



Issue Fact Sheet

NMHC/NAA Joint Legislative Program • Suite 540 • 1850 M Street, NW • Washington, DC 20036 • (202) 974-2300 • Fax (202) 775-0112 • www.nmhc.org

IMMIGRATION REFORM

Background

In recent years, the economic, workforce and security implications of our nation's immigration policies have captured public attention. But the recession and sustained economic uncertainty have heightened concern among members of Congress about the potential political consequences of enacting comprehensive immigration reform. While Congress considered enforcement-focused measures, including bills dealing with employment verification procedures and border security, efforts to enact comprehensive legislation have stalled since June 2007 when a bipartisan bill intricately negotiated by 12 senators fell short of the 60 votes needed to end debate in the Senate.

The failure of Congress to enact comprehensive immigration reform has encouraged state and local governments to enact a patchwork of immigration laws that, among other things, have heightened scrutiny on employers. The multifamily rental housing industry is particularly concerned about draconian measures that, if enforced, would bar apartment owners from renting an apartment to an undocumented individual and require them to screen prospective or even current residents for their immigration status.

NMHC/NAA Position

Our immigration laws must be reformed to strengthen the American economy while discouraging illegal immigration. Immigration policy is a federal responsibility with national security and economic implications that should be handled by the federal government. Congress must enact reform legislation that reserves for the federal government—not state and local governments—the exclusive authority to create immigration policy.

Meaningful reform must include the following components:

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

Current Status

The immigration policy debate continues to play out in Congress and among state and local lawmakers. At the federal level, Congress did not address comprehensive reform in 2010 despite assurances from Senate Minority Leader Harry Reid (D-NV) and President Obama that a meaningful bipartisan debate would be achievable. Senators Charles Schumer (D-NY) and Lindsey Graham (R-SC) were expected to introduce a comprehensive bill in early 2010, but that effort faltered after Graham withdrew his support and in the face of a sustained lack of support from Senate Republicans.

In this Congress, on June 22, Senator Robert Menendez (D-NJ) introduced the "Comprehensive Immigration Reform Act of 2011" (S. 1258). But passage of the bill is unlikely since no action has been taken in the Senate, and the Republican-led House is maintaining an enforcement-only approach. On August 18, the Administration announced a plan for "prosecutorial discretion" that will allow the federal government to close deportation cases according to specific factors determined by a working group that includes the Department of Justice and Department of Homeland Security. President Obama has reiterated his support for comprehensive legislation but has blamed Congress for failing to enact meaningful reform.

Meanwhile, on September 21, the House Judiciary Committee approved the “Legal Workforce Act of 2011” (H.R. 2885), which would require all employers to screen prospective employees through the federal government’s E-Verify, online employment verification system. Under current law, federal contractors must use E-Verify, and some states require most other employers to use the system. The bill also reduces the number of identification documents an employer can accept when using E-Verify, eliminates the current I-9 verification program and increases employer penalties. Final passage of the measure is uncertain; even if it is approved by the full House, it is opposed by Senate Democrats.

Absent federal legislation, states continue to pursue their own remedies. At the state level, attention has been focused on Arizona’s law that requires employers to verify the legal status of their workers using the federal government’s voluntary E-Verify program and permits the state to revoke operating licenses from businesses that knowingly hire employees who are unauthorized to work in the United States. The law was upheld by the U.S. Supreme Court on May 26 (*Chamber of Commerce v. Whiting*, No. 09-115).

In Alabama, a federal judge has granted a preliminary injunction that blocks enforcement of parts of that state’s immigration law (Ala. Laws Act 2011-535). The law, which includes provisions that would punish rental property owners for “harboring” illegal immigrants, was already on hold. On September 28, U.S. District Judge Sharon Lovelace Blackburn ruled that neither Congress nor the U.S. Supreme Court has defined “harboring,” but federal law nonetheless preempts Section 13 of Alabama’s statute, making it unenforceable (*U.S. v. Bentley*, 5:11-cv-2746, U.S. District Court, Northern District of Alabama (Birmingham)). Importantly, the judge noted that federal law explicitly and implicitly permits landlords to provide rental housing to individuals without legal documentation, rejecting Alabama’s argument that merely providing rental housing to someone known or reasonably believed to be an illegal alien—without more—constitutes “harboring.”

Advocates on both sides of the issue have also closely followed the court battle over a Hazleton, PA ordinance that would fine apartment operators for renting to undocumented individuals and revoke business licenses from employers that hire them. The U.S. Supreme Court, following its May 26 decision in the Arizona case, ordered the U.S. Court of Appeals for the Third Circuit to reconsider its 2010 ruling that affirmed a lower court’s decision to block the ordinance (*Lozano v. Hazleton*, No. 07-3531). The law remains on hold pending the Appeals Court’s review.

Relevant Committees

House Judiciary
House Homeland Security
House Education and Labor

Senate Judiciary
Senate Homeland Security & Governmental Affairs
Senate Health, Education, Labor, and Pensions

Contact Information

Betsy Feigin Befus
Vice President of Employment Policy and Counsel
NMHC/NAA Joint Legislative Program
202/974-2339
bbefus@nmhc.org

Last Updated: October 2011