



**2009**  
**LEGISLATIVE &  
REGULATORY PRIORITIES**



**NATIONAL APARTMENT ASSOCIATION  
NATIONAL MULTI HOUSING COUNCIL**

**JOINT LEGISLATIVE PROGRAM**

# NAA/NMHC JOINT LEGISLATIVE PROGRAM



## JOINT LEGISLATIVE COMMITTEE

**Daryl Carter** (Chairman)

AVANATH CAPITAL PARTNERS

**Steve Lamberti**

MILESTONE MANAGEMENT

**Sue Ansel**

GABLES RESIDENTIAL

**Terry Schwartz**

DOVER REALTY ADVISORS

**Ron Shelton, CAPS**

AMALGAMATED MANAGEMENT CORPORATION

**Brad Williams, CPM**

LINCOLN PROPERTY COMPANY

**Richard A. Snyder, CPM**

R.A. SNYDER PROPERTIES

**David Hirsch, CAM**

ECI MANAGEMENT CORPORATION

## JOINT LEGISLATIVE STAFF

**Jim Arbury**

SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS

**Lisa E. Blackwell**

VICE PRESIDENT, HOUSING POLICY

**Betsy Feigin Befus**

VICE PRESIDENT, EMPLOYMENT POLICY AND COUNSEL

**David B. Cardwell**

VICE PRESIDENT, CAPITAL MARKETS AND TECHNOLOGY

**Michele Cherry**

DIRECTOR OF LEGISLATIVE OPERATIONS

**Paula Cino**

DIRECTOR, ENERGY AND ENVIRONMENTAL POLICY

**Jeanne McGlynn Delgado**

VICE PRESIDENT, BUSINESS OPERATIONS AND RISK  
MANAGEMENT POLICY

**Kimberly D. Duty**

VICE PRESIDENT, COMMUNICATIONS

**JENNIFER BONAR GRAY**

VICE PRESIDENT, TAX

**Eileen C. Lee, Ph.D.**

VICE PRESIDENT, ENERGY AND ENVIRONMENTAL POLICY

**Ronald G. Nickson**

VICE PRESIDENT, BUILDING CODES

**Mark H. Obrinsky, Ph.D.**

VICE PRESIDENT OF RESEARCH AND CHIEF ECONOMIST

## NATIONAL APARTMENT ASSOCIATION

**Ron Shelton, CAPS**

CHAIRMAN

**Douglas S. Culkin, CAE**

PRESIDENT

**Brad Williams, CPM**

CHAIR, LEGISLATIVE COMMITTEE

**David Hirsch, CAM**

CHAIR, NATIONAL ISSUES SUBCOMMITTEE

**Richard A. Snyder, CPM**

CHAIR, STATE & LOCAL ISSUES SUBCOMMITTEE

**Michael Holmes**

CHAIR, NAA PAC

## NATIONAL MULTI HOUSING COUNCIL

**Ric Campo**

CHAIRMAN

**Douglas M. Bibby**

PRESIDENT



## NAA/NMHC Joint Legislative Program

1850 M Street, NW, Suite 540

Washington, DC 20036

202/974-2300 (phone)

202/775-0112 (fax)

# CONTENTS



## THE NAA/NMHC JOINT LEGISLATIVE PROGRAM 1

The National Apartment Association	1
The National Multi Housing Council	1
The Congressional Real Estate Caucus	1

## WHY AMERICA NEEDS A MORE BALANCED HOUSING POLICY 2

### AFFORDABLE HOUSING SOLUTIONS 3

Section 8 Housing Choice Vouchers	3
Voucher Reform	3
Project-Based Funding	3
Emergency Housing Vouchers	3
Defaults in the Single-Family Sector	3
State Mandates	4
Low-Income Housing Tax Credit	4
Exit Tax	4
Capital Gains/Depreciation Recapture	4
Utility Adjustments for Tax Credit Properties	5

### HOUSING POLICY 6

Barriers to Multifamily Development	6
Rent Control	6
Homeownership Incentives	7
Military Housing	7

### ENERGY AND ENVIRONMENTAL POLICY 8

Building Energy Efficiency	8
----------------------------	---

### FINANCE 9

Availability of Capital and Credit	9
------------------------------------	---

### APARTMENT MANAGEMENT 10

Employee Free Choice Act/Union "Card Check"	10
Immigration Reform	11
Accessibility	11
Telecommunications Policy	12
Catastrophic Property Insurance	13
National Flood Insurance Program	13
Homeland Security	14
Translation Requirements	14



### TAX POLICY 15

Carried Interest	15
Federal Estate Tax	15
Alternative Minimum Tax/Tax Reform	16
Like-Kind Exchanges	16

### BUILDING CODES 17

ICC Model Codes	17
Non-Metallic Sheathed Cable	17
Accessibility	18
World Trade Center Disaster	18

### U. S. APARTMENT MARKET 19

State Distribution of Apartment Renters in 2007	19
State Distribution of New Apartment Construction in 2008	20
Characteristics of Apartment Households and All U.S. Households in 2007	21
Percent distribution of \$893 billion in multifamily mortgage credit outstanding in 2008	22
Renter Occupied Housing	22
Apartment Construction in 2008	22
Federally assisted rental housing: 2008	22



**2009**



**NATIONAL APARTMENT ASSOCIATION  
NATIONAL MULTI HOUSING COUNCIL**

# 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 joined forces for more than a decade to form 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 10 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), based in Arlington, VA, is the leading advocate for quality rental housing. NAA is a federation of nearly 200 state and local affiliated associations representing more than 53,502 members responsible for more than 6.5 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 provides six national designation programs; publishes units magazine and other industry publications; holds an annual Education Conference and Exposition; and promotes industry professionalism. For information, call 703/518-6141, e-mail [information@naahq.org](mailto:information@naahq.org) or visit [www.naahq.org](http://www.naahq.org).

### The National Multi Housing Council

For more than 30 years, the National Multi Housing



Council (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 (CREC) 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, Mass., 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 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.

## WHY AMERICA NEEDS A MORE BALANCED HOUSING POLICY



For decades, the federal government has pursued a “homeownership at any cost” housing policy, ignoring the growing disconnect between the country’s housing needs and its housing policy. In the process, many people were enticed into houses they could not afford, which in turn helped fuel a housing bubble that ultimately burst and caused a global economic crisis.

The nation is now paying the price for that misguided policy and learning firsthand that there is such a thing as too much homeownership; that aggressively pushing homeownership was not only disastrous for the hardworking families lured into unsustainable homeownership, but also for our local communities and our national economy.

If there is a silver lining in this situation, it is the opportunity we now have to learn from our mistakes and rethink our housing policy. Housing our diverse nation means having a vibrant rental market along with a functioning ownership market. It’s time we adopt a balanced housing policy that doesn’t measure success solely by how much homeownership there is.

For many of America’s most pressing challenges, from suburban sprawl to affordable housing, apartments are a much better solution. Apartments help create stronger and healthier communities by offering enough housing for the workers that businesses need, by reducing the cost of providing public services like water, sewer and roads and by creating vibrant live/work/play neighborhoods. They will help us house our booming population without giving up all our green space and adding to pollution and traffic congestion.

Not only are apartments needed, but fortunately a growing number of Americans desire them. For

generations, married couples with children dominated housing markets. But today those families make up less than 25 percent of American households. In their place are young professionals, childless couples, empty-nesters and single parents who want the conveniences, amenities, shorter commutes and financial freedom that apartment living gives them.

The National Apartment Association (NAA) and the National Multi Housing Council (NMHC) have joined together to advocate for a more balanced housing policy, one that respects the rights of individuals to choose housing that best meets their financial and lifestyle needs. NAA/NMHC urge policy makers at all levels of government to work with the apartment industry to craft 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.



# AFFORDABLE HOUSING SOLUTIONS



The production and preservation of affordable multifamily housing is critical to remedy the shortage of decent and affordable housing for low- and moderate-income families. The shortage no longer applies only to low-income households; increasingly it has become acute for those households above the typical subsidy level of 60 percent of area median income. The nation needs programs that will help the private sector develop housing for families in the 60 percent to 120 percent of area median income range, especially in high-cost markets. Most current subsidies are targeted to provide housing only for low-income families at or below 50 percent of area median income and these programs do not even begin to address those in need of housing due to the collapse in the single-family housing market. Because there are not enough resources to serve the full range of families that need housing at affordable levels based on their income, a growing number of families in need remain in inadequate or substandard housing. Mixed-income housing is another means to expand the reach of rental housing to a broader range of low-income, moderate-income and working families.

## ISSUES

### Section 8 Housing Choice Vouchers

**Issue Discussion:** Our federal efforts in 2009 take place amid a bigger policy shift as the federal government continues its effort to transfer responsibility for affordable housing to state and local governments. NAA/NMHC believe that if we are to meet the housing needs of America's low- and moderate-income families, we must improve the Section 8 program. We believe more apartment owners would participate in the program if the costs of renting to voucher holders were more comparable to the costs of serving unsubsidized residents. In other words, the program must be more "transparent" to the market. But NAA/NMHC urge Congress and the U.S. Department of Housing and Urban Development (HUD) to reform the existing Section 8 program instead of turning the program into a block grant.

**Voucher Reform.** NAA/NMHC supported the "Section 8 Voucher Reform Act of 2007" (H.R. 1851) that passed the House of Representatives in the 110th Congress. The bill would have overhauled the program's burdensome and duplicative inspection standards—a priority for NAA/NMHC—and permanently fixed the flawed voucher renewal funding formula. It also streamlined the process for calculating income and rent and implemented changes that would make the program more consistent with the Low-Income Housing Tax Credit (LIHTC) program so the two could have been used together more effectively.



It also required HUD, rather than apartment owners, to translate both its own official vital documents and selected non-HUD property documents into any language the Department identified as necessary, and provided a HUD-funded and HUD-administered toll-free telephone number for oral interpretation needs. Similar legislation (S. 2684) was introduced by Senator Dodd (D-CT). While the legislation was not enacted, we are hopeful that the new Congress will work toward the goals highlighted in H.R. 1851/S. 2684.

**Project-Based Funding.** At the end of the 110th Congress, a Continuing Resolution (CR) was approved that secured \$50 million to ensure timely renewal of project-based Section 8 contracts and included language that will allow renewals to occur beyond the period covered by the joint resolution.

Had the CR not made the changes, funding for the project-based Section 8 program would have resulted in a lapse in payments from the government to owners. While voucher funding has remained constant for the last several years, the need continues to exceed capacity. We are committed to a funding program that assists those in need.

**Emergency Housing Vouchers.** In light of the foreclosure crisis in the single-family housing area, NAA/NMHC support an Emergency Housing Vouchers concept. We believe the program should be administered by HUD and follow the pattern of the Katrina Vouchers, as long as funding is made available. It takes a long time to get new vouchers into the system. Since HUD now knows how to administer an emergency program (Katrina), Emergency Housing Vouchers would be an immediate help to those who are at risk of losing their housing.

**Defaults in the Single-Family Sector.** Government data sources confirm that the foreclosure rate for rental buildings with five or more units is in the single digits. The current and projected foreclosure rates for rental housing are overwhelmingly in single-family houses and condominiums. Therefore, legislation to protect renters

in foreclosed multifamily communities is unnecessary and may, in fact, harm the supply of affordable rental housing.

**State Mandates.** Against the backdrop of these funding challenges, several states and localities have attempted to address their affordable housing shortages by forcing housing providers to accept Section 8 vouchers. Some jurisdictions have even made families and persons receiving housing assistance payments a protected class under state civil rights laws, making it a civil or even a criminal violation for housing providers to opt out of the Section 8 program. These efforts go against the principles on which the Section 8 program was created. The program's creators recognized that participants would bear additional administrative and regulatory costs above and beyond those necessary to serve as conventional market housing providers. Thus, they implicitly preserved the right to participate or not participate. They failed to make this distinction explicit in the federal law; however, and several state legislatures have considered measures to effectively mandate participation in the Section 8 program.

**Action Requested:** NAA/NMHC strongly advocate reform of the current Section 8 Housing Choice Voucher Program to make the program more transparent and to reduce burdensome regulatory requirements. To that end, we urge that the Congress pass legislation similar to H.R. 1851/S. 2684 from the 110th Congress. In addition, we urge Congress to provide sufficient funding for all authorized vouchers and project-based Section 8 contracts. We support the concept of Emergency Housing Vouchers, and we oppose legislation that would mandate a new owner of a property be subject to the Section 8 Voucher Housing Assistance Payment contract of the previous owner. We urge Congress to reject efforts to turn the program into a state-based block grant. Finally, we urge states to respect the federal preemption of state and local laws intended by the program to keep participation voluntary.

### Low-Income Housing Tax Credit

**Issue Discussion:** The Low-Income Housing Tax Credit (LIHTC) program was enacted in 1986 as a mechanism by which private investors were encouraged to invest in affordable housing projects which might not have been economically viable without the incentives provided by the program.

With the advantage of 20 years of experience with the LIHTC program, Congress made a number of significant changes in legislation enacted on July 30, 2008 which attempted to improve the efficiency and effectiveness of the program. Among the many welcome changes included in this legislation were provisions allowing the LIHTC to offset Alternative Minimum Tax (AMT) liabilities for buildings placed in service after December 31, 2007, changing the treatment of the Basic Allowance for Housing (BAH) provided to military service members when

calculating the eligibility of certain service members for LIHTC property residence, and modifying the 70 percent credit to limit uncertainty by creating a flat 9 percent credit for non-federally subsidized buildings placed in service after enactment of the bill through the end of 2013.

**Action Requested:** Congress should continue to make appropriate changes to the LIHTC program which will improve the efficiency of the program while encouraging new and enhanced investment in affordable housing. Particularly in the challenging times that the economy currently faces, additional incentives may be appropriate to encourage further investment in the program by individual, corporate, and institutional investors and to enhance the viability of current developments which participate in the program.

### Exit Tax

**Issue Discussion:** Before the implementation of the Low-Income Housing Tax Credit program 23 years ago, one method used to raise capital for the development of federally assisted housing was the availability of accelerated depreciation deductions for investors. Largely as a result of these accelerated depreciation deductions taken in past years, many of these properties currently carry low or negative basis. Consequently, a sale of these properties to new investors will often result in a large depreciation recapture tax liability for long-time owners – in some cases the tax liability may exceed the sales value of the property itself. This situation may result in properties that are badly in need of improvements that are not being made because owners are reluctant to make additional capital investments in these properties given the tax liabilities associated with them. At the same time, again because of potential tax liabilities that would become due upon sale of the properties, current owners will often opt instead to hold these properties with an eye toward transferring them at death. The result is an affordable housing stock that is deteriorating and badly in need of capital infusions that are unlikely to come without changes in current tax rules.

**Action Requested:** Congress should act to waive the depreciation recapture tax liability where investors sell their property to new owners who agree to invest new capital in the property and to preserve the property as affordable housing for an extended period of time.

### Capital Gains/Depreciation Recapture

**Issue Discussion:** 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 2010), 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. It also discriminates against real estate in favor of other asset classes.

In 1999, Congress approved a tax bill that reduced both the capital gains and the depreciation recapture rate, but the measure was vetoed. More recently, in January 2004, the Treasury Department recommended simplification of the calculation of capital gains depreciation recapture on certain types of assets, including real estate, by eliminating the special 25 percent rate and replacing it with a new “blended” rate based on a combination of ordinary income and capital gains tax rates.

**Action Requested:** NAA/NMHC urge Congress to repeal the 25 percent depreciation recapture rule established in 1997.

### Utility Adjustments for Tax Credit Properties

**Issue Discussion:** Apartment owners and operators of properties developed using Low-Income Housing Tax Credits (LIHTC) must be afforded the opportunity to implement unit-based utility metering using technology and billing through the practice of submetering under the final rule promulgating regulations by which owners and operators are to adjust their gross rents in cases where residents are responsible for monthly utility costs.

The Internal Revenue Service (IRS), at the request and urging of the multifamily industry, amended the rules governing how LIHTC property owners adjust the gross rent for residents that pay their utilities. The final rule, Regulation Section 1.42-10 (T.D. 9420), took effect on January 1, 2009 and was five years in the making. It responded to the growing deployment of individual and submetering practices now a standard in the industry. The IRS, working with owners and operators, expanded the methods by which gross rent adjustments can be established in an effort to create more accurate adjustments that reflect costs to the residents. The final rule, however, did not disclose or seek comment to modification of the rule that defines eligible properties, resulting in a prohibition in the practice of submetering utilities at the unit level from a property master meter. The final version significantly altered the scope of these rules by including new language not discussed with industry representatives during the regulatory process. As such, the industry was not afforded the opportunity to comment on this new language as mandated under the Administrative Procedures Act (26 USCS § 7805). The insertion of this new language, which fundamentally changed the meaning of the regulations, significantly limits the ability of property owners to provide submetered utility bills to residents.



At issue is the language in Section 1.42-10(a) that says “if the cost of any utility (other than telephone, cable television, or Internet) for a residential unit is paid directly by the tenant(s) and not by or through the owner of the building, the gross rent for that unit includes the applicable utility allowance determined under this section.” Read literally, this language means

building owners will no longer be able to create a utility allowance through the longstanding industry-accepted practice of submetering. This is because the utility is often not paid directly by the resident due to the existence of a submetering system. Such a prohibition on the use of submetering will be a significant burden on building owners and could, in some situations, have the unintended effect of increasing the overall utility costs of residents. Submetering measures the residents’ actual usage and residents pay for the utilities they use. This consumption price signal often triggers a more efficient use of utilities.

The federal government has a consistent history of supporting submetering in rental housing. The U.S. Department of Housing and Urban Development (HUD) has encouraged the use of submetering for the better part of two decades as an energy conservation tool. For over 15 years, HUD’s Management Handbook has included guidance for owners of Section 8 and other FHA-insured properties. In addition to the federal government, many states such as Texas and New York encourage submetering and have specific rules for submetering. The Texas Department of Housing and Community Affairs draft qualified allocation plan (QAP) for 2009 will award three additional points for low-income housing project applications that implement submetering projects. New York encourages submetering of electricity by providing grants to affordable and subsidized housing to cover part of the cost of submetering.

Regulation Section 1.42-10 (T.D. 9420) is currently in effect and no guidance has been issued by the IRS. The IRS has stated its intent to issue comment and guidance in early 2009 and has indicated that it will seek input on this guidance. The Treasury and IRS have made this a priority item and their intent is to address the matter. Inquiry to the IRS has not resulted in any official time frame or response to their plan of action.

**Action Requested:** NAA/NMHC call on the IRS to issue guidance to the industry and to the housing finance agencies that oversee the program that permits such practices as soon as possible, as the final rule took effect on January 1, 2009. Inaction by the IRS places thousands of affordable housing rental units in violation of the program and will add further confusion and cost to program oversight and compliance.

# HOUSING POLICY



NAA/NMHC continue to advocate for a more balanced housing policy that effectively addresses our nation's most pressing housing needs, and one that explicitly recognizes the importance of apartments in the nation's future growth plans. We oppose efforts to direct even more of our limited federal housing resources toward homeownership at the expense of critical rental housing programs.

## ISSUES

### Barriers to Multifamily Development

**Issue Discussion:** Apartments are a vital, but often overlooked, part of the community development toolbox.

They are more compact and less sprawling so they use municipal infrastructure more efficiently and preserve greenspace. They create vibrant, walkable neighborhoods, which helps reduce auto traffic and air pollution. They provide homes within reach of municipal employees, such as police officers, teachers and nurses. And they improve economic prosperity by providing much-needed housing for the employees local businesses need. If the United States is serious about wanting to change the future and create healthier and stronger communities in this country, Americans have to think about apartments in a more positive way.



The U.S. population is growing faster than many people realize. By 2030 there will be 94 million more people in the country than there were in 2000 and this does not include people who have lost their homes to the current foreclosure crisis in the single-family housing market. All of these people need somewhere to live, somewhere to work and somewhere to shop. The only way communities can accommodate this kind of population growth without sacrificing quality of life is to embrace higher-density, mixed-use development that integrates homes, schools, shopping, jobs and entertainment into our neighborhoods. High-quality apartments are an important part of this future growth plan.

Unfortunately, many Americans oppose apartment construction because of outdated fears about rental housing. Local governments, eager to retain the support of voters, erect barriers to apartments. Even worse, many

of the country's zoning laws are more than 50 years old and actually prohibit the kind of vibrant, walkable communities that citizens today want.

NAA/NMHC's outreach, seeking a more level playing field between rental housing and homeownership, has produced numerous successes, including the U.S. Department of Housing and Urban Development's (HUD) effort to remove barriers to multifamily housing through its Regulatory Barriers Clearinghouse.

**Action Requested:** NAA/NMHC strongly support legislation to fund research, identify model programs, analyze the environmental, economic and social benefits of a balanced approach to housing and revise outdated laws that increase the cost of providing affordable housing.

### Rent Control

**Issue Discussion:** 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," concludes 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:** NAA/NMHC urge Congress and the states to provide sufficient incentives and to remove unnecessary and costly barriers to developing affordable housing, thus relieving the critical shortage of rental housing.

## Homeownership Incentives

**Issue Discussion:** NAA/NMHC recognize the importance of homeownership to America; however, the dangerous disconnect between housing policy and housing needs has led our entire nation into a financial crisis because of the foreclosures in the single-family market. Mayors and congressional commissions agree that our top housing priority should be creating more rental housing, yet every year more of our limited resources are diverted to homeownership at the expense of other critical housing needs. NAA/NMHC believe that a “homeownership above all else and at any cost” policy is unwise and has proved to precipitate the biggest financial crisis since the Great Depression. Trying to create a nation of too many homeowners has ultimately harmed not only many of those owners, but also our local communities.

Rising foreclosures not only hurt working families, they also hit local communities hard. When families default and abandon their houses, property values decline and neighborhoods can spiral downward. Cities, counties and towns lose tax revenue and incur higher costs associated with vandalism and other social problems. The conventional wisdom that home ownership is good for owners and their communities is coming under intense scrutiny in the press as the subprime meltdown spreads.

As Congress works to correct the current foreclosure crisis and stop sliding house prices, we urge you to act carefully and reject proposals that do more harm than good. Some are calling for homebuyer tax credits (either by allowing the current \$7,500 credit, which presently must be repaid to the U.S. taxpayer, to not be repaid, or by calling for a larger homebuyer tax credit of up to \$22,000), legislation reinstating seller-financed downpayments and a federally financed interest rate buydown, lawmakers should understand that these actions may very well lead to future bailouts. They are a short-sighted prop for the for-sale housing market—the very sector of our economy that helped trigger this global economic crisis with artificially low interest rates, easy credit and extreme overbuilding.

Given that the National Association of Home Builders (NAHB) says Americans are expected to buy 5.1 million houses in 2009 without any incentives, why should a further stimulus for single-family home purchase be a priority rather than assistance for current homeowners in default? Giving buyers a \$22,000 tax credit, as NAHB has called for, would mean \$112 billion in wasted subsidies to buyers who would have bought a house without any federal assistance.

Proposals to lift the ban on seller-financed downpayment assistance are short-sighted and do not recognize many of the factors, e.g. homebuyers with no equity in their new home, that led to the current housing crisis.



Congress should take all reasonable steps to help those who are in houses facing foreclosure. Lawmakers should direct their efforts to measures that get these loans restructured. Beyond that, if Congress wants to shore up the economy, it should enact proven economic stimulus policies, such as investment incentives for business, investing in our national infrastructure, extending unemployment benefits, issuing general aid to state governments and enacting meaningful energy-efficiency tax incentives for commercial real estate.

**Action Requested:** NAA/NMHC urge Congress to fully consider the nation’s most pressing housing needs and the needs of working families before advancing any additional homeownership incentives. We urge you to oppose new homeownership tax incentives and to continue the ban on seller-assisted downpayments. We encourage you to enact economic stimulus policies that encourage investment in our nation’s infrastructure and industrial sectors. Finally, we support the concept of restructuring loans so that Americans can stay in their homes.

## Military Housing

**Issue Discussion:** NAA/NMHC continues its strong support of the successful privatization of military housing.

Military housing under privatization has reduced inadequate housing stock replacing it with modern and family friendly homes. This housing increased the quality of life for military families which has directly supported military readiness and retention.

**Action Requested:** NAA/NMHC urge Congress to continue to support programs that will create public/private partnerships, as well as private housing initiatives for U.S. military service members. NAA/NMHC also request that federal laws, regulations or additional requirements that might deter such housing from being developed be eliminated. NAA/NMHC will continue to work with military housing leaders to identify those conflicts in an effort to make a more positive impact on the quality of life for military families.

# ENERGY AND ENVIRONMENTAL POLICY



Environmental issues, particularly as they relate to energy and sustainability, are very much in the mix of topics that will receive early consideration in the 111th Congress. There is little doubt that energy issues from the cost of oil to the cost associated with war in the Middle East have had a significant downward drag on the economy. Lawmakers on both sides of the aisle are calling for a national energy policy that meaningfully addresses production from renewable sources and stresses energy efficiency and a reduction in greenhouse gases across economic sectors. These tenets are also strongly echoed in policy debates at the international level by developed and developing countries.

## ISSUES

### Building Energy Efficiency

**Issue Discussion:** NAA/NMHC members recognize the importance of energy-efficient building performance. The high cost of utilities is a significant consideration for housing providers as well as for our residents. We support federal policies encouraging the use of energy-efficient building technologies, the expanded use of renewable energy sources, the adoption of smart meters in service of an improved national electric grid, and grants to localities to implement smart growth strategies, including mass transit.

Advances in building science have resulted in the development of new materials and systems that make buildings highly efficient. Existing buildings with less efficient technologies represent an opportunity to make improvements in energy and water consumption. Changing out building systems requires an understanding of how the building systems work together. A one-size-fits-all legislative approach that would require the building stock to meet a certain energy performance level is unworkable and will have the direct consequence of exacerbating the shortage of safe, affordable apartment housing. Rather, increased funding of weatherization and energy-efficiency programs will spur the renovation of older, inefficient buildings, which will create jobs for the construction and manufacturing industries and help low-income households control volatile energy costs.

**Action Requested:** (1) Congress should incentivize energy-efficiency upgrades in existing buildings and



green building through an expansion of the tax provisions enacted in the Energy Policy Act of 2005. Legislation to accelerate the depreciation schedule for certain building systems,

like HVAC, so that owners of existing property will be able to change out functional building systems and replace them with advanced technologies that are more energy efficient will assist property owners to make these capital investments that would reduce greenhouse gas emissions. (2) Congress should devote \$500 million in additional funding to the Weatherization Assistance Program (WAP) in FY '09 and fund the WAP at \$1.4 billion in FY '10. The weatherization program is a proven success in making buildings more energy efficient through low-tech interventions. (3) NAA/NMHC encourage the voluntary use of practical, proven and cost-effective energy-efficient and green building principles in new and existing projects.



Maintaining access to credit is vital to the multifamily industry. Restoring banking and other sources of debt capital is critical to support the millions of American families that live in rental housing.

## ISSUES

### Availability of Capital and Credit

**Issue Discussion:** While not a cause of the current lack of liquidity, the multifamily housing sector has been greatly impacted by limitations and lack of debt capital from a range of sources, including the commercial mortgage-backed securities market, commercial banks, insurance company debt and commercial credit companies. Many firms have reduced expenditures including implementing reductions in staff, deferred investments and curtailed property transfers as asset values have declined. While occupancy continues to be relatively strong on a national basis, the continued deterioration of the economy has created growing concern in the industry. At the same time, the nation and the apartment industry have witnessed unprecedented changes in the financial markets and unparalleled government response. Many sources of investment and debt capital have disappeared or merged, the banking industry shut down and Fannie Mae and Freddie Mac were taken over by the federal government.

As the economy continues to experience historic global weakness, owners and investors of real estate, including apartment communities, are experiencing a decline in value of their holdings. Liquid capital markets are vital to meeting the needs of the many property owners who will have loans maturing in 2009 that need to be refinanced. While Fannie Mae, Freddie Mac and the Federal Housing Administration are a liquidity backstop for the apartment sector, they are not sufficient to meet the industry's debt capital needs. Congress has given unprecedented authority to the Federal Reserve and the Treasury to address the credit crisis, but their actions have had little immediate impact to date.

During the year, lawmakers are likely to consider legislation addressing the oversight and future of Fannie Mae, Freddie Mac and the Federal Housing Administration. It is imperative that Congress not overlook the vital role of these institutions to the multifamily rental market and how they have met a broad range of debt capital needs to this key segment of the housing industry. Members and staff must be urged to not unwind the current debt capital market for multifamily housing by actions to solely respond to the single-family mortgage situation.

**Action Requested:** NAA/NMHC support federal efforts to bring credit markets back to the marketplace, including, but not limited to the following specific actions:

1. Use by the Treasury Department of the Term Asset-Backed Securities Loan Facility (TALF) or Troubled Asset Relief Program (TARP) funds to purchase commercial mortgage-backed securities.
2. Purchase by the Federal Reserve of Fannie Mae and Freddie Mac multifamily mortgage-backed securities as part of their efforts to provide liquidity to the marketplace that invests in mortgage-backed securities.
3. Use of Fannie Mae and Freddie Mac portfolio investment funds as a means to purchase multifamily mortgage loans to meet the mortgage needs of apartment owners and to ensure that this is an eligible portfolio investment as part of the Federal Housing Finance Agency's oversight of Fannie Mae and Freddie Mac and not place limitations on the investment portfolios that would exacerbate the multifamily loan activities of the two government sponsored enterprises.
4. Purchase by the Federal Reserve of Ginnie Mae (GNMA) multifamily construction loan securities at the prevailing rate of GNMA mortgage securities for the FHA Section 221(d)4 program.
5. Require commercial banking institutions that have accessed TARP funds to make mortgage capital available to the development and construction of properties that have been allocated Low-Income Housing Tax Credits (LIHTC).
6. Authorize the Federal Reserve to purchase multifamily mortgage securities from Fannie Mae and Freddie Mac at an interest rate of 4.50 percent on properties that have received LIHTC allocation in 2007 and 2008.
7. Give authority for Fannie Mae and Freddie Mac to provide development and construction loans through December 31, 2010.



# APARTMENT MANAGEMENT



Apartment management is affected by numerous government regulations and actions. Government action or inaction on key issues can adversely affect apartment operating costs, increase liability or create legal ambiguity relative to property management. Although many important decisions affecting both large and small stakeholders in the residential property management industry are matters of state law, federal legislation and regulations can significantly affect day-to-day operations for market-rate and subsidized apartments alike.



a union when a majority of employees simply sign union authorization cards (card checks); current law requires a secret ballot election. The results of card check votes would be known to employers, employees and union organizers, rendering the process inherently vulnerable to pressure and coercion by union representatives and pro-union workers. In addition,

an employee may be completely unaware that by signing a union card he or she is not just agreeing to an election but to actual union representation.

Perhaps the most troublesome provisions in the proposed legislation relate to timing and process. In addition to doing away with an employee's expectation of a secret ballot election, the EFCA would require collective bargaining negotiations within just 10 days of union certification. A right to mediation would be triggered if an agreement on the first labor contract is not reached within a 90-day negotiation period, and if mediation fails within 30 days of commencing, the mediating body will decide unresolved issues between an employer and a union. The resulting binding arbitration would be in effect for two years. The EFCA's proposed timetable changes would interfere with bargaining by imposing the threat of mandatory binding arbitration by an outside decision maker. Such forced interference in the private sector would be a disruptive affront to the very essence of the employee-employer relationship.

The EFCA would also impose higher fines on employers for committing certain "unfair labor practices," including triple back pay to an aggrieved employee and up to \$20,000 in civil penalties per violation.

NAA/NMHC members are not particular union threats, but the apartment industry should not be complacent about the potential impacts of the measure. Even if the Democrats can count 60 Senators among their ranks, there may not be enough for a filibuster-proof majority on this particular issue since there are a handful of Senate Democrats who may not support all of the provisions.

**Action Requested:** NAA/NMHC oppose the EFCA and urge Congress to reject the bill as an ill-conceived proposal that would tip the balance overwhelmingly in favor of unions, enhance their political strength at

## ★ ISSUES

### Employee Free Choice Act/Union "Card Check"

**Issue Discussion:** The Employee Free Choice Act (EFCA), popularly known as the "card check" bill, could fundamentally change the culture of the American workplace by replacing existing labor organizing rules with rules that would enhance a union's ability to win support and ultimately increase unionization nationwide. Across industries, small and large employers alike are extremely concerned about how the proposed legislation could impact their business practices.

The 1935 National Labor Relations Act (NLRA) was intended to guarantee workers the right to organize without coercive employer interference. Labor unions have long been dissatisfied with the legal framework established by the NLRA. They argue that current union election procedures fail to protect organizing rights because the system inherently favors the interests of employers. As union membership nationwide has slipped to single digits and their coffers have dwindled, unions are seeking changes to the current federal rules that would speed up the organizing process and allow greater fines against employers that do not bargain with them in good faith.

On March 1, 2007, the U.S. House of Representatives approved the EFCA (H.R. 800) in a 241-185 vote. The Senate version attracted 46 co-sponsors, but died on June 19, 2007 when it was filibustered. If approved by the 111th Congress and signed into law, the EFCA would amend the NLRA in several meaningful ways. The most well-known provision would require an employer to recognize

considerable cost to business and employees, and render a reasonable collective bargaining process moot. In its current form, it would interfere with an employer's ability to make strategic business decisions, and it would alter the balance between a company's goals of productivity and profitability and a union's ambitions to gain power and put in place a collective bargaining agreement. Employees already enjoy statutorily-guaranteed rights and protections to organize under the NLRA. Moreover, unionized employees can be prevented from earning the recognition and flexibility that they deserve because employers must adhere to collective bargaining agreement provisions.

## Immigration Reform

**Issue Discussion:** Congress must enact comprehensive immigration reform to strengthen national security and address the country's current and future economic needs. The inadequate immigration infrastructure has caused an unacceptable status quo. Workforce needs apply more pressure on the deficient system than can be handled, let alone the many other categories of immigrants pushed through the inadequate structure. Despite the economic recession, millions of undocumented workers throughout the country perform work that most Americans will not do themselves. Regardless of whether those workers seek permanent or temporary status, immigrants applying for legal residency under the current system are faced with overly complex procedures, inflexible regulations and unreasonable delays. By failing to create adequate programs for hiring foreign workers and not addressing the status of workers already here, Congress and the Administration are not fully safeguarding either the economy or U.S. borders.

The vast majority of businesses want to obey employment verification rules but the current system lacks an accurate means to confirm the immigration status of prospective or current employees. Even the most diligent employers have difficulty identifying forged documents because they remain highly vulnerable to fraud and theft. Careful employers should not be penalized when they implement proper screening techniques. Most employers currently have voluntary access to the federal government's E-Verify electronic/telephonic employment verification system to ensure that employees are authorized to work, but this formerly experimental program does nothing to authenticate identification documents. Nonetheless, federal contractors must participate in the flawed E-Verify program. Effective employee screening and workplace enforcement are essential, but those components must be accurate and efficient, and they are just one part of meaningful, comprehensive reform.

While U.S. immigration laws must be meaningfully reformed, improving national security does not simply require better employment verification enforcement,

but a more rational, comprehensive immigration policy. Specifically, a comprehensive immigration reform package should improve border security, improve employee verification, include a temporary guest worker program that would allow employers to hire certain pre-screened foreign workers as needed and address the status of the undocumented individuals currently in the country.

Apartment owners are particularly concerned about the failure of Congress to enact comprehensive immigration reform because that inaction has encouraged state and local governments to pass draconian measures that, if enforced, would require apartment owners to act as de facto immigration police. In most cases these laws would bar apartment owners from renting to undocumented individuals and require them to screen all prospective or even current residents for their immigration status. Without Congressional action, state and municipal governments are likely to continue to approve these measures, which are extremely problematic on legal and practical grounds.

Congress faced increasing pressure to address immigration reform in the 110th session, but heightened factionalism within each party and among party leaders stalled meaningful consideration of this issue. The new Administration and key members of Congress have signaled their support for reform and the prospect is good for a renewed focus on immigration issues in the 111th session.

**Action Requested:** NAA/NMHC strongly urge Congress to approve legislation that includes an accurate, cost-effective employment verification system as part of a comprehensive package that addresses national security and also includes a temporary worker program and rationally deals with the undocumented workers currently residing in the country. NAA/NMHC also urge Congress to reserve for the federal government the authority to enact and enforce immigration policy.



## Accessibility

**Issue Discussion:** When Congress amended the Fair Housing Act in 1988 to make it unlawful to discriminate against any person on the basis of handicap, it defined “discrimination” to include the failure to design and construct certain covered multifamily dwellings in such a manner that they are accessible and usable by handicapped persons. Many NAA/NMHC members have been challenged with lawsuits over their alleged failure to comply with the accessibility requirements of the law. Given the complexity of building construction coupled with vague and limited guidance provided by the federal government, many property owners misunderstood their obligations and now find themselves potentially out of compliance. Disability advocates and the federal government continue to turn up the heat to enforce these requirements on the apartment industry. NAA/NMHC support the industry in its legal challenges through “friend of the court” briefs when appropriate and most important, we have been working to identify and create educational opportunities to help the industry comply with the often ambiguous provisions of the law. We also seek a long-term solution to help mitigate the threat of litigation. This combined educational and advocacy initiative is being developed with the help of legal and building industry expertise.

NAA/NMHC will continue to educate policymakers and regulators about the ongoing efforts to combat discrimination in housing, especially for the disabled. Efforts by the disability community to make significant fair housing policy changes have been forwarded to the new Administration. The multifamily industry will urge HUD to engage all stakeholders in such efforts.

**Action Requested:** Policymakers and regulators need to know the challenges facing the multifamily housing industry as it seeks to comply with interpretations of law that often present difficult targets because of numerous revisions. We also urge HUD to reject requests for establishment of an independent fair housing enforcement agency.

## Telecommunications Policy

**Issue Discussion:** NAA/NMHC strongly favor a robust, competitive telecommunications industry that reliably and cost-effectively meets the needs of apartment residents. Federal telecommunications policy should be based primarily on a free and open market philosophy, without legal restrictions and/or governmental interference that impair the management of an apartment property.

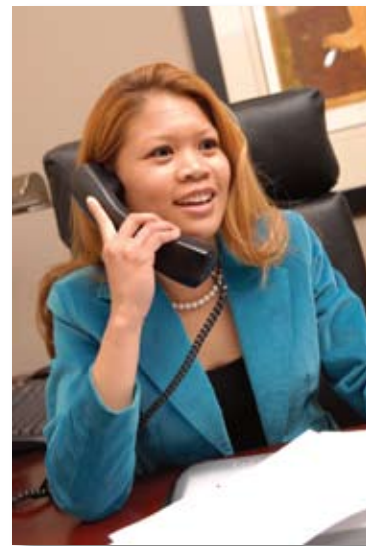
Telecommunications services are in great demand, and today’s apartment residents require newer, faster and more sophisticated telecommunications capabilities. Therefore, apartment owners rely on advanced telecom systems and services to satisfy residents’ needs and to establish an edge in the highly competitive multifamily marketplace. Those needs can only be met when

telecommunications providers compete in a freely operating market without restrictions on freely negotiated contracts between apartment owners and service providers. Such competition has spurred the development of new technologies and higher quality service.

New technology such as Fiber to the Premises (FTTP), Voice Over Internet Protocol (VOIP), Wireless (WiFi), and Broadband over Powerlines (BPL) have changed the way voice, video and data services are provided to apartment properties. At the same time, the Incumbent Local Exchange Carriers are still responsible for providing Carrier of Last Resort service for land-line phone system hook-up. As a result, some telecom providers have sought permission at both the state and federal levels to bypass the traditional negotiations for service that must take place between property owners and providers and gain mandatory access to multifamily properties for provision of any or all types of service.

Efforts by federal and state governments to mandate access to various telecommunications technologies, presumably in the interest of individuals who reside in apartments, more often than not result in less competition, higher prices, and decreased service standards and product offerings because the larger companies eventually prevail in the tight multifamily market and drive out competitors. Moreover, many apartment communities can only support one type of voice, video or data service because of the unique economy of scale in the multifamily sector. A misguided effort to increase competition by banning various types of exclusive agreements will unfortunately result in less competition and higher costs for residents, especially in moderate-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.

Despite NAA/NMHC’s strong effort against federal regulation, the Federal Communications Commission (FCC) has retroactively banned the enforcement of exclusive building access clauses in agreements between apartment owners and many video service providers. NAA/NMHC have filed an appeal of the FCC ban in federal district court on the grounds that the FCC lacks the requisite legal authority to regulate in this area, and that their decision was based on incomplete market data and erroneous assumptions about the multifamily video



market. The FCC has also sought to regulate exclusive marketing agreements and bulk billing arrangements under the erroneous belief that this will encourage market competition and broadband deployment.

**Action Requested:** Members of Congress should reject efforts by telecommunications providers who seek legislation that grants them special access privileges to private property. The FCC should refrain from regulating in this area because it lacks legal authority to do so, and there is insufficient market evidence warranting federal intervention.

### **Catastrophic Property Insurance**

**Issue Discussion:** 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. While natural catastrophic disasters occur infrequently, they will become a greater challenge going forward and given the increases in development, losses are expected to escalate. Property owners with catastrophic exposure such as severe wind and earthquakes experienced significant cost increases and reduced policy limits in the aftermath of the 2005 hurricane season. Experts predict that in the foreseeable future policyholders can expect to see a stabilization of market conditions at the current high cost levels. It is estimated that catastrophic losses will double every decade or so due to growing residential and commercial density and more expensive buildings.

Since then, revised models that more accurately reflect property values and risk as well as rating agencies revising their criteria to more closely scrutinize exposures in catastrophe-prone areas and the backing off of reinsurers in the market have all led to higher prices and limited capacity. While there are strategies that policyholders should employ to manage the impacts of hardening markets, many believe there is also a role for the federal government to play to ensure adequate capacity in times of severe weather events such as earthquakes and hurricanes that cannot be accommodated by the private market alone.

Several pieces of legislation were introduced in the 110th Congress to address the property insurance crisis 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:** Congress has an obligation to hold hearings, assess the market conditions and take steps to enact a reasonable legislative solution that will ensure that policyholders can obtain affordable and adequate coverage when the private market is not able



to accommodate them. Full consideration should be given to such proposals as: (1) the establishment of a Commission on Natural Catastrophe Risk Management to fully assess the problem and recommend action; (2) a low-interest federal loan program for states impacted by severe natural disasters; (3) reinsurance for state catastrophic funds and; (4) pooling of risk that can be transferred to the private market through the use of catastrophic bonds. It is likely that relief will not come from any one proposal but from a patchwork of legislative proposals.

### **National Flood Insurance Program**

**Issue Discussion:** Congress established the National Flood Insurance Program (NFIP) in 1968 as a means to help property owners and renters in participating communities purchase insurance protection that was otherwise unavailable in the private market. Communities with significant flood risk participate by adopting and enforcing floodplain management regulations to reduce future flood damage. The insurance is underwritten by the Federal Emergency Management Agency (FEMA) and policies are sold through insurance companies. Intended to be a financially self-sufficient program, the hurricanes of 2005 have left the program almost \$20 million in debt and in need of reform.

Legislation to provide needed reform was considered by the 110th Congress, but time ran out before consensus could be reached so a simple extension of the program was enacted through March 13, 2009. Congress will take up reform legislation again early in the session and most likely will focus on efforts to return the program to solvency by creating financial accountability of the program by increasing the number of policyholders and eliminating many of the program subsidies. Other key components may include reviewing and updating the floodplain maps, increasing coverage limits, including business interruption coverage, and raising the annual

cap on premium increases. Of specific concern to the apartment industry is the proposed phasing out of subsidized insurance rates for “commercial” properties (including multifamily housing properties), while retaining them for primary residences. NAA/NMHC successfully lobbied the last Congress to amend this provision to preserve subsidized insurance rates for multifamily properties, noting that apartments serve as renters’ primary residences. NAA/NMHC also cited the adverse effect increased NFIP premiums would have on the already shrinking supply of affordable housing.

**Action Requested:** NAA/NMHC urge the House and Senate to pass NFIP reform legislation that includes a long-term program extension, increases coverage limits for multifamily policyholders, recognize that apartments serve as the primary residence for a third of the population and reject the subsidy phase-out provisions for multifamily housing properties.

### Homeland Security

**Issue Discussion:** NAA/NMHC strongly support ongoing efforts to enhance homeland security while taking appropriate measures to ensure such actions do not unnecessarily interrupt or significantly burden the business operations of the apartment industry. In the post-September 11 world, the business community, including the apartment industry, is being confronted with what seems like daily doses of new government initiatives to protect the country against terrorism. Apartment firms now screen residents and employees against terrorist lists and report large cash transactions to federal counter-terrorism officials. They are also complying with enhanced lease termination rights enacted in 2003 for deploying service members.

On August 3, 2007 President Bush signed into law legislation implementing the remaining recommendations of the 9/11 Commission (P.L. 110-53). Among other things, the law calls on the U.S. Department of Homeland Security (DHS) to work with the private sector to develop preparedness best practices and to create a voluntary private sector preparedness accreditation and certification program. NAA/NMHC support a voluntary approach since it would be difficult for any single standard to adequately address the diverse range of property types, locations and security risks in the private sector. It is far more rational to encourage a voluntary approach to instituting emergency preparedness plans and to tailor each plan to the specific business needs and capacities of the firm.

**Action Requested:** NAA/NMHC will continue to work with our real estate partners through the Real Estate

Information Sharing and Analysis Center (ISAC) to coordinate efforts to improve the communications from the U.S. Department of Homeland Security on threats and warnings as well as policy and planning activities.

### Translation Requirements

**Issue Discussion:** Executive Order 13166, issued by the White House in 2000, proposing improving access to services by persons with Limited English Proficiency (LEP), requires federal agencies “to prepare a plan to improve access to ... federally conducted programs and activities by eligible LEP persons.” HUD subsequently proposed a plan that would require any apartment owner that participates in federal housing programs, including accepting Section 8 vouchers, to translate vital documents, i.e., leases and all types of notices, and offer oral interpretation services free of charge to residents with LEP.



NAA/NMHC do not oppose the objectives outlined in the Executive Order or HUD’s attempt to implement that Order except for the provision of services by and

at the expense of the apartment owner. While some apartment owners and managers might be fluent in certain languages and dialects other than English, imposing a translation burden on all apartment owners nationwide is costly, unworkable and an unfunded

federal mandate. It should not be the responsibility of apartment owners to provide translation and oral interpretation services directly to the LEP population and to assume the responsibility for the associated costs, the accuracy of translated documents and the competency of interpreters. NAA/NMHC strongly believe that it is the duty of the government to incur the cost and burden of document translation for persons with LEP and to set up programs that will achieve such guidance.

**Action Requested:** NAA/NMHC have called on HUD to revise its proposed implementation by recognizing that it is the responsibility of the government to implement an LEP program and we urge Congress to see that HUD does not impose an unfunded federal mandate on apartment owners. Finally, NAA/NMHC support legislation (H.R. 1851) that requires HUD to translate both its own official vital documents and selected non-HUD property documents into any language the Department identifies as necessary, and to provide a HUD-funded and HUD-administered toll-free telephone number for oral interpretation needs.

# TAX POLICY



Federal tax policy should reflect the economic nature of investments in the financing of real estate and discourage laws causing an outflow of capital from real estate to other investments or distortions in the flow of capital to selective real estate sectors.

## ISSUES

### Carried Interest

**Issue Discussion:** NAA/NMHC strongly oppose proposals to change the current law governing the tax treatment of carried interests. A carried interest, which has been a fundamental part of investment partnerships for decades, is an interest in the long-term capital gain of the partnership when it sells its property. Investing partners grant this interest to the general partners as an incentive for increasing the value of the underlying asset. The distribution of funds when a partnership is terminated come from the sale of capital assets.

In 2007, the U.S. House of Representatives passed legislation, based on H.R. 2834, which would have increased the tax on the capital gain value of “carried interest” or “promote” received by a general partner in a partnership from the current 15 percent capital gains tax rate to ordinary income tax rates, which are currently as high as 35 percent. The original focus of this tax change was apparently the Wall Street private equity and hedge funds. The version of the legislation passed by the House, however, would have had a broad reach, with industry estimates indicating that about a third of the impact of the legislation would be on the real estate industry alone. Such a change would have imposed the most sweeping and potentially most disruptive new tax on real estate since the Tax Reform Act of 1986, which contained the passive loss limitation rules.

NAA/NMHC was very pleased that the carried interest proposal was not enacted in 2007 or 2008. NAA/NMHC’s efforts, along with those of other real estate groups and other industry representatives, have been successful in raising concerns among Senators and Congressmen about the impact of the provision on the real estate industry and the economy in general. However, the carried interest issue is likely to continue to be examined in 2009, as the concept of the tax change had had the support of the Ways and Means Committee Chairman, Charles Rangel (D-NY), and was endorsed during the presidential campaign by then-candidate Barack Obama. NAA/NMHC will continue to work to educate Congress and to urge that any proposals in this area be examined fully to ensure that any changes reasonably address possible abuses without having unintended consequences on legitimate real estate transactions and arrangements.

**Action Requested:** NAA/NMHC urge Congress not to implement tax changes that will harm the partnership arrangements that utilize carried interests. Capital gains is the proper tax treatment for the carried interest received by real estate general partners since monies distributed stem from long-term capital gain. Inappropriate tax increases will make many projects unprofitable and the unintended consequences of imposing new tax rules on the real estate industry will be felt throughout the country, including underdeveloped areas in need of affordable housing.



### Federal Estate Tax

**Issue Discussion:** In 2001, Congress passed legislation to eliminate the estate tax by reducing the tax rate and increasing the size of estates excluded from taxation during 2002 to 2009. Then, for one year in 2010, the estate tax will be fully repealed. On December 31, 2010, however, the law reverts back to the higher rates and smaller exclusions that were in place in 2001.

In addition to repealing the estate tax for the year 2010, the law, as currently scheduled to go into effect for 2010, also repeals “stepped-up basis” for that year. This will result in thousands of estates avoiding the estate tax, but instead heirs will find themselves with substantial capital gains tax liabilities that they would not owe under current law. Currently, when someone inherits property or a stock, the property’s tax basis is stepped-up to its market value at that time. Without stepped-up basis, as will be the case in 2010, the tax basis of the inherited property is the original purchase price paid by the donor minus various basis adjustments. This can result in quite a low basis if the property has been depreciated over a number of years. It is this potentially low basis that can result in an heir owing a large capital gains tax if he or she decides to sell the property after it is inherited. The 2009 law provides:



(1) asset basis is stepped-up to fair market value at the time of the donor's death; (2) the first \$3.5 million of a taxable estate is generally excluded from taxation; (3) for estate assets in excess of the excluded \$3.5 million, a maximum 45 percent tax rate is applied to the net fair market value (value minus debt); and (4) heirs may re-depreciate the property granted them using fair market value (stepped-up basis). The House and the Senate appear to be moving toward adopting a compromise reform package containing many of the principles which NAA/NMHC have been advocating for several years.

**Action Requested:** With 2010 approaching, 2009 is a critical year for estate tax reform and it is likely that legislation will be enacted this year. Congress should act to provide certainty and stability in the federal estate tax laws. NAA/NMHC urge Congress to extend the law in effect for 2009 consistent with the principles articulated above.

### Alternative Minimum Tax/Tax Reform

**Issue Discussion:** Major tax reform is a possibility in 2009, but the state of the economy may convince Congressional leaders that the time is not ripe for large-scale policy changes this year. However, some decisions will need to be made in either 2009 or 2010 as a large number of tax law changes first enacted in 2001 and 2003 are scheduled to expire at the end of 2010. If the 2001 and 2003 tax changes are allowed to expire as required by current law, American corporate and individual taxpayers will see a tax increase in excess of \$130 billion

in 2011 alone—with this tax increase approaching over \$300 billion annually by 2019. Those scheduled tax increases are in addition to the continually growing reach of the individual alternative minimum tax (AMT), which is estimated to affect almost 35 million

taxpayers by 2011 if no permanent changes are made prior to that year.

**Action Requested:** NAA/NMHC urge the Administration and Congress to undertake tax reform initiatives carefully and to evaluate the practical implications of any changes in the taxation of real estate and rental housing on national housing policies. Congress should refrain from modifying the tax laws to increase the tax burdens on, or otherwise disadvantage, owners and renters of multifamily housing relative to other real estate and other asset classes.

### Like-Kind Exchanges

**Issue Discussion:** Section 1031 of the Internal Revenue Code allows owners of commercial real estate to exchange properties without setting off a taxable event. Such tax-deferred exchanges enable an orderly flow of property ownership. Congress and the Internal Revenue Service (IRS) are reviewing several aspects of like-kind exchanges as well as developments in the tenant-in-common marketplace.

**Action Requested:** Congress and the IRS should not alter the present 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.

# BUILDING CODES



The model building codes and standards developed by the International Code Council (ICC), the National Fire Protection Association (NFPA) and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) provide a uniform basis for code enforcement across the country.

The complete set of codes developed by the International Code Council is particularly important. The ICC codes—and the references they include to standards developed by the other groups—provide the apartment industry with a uniform and consistent basis for construction nationwide. They allow the industry to build accessible and affordable housing cost-effectively, without any reduction in the basic requirement for life safety.

These standards are developed at the national level and then adopted and enforced at the local level. NAA/NMHC strongly support the local adoption of the ICC's set of codes. The mixing and matching of different codes—such as if a locality adopts the ICC's International Building Code (IBC) but then adopts the NFPA's Uniform Fire Code (NFPA 1) instead of the ICC's International Fire Code—creates situations in which the provisions from one code contradict the provisions of another. In addition to creating confusion in the enforcement process, this mixing of different codes developed by different organizations usually means designing to the most restrictive provision, which results in unnecessary increases in construction costs.

## ISSUES

### ICC Model Codes

**Issue Discussion:** NAA/NMHC support the adoption of the model codes developed and published by ICC over any other set of model codes. The ICC model codes, developed with input from code and fire officials as well as industry, have proved to be a complete, comprehensive and coordinated set of codes that allows the apartment industry to build cost-effective, safe, affordable and accessible housing.

In addition to being the only set of model codes developed and published by a single organization, the 2000 IBC with the 2001 amendments, the 2003 IBC and now the 2006 IBC, with the January 2007 erratum (concerning missing text), are the only model codes



with the “safe harbor” designation for compliance with HUD’s Fair Housing Act Accessibility Guidelines (FHAAG).

**Action Requested:** NAA/NMHC strongly urge local jurisdictions to adopt the full package of ICC construction codes without

local amendments. NAA/NMHC further urge localities not to mix and match codes, such as adopting the ICC's International Building Code (IBC) but then adopting the NFPA Uniform Fire Code (NFPA 1) instead of the ICC's International Fire Code.

NAA/NMHC also urge local jurisdictions not to adopt the NFPA Life Safety Code (NFPA 101) for anything other than medical occupancies, because that code has requirements for existing apartments that are not aligned with the requirements in the IBC.

### Non-Metallic Sheathed Cable

**Issue Discussion:** NAA/NMHC strongly support the cost-effective, safe electrical wiring provisions in the 2003 and 2006 ICC codes and the 2002, 2005, and 2008 National Electrical Code (NEC), published by the NFPA. We oppose any modifications to those provisions that raise costs without supporting technical justification.

For nearly 20 years, NAA/NMHC have advocated widespread use of non-metallic sheathed cable (NM cable; also referred to as Romex) without consideration of building height. Earlier code requirements limited NM wiring to buildings with three or fewer stories, a costly restriction that is completely unjustified.

During the 2001 code development cycle, the ICC removed all height limitations on the use of NM cable



from the International Building Code (IBC). In addition, the 2002 National Electrical Code was revised to allow the use of NM cable in any building permitted to be of Types III, IV and V construction, up to five stories in height. The 2005 and 2006 NEC retain these changes.

Expanded use of NM cable saves apartment developers \$50 million in annual construction costs, without compromising life safety. These savings allow apartment developers to construct new apartments and replace old housing where previously they would not have been financially able to do so.

**Action Requested:** Local jurisdictions are urged to adopt the 2006 ICC codes and the 2008 NEC without any local amendments restricting the use of NM wiring.

### Accessibility

**Issue Discussion:** 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 the development of a single set of national accessibility standards. NAA/NMHC also support the efforts of the United States 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 A117.1-2003 Standard on Accessible and Usable Buildings and Facilities as the basis for accessibility technical requirements.

**Action Requested:** NAA/NMHC support the adoption of the accessibility provisions in the 2006 ICC codes.

### World Trade Center Disaster

**Issue Discussion:** NAA/NMHC support changes to the model codes that address technical issues identified in the National Institute of Standards and Technology’s (NIST) investigation of the September 11, 2001 collapse of the World Trade Center. NAA/NMHC 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 the building.

NIST’s Final Report on the Collapse of the World Trade Center Towers, concerning the attack on the World Trade Center Towers on September 11, included 30 recommendations on items that NIST was concerned about in the design, construction and operation of very tall buildings. These recommendations are now being studied by a variety of groups responsible for the development of codes and standards that form the basis for the code provisions that establish the minimum building code requirements.

**Action Requested:** NAA/NMHC support changes in the national codes to address issues identified during the NIST investigations. However, our members oppose any proposed changes to requirements at the local level that have not been thoroughly discussed, acted on and approved at the national level during the rigorous model code development process.

## State Distribution of Apartment Renters in 2007 *(buildings with 5 or more apartments)*

State	Total Residents (in thousands)	Apartment Residents (in thousands)	Share of State Population (percentage)	Number of Occupied Apartments (in thousands)	Number of Occupied Apartments, 2000 (in thousands)	Change in Apartments Since 2000 (in thousands)
Alabama	4,628	300	6%	165	152	13
Alaska	683	59	9%	30	28	2
Arizona	6,339	668	11%	312	305	7
Arkansas	2,835	168	6%	91	76	14
California	36,553	5,758	16%	2,429	2,408	21
Colorado	4,862	539	11%	280	274	5
Connecticut	3,502	312	9%	173	181	-7
Delaware	865	72	8%	36	37	-1
District of Columbia	588	179	30%	97	104	-7
Florida	18,251	1,948	11%	925	887	38
Georgia	9,545	977	10%	429	388	41
Hawaii	1,283	162	13%	78	78	1
Idaho	1,499	67	4%	36	32	3
Illinois	12,853	1,232	10%	658	741	-84
Indiana	6,345	475	7%	271	257	13
Iowa	2,988	223	7%	132	119	13
Kansas	2,776	188	7%	113	106	6
Kentucky	4,241	274	6%	152	150	2
Louisiana	4,293	256	6%	139	155	-16
Maine	1,317	67	5%	43	46	-3
Maryland	5,618	663	12%	337	340	-3
Massachusetts	6,450	694	11%	385	414	-30
Michigan	10,072	751	7%	439	451	-12
Minnesota	5,198	508	10%	302	300	2
Mississippi	2,919	163	6%	79	74	6
Missouri	5,878	365	6%	219	216	4
Montana	958	48	5%	28	26	2
Nebraska	1,775	146	8%	89	90	-1
Nevada	2,565	381	15%	178	154	24
New Hampshire	1,316	107	8%	58	63	-4
New Jersey	8,686	1,004	12%	505	507	-1
New Mexico	1,970	130	7%	70	62	8
New York	19,298	4,333	22%	1,927	2,010	-83
North Carolina	9,061	706	8%	365	293	72
North Dakota	640	83	13%	53	44	9
Ohio	11,467	940	8%	548	564	-16
Oklahoma	3,617	249	7%	137	131	6
Oregon	3,747	402	11%	213	199	14
Pennsylvania	12,433	772	6%	482	494	-13
Rhode Island	1,058	83	8%	51	61	-9
South Carolina	4,408	284	6%	143	119	24
South Dakota	796	63	8%	39	35	4
Tennessee	6,157	481	8%	249	243	6
Texas	23,904	2,995	13%	1,377	1,305	73
Utah	2,645	211	8%	90	80	10
Vermont	621	36	6%	20	20	0
Virginia	7,712	772	10%	389	384	5
Washington	6,468	755	12%	407	384	24
West Virginia	1,812	76	4%	45	45	0
Wisconsin	5,602	476	9%	287	280	7
Wyoming	523	25	5%	15	14	0
<b>Total</b>	<b>301,621</b>	<b>32,623</b>	<b>11%</b>	<b>16,117</b>	<b>15,929</b>	<b>188</b>

**Source:** Census 2000 and 2007 American Community Survey. For more information about these data sources, please visit [www.census.gov](http://www.census.gov).

## State Distribution of New Apartment Construction in 2008

(November Year-to-Date as of 11/08)

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

State	Number of Apartments	Total Value (thousands of dollars)
Alabama	3,492	\$267,623
Alaska	105	\$15,354
Arizona	6,277	\$456,029
Arkansas	2,646	\$169,271
California	25,218	\$3,172,727
Colorado	6,601	\$842,912
Connecticut	2,078	\$279,349
Delaware	445	\$33,341
District of Columbia	280	\$25,337
Florida	19,541	\$1,994,974
Georgia	8,097	\$748,294
Hawaii	1,333	\$319,542
Idaho	281	\$26,762
Illinois	7,844	\$800,025
Indiana	3,721	\$249,885
Iowa	1,602	\$162,004
Kansas	2,387	\$192,533
Kentucky	2,764	\$181,704
Louisiana	3,604	\$299,003
Maine	465	\$33,340
Maryland	4,979	\$529,872
Massachusetts	3,555	\$374,506
Michigan	1,391	\$116,026
Minnesota	1,925	\$207,462
Mississippi	2,628	\$146,366
Missouri	3,237	\$233,402
Montana	192	\$15,649
Nebraska	1,473	\$115,811
Nevada	6,440	\$496,579
New Hampshire	645	\$54,206
New Jersey	7,881	\$711,863
New Mexico	653	\$54,275
New York	36,421	\$3,393,729
North Carolina	13,661	\$985,096
North Dakota	1,039	\$91,941
Ohio	3,792	\$256,768
Oklahoma	1,281	\$95,270
Oregon	3,739	\$496,017
Pennsylvania	3,472	\$334,136
Rhode Island	94	\$17,565
South Carolina	5,506	\$525,946
South Dakota	867	\$65,948
Tennessee	4,341	\$308,137
Texas	45,281	\$3,408,164
Utah	2,815	\$283,704
Vermont	173	\$13,295
Virginia	5,742	\$522,599
Washington	8,676	\$1,060,986
West Virginia	600	\$31,965
Wisconsin	4,250	\$315,905
Wyoming	222	\$11,583
<b>Totals</b>	<b>275,752</b>	<b>\$25,544,780</b>

Source: <http://www.census.gov/const/C40/Table2/t2yu200811.txt>  
<http://www.census.gov/const/C40/Table2/t2yv200811.txt>

## Characteristics of Apartment Households and All U.S. Households in 2007

(in thousands)

	All Apartments	New Apartments (Built 1990-2007)	Total Households (renters and owners)
Total Households	15,223	2,444	110,719
<b>Age of Householder</b>			
<30	31%	34%	13%
30-44	29%	29%	28%
45-64	24%	16%	37%
65+	17%	22%	21%
Median Age	39	36	48
Mean Age	44	44	50
<b>Household Type (%)</b>			
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%
<b>Household Members (%)</b>			
1	49%	49%	27%
2	27%	31%	33%
3	12%	11%	16%
4+	12%	9%	24%
Mean Number	2	2	2.5
<b>Children (under age 18)</b>			
Mean number	0.4	0.3	0.6
% Households with one or more	22%	19%	31%
<b>Household Income (% distribution)</b>			
Less than \$20,000	38%	33%	19%
\$20,000 - \$34,999	25%	24%	19%
\$36,000 - \$49,999	14%	14%	14%
\$50,000 - \$74,999	13%	15%	18%
\$75,000 +	10%	14%	30%
Mean Income	\$35,308	\$42,316	\$65,500
Median Income	\$25,500	\$30,000	\$47,000
<b>Household income of "Market Rate" Renters</b>			
Mean Income	\$40,407	\$44,642	n/a
Median Income	\$30,000	\$32,493	n/a
<b>Hispanic householders</b>			
Hispanic	19%	11%	11%
non-Hispanic	81%	89%	89%
<b>Motor Vehicles</b>			
Mean # per Household	1.1	1.2	1.9
% Households with one or more	74%	84%	92%

**Notes:** All statistics are NMHC tabulations from the U.S. Census Bureau's 2007 American Housing Survey. The estimates are based on a nationally representative sample of 39,107 occupied housing units, of which are in structures with 5 or more units and 1,221 are newly built apartments, where newly built is defined as those built after 1989. 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.

## Percent distribution of \$893 billion in multifamily mortgage credit outstanding in 2008

(Third Quarter)

Commercial Banks	24%
Savings Institutions	7%
Life Insurance Companies	6%
Fannie Mae	13%
Freddie Mac	8%
Mortgage Securities	
Ginnie Mae	4%
Fannie Mae	11%
Freddie Mac	1%
CMBS	13%
Individual and others	13%

**Source:** Federal Reserve Board

## Renter Occupied Housing

U.S. HOUSEHOLDS: RENTERS & OWNERS			
Type of Household	Number of Households (000s)	% of U.S. Total	Number of Residents (000s)
Renter-Occupied Housing	37,469	32%	88,558
Owner-Occupied Housing	79,350	68%	210,548
<b>Total</b>	<b>116,819</b>	<b>100%</b>	<b>299,106</b>

**Source:** NMHC tabulations of 2008 Current Population Survey, Annual Social and Economic Supplement, US Census Bureau (<http://www.census.gov/cps>)

## Apartment Construction in 2008

(through November 2008)

Apartments Authorized for Construction (5+ units in structure; includes units for owner occupancy)	275,752
<b>Source:</b> <a href="http://www.census.gov/const/C40/Table2/t2yu200611.txt">http://www.census.gov/const/C40/Table2/t2yu200611.txt</a>	
Value of apartments authorized (in thousands):	\$25,544,780
<b>Source:</b> <a href="http://www.census.gov/const/C40/Table2/t2yv200611.txt">http://www.census.gov/const/C40/Table2/t2yv200611.txt</a>	

## Federally assisted rental housing: 2008

	Number of Housing Units
Section 8 program vouchers	3,356,526
HOME Rental Units Completed	23,170
CDBG Rental Units Rehabilitated	21,418
Section 236 program	280,636

**Source:** <http://www.hud.gov/offices/cfo/reports/hudpar-fy2008.pdf>

# PHOTO CREDITS



Unless otherwise noted, all photos © The National Apartment Association

Contents: Palm Estates at Vero Beach, Vero Beach, Florida

Page 2: 1. Preserve at Woods Lake, Greenville, South Carolina  
2. Gables Republic Tower, Dallas, Texas

Page 3: Fields at Westover, Falls Church, Virginia

Page 5: Forest Pointe, Coconut Creek, Florida

Page 7: The Diamond at Prospect, Denver, Colorado

Page 8: Nissen Building Apartments, Winston-Salem, North Carolina

Page 11: The Diamond at Prospect, Denver, Colorado

Page 13: Premier Lofts, Denver, Colorado

Page 14: Lincoln Meadows, Boynton Beach, Florida

Page 15: Harris Pond, Charlotte, North Carolina

Page 16: 1) Camden Monument Place, Fairfax, Virginia  
2) Hunter's Ridge at Deerwood, Jacksonville, Florida  
3) Tyvola Centre, Charlotte, North Carolina

Page 17: 1) Premier Lofts, Denver, Colorado  
2) Fields of Manassas, Manassas, Virginia

Page 18: Premier Lofts, Denver, Colorado



NATIONAL APARTMENT  
ASSOCIATION

4300 Wilson Boulevard  
Suite 400  
Arlington, VA 22203  
703-518-6141  
FAX 703-248-9440  
[www.naahq.org](http://www.naahq.org)  
[information@naahq.org](mailto:information@naahq.org)



1850 M St., NW  
Suite 540  
Washington, DC 20036  
202-974-2300  
FAX 202-775-0112  
[www.nmhc.org](http://www.nmhc.org)  
[info@nmhc.org](mailto:info@nmhc.org)

★ ★ ★ ★ ★ ★ ★ ★ ★ ★



Printed with vegetable-based inks.