industry. Based in Washington, DC, NMHC represents the largest and most prominent firms in the apartment industry, including owners, developers, managers, lenders and brokers. The Council benefits from a focused agenda and a membership that includes the principal officers of the most distinguished real estate organizations in the United States.

With its joint legislative partner, the National Apartment Association, NMHC serves as the apartment industry's primary advocate on legislative and regulatory matters, such as housing policy, finance, tax, technology, property management, environmental issues and building codes. In addition to providing leadership on public policy issues, NMHC is acknowledged as the preeminent source of apartment-related information. The Council conducts apartment-related research, encourages the exchange of strategic business information and promotes the desirability of apartment living.

The Congressional Real Estate Caucus

The Congressional Real Estate Caucus was formed in May 1998 at the Real Estate Summit on Capitol Hill organized by the NAA/NMHC Joint Legislative Staff. Representatives Michael Turner (R-OH) and Richard Neal (D-MA), the former mayor of Springfield, MA, serve as co-chairs. A Senate Real Estate Caucus has been formed with Senators Mary Landrieu (D-LA) and Johnny Isakson (R-GA) serving as co-chairs. The CREC is endorsed by national real estate groups representing 2 million members and companies that own, build, manage and finance real estate. CREC serves as a forum for members of Congress and real estate professionals to discuss federal policy and its impact on the nation's real estate industry.

CREC seeks to ensure implementation of federal policies that further real estate's contributions to national, state and local economies. Real estate accounts for a quarter of every tax dollar, constitutes half of the nation's domestic investment and is responsible for 12 percent of the nation's gross domestic product and an estimated 8.9 million jobs. Thus, protecting and promoting a healthy real estate sector can only serve to strengthen the nation's economy.

Principles of a Balanced Housing Policy

For decades, the federal government pursued a "homeownership at any cost" housing policy, ignoring the growing disconnect between the nation's housing needs and its housing policy. Now, the U.S. is on the cusp of a fundamental change in our housing dynamics. Shifting demographics and new economic realities are driving more people away from the typical suburban house and creating a surge in rental demand. Tomorrow's households want something different. They want more choice. They are more interested in urban living and less interested in owning. They want smaller spaces and more amenities. And increasingly, they want to rent, not own. Unfortunately, our housing policy has yet to adjust to these new realities.

Booming Rental Demand

- One-third of Americans rent their housing, and nearly 14 percent—17 million households—call an apartment their home.
- Changing demographics mean changing housing preferences.
  - Married couples with children are now less than 22 percent of households – and that number is falling. By 2030, nearly **three-quarters of our households will be childless**.
  - 78 million **Echo Boomers** are beginning to enter the housing market, primarily as renters.
  - 78 million **Baby Boomers** are beginning to downsize, and data shows seniors are more likely to rent after moving.
- Between 2008 and 2015, **nearly two-thirds of new households formed will be renters**. That's six million new renter households.
- Because of these changes, it is estimated that **half of all new homes built between 2005 and 2030 will need to be rental units**.

New Supply Is Falling

- New multifamily construction set an all-time post-1963 low in 2010 at 97,000 new starts.
- We need to be building an estimated 300,000 units a year to meet expected demand. Yet most forecasts suggest we'll start fewer than half that many in 2011. That's not even enough to replace the units lost every year to demolition, obsolescence and other factors.
- While a glut of single-family housing exists, **the apartment industry is heading toward a shortage as early as 2012**. The shortage of affordable rental units is particularly acute. The Harvard Joint Center for Housing Studies estimates a three-million-unit shortage nationwide.

A Strong Track Record

- The performance of the apartment industry stands in stark contrast to the single-family sector. **Our industry did not overbuild** in the housing boom and did not contribute to the housing meltdown.
- Overall loan performance in the $2 trillion multifamily sector remains relatively healthy, with the strongest performance recorded by the debt provided by Fannie Mae and Freddie Mac. Their delinquency and default rates are 0.51 percent compared to 8.7 percent for single-family home mortgages.

More Than Just Shelter: Social Benefits of Rental Housing

- **Apartments are fiscally responsible**. They use existing infrastructure and reduce the cost of providing public services such as water, sewer and roads. Nationally, we can save $100 billion in infrastructure costs if we pursue more compact forms of development.
- Apartments are more **environmentally sustainable, resource-efficient and energy-efficient** than other housing types. Because of their high-density nature, apartment households generate 30 percent to 40 percent fewer vehicle trips than single-family houses, which make them an important tool in our climate change efforts.
- Apartments help create a more **mobile workforce** that can respond to changing economic opportunities.
- Apartments help develop **economically healthy communities** by providing housing for much-needed workers. Harvard University researchers found that average house values were the highest in working communities with the most multifamily units.

The time has come to rebalance our housing policy and make rental housing a priority. Nearly two-thirds of households formed between 2008 and 2015 will be renters, yet 80 percent of our housing programs and tax expenditures go to homeownership.

Action Requested: The apartment industry urges lawmakers at all levels of government to create policies that respect the rights of individuals to choose housing that best meets their financial and lifestyle needs. We ask these policymakers to work with the apartment industry to develop a smarter housing policy that:

- Assures that everyone has access to decent and affordable housing, regardless of his or her housing choice;
- Respects the rights of individuals to choose the housing that best meets their financial and lifestyle needs without disadvantaging, financially or otherwise, those who choose apartment living;
- Promotes healthy and livable communities by encouraging responsible land use and promoting the production of all types of housing;
- Recognizes that all decent housing, including apartments, and all citizens, including renters, make positive economic, political and social contributions to their communities; and
- Balances the expected benefits of regulations with their costs to minimize the impact on housing affordability.

Further, we urge lawmakers to reject proposals for new homeownership subsidies, including homebuyer tax credits and other ill-advised subsidies that only threaten to reinflate the single-family housing bubble and direct even more of our limited federal housing resources toward homeownership at the expense of critical rental housing programs.

Barriers to Apartment Development

For generations, married couples with children dominated our housing markets and caused the suburbs to grow explosively. And our zoning laws, most of which predate World War II, catered to them by requiring low-density development and prohibiting developments that mix residential and commercial uses. But society has changed and so have their housing preferences. Married couples with children are less than 25 percent of American households. In their place are young professionals, childless couples, empty nesters and single parents. These households want vibrant, walkable communities surrounded by shops, restaurants and entertainment.

Fully 60 percent of respondents in one survey said they would rather live in a compact neighborhood than a large-lot neighborhood where they would depend entirely on cars to get around. But outdated zoning laws prevent housing providers from creating the types of housing today's households desire. These societal changes are so profound that one well-respected urban planning professor predicts that a surplus of 22 million large-lot houses (built on more than one-sixth of an acre) could exist within 20 years—that's roughly 40 percent of the large-lot houses available today.

Many zoning laws also discourage rental housing. With house prices still falling and jobs not entirely secure, renting is losing its stigma. The housing crisis taught Americans that housing is shelter, not an investment. Owning a house is no longer required to build wealth. People are now free to choose the housing that best suits their lifestyle. For millions, a rental apartment offers them convenience and flexibility to relocate to pursue new job opportunities.

Even where zoning laws allow apartment construction, neighborhood activists often oppose new rental communities for their own narrow self interests and misconceptions about apartments and their impact on property values, traffic and school overcrowding. An increasing body of research refutes the notion that apartments lower property values, increase traffic or result in overcrowded schools. To the contrary, communities with more apartments tend to have higher property values. They also help minimize traffic because apartment residents own fewer cars and are more likely to use public transportation. They also have one-third as many school children. Apartments also help localities reduce taxes by concentrating public services such as water, sewer, roads, and police and fire service over a smaller area. They are also more environmentally friendly and help preserve parks and natural areas by providing more compact development.

Action Requested: The apartment industry urges local governments to update zoning and land-use policies to allow for higher population densities as well as permit mixed-use development. We ask lawmakers to help change the dialogue and reduce citizen opposition by educating citizens that compact development and rental housing can bring new jobs, new retail, new tax revenue and other benefits to the community.

FEDERALLY ASSISTED RENTAL HOUSING: 2010

NUMBER OF HOUSING UNITS	
Tenant Based Voucher	1,886,494
HOME Rental Units Completed	20,834
CDBG Rental Units Rehabilitated	18,346
Section 236 program	225,167

Sources: https://pic.hud.gov/pic/RCRPublic/rcrmain.asp
Peter Huber, 202-708-2684
Karen Pearce, 202-402-4684
2008 data from: www.huduser.org/portal/picture2008/index.html
http://www.hud.gov/offices/cfo/reports/2009section2.pdf
Updated 1/10/2010

The 2002 Millennial Housing Commission report identified affordability as the "single greatest housing challenge facing the nation." Unfortunately, little progress has been made on the affordability crisis in the intervening years. If anything, the problem has gotten worse. According to Harvard University, 35 million households spend 30 percent or more of their income on housing, a common definition of affordability. To find affordable housing, many workers are being pushed farther and farther from their jobs, something that is no longer tenable in this era of high fuel costs.

In a perfectly functioning market, housing providers would simply increase production to meet this tremendous demand. But housing is not a perfectly functioning market. Regulatory barriers as well as high land and construction costs and local impact fees make it virtually impossible for the private sector to build, rehabilitate and operate apartments at affordable rents to many workers in any mid- to large-size metro area.

Ultimately, there will be no single solution to this problem. We need to harness the power of the private sector to produce and preserve affordable housing. To do that, we need to eliminate regulatory barriers and outdated zoning and land-use policies, enact market-based density bonuses and restore much-needed balance to our national housing policy.

ISSUES

Low-Income Housing Tax Credit Program

The Low-Income Housing Tax Credit (LIHTC) program has a long history of generating the capital needed to produce low-income housing, and it has enjoyed broad bipartisan support in the Congress. That said, the program has become a collateral victim of the banking and mortgage crisis. In response, Congress has taken some steps to bolster the beleaguered program.

Notably, in the 111th Congress, lawmakers approved the Tax Credit Assistance Program (TCAP) and the Tax Credit Exchange Program (TCEP). TCAP provided $2.25 billion in grants to state tax credit allocating agencies for capital investments (i.e., "gap financing") in LIHTC projects. TCEP was designed to help stalled LIHTC programs move forward and allowed states to exchange a portion of their 2009 LIHTC allocations (plus any remaining 2008 allocations) for cash grants from the Treasury Department.

Action Requested: While these two programs take an important step toward infusing capital into the program, other changes are required to restore liquidity to the program. The apartment industry urges Congress to:

- Increase the credit carryback from one to five years to allow investors to immediately realize value in LIHTC investments, thus making LIHTCs attractive to a larger pool of investors;
- Renew the TCEP to maintain the development pipeline; and
- Broaden the investor base by allowing some S corporations, LLCs and closely held C corporations to offset revenue with housing credit tax benefits.

Section 8 Voucher Program

NAA/NMHC strongly support the Section 8 housing choice voucher program, which has long served as America's primary rental subsidy program. The program, which provides subsidized rents for low-income families in private rental housing, can be one of the most effective means of addressing the need for affordable housing. It allows families to choose their housing and helps reduce the concentration of poverty.

But the program has been plagued with inefficiencies, and onerous bureaucratic requirements increase the cost to rent to a Section 8 voucher holder and discourage private owners from accepting Section 8 vouchers. Owners who participate in the program must sign a three-way lease with the resident and the housing authority, and are subject to (often cumbersome) program restrictions, such as repetitive unit inspections, resident eligibility certification and other regulatory paperwork. The program has also been plagued with volatile funding that is expected to worsen in future budget cycles.

Recognizing the regulatory burden the program places on private owners, Congress specifically made program participation voluntary. However, at the state and federal level, efforts have been undertaken to make it illegal for a private owner to refuse to rent to a Section 8 voucher holder. While superficially appealing, such mandates are ultimately self-defeating because they greatly diminish private investment in affordable housing and reduce the supply. Increased participation should occur because the program has been reformed, and renting to a Section 8 voucher holder (from the owner's perspective) is comparable to renting to an unsubsidized renter.

If the housing needs of America's low- and moderate-income families are going to be met, it is imperative that we improve the Section 8 program, and its voluntary nature must be preserved.

Action Requested: The apartment industry urges lawmakers to take action to help the Section 8 program truly meet the affordable housing needs of the nation's citizens. Specifically, they should:

- Reform the Section 8 program to remove duplicative regulatory requirements so the cost of renting to voucher-holding residents is comparable to that of unsubsidized residents;
- Put in place a reliable funding formula;
- Reinforce the voluntary nature of the program and reject proposals that effectively mandate voucher participation; and

- Not extend or make permanent temporary provisions that require the new owner of a foreclosed property to be subjected to the Section 8 contract of the prior owner. Such action would discourage investment in rental housing at a time when the nation's demand for rental housing outstrips supply and is rising as a result of the recession.

Rent Control

NAA/NMHC encourage affordable housing production and voucher assistance rather than rent control to address our affordable housing challenges. Forbes magazine lists rent control as one of the 10 worst economic ideas of the 20th century, saying: "Here we have a policy initiative that has done huge damage to cities around the globe. It is very hard today to find an economist supporting rent control."

"(M)ost of the benefits produced by rent controls aid moderate-, middle- and upper-income households, rather than the poor households they may have been adopted to help," said Anthony Downs of the Brookings Institution in his definitive academic research work, A Reevaluation of Residential Rent Controls. HUD concurs: "The benefits of rent control are poorly targeted… Significant numbers of well-to-do renters live in rent-controlled apartments and enjoy substantial benefits, while many lower-income renters receive little or no benefit." The Advisory Commission on Regulatory Barriers to Affordable Housing, a blue-ribbon panel of experts, wrote: "As a means of redistributing income to the poor…rent control is extraordinarily inefficient, if not counterproductive."

Action Requested: The apartment industry urges Congress and the states to provide sufficient incentives and remove unnecessary and costly barriers to developing affordable housing, thus relieving the critical shortage of rental housing.

Density Bonuses

Density bonuses allow developers to build more units on a given site than local zoning regulations would normally allow. In theory, this brings down the per-unit cost of each unit so the developer can make some portion of the units in the property more affordable. But in practice, density bonuses are rarely sufficient to cover the cost of the affordable units.

The longer density bonuses are used in a jurisdiction, the less effective they become. There are two reasons for this. First, they typically do not keep up with land and construction costs. Second, once density bonuses are written into a jurisdiction's zoning law, land sellers take them into consideration when calculating the value of a parcel of land. They know how many units a developer can build, including the density bonus, and they base their sales prices on that calculation. More units mean a higher sales price. As a result, the bonus that was meant to help offset high land costs is now pushing land costs even higher and wiping out the bonus' value.

Action Requested: The apartment industry urges municipalities to 1) provide additional tax abatement to density bonus units to make them affordable, and 2) reevaluate density bonuses regularly and readjust them based on current economic conditions to maintain their value. In addition, when they are included as part of an inclusionary zoning policy, we ask for flexibility to allow developers to build affordable units elsewhere or pay a fee into an affordable housing fund.

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RENTER OCCUPIED HOUSING U.S. HOUSEHOLDS: RENTERS & OWNERS

TYPE OF HOUSEHOLD	NO. OF HOUSEHOLDS (IN THOUSANDS)	% OF U.S. TOTAL	NO. OF RESIDENTS (IN THOUSANDS)
Renter Occupied Housing	38,777	33%	95,797
Owner Occupied Housing	78,795	67%	208,484
TOTAL	**117,572**	**100%**	**304,281**

Source: NMHC tabulations of 2010 Current Population Survey, Annual Social and Economic Supplement, U.S. Census Bureau (www.census.gov/cps). Updated September 2010.

The apartment industry, like other commercial real estate sectors, continues to suffer as a result of the still-impaired capital markets. While some signs indicate that the commercial mortgage-backed securities (CMBS) market is thawing and other credit sources such as life insurance companies and pension funds are slowly returning to the market, they remain limited sources of capital for the apartment sector. Until the capital markets are fully restored, the sector will continue to rely heavily on the Government-Sponsored Enterprises (GSEs) and the Federal Housing Administration (FHA) to enable it to produce new housing and refinance maturing multifamily debt.

ISSUES

Reform of the GSEs Fannie Mae and Freddie Mac

Even with improving access to capital from other sources, Fannie Mae and Freddie Mac remain the primary source of permanent debt financing for apartment owners, accounting for approximately 90 percent of the funds provided to multifamily borrowers during 2010 and virtually all non-construction-related capital.

As policymakers craft solutions to fix the GSEs' single-family housing problems, they should be mindful not to do so at the expense of the much smaller and less understood, but vital, multifamily sector. Apartments are a critical component of the nation's housing market, but history has made it clear that the private market simply cannot meet the majority of the industry's capital needs.

Banks are limited by capital requirements and have never been a source of long-term financing. Life insurance companies have typically been less than 10 percent of the market, lend primarily only to newer, luxury high-end properties, and leave the multifamily market based on their investment needs and economic conditions. The private-label CMBS market is unlikely to return to the volume and market share it reached a few years ago, and the FHA has exceeded its capacity. Therefore, the federal government must continue to play an active role in ensuring liquidity, both to support the production of workforce housing and to ensure that capital remains available to the sector during market dislocations.

A federally backed secondary market is absolutely critical to the sector's long-term health and our ability to continue to meet the nation's growing demand for rental housing. The industry will also rely heavily on Fannie Mae and Freddie Mac to help refinance the estimated $300 billion to $400 billion in multifamily mortgages that will mature in the next four to five years. Without this liquidity backstop, the risk of foreclosure (and bankruptcy) of otherwise performing loans is significant.

Fortunately, to date meeting that need has posed little to no risk to the taxpayer. In stark contrast to the single-family sector, the apartment industry did not overbuild during the housing boom. Even more importantly for the issue at hand, the GSEs' multifamily programs did not contribute to the housing meltdown. Overall loan performance in the $2 trillion multifamily sector remains relatively healthy, and the strongest performance has been recorded by the debt provided by the GSEs. Their multifamily delinquency and default rates remain below one percent—a tenth of the size of the delinquency/default rates plaguing single-family.

Through careful underwriting, the GSEs' multifamily models have met the test. They have attracted enormous amounts of private capital; helped finance millions of units of market-rate workforce housing without federal appropriations; sustained liquidity in all economic climates; and ensured safety and soundness in their multifamily business. As a result of the liquidity provided by the GSEs, the United States has the best and most stable rental housing sector in the world.

The GSEs' multifamily programs did not cause the housing meltdown, but they are now at risk of being eliminated as a collateral victim to single-family market excesses. Instead of abandoning a market-proven model, policymakers should preserve the elements that led to this success story in any reconfigured housing finance system.

Action Requested: As members of Congress embark on efforts to restructure the GSEs and the secondary market for housing, we strongly urge them to adopt the following principles to guide their actions related to the GSEs' multifamily programs.

1. Do No Harm: Preserve Multifamily Lending Programs

The multifamily sector produces the vast majority of this nation's affordable, workforce housing. Therefore, there is an appropriate public mission for the government to provide an effective financing system to ensure the nation's housing needs are met. Since the multifamily sector, and more specifically the GSEs' multifamily programs, did not contribute to the housing meltdown, they should not become a collateral victim of efforts to fix the single-family problems.

2. Protect the Taxpayer: Look to Proven Multifamily Models

The GSEs' multifamily programs can serve as a model for a reformed housing finance system. They have performed extraordinarily well and have less than a one-percent delinquency rate. Historically, they have been well capitalized, have covered all their losses through the loss reserves and have earned a profit. Even during conservatorship, the GSEs' multifamily programs have earned net revenues of $2 billion.[1] Their success is the result of strong business models that use retained risk and stringent underwriting criteria. These models should be studied for broader application to the larger housing finance system. To protect the taxpayer going forward, the government must ensure strong

[1] *Source: GSE SEC filings. This does not include writedowns of Low-Income Housing Tax Credit holdings that the firms have been prohibited from selling and liquidating.*

regulatory oversight. It should require mortgage originators and servicers to retain some risk, and it should establish adequate capital standards to fund loan-loss reserves.

3. Federal Government Involvement Necessary and Should Be Appropriately Priced

Even after we transition to a new housing finance system, there will be an ongoing need for an explicit federal government guarantee on multifamily mortgage securities and portfolio-held loans. Over the past 40 years, there have been numerous occasions when the private sector has been unable or unwilling to finance multifamily loans. Hence it is hard to envision a reformed housing finance system without some form of federal credit enhancement. However, that credit should be priced at an appropriate level that reflects the mortgage risk and the value of the government's credit enhancement and in such a way that it complements, but does not unfairly compete with, private debt capital.

4. Liquidity Support Should Be Broad and Available at All Times, Not Just "Stop-Gap" or Emergency

Any federal credit facility should be available to the entire apartment sector and not be restricted to specific housing types or specific renter populations. Narrowing any future credit source would remove a tremendously important source of capital to a large portion of our industry, namely market-rate developers who actually provide a large volume of unsubsidized workforce housing. Such a facility should also be available at all times to ensure constancy in the U.S. housing market throughout all business cycles. It would be impossible to turn on and off a government-backed facility without seriously jeopardizing capital flows.

5. Mission Should Focus on Liquidity, Not Mandates

The public mission of a federally supported secondary market should be clearly defined and focused primarily on using a government guarantee to provide liquidity and not specific affordable housing mandates. Such mandates create conflicts within the secondary market and are partially responsible for the housing crisis because of the distortions the mandates introduced into the GSEs' business practices. Instead of mandates, the new housing finance system should provide incentives to support the production and preservation of affordable multifamily housing. Absent incentives, the government should redirect the affordability mission to HUD/FHA and the Low-Income Housing Tax Credit program.

6. Retain Portfolio Lending While Expanding Securitization

Securitization must be used to attract private capital for multifamily mortgage capital. However, unlike single-family loans, multifamily loans are not easily "commoditized." Without the ability to hold some loans in portfolio, multifamily lending activities will be significantly curtailed. In addition, securitizing multifamily loans is not always the best way to manage credit risk. Portfolio capacity is also required to aggregate mortgages for a structured securities sale.

7. Create Certainty and Retain Existing Resources/Capacity During the Transition

To avoid market disruption it is important that policymakers clearly define the role of the government in a reformed system and the timeline for transition. Without that certainty, private capital providers (e.g., warehouse lenders and institutional investors) are likely to limit their exposure to the market, which could cause a serious capital shortfall to rental housing. In addition, during the transition years, we believe it is critical to retain many of the resources and capacity of the existing GSEs. The two firms have extensive personnel and technology expertise as well as established third-party relationships with lenders, mortgage servicers, appraisers, engineers and other service providers that are critical to a well-functioning secondary market.

Federal Housing Administration's Multifamily Insurance Program

Since the great financial crisis of 2008, virtually all private sources of capital (banks, insurance companies, pension funds and Wall Street) have been sidelined. Fortunately, the FHA has stepped in to fill some of that financing gap. FHA-insured loans are the primary source of construction financing and higher-leverage, long-term mortgage financing for multifamily developers and owners. Even as private capital sources are slowly returning to the market, demand for mortgage insurance from the FHA multifamily programs will remain high, especially as banks continue to engage in little or no construction lending.

FHA is struggling to deal with the nearly overwhelming increase in volume, however, and is changing its loan policies and procedures in response. In 2010, FHA implemented the largest changes in its multifamily underwriting criteria in decades. FHA is also implementing new policy and procedures to process applications, involving new centralized loan committees, removing delegation from field offices and instituting new risk management oversight practices. There are also reports that they are re-negotiating transactions and exploring additional recourse provisions.

The combined impact of these changes is to create bottlenecks that result in significant delays in approving multifamily mortgage insurance applications. The historic increase in demand for FHA financing also threatened to shut down the program in 2010 when the FHA nearly ran out of commitment authority to continue to fund new commitments. Fortunately, fast congressional action to provide an additional $5 billion in authority averted a shutdown.

Action Requested: The apartment industry supports prudent risk management practices by the FHA to ensure its viability and to protect the taxpayer. However, we urge the FHA to work with its lending partners to ensure that it can adequately respond to the increased demand for FHA insurance. In addition, the apartment industry asks the FHA to continue to look for ways to make it more responsive and flexible. Lastly, we urge lawmakers to ensure that the FHA has sufficient credit authority to support the apartment

Tax law plays an integral role in the ability of apartment firms to develop and maintain a sufficient supply of housing affordable to America's workforce. It can distort the flow of capital to the industry or even cause an outflow of capital. As the nation increasingly relies on apartments to house our citizens, we urge lawmakers to ensure that federal tax policy reflects the economic nature of investments in the financing of real estate.

ISSUES

Carried Interest

From 2007 through 2010, the House of Representatives initiated an effort to rein in high-flying hedge fund managers by proposing to eliminate capital gains treatment of carried interest and taxing it as regular income instead. Some in Congress see the tax revenue generated by the carried interest proposal as a way to offset the cost of other tax changes; however, the proposal would have numerous unintended consequences, including exacerbating the nation's affordable housing shortage.

Such a change would devastate real estate partnerships, causing a ripple effect for many of the industry's 550,000 workers and 16 million Americans who rely on the sector to provide them with safe, decent and affordable housing. It would make many development projects financially unviable, preventing much of the proposed new affordable housing from being built.

A "carried interest" (or "promote") has been a fundamental part of real estate partnerships for decades. Investing partners grant this interest to the general partners to recognize the value these partners bring to the venture as well as the risks they take (recourse debt, litigation risks, responsibilities for cost overruns, etc.).

Action Requested: The apartment industry strongly opposes proposals to change the current law governing the tax treatment of carried interest. Current tax law, which treats it as a capital gain, is the proper treatment of this income because carried interest represents a return on an underlying long-term capital asset as well as risk and entrepreneurial activity. Extending ordinary income treatment to this revenue is inappropriate. In addition, any fees that a general partner receives that represent payment for operations and management activities are already properly taxed as ordinary income.

2001 and 2003 Tax Cuts and Tax Reform

Certainty in the nation's tax laws are a requirement for businesses, including apartment owners and investors, to make construction and hiring decisions. Because lawmakers were only able to pass a two-year extension of the Bush-era tax cuts, including reduced rates for capital gains and dividends, the industry faces an unknown future and the potential for significant tax increases in 2013.

Action Requested: The apartment industry urges lawmakers to clearly establish long-term certainty in our tax laws. Importantly, any tax reform undertaken must maintain tax rates that favor investment, including the 15 percent capital gains tax rate, and must not otherwise disadvantage owners and renters of multifamily housing relative to other real estate and asset classes.

Permanent Estate Tax Reform

After allowing the estate tax to lapse in 2010, President Obama and Congress reached an agreement to reinstate the levy for 2011 and 2012 with an exemption level of $5 million (indexed for inflation after 2011) and a top tax rate of 35 percent. Without further action, in 2013 the tax will revert to a $1 million exemption and a 55 percent rate. Since most members will find that unacceptable, Congress is expected to continue to debate long-term estate tax reform during the 112th Congress.

For property owners, the so-called basis, or property valuation, rules included in estate tax legislation are critical. These rules determine the tax basis of inherited property. There are generally two different types of basis rules—stepped-up basis and rollover basis. With a stepped-up basis (the law for all years except 2010, when the estate tax was repealed unless taxpayers elect to use 2011 rules), the tax basis of inherited property is reset to reflect the fair market value of the property at the time of the inheritance. By contrast, under rollover basis, the tax basis of the inherited properties is the same for heirs as it was for the donor (i.e., the heir "steps into the shoes" of the donor with regard to tax basis). This includes any decreases in tax basis to reflect depreciation allowances claimed by the donor in prior years.

Retaining a stepped-up basis rule is essential for estates that contain significant amounts of depreciated real property, such as apartments. Repealing stepped-up basis not only harms heirs of commercial property, it also has the unintended consequence of exacerbating the nation's affordable housing shortage.

Action Requested: In the interest of promoting certainty and stability in the tax code, the apartment industry urges Congress to swiftly enact permanent estate tax legislation that retains a stepped-up basis regime along with a $5 million exemption and a 35 percent rate.

1099 Reporting Requirements

The health care legislation (P.L. 111-148) enacted in 2010 includes extremely onerous information reporting requirements. Starting in 2012, businesses will be required to file a 1099 form for every business from which it purchases more than $600 in goods and services. This requirement will apply to routine expenses, such as office supplies, telephone bills and shipping costs. Current law restricts the reporting requirement to all non-corporate entities that provide more than $600 worth of services only.

Action Requested: Although the Internal Revenue Service has pledged to exempt purchases made by credit card from the new rules, the apartment industry believes they would still represent an unreasonable compliance burden and strongly urges Congress to support legislation calling for their repeal.

Like-Kind Exchanges

Section 1031 of the Internal Revenue Code allows owners of commercial real estate to exchange properties without triggering a taxable event. Such tax-deferred exchanges enable an orderly flow of property ownership.

Action Requested: The apartment industry urges Congress and the IRS not to alter the current like-kind exchange rules. Proposals to revise or restrict like-kind exchanges may have a significantly harmful effect on the value and trading of property.

Capital Gains, Depreciation Recapture and "Exit Tax" Relief

In 1997, when Congress reduced the maximum tax rate on long-term capital gains to 20 percent (for assets held more than 12 months), it imposed a 25 percent depreciation recapture rate on the portion of the gain assigned to the depreciable portion of a property. Thereafter, the capital gains tax rate was further reduced to 15 percent (through 2012), but the depreciation recapture rate was left unchanged. Imposing such a high depreciation recapture tax on apartment properties that have been depreciated from original cost fails to recognize the unique nature of commercial real estate property and discriminates against real estate in favor of other asset classes.

It also discourages long-term property owners from continuing to invest in their properties or sell them to entities that could maintain them as affordable housing. After decades of operations, many of these owners have a very low tax basis in their properties. If they were to sell them, they would pay large depreciation recapture taxes; in some cases, the tax liability may actually exceed the sales value of the property. To avoid this huge tax bill, many current owners will not only avoid selling their properties, but also be reluctant to make additional capital investments in properties with little value. The result is deteriorating properties that are lost as safe, affordable housing.

Action Requested: The apartment industry strongly supports tax legislation that brings the depreciation recapture rate more into line with the capital gains tax rate. We also urge Congress to enact legislation to provide apartment owners with "exit tax" relief from depreciation recapture taxes when the owners sell their property to new owners who agree to invest new capital in the property and preserve it as affordable housing. Such a change would help America preserve its dwindling supply of affordable housing at a minimal revenue cost to the federal government.

APARTMENT CONSTRUCTION IN 2010 (through November 2010)

Apartments Authorized for Construction........115,280
(5+ units in structure; includes units for owner occupancy)

Source: www.census.gov/const/C40/Table2/t2yu201011.txt

Value of Apartments Authorized (in thousands): $10,477

Source: www.census.gov/const/C40/Table2/t2yv201011.txt

Energy Policy

The apartment industry is committed to advancing sustainable development and energy practices. Apartment owners have a significant business interest in reducing the energy costs of operating apartment communities and ensuring that housing remains affordable. As a result, many apartment firms have voluntarily established energy efficiency and green building programs throughout their portfolios. However, moving beyond what is currently business practicable in the current economic climate will require federal support through tax and other incentive programs.

ISSUES

Building Energy and Efficiency Mandates and Incentives

The apartment industry shares the goal of many lawmakers to improve the energy performance of the apartment sector. However, we caution that a one-size-fits-all legislative approach to the building sector is unworkable. We also encourage policymakers to consider all avenues for achieving sustainability in the residential sector, not only issues related to building shell and mechanical systems governed by building codes. Policies promoting density, smart growth, resource conservation from electricity, water and materials combined with rigorous operations and maintenance practices are all significant pathways to building sustainability.

Recent legislative efforts, however, have focused on controlling building energy performance through aggressive building code mandates. These proposals would require all buildings to exceed existing energy code measures by 30 percent to 50 percent. This one-size-fits-all legislative approach fails to consider the distinct characteristics of the multifamily sector and will have the direct consequence of exacerbating the shortage of affordable apartment housing.

Unrealistic energy performance standards will quell rehab and upgrade of many existing properties and similarly impact new construction. It is important to note that more than half of the energy used in apartments falls outside the scope of building codes, so a 30 percent more efficient building code does not translate into a 30 percent decrease in energy usage on the property overall. A codes-based approach to energy conservation puts extreme pressure on apartment firms to invest in very expensive upgrades—costs that have to be passed on to residents—while leaving the vast majority of building energy use unaffected.

A more effective approach is to provide incentives and funding for energy efficiency programs that drive the renovation of older, inefficient buildings, create jobs for the construction and manufacturing industries and help apartment residents manage energy costs.

To the extent that lawmakers seek to establish performance benchmarks for apartment properties, we believe the American National Standards Institute (ANSI)- approved National Green Building Standard (NGBS) is the most appropriate standard for residential construction. The NGBS was developed by a diverse group of stakeholders that included state and local building code officials, representatives of the U.S. Green Building Council, real estate industry representatives, product manufacturers and other experts in green building and energy efficiency. Moreover, the standard—which covers multifamily, single-family and mixed-use developments—is the only standard written to be seamlessly incorporated into existing building codes, and has followed the strict standard-setting procedures established by the American National Standards Institute.

Action Requested: The apartment industry supports a comprehensive national energy policy that incorporates energy efficiency, sustainable land use, transportation and long-term fuel production. Economic recovery and job creation programs targeting energy consumption on multifamily properties can generate significant energy savings and impact a large number of households. We oppose policies that seek to establish arbitrary energy efficiency targets that have not been found to be economically sound and technically feasible. We support the creation of meaningful financial incentives that can spur the adoption of energy efficiency technologies and practices in new and existing buildings.

Building "Energy Labeling" Requirements

Growing interest exists among lawmakers to require owners to disclose their properties' energy scores or performance ratings. We caution, however, that available data is insufficient to make such mandates reliable.

The apartment industry has long supported an expansion of voluntary energy efficiency rating programs. After years of advocacy by NAA/NMHC, in 2010 the U.S. Environmental Protection Agency launched a multifamily version of its ENERGY STAR Portfolio Manager. The online energy performance tracking tool allows building owners and operators to measure and manage their buildings' energy consumption. A comparable tool has existed for the office sector for more than a decade.

While we welcome the multifamily ENERGY STAR program, it is still new and does not have a robust data set comparable to the one for office properties. We remain concerned that mandatory labeling requirements without the existence of a fully vetted and robust ENERGY STAR labeling program for multifamily properties could create confusion among prospective residents and policymakers and discourage investment in the sector.

Action Requested: The apartment industry urges lawmakers to continue to support voluntary energy efficiency rating programs, but reject a mandatory performance labeling program that is not based on solid building valuation principles, as such a program will impede real estate transactions.

Increasing environmental awareness is creating both opportunities and challenges for apartment firms. As concerns mount regarding sustainability and resource conservation, the compact development inherent in apartment homes is a green trend embraced by communities. The apartment industry supports a regulatory framework that protects human health and balances economic feasibility with environmental stewardship.

Stormwater Management

In October 2009, the EPA announced plans to issue new and significantly expanded stormwater management rules for already developed and redeveloped properties under the Clean Water Act (CWA). While EPA currently regulates stormwater through a variety of means, including permits for properties under construction, the new rules would extend regulation beyond the construction period and impact ongoing building operations and maintenance. EPA has indicated that such regulation would, at a minimum, include new project design and performance standards for stormwater discharges. It is expected that the regulations will require the use of green infrastructure and low impact development techniques, such as a 50 percent reduction in impervious surfaces, green roofs and increased onsite water retention.

The apartment industry believes that EPA has exceeded its statutory authority by attempting to regulate existing buildings under the CWA. EPA has erroneously deemed all developed land a "point source" subject to CWA jurisdiction, and has further failed to follow the proper statutory process to establish regulatory authority over new classes of discharges.

Action Requested: The apartment industry cautions against one-size-fits-all stormwater management rules for apartment properties. Effective stormwater management is highly site-specific, so any regulations must be flexible and tailored to accommodate diverse geographic and individual site characteristics. In addition, any expansion of regulatory authority under the CWA must adhere to statutory requirements, including congressional review.

Wetlands

The Clean Water Act requires developers who disturb wetlands to receive a federal permit. However, a series of U.S. Supreme Court decisions involving the extent of federal CWA jurisdiction over certain wetlands have created confusion for federal regulators and the regulated community.

Congress is proposing legislation to redefine which waters are subject to the Clean Water Act. Depending on the definition of U.S. waters, these bills could trigger federal permits to develop private properties with any water, not just those with "navigable" water, which is the current statutory definition.

Most recently, the Court rejected the notion that the CWA was limited to navigable waters and observed that cases of jurisdiction under the CWA would need to be determined on a case-by-case basis until such time as clear EPA regulations were issued.

The federal agencies have chosen not to promulgate new regulations, and a coalition of interests is seeking legislation that would redefine which waters are subject to CWA by removing the term "navigable" from the CWA. Such legislation would require federal permits for land with any water, not just those with "navigable" water as the current statute states.

We believe striking the term "navigable" will create a host of additional problems and result in an increase in lawsuits and exacerbate the protracted delays in obtaining permits under the Act.

Action Requested: The apartment industry supports the protection of water resources under the Clean Water Act but opposes the expansion of federal jurisdiction beyond those that are navigable to include all U.S. waters. Regulation of non-navigable waters is currently the domain of state and local policymakers, and we believe that state and local regulators are in the best position to apply more stringent criteria to manage water resources that may require specific, heightened intervention to maintain high water quality standards.

Lead-Based Paint

Although blood lead levels have declined by more than 90 percent in the past 20 years, EPA is expanding regulations to further reduce permissible lead levels in air and drinking water, lower the permissible concentration of lead in coated surfaces and reduce the threshold level for lead in dust and soil. EPA states that these changes are necessary since "even at low levels, exposure to lead can impair a child's IQ, learning capabilities and memory."

One of these regulations is the Renovation, Repair and Painting Rule (RRP) that went into effect in 2010. The rule imposes safe work practices for renovation projects undertaken at pre-1978 properties not certified to be lead free. In addition to site preparation and clean-up procedures, the rule requires that workers and firms be certified by EPA. EPA has proposed a far-reaching, cost-prohibitive and difficult-to-implement amendment to the rule even though no data exists to indicate that the original regulations have failed to meet the goals of the statute.

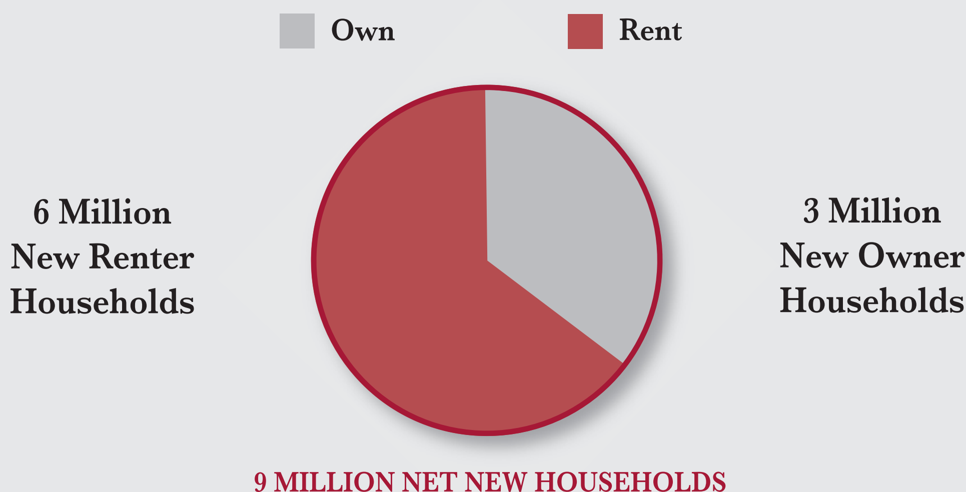
NAA/NMHC strongly disagree with the premise that the current RRP rule is ineffective and in need of significant, complex and costly modifications. We believe EPA has erred by

failing to distinguish between routine renovation, repair and painting activities and abatement activities as Congress directed in Title X (the Residential Lead-Based Paint Hazard Reduction Act).

EPA has also issued an advanced notice of proposed rulemaking (ANPR) that would expand the Agency's regulatory authority under the RRP rule to activities on commercial properties. The ANPR raised questions on whether apartment properties with more than 10 units might also be included under this new regulation and makes no distinction for the year of the property's construction, suggesting that renovations and repairs performed on properties built after 1978 that may potentially generate lead dust could be subject to regulation.

Action Requested: The apartment industry has worked with Congress and federal agencies charged with implementing Title X since the law was enacted in 1993. The results have been described by a former surgeon general as a "public health success story," yet EPA continues to promulgate amendments to the already stringent rules. Data from the Centers for Disease Control and Prevention do not support EPA's contention that a "one-size-fits-all" national policy is the most effective way to target those census tracks where the issue of childhood lead exposure is still unresolved. We respectfully ask Congress to utilize its oversight authority of the EPA Lead Program with respect to the Agency's compliance with congressional intent under Title X and other statutes governing the Agency's rulemaking efforts.

BETWEEN 2008 AND 2015, NEARLY TWO-THIRDS OF NEW HOUSEHOLDS FORMED WILL BE RENTERS. THAT'S 6 MILLION NEW RENTER HOUSEHOLDS.[1]



9 MILLION NET NEW HOUSEHOLDS

1. Arthur "Chris" Nelson, Presidential Professor & Director of Metropolitan Research, University of Utah, "Mega Housing Opportunities" presentation to the Rocky Mountain Land Institute, March 5, 2009.

Apartment Management

Although many important decisions affecting apartment operations are made at the state and local level, federal legislation and regulations can also have a significant affect. Government action—or inaction—on key issues can adversely affect the day-to-day management of apartments by increasing costs, increasing liability risk or creating legal ambiguities.

ISSUES

Bed Bugs

The resurgence of bed bugs has received extensive media coverage recently after infestations were discovered in retail outlets, office buildings and movie theaters. While apartment owners and managers are actively monitoring for the presence of these insects, they are challenged in their efforts to eradicate them because there are no effective and affordable pesticides to treat infestations. Cost of treatment varies with the level of infestation and the property type. According to the National Pest Management Association (NPMA), there are limited treatment options for bed bugs. NPMA estimates the cost of a typical treatment session to be $500–$1,200 per affected unit; typically an affected apartment unit and the surrounding apartments must be treated several times over a period of months to assure the elimination of the bugs.

While certain existing chemicals will kill adults that are directly sprayed, there are no chemicals that effectively address bed bugs' other life stages or provide an effective residual level of the chemical on sprayed surfaces. In comments made before the Congressional Forum on Bed Bugs, Dr. Michael Potter of the University of Kentucky stated that the market share for indoor use, residential pesticides is exceedingly small compared to the market share for other pesticide products, such as those used in agriculture. He noted that it takes roughly 10 years to bring a new chemical to market and costs approximately $200 million in research and testing. For those reasons, he stated that a chemical solution for the bed bug problem will not be available in the near term.

Action Requested: EPA should evaluate obstacles to the development of next-generation pesticides. The cost of research, concerns regarding potential product liability and market share considerations make it difficult for an individual company to invest in development of new pesticide formulations when the regulatory pathway is uncertain. The federal government should use its national laboratory system to expedite testing of existing pesticide products for their safety and efficacy in treating bed bug infestation.

EPA should also establish an online clearinghouse for consumer information on bed bugs. Such a site would include information on how to identify the pest and how to practice integrated pest management (IPM), from prevention through treatment. The information on the site should be rigorously vetted for accuracy by academe and industry.

Finally, fraudulent product claims are exacerbating the bed bug problem as consumers turn to products and treatments that are marketed as effective in preventing or treating bed bugs. These ineffective products not only pose an economic drain, they also enable an identified infestation to go unchecked as ineffective treatments are applied. The Federal Trade Commission and Consumer Product Safety Commission should be directed to step up investigation of these claims.

Employee Free Choice Act ("Card Check")

The political influence of organized labor has declined, and unions want a federal legislative fix that could favorably impact organizing campaigns and collective bargaining outcomes as well as augment their financial resources. The Employee Free Choice Act (EFCA) is their proposed solution. This onerous measure would amend the National Labor Relations Act (NLRA) to effectively eliminate federally supervised secret ballot elections. It would also unduly interfere with the collective bargaining process to the potential detriment of workers and businesses alike. Small and large employers across a variety of industry sectors are extremely concerned that the EFCA could influence their economic viability and interfere with strategic decision making.

Card check, the EFCA's most well-known provision, would require an employer to recognize a union when a majority of employees simply sign union authorization cards instead of a federally supervised election. In contrast to ballots in supervised union elections, which are private, the results of card check votes would be known to employers, employees and union organizers, rendering the process inherently vulnerable to coercion and fraud.

Under current law for collective bargaining agreements, employers and unions mutually agree on wages, benefits and other contract terms that can impact day-to-day business operations. But the EFCA could result in an outsider without direct expertise in the business deciding key aspects of employment by allowing mandatory arbitration just 120 days after a union is certified if a collective bargaining agreement is not produced. Under the EFCA, collective bargaining would begin within just 10 days of union certification and, if a first contract is not reached in 90 days, mediation rights would be triggered that could ultimately result in a final two-year contract determined by an arbitrator.

The EFCA would also create one-sided penalties by allowing penalties against employers—but not unions—for certain unfair labor practices. Current law offers remedial relief for unfair labor practices, including reinstating and compensating an employee who is wrongfully discharged or reimbursing a union for expenses when an employer violates the law.

Action Requested: The apartment industry strongly opposes the EFCA and urge Congress to reject the bill as an ill-conceived proposal that could increase the power of unions at considerable cost to employees and businesses during a sustained period of economic hardship and job loss. As it is proposed, the "card check" bill would defeat an existing legal framework that protects

employee privacy and allows companies and unions to negotiate without undue pressure on the collective bargaining process.

Telecommunications Policy

Telecommunications services can have a significant impact on an apartment owner's capacity to attract and retain residents. Apartment residents demand newer, faster and more sophisticated telecommunications capabilities in their apartment homes. To meet this demand and establish an edge in a highly competitive marketplace, apartment owners rely on advanced, competitively-priced, reliable telecom services.

The telecommunications needs of apartment residents can only be met when telecommunications providers compete freely and can negotiate contracts with apartment owners who satisfy residents' expectations.

Despite NAA/NMHC's strong objections, in 2007 the Federal Communications Commission (FCC) retroactively banned telecom agreements that designate one provider to supply television service to an apartment community. The FCC opted against imposing limitations on agreements between apartment owners and service providers covering exclusive marketing and bulk billing, but the FCC said that it may revisit those issues.

These kinds of government mandates and restrictions interfere with negotiations between property owners and service providers. While these policies are intended to enhance competition and consumer access to telecom services, they can actually result in less competition, higher prices, decreased service standards and fewer product offerings.

Apartment owners strive to secure contracts that deliver choice and competitive prices for residents. Some apartment communities, however, can only support one type of voice, video or data service because of telecommunications infra-structure costs and the unique economy of scale in the multifamily sector. Requiring them to allow multiple providers on a property may limit the property owner's ability to negotiate the best possible contract on behalf of residents. This can be a particular concern in moderate- and lower-income apartment communities. In addition, forced acceptance of particular technologies that may soon become obsolete could impose further costs and disruption to apartment owners and residents.

Importantly, there is insufficient evidence of an improperly functioning private market that would warrant federal intervention.

Action Requested: The apartment industry urges Congress to reject legislation that could force apartment owners to grant multiple telecommunications providers access to their property and interfere with their ability to contract for services. We also urge the FCC not to impose similar regulations.

Accessibility

Apartment owners, developers and managers have specific compliance obligations under various disability rights laws. Key among them is the Fair Housing Act and the Americans with Disabilities Act. When Congress amended the Fair Housing Act in 1988 to make it unlawful to discriminate against any person on the basis of a handicap, it defined "discrimination" to include the failure to design and construct certain covered multifamily dwellings that are accessible and usable by handicapped persons. Since then, many NAA/NMHC members have been challenged with lawsuits over their alleged failure to comply with the law's accessibility requirements.

Given the complexity of building construction coupled with vague and limited guidance provided by the federal government in the initial years after enactment, many property owners misunderstood their obligations and now find themselves potentially out of compliance. Despite the lack of sufficient compliance assistance for many years, disability advocates and the federal government continue to enforce strict adherence to requirements.

Of specific concern is the lack of tolerances built into the various accessibility standards to which the industry is held accountable. In many cases, alleged violations arise out of sloped sidewalks in excess of stringent measurement standards. To address what is viewed as an unreasonable approach to enforcement, NAA/NMHC commissioned a study by a recognized leader in disability law and policy to investigate whether the current "no tolerance" approach to compliance is the only means of achieving accessibility.

The resulting report concluded that tolerances in specific elements of design do not compromise usability and recommends alternatives to the current standards.

Action Requested: Apartment owners are committed to building properties in compliance with all accessibility rules. The apartment industry asks Congress and regulators to learn about and understand the complexity of the building process and the challenges facing the apartment industry as we seek to comply with interpretations of law that often present difficult targets because of numerous revisions. We also urge HUD to reject requests for establishing an independent fair housing enforcement agency.

Immigration Reform

Business leaders, immigrant advocates and other groups concerned with the inconsistency and economic implications of our nation's immigration laws have advocated reform for more than a decade. In recent years, the issue has moved to center stage in Congress and gained a high level of public attention. Despite an intense lobbying effort by immigration reform supporters, Congress has not passed legislation to address the inadequacies of the current system. This has encouraged state and local governments to enact a patchwork of measures that further complicate the legal landscape covering both national security and day-to-day business operations. Immigration reform has not been a real focus in Congress since June 2007, when a bipartisan bill intricately negotiated by 12 senators fell short of the 60 votes needed to end Senate debate.

Apartment owners are particularly concerned about Congress' failure to enact comprehensive immigration reform because federal inaction has encouraged state and local governments to pass draconian measures that, if enforced, could require apartment owners to act as de facto immigration police. Some of these measures would even bar apartment owners from renting to undocumented individuals and require them to screen prospective or current residents for their immigration status.

Immigration policy and enforcement are federal responsibilities with national security and economic implications that should be handled by the federal government. Reform legislation, therefore, must include a provision designating the federal government as the exclusive authority to create immigration policy. Federal policies should also effectively address immigration-related concerns without imposing unnecessary burdens on employers.

Action Requested: The apartment industry urges Congress to reform federal immigration policy to strengthen the American economy while discouraging illegal immigration and enhancing national security. Meaningful reform must include the following components:

1. A federally-administered system that accurately and efficiently confirms an individual's legal status to work in the U.S.;
2. A rational approach to documenting individuals that currently reside in the U.S. without proper documentation;
3. A responsive guest worker program that would allow certain employers to hire qualified foreign individuals when other workers are unavailable;
4. An improved border protection system; and
5. A federal preemption that expressly reserves for the federal government the authority to create and implement immigration policy, including state and local measures that deal with residential leases and employment screening.

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created for several reasons: to supply insurance coverage to residential and commercial properties; to provide for flood plain management; and to identify and map the nation's flood plains in Flood Insurance Rate Maps (FIRMs). The program was not designed to be taxpayer-funded; instead, the operating expenses and insurance claims are paid out of insurance premiums collected. Until 2004, the program remained financially sound; it used its borrowing authority and paid back the Treasury with interest on three occasions.

However, major disasters and hurricanes in 2004 and 2005 caused the NFIP to assume more than $18 billion in debt. Now, the future financial stability and overall program structure of the NFIP is questionable. According to the Government Accountability Office, the program is not actuarially sound due to the number of policyholders who pay subsidized rates and the large number of repetitive-loss properties (those with two or more losses in a 10-year period) in the NFIP portfolio. Another problem is that a large number of property owners located in flood plains do not purchase coverage despite a mandatory purchase requirement.

Congress is now faced with reforming the NFIP to return it to some semblance of self-sufficiency. High on the list of reforms in the past two Congresses has been phasing out subsidized rates for non-primary houses or vacation properties. Legislative proposals have included updating maps of 100-year flood plains, increasing coverage limits, adding business interruption coverage, and the highly controversial addition of optional wind damage coverage.

Congressional efforts in 2010 to overhaul the NFIP, which had been set to expire in 2008, were not successful. Instead, the program has been extended several times allowing more time for the House and Senate to find common ground on a reform bill. The most recent extension will permit the program to write and renew policies through September 30, 2011.

Action Requested: The apartment industry urges Congress to support a five-year reauthorization of the National Flood Insurance Program. We also support reform measures such as increasing limits to place it on par with commercial properties and offering business interruption coverage. Properties built before their community's flood insurance rate maps were completed, known as pre-FIRM buildings, should continue to be insurable at the subsidized rates. If these rates increase, operating costs for many of the already-short supply of multifamily properties serving affordable housing needs will also increase.

Catastrophic Property Insurance

Since the hurricanes of 2005, insurance affordability and availability has been the recurring theme on state and federal legislative agendas. Congress has been evaluating the federal and private sector role in insuring for natural catastrophes and the public policy options for revising these roles. Experts predict that catastrophic losses will double every decade or so due to growing residential and commercial density and more expensive buildings.

While conditions for property insurance have stabilized in recent years, property owners with catastrophic exposure— such as severe wind and earthquakes—experience significant cost increases and reduced policy limits in the aftermath of natural disasters. Many believe there is a role for the federal government to play to ensure adequate capacity in times of severe weather events that cannot be accommodated by the private market alone.

Several pieces of legislation were introduced in the past few Congresses to address property insurance crisis conditions, but none were enacted given the complexity of the issue and mixed support for a federal versus market-based solution to these challenges.

Action Requested: The apartment industry urges Congress to evaluate options for a legislative solution to ensure policyholders can obtain affordable and adequate coverage when the private market is not able to accommodate them. Full consideration should be given to the array of options available such as low-interest federal loan programs for states impacted by severe natural disasters, reinsurance for state catastrophic funds and the potential use of catastrophic bonds. It is likely that relief will not come from any one proposal but from a patchwork of legislative proposals.

Building Codes

Model building codes and standards provide a uniform basis for code enforcement across the U.S. and allow apartment firms to build accessible and affordable housing without any reduction in fundamental life safety requirements. They are developed by a variety of organizations, including the International Code Council (ICC), the National Fire Protection Association (NFPA) and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE). In general, the model codes are updated on a three- or five-year cycle and are made available to states and localities for voluntary adoption. It is not uncommon, however, for a local jurisdiction to still be enforcing codes that were developed several years ago.

NAA/NMHC are actively involved in the model code/standard development process to ensure that the multifamily industry's interests are considered and that proposed changes to the codes and standards do not unnecessarily increase the cost of housing.

ISSUES

Energy Codes and Standards

Numerous proposals during the past Congress sought to mandate a 30 percent to 50 percent improvement in ICC and ASHRAE energy codes and standards. Absent such improvements, these legislative proposals sought to create a federal energy code. While these legislative initiatives failed, efforts to significantly increase minimum building energy performance have proliferated in the code arena. Of concern, these efficiency targets have been artificially established without appropriate consideration of the cost-benefit in the apartment sector.

Most recently, the ICC incorporated substantial changes into the International Energy Conservation Code (IECC), which will appear in the 2012 code version. The new code provisions will require considerable changes to current building construction practices and present specific problems for apartment projects. For instance, the new code will require blower door testing despite a lack of standards for such testing in multifamily buildings three stories or less in height. NAA/NMHC have significant concerns about the potential negative effects of the 2012 IECC, including cost-effectiveness, technical feasibility, and implementation and enforcement problems.

Alternatively, changes incorporated into the 2010 version of ASHRAE 90.1, Energy Efficient Design of New Buildings Except Low-Rise Residential Buildings, although onerous, are not as severe as the changes incorporated into the 2012 IECC. However, they are significant and will have an impact on apartment buildings four stories or more in height. The IECC does reference ASHRAE 90.1 as an alternate compliance procedure.

Action Requested: The apartment industry supports cost-effective and technologically feasible improvements to building energy performance. Changes to existing energy codes and standards should address the specific needs of residential occupancies, including the continued affordability and availability of new apartment homes. Jurisdictions considering updates to their energy codes and standards should carefully review the 2012 IECC for potential negative impacts within their communities.

Green Building Codes and Standards

NAA/NMHC support the voluntary use of practical, proven and cost-effective, energy-efficient and green building principles in multifamily projects. To the extent that lawmakers seek to establish green performance benchmarks for apartment buildings, they should adopt the American National Standards Institute-approved National Green Building Standard (NGBS, ICC-700). The NGBS is the consensus code or standard developed to specifically address green building practices in the residential sector. ICC-700 provides meaningful green guidelines for the apartment industry, while providing flexibility to accommodate geographic differences, individual site conditions and the diversity of apartment construction types.

Conversely, other green codes and standards, namely ASHRAE 189.1 and the International Green Construction Code (IGCC) (currently in development), were designed primarily to address commercial construction. These documents require the use of products and technologies not commonly used and unproven in the multifamily sector. In addition, lawmakers must realize that the IGCC is still in draft form and has not been fully vetted through the code development process. Since official publication of the IGCC is not expected until 2012, NAA/NMHC caution against the premature adoption of draft versions.

Action Requested: The apartment industry urges jurisdictions to exercise caution when considering adoption of new energy codes and green building performance criteria to ensure they are not creating unintended consequences, such as making housing more expensive and less available. We support voluntary, incentive-based green building initiatives and stress the importance of using national consensus codes and standards to establish minimum sustainability benchmarks. Jurisdictions that do adopt environmental performance standards for apartment properties should use the National Green Building Standard (ICC-700) because it has been specifically developed for use in the residential sector.

"Mix and Match" Building Codes

States and localities have choices when they set the building codes for their jurisdiction. They can write their own, although most adopt the model codes offered by the national standards-setting organizations. Some jurisdictions have unwisely chosen to "mix and match" codes, such as adopting the ICC's International Building Code (IBC) but then adopting the NFPA's Uniform Fire Code (NFPA 1) instead of the ICC's International Fire Code. Comparable situations exist when jurisdictions adopt the IBC and the ASHRAE energy standards instead of the ICC International Energy Conservation Code.

This can create situations in which the provisions from one code contradict the provisions of another code. In addition to creating confusion in the enforcement process, the mixing of codes developed by different organizations usually means designing to the most restrictive provision. This results in an unnecessary increase in construction costs.

Action Requested: The apartment industry urges local jurisdictions to adopt the package of ICC codes without mixing and matching codes from different organizations. Specifically, we urge local jurisdictions not to adopt the NFPA Life Safety Code (NFPA 101) for anything other than medical occupancies because the NFPA's codes requirements for existing apartments are not aligned with the IBC's requirements.

Accessibility

NAA/NMHC support accessible building code provisions that are compatible with the provisions of the Americans with Disabilities Act and the Fair Housing Act. NAA/NMHC support the 10 "safe harbor" design standards designated by HUD. HUD's acceptance of the ICC/ANSI A117.1 accessibility standard and the IBC as a safe harbor under HUD's Fair Housing Act Accessibility Guidelines is a major step forward in developing a single set of national accessibility standards. NAA/NMHC also support the efforts of the U.S. Access Board (a federal agency committed to accessible design) to align the federal accessibility provisions with those contained in the model codes. We further encourage the Access Board to accept the ANSI A117.1-2009 Standard on Accessible and Usable Buildings and Facilities as the basis for accessibility technical requirements.

Action Requested: The apartment industry supports the adoption of the accessibility provisions in the 2012 ICC codes.

World Trade Center Disaster

Following the collapse of the World Trade Center on September 11, 2001, the National Institute of Standards and Technology (NIST) issued a report that included 30 recommendations on designing and constructing very tall buildings. The forthcoming 2012 ICC codes have been revised to include those recommendations that the code officials thought were important.

Action Requested: The apartment industry supports changes in the national building codes to address issues identified during the NIST investigations. However, we oppose any modifications intended to require high-rise buildings to be designed to withstand the impact of a very large, fuel-loaded airplane flying into the side of a building. We also oppose any proposed changes made during the local code adoption process that have not been thoroughly discussed, acted on and approved at the national level during the rigorous model code development process.

PERCENT DISTRIBUTION OF $847.0 BILLION IN MULTIFAMILY MORTGAGE CREDIT OUTSTANDING IN 2010

(Third Quarter)

Commercial Banks	24%
Savings Institutions	7%
Life Insurance Companies	6%
FHA	8%
Fannie Mae	20%
Freddie Mac	10%
Mortgage Securities	
Ginnie Mae	6%
Fannie Mae	0%
Freddie Mac	2%
CMBS	12%
Individual and others	5%

Source: Federal Reserve Board
Updated 2/23/2011

STATE DISTRIBUTION OF APARTMENT RENTERS IN 2009 (buildings with 5 or more apartments)

STATE	TOTAL RESIDENTS (IN THOUSANDS)	APARTMENT RESIDENTS (IN THOUSANDS)	SHARE OF STATE POPULATION	NUMBER OF OCCUPIED APARTMENTS (IN THOUSANDS)	NUMBER OF OCCUPIED APARTMENTS, 2000 (IN THOUSANDS)	CHANGE IN APARTMENTS SINCE 2000 (IN THOUSANDS)
Alabama	4,586	310	7%	172	152	20
Alaska	677	53	8%	25	28	-3
Arizona	6,477	687	11%	312	305	6
Arkansas	2,807	178	6%	94	76	18
California	36,118	5,876	16%	2,453	2,408	45
Colorado	4,912	588	12%	304	274	30
Connecticut	3,404	321	9%	175	181	-6
Delaware	861	66	8%	35	37	-2
District of Columbia	564	182	32%	96	104	-8
Florida	18,106	2,062	11%	967	887	79
Georgia	9,552	995	10%	439	388	52
Hawaii	1,260	170	14%	82	78	4
Idaho	1,511	71	5%	36	32	3
Illinois	12,565	1,309	10%	702	741	-39
Indiana	6,234	510	8%	278	257	20
Iowa	2,902	229	8%	137	119	17
Kansas	2,737	203	7%	120	106	13
Kentucky	4,191	302	7%	165	150	15
Louisiana	4,368	277	6%	146	155	-9
Maine	1,280	79	6%	49	46	2
Maryland	5,556	712	13%	360	340	19
Massachusetts	6,346	734	12%	405	414	-10
Michigan	9,713	769	8%	442	451	-9
Minnesota	5,123	515	10%	307	300	7
Mississippi	2,852	169	6%	85	74	11
Missouri	5,819	383	7%	226	216	10
Montana	948	50	5%	27	26	1
Nebraska	1,743	170	10%	101	90	10
Nevada	2,610	380	15%	173	154	19
New Hampshire	1,285	109	8%	62	63	-1
New Jersey	8,513	1,009	12%	508	507	2
New Mexico	1,967	132	7%	68	62	6
New York	18,934	4,371	23%	1,948	2,010	-62
North Carolina	9,091	760	8%	392	293	100
North Dakota	620	89	14%	55	44	11
Ohio	11,226	961	9%	556	564	-8
Oklahoma	3,569	250	7%	139	131	8
Oregon	3,742	405	11%	213	199	14
Pennsylvania	12,135	794	7%	498	494	4
Rhode Island	1,015	93	9%	57	61	-4
South Carolina	4,415	298	7%	148	119	29
South Dakota	781	68	9%	40	35	4
Tennessee	6,145	495	8%	260	243	17
Texas	24,191	3,216	13%	1,471	1,305	167
Utah	2,740	208	8%	90	80	10
Vermont	600	39	7%	24	20	4
Virginia	7,628	822	11%	413	384	29
Washington	6,520	798	12%	426	384	42
West Virginia	1,774	77	4%	47	45	2
Wisconsin	5,489	507	9%	303	280	23
Wyoming	530	29	6%	16	14	2
TOTAL	**298,729**	**33,882**	**11%**	**16,646**	**15,929**	**717**

Source: Census 2000 and 2008 American Community Survey. For more information about these data sources, please visit www.census.gov.
Updated 12/31/2009

STATE DISTRIBUTION OF NEW APARTMENT CONSTRUCTION IN 2010

(Year-to-Date as of November 2010) **Housing Units Authorized by Building Permits**

(5+ units in structure; includes units for owner occupancy)

STATE	NUMBER OF APARTMENTS	TOTAL VALUE (THOUSANDS OF DOLLARS)
Alabama	1,573	95,991
Alaska	91	10,671
Arizona	1,268	134,509
Arkansas	1,805	82,064
California	13,381	1,773,627
Colorado	1,895	204,525
Connecticut	999	150,617
Delaware	305	17,344
District of Columbia	412	61,962
Florida	6,883	659,833
Georgia	1,968	170,818
Hawaii	1,464	171,290
Idaho	504	47,090
Illinois	2,492	490,468
Indiana	1,935	149,573
Iowa	885	87,257
Kansas	522	37,506
Kentucky	989	107,819
Louisiana	524	35,126
Maine	98	6,024
Maryland	3,448	363,191
Massachusetts	2,496	238,712
Michigan	833	61,980
Minnesota	2,391	231,338
Mississippi	354	24,951
Missouri	1,500	114,865
Montana	328	27,101
Nebraska	570	40,664
Nevada	691	52,960
New Hampshire	489	36,475
New Jersey	4,309	362,936
New Mexico	421	33,482
New York	5,924	550,427
North Carolina	6,783	406,884
North Dakota	1,138	71,911
Ohio	2,248	123,958
Oklahoma	878	42,905
Oregon	1,014	102,083
Pennsylvania	2,933	300,090
Rhode Island	86	5,215
South Carolina	1,137	89,760
South Dakota	478	29,435
Tennessee	4,092	295,388
Texas	16,066	1,194,212
Utah	1,653	158,477
Vermont	250	27,100
Virginia	4,508	301,826
Washington	4,055	372,378
West Virginia	161	8,953
Wisconsin	3,293	255,788
Wyoming	760	57,196
TOTALS	**115,280**	**$10,476,755**

Sources: http://www.census.gov/const/C40/Table2/t2yu200911.txt; http://www.census.gov/const/C40/Table2/t2yv200911.txt
Updated 12/31/2009

CHARACTERISTICS OF APARTMENT HOUSEHOLDS AND ALL U.S. HOUSEHOLDS IN 2009 (in thousands)

	ALL APARTMENTS	NEW APTS. (Built 1990-2009)	TOTAL HOUSEHOLDS (Renters and Owners)
TOTAL HOUSEHOLDS	**15,239**	**2,825**	**111,861**
Age of Householder			
<30	31%	36%	13%
30-44	28%	26%	29%
45-64	25%	16%	38%
65+	17%	20%	21%
Median Age	39	35	48
Mean Age	43	43	50
Household Type (%)			
Single Male	24%	21%	12%
Single Female	25%	29%	16%
Husband w/ Wife Only	8%	13%	22%
Husband/Wife/Kid(s)	9%	8%	25%
Single Parent	12%	11%	9%
Other	21%	19%	16%
Household Members (%)			
1	49%	49%	27%
2	27%	31%	33%
3	12%	11%	16%
4+	12%	9%	24%
Mean Number	2	2	2.5
Children (under age 18)			
Mean number	0.4	0.3	0.6
% Households with one or more	22%	19%	31%
Household Income (% distribution)			
Less than $20,000	38%	32%	20%
$20,000 - $34,999	23%	21%	18%
$36,000 - $49,999	15%	18%	14%
$50,000 - $74,999	13%	15%	17%
$75,000 +	10%	14%	31%
Mean Income	$35,758	$42,553	$65,073
Median Income	$26,000	$33,000	$47,020
Household Income of "Market Rate" Renters			
Mean Income	$40,501	$46,416	n/a
Median Income	$31,000	$36,400	n/a
Hispanic Householders			
Hispanic	19%	11%	11%
Non-Hispanic	81%	89%	89%
Motor Vehicles			
Mean # per Household	1.0	1.2	1.9
% Households with one or more	73%	84%	92%

Notes: All statistics are NMHC tabulations from the U.S. Census Bureau's 2009 American Housing Survey. The estimates are based on a nationally representative sample of 45,057 occupied housing units, of which 6,615 are in structures with 5 or more units and 1,299 are newly built apartments, where newly built is defined as those built in 1990 or later. Because of the relatively small number of newly built apartments in the sample, small differences between the estimated characteristics of these residents and others may be attributable to sampling error and should be interpreted cautiously. "Market Rate" apartments are those privately owned units whose residents reported that no government subsidy is received. Results in this table will differ from those of other national surveys because of differences in survey timing, question wording and sampling.
Updated 2010.

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