

## 2014 NMHC and NAA Policy and Regulatory Priorities

For more than 20 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered in a joint legislative program to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. NAA is a federation of more than 170 state and local affiliates comprised of 63,000 multifamily housing companies representing 6.8 million apartment homes throughout the United States and Canada.

### Multifamily Industry Priorities in the Next Congress

NMHC and NAA have set another aggressive, targeted policy agenda this year. Our priorities include the following:

#### ***Finance and Capital Markets***

- Housing Finance Reform
- FHA Multifamily Programs

#### ***Business and Property Operations***

- Regulatory Reform
- Flood Insurance
- U.S. Mail Delivery
- Terrorism Insurance

#### ***Housing Policy***

- Privatized Military Housing
- Disparate Impact

#### ***Tax Policy***

- Tax Reform

#### ***Employment, Labor and Immigration***

- Immigration Reform (E-B5, E-Verify)

#### ***Energy and Environment***

- Energy Policy
- Clean Water Act
- Environmental Quality

#### ***Construction and Development***

- Building Codes

### **Your Support Matters, Now More Than Ever**

**The Apartment Industry is Critical to the U.S. Economy.** Apartments and their 35 million residents support more than 25 million jobs and contribute \$1.1 trillion to the economy.

**Rental Demand is Surging.** Changing demographics and new economic realities are driving a surge in rental demand. In this decade, renters could make up half of all new households, upwards of seven million new renter households. The fact is, however, that while 300,000 to 400,000 units a year must be built to meet expected demand, just 185,800 were delivered in 2013.

## **Finance and Capital Markets**

### **Housing Finance Reform**

**NMHC/NAA are working to preserve a federal guarantee for multifamily mortgages and the availability of consistently reliable and competitively priced capital in all markets during all economic cycles.**

All private sources of capital, from commercial banks to life insurance companies, to the commercial mortgage-backed securities market, have limitations either in terms of loans they offer, the kinds of properties and markets they target, or even their capacity or willingness to lend in all markets at all times. Taxpayers and the mortgage finance system itself should be protected through a strong regulatory framework and multiple layers of private capital. Policymakers should protect and preserve existing resources, as well as support greater transparency, during the transition to a comprehensive overhaul of the housing finance system.

### **FHA Small Loan Program Proposal**

**NMHC/NAA are urging an expansion of the FHA Risk Share pilot program to allow greater flexibility and wider lender participation so it reaches a larger number of small multifamily property owners.**

HUD has proposed a pilot program to help in the financing of small multifamily rental properties using the FHA Risk Share program. We agree with HUD's assessment that owners of small rental properties face difficulty accessing financing due to diminishing lending in this area, a reduction in community and regional banks in the wake of the 2008 recession, and increasingly higher credit standards. A broader pilot program than proposed by HUD would provide the government with greater insight into how best to make available credit to owners of smaller properties.

### **Dodd-Frank Regulation and CMBS Risk Retention Rules**

**NMHC/NAA are working to eliminate the unintended consequences of the Dodd-Frank law as regulations are promulgated.**

The Dodd-Frank law requires or permits federal regulators to issue hundreds of regulations on risk retention, end-user requirements for interest rate swaps, and derivatives. Some of the new regulations could negatively impact investment and lending activities that are vital to the apartment industry. It is necessary to carefully monitor the regulatory process in order to protect the industry and its access to reliable and affordable credit. We are also supporting further technical changes to servicing and reporting requirements advocated for by the finance industry.

## **FHA Multifamily Transformation Initiative**

**NMHC/NAA are serving in a key consultant role to FHA on multifamily policies and issues, including the agency's multifamily reorganization and consolidation effort.**

The Federal Housing Administration's (FHA) mortgage insurance operation reorganization will eliminate over 40 office locations throughout the nation. It is critical to provide guidance to HUD in order to help ensure improvement in processing consistency and efficiencies.

## **Business and Property Operations**

### **Regulatory Reform**

**NMHC/NAA are urging federal agencies to insist that new rules and regulations affecting commercial real estate reflect the industry's business and operational structure.**

The apartment industry is a highly regulated sector, governed by an abundance of regulations from agencies as diverse as HUD, the Environmental Protection Agency, the Department of Energy, and even the Federal Reserve. While these regulations may be well intentioned, many will lead to costly mandates that divert resources not only from the production and operation of multifamily housing, but also from job creation.

### **Flood Insurance**

**NMHC/NAA are monitoring the regulatory implementation of the National Flood Insurance Program and will educate the industry on changes to the program.**

President Obama signed a five-year reauthorization of the National Flood Insurance Program into law in 2012. As the reforms were being implemented, some policyholders were experiencing unrealistic price increases at renewal, at time of property transfer or when mapped into a riskier flood zone. Recognizing the unintended consequences associated with the program rollout, Congress enacted legislation in 2014 to slow the pace of price increases and to repeal some of the reform provisions that would have penalized property owners when a map change placed their property in a riskier zone.

### **U.S. Mail Delivery**

**NMHC/NAA are advocating for mail delivery policies that recognize the safety, convenience and cost implications for apartment communities and their residents.**

There are a number of proposals to reform U.S. Postal Service (USPS) operations under consideration that address both costs and revenue, such as changes that would favor, or even require, centralized and curbside mail delivery service for both residential and commercial addresses, including apartment communities. Supporting USPS delivery policies that protect the safety and convenience for apartment residents and staff, as well as the security of mail and packages, must be a priority. Cost and efficiency for existing and future apartment communities must also be considered when the USPS encourages conversion to centralized mail delivery from existing door delivery.

## **Terrorism Insurance**

**NMHC/NAA are working, as part of a real estate industry coalition, on a TRIA extension.**

The Terrorism Risk Insurance Act (TRIA) authorized the government to be the insurer of last resort when private insurers were unwilling to provide terrorism insurance. TRIA was enacted after 9-11 when insurance carriers no longer offered coverage. The program has been extended twice, most recently in 2007, and is currently set to expire at the end of 2014. The private sector is unlikely, or unable, to step into the shoes of the Federal Government if TRIA expires, and Congress risks disastrous economic impacts if it is not extended again. An NMHC industry risk survey reported that 85 percent of apartment firms surveyed purchased terrorism coverage. Legislation has been introduced in both the House and Senate and hearings have been held, with the Senate reaching consensus in April 2014 on legislation to reauthorize TRIA.

## **Music Licensing**

**NMHC/NAA are monitoring Congress and the Administration's evaluation of music licensing laws governing public performance, infringement and enforcement, royalty rates, and other issues that may impact apartment communities.**

Performing Rights Organizations that administer and enforce music copyrights on behalf of copyright owners contend that apartment communities may be obligated to obtain a public performance license for certain uses of copyrighted music in leasing offices, fitness centers, swimming pools and other areas. The law for music copyrights is complex and, in some cases, undecided. Whether a license may be needed depends upon how and where music may be played and a number of factors specific to an individual apartment community. Recognizing a growing need for an informed resource on the legal complexities of music licensing, we produced a members-only white paper to address priority issues for apartment communities about how copyright law may apply.

## **Data Privacy and Breach Notification**

**NMHC/NAA are supporting reasonable efforts to safeguard a consumer's personal information, without imposing difficult notification requirements, unless a real threat of identity theft exists.**

Congress is working to replace the patchwork of privacy and data breach laws, enacted by 46 states and the District of Columbia, with a national standard for all businesses that collect personal consumer information. This includes apartment firms that collect personally identifiable information such as the name, address and Social Security number of residents, prospective residents and employees. The requirements of state laws vary and sometimes conflict, creating a significant compliance challenge for businesses. A national standard may also not be ideal for some companies that have adapted to their state laws and are concerned about more rigid standards at the national level.

## **Telecommunications**

**NMHC/NAA are advocating for the industry's interests as the Federal Communications Commission and Congress consider a range of telecommunications issues that could impact apartment owners and residents.**

Reliable, competitively priced Internet, video and telephone services in apartment units and throughout apartment communities can have a significant impact on resident satisfaction and an apartment community's ability to attract and retain residents. Apartment communities also increasingly contact and interact with residents through online and mobile platforms, and provide "smart" amenities to the community. Lawmakers and regulators are debating policies with implications for the rental apartment industry, including connectivity challenges; Internet neutrality; competition and consumer accessibility in the telecommunications services marketplace; and potential rewrites of the Communication Act and the Telecommunications Act of 1996.

## **Housing Policy**

### **Privatized Military Housing**

**NMHC/NAA are urging that DoD exercise caution before using BAH reductions to satisfy budget cuts.**

In response to sequestration-driven budget cuts, Congress and the Department of Defense (DoD) are reviewing proposals impacting privatized military housing. DoD's proposed reductions to the Basic Allowance for Housing (BAH) to meet continued sequestration targets would substantially reduce the revenue collected at privatized housing projects and also negatively impact the rent rates and occupancy of private apartment communities serving military installations. We are advocating for a measured approach to BAH changes that engages all stakeholders and assesses the impacts across the real estate sector.

### **Fair Housing and Disparate Impact**

**NMHC/NAA are evaluating the impact and seeking regulatory clarification of HUD's disparate impact final rule on apartment operations, including resident screening, occupancy standards and other industry practices.**

The doctrine of disparate impact maintains that even if an action or policy is not intended to discriminate, it can still be considered discriminatory if its effect has an "adverse impact" on members of a protected class. At issue for apartment owners and managers is that under HUD's disparate impact final rule, seemingly neutral and common business policies, such as occupancy limitations, criminal background screening and Section 8 voucher policies, among others, could trigger discrimination claims despite no intention of singling out a particular group for adverse treatment.

## **Accessibility: Fair Housing and ADA**

**NMHC/NAA are educating members about accessibility laws and requirements.**

Multifamily property owners and managers have obligations under both the Americans with Disabilities Act (ADA) and the Fair Housing Act to include accessible design features in covered apartment communities. The complexity of apartment building design, confusing and limited federal compliance guidance and a lack of recognition by regulatory agencies for construction tolerances has contributed to a significant number of complaints for noncompliance leveled against apartment properties. We anticipate this activity will continue in light of new attention on the shortage of accessible housing for returning war veterans.

## **HUD Budget**

**NMHC/NAA are urging lawmakers to provide full funding for rental assistance programs, which are already seriously underfunded.**

The Section 8 program, the Home Investment Partnership Program, FHA multifamily programs and the Community Development Block Grant Rehabilitation Program are facing significant funding cuts. As federal support for these vital programs is reduced, state and local governments are forced to make up the shortfall through increased fees, including impact fees, which can have a disproportionate impact on the apartment industry. Any cuts or short funding to these programs will discourage future involvement in the programs by private sector participants. Short funding rental assistance contracts may force property owners and managers to make contingency plans for paying mortgages, experience costly delays to capital improvements projects, and endanger ongoing business operations.

## **Section 8 Voucher Reform**

**NMHC/NAA are supporting Section 8 reform legislation that removes inefficiencies and difficult bureaucratic requirements that make it more expensive for apartment owners to rent to Section 8 voucher holders.**

The Section 8 Voucher Choice Program has been plagued with a flawed and volatile funding system, which is expected to worsen in future budget cycles and has undermined private sector confidence in the program. As a result, many private owners are discouraged from accepting Section 8 vouchers. This worsens the nation's affordable housing shortage and has led some states and local municipalities to enact regulations that force apartment firms to accept vouchers. Reforms should address duplicative regulatory requirements, streamline the inspection process, simplify rent calculations, reinforce the voluntary nature of the program, and establish a reliable funding formula.

## **Fair Market Rents**

**NMHC/NAA are encouraging HUD to publish proposed FMRs annually and allow a sufficient comment period before implementation.**

Fair Market Rents (FMRs) are developed by HUD on an annual basis to determine the housing payment standard for the Housing Choice Voucher Program. As federal budgets tighten, there is concern that HUD may be pressured to make changes to the methodology used to calculate the FMR to result in lower rents. There is also concern that HUD will stop publishing the proposed FMRs and will adopt the concept of Small Area Fair Market Rents (SAFMRs), which sets rents in smaller geographic areas (by ZIP code) that exclude larger, higher-cost metro areas as a way to decrease costs. We oppose the unproven concept of SAFMRs.

## **Low-Income Housing Tax Credit Utility Adjustments**

**NMHC/NAA are promoting a standard that will maintain flexibility in how developers and owners of LIHTC apartment properties estimate the utility charges for units where the residents pay rent.**

Properties built under the Low-Income Housing Tax Credit (LIHTC) program have limits on the rents they can charge in order to keep them affordable. Those rents include a utility allowance for resident-paid utilities.

## **Violence Against Women Act**

**NMHC/NAA are urging regulators to adopt policies that protect victims and address the business and legal needs of housing providers.**

The reauthorized Violence Against Women Act (VAWA) legislation builds on the previous law and expands VAWA's application to additional housing programs, which now include Section 8 voucher and project-based programs, low-income housing tax credit properties, HOME, and a variety of elderly, disabled and rural housing programs. The bill improves upon existing law by allowing property owners and managers who receive "conflicting information" about a domestic violence incident to require third-party verification before extending benefits under the act. However, the legislation also included vague statutory language that requires regulatory interpretation by numerous federal agencies. New provisions of concern to housing providers include emergency transfer provisions and notification requirements. As regulators implement the transfer and notification policies, they must take into account the differing characteristics, roles and capabilities of various housing providers and property types, as well as the disparate responsibilities of private versus public housing providers, and tailor guidance and rules accordingly.

## Tax Policy

### **Tax Reform**

**NMHC/NAA are supporting the enactment of pro-growth tax reform that does not disadvantage apartment owners and renters relative to other asset classes.**

The apartment industry favors pro-growth reform that does not disadvantage multifamily housing relative to other asset classes. We support a comprehensive approach to tax reform that does not reduce rates for corporate taxpayers at the expense of flow-through taxpayers (e.g., LLCs, partnerships and S Corporations) that remit business taxes on their individual income tax returns and dominate the apartment industry. We also strongly support maintaining the current-law tax treatment of carried interest; the full deductibility of business interest; the Low-Income Housing Tax Credit; and the estate tax compromise agreed to in the American Taxpayer Relief Act of 2012 that calls for a \$5.34 million exemption (indexed for inflation) and a 40 percent top rate. Finally, we oppose proposals that would extend the 27.5 year depreciation period for multifamily buildings, increase the 25 percent depreciation recapture rate, or curtail like-kind exchanges.

### **Low-Income Housing Tax Credit**

**NMHC/NAA are urging lawmakers to retain the LIHTC program as they undertake comprehensive tax reform.**

The Low-Income Housing Tax Credit (LIHTC) is a public/private partnership that leverages federal dollars with private investment to support the production of affordable rental housing. The program has a long history of successfully generating the capital needed to produce low income housing while also enjoying broad bipartisan support in Congress. We are urging Congress retain the LIHTC as tax reform is considered. We also support improving the LIHTC by making permanent the flat nine percent tax rate that supports new construction without any additional federal subsidies and by extending the same treatment to the four percent tax credit for acquisitions.

### **Energy Efficiency Incentives**

**NMHC/NAA are supporting the extension and expansion of energy efficiency tax incentives as part of comprehensive tax reform.**

Incentives for energy efficiency upgrades promote energy savings and spur jobs for the construction and manufacturing industries. Substantial investments in new building systems and technology require access to financing, including incentives for building efficiency improvements. Building retrofit loan programs, grant/rebate programs and favorable tax treatment would assist owners of older properties in making meaningful energy conservation retrofits to properties that, due to their age, would be unlikely to be able to exceed the requirements of the latest energy codes. Furthermore, support for energy efficiency measures is a necessary counterpart to energy production incentives. We are advocating for an expansion of the current commercial building energy efficiency incentive to encourage substantial investments in older properties. This will assist property owners in achieving significant, demonstrated improvements in energy performance in comparison to a building's own performance data rather than a specific energy code.

## **Employment, Labor and Immigration**

### **Immigration Reform**

**NMHC/NAA are supporting comprehensive federal immigration reform.**

Congressional inaction has resulted in a patchwork of immigration policies that do not adequately address national security concerns or economic and workforce needs, generating uncertainty for businesses, including apartment firms, who must comply with various federal, state and local laws. Some local laws would even hold apartment companies responsible for the immigration status of apartment residents. We support a comprehensive approach to immigration reform including interior and border enforcement, employment eligibility verification, amply-sized guest worker programs for all industries including construction, and a practical earned legalization process for a robust workforce and consumer base to strengthen the multifamily industry.

### **Criminal Background Checks in Employment**

**NMHC/NAA are working to ensure that apartment companies are able to check criminal histories of employees and job applicants.**

The Obama Administration and some members of Congress have indicated their concerns about the use of criminal arrest and conviction records by employers in hiring and other employment matters. The Equal Employment Opportunity Commission claims it does not intend to prohibit criminal background checks, but to prevent discrimination related to how such information is used. In Congress, measures have been introduced that cover federal criminal records databases. There is a critical need to screen potential employees in order to protect the safety and security of apartment residents and the staff who manage and maintain apartment communities.

## **Energy and Environment**

### **Energy Policy**

**NMHC/NAA are advocating for federal energy policy that limits the use of mandates to drive energy improvements.**

Apartments represent a significant opportunity for achieving energy efficiency and furthering public policy goals of energy independence and environmental sustainability. By their basic density and design, apartments are inherently energy efficient. Trying to use aggressive building codes or other mandates to force energy savings ignore the unique characteristics of apartment construction, operation and maintenance and create additional hurdles that block the industry from meeting growing rental housing demand. We are working to assure that the transition to advance building systems (HVAC, Boilers, lighting, Etc.) efficient equipment takes into consideration technical limitations of existing buildings and cost concerns.

## **Clean Water Act Expansion**

**NMHC/NAA are opposing an overly broad expansion of the Clean Water Act that would subject all bodies of water to federal jurisdiction.**

Under the Clean Water Act, the Environmental Protection Agency (EPA) is authorized to regulate activities that affect water quality. EPA and the Army Corps of Engineers have issued a preliminary guidance document that would expand the number of waters subject to federal jurisdiction. Expanding the scope of the Clean Water Act would result in undue federal regulatory requirements for apartment firms. These additional hurdles not only fail to reflect the uniqueness of higher density apartment development but also would create delays, add costs and ultimately limit construction and revitalization activity. State and local regulators are in the best position to apply more stringent criteria for the management of water resources that may require specific, heightened intervention for maintaining high water quality standards.

## **Lead-Based Paint**

**NMHC/NAA are advocating that EPA evaluate existing regulatory programs and industry practices that address potential lead-based paint hazards before implementing duplicative programs.**

Federal regulations that address lead in the environment have been enormously successful. Despite the documented improvements in blood lead levels, the EPA is expanding already stringent regulations to further reduce permissible lead levels in the air, drinking water, coated surfaces, dust and soil. EPA has indicated that it is considering a modification of the lead hazard standard, including the definition of lead-based paint. The agency is also considering a proposed rule to expand the scope of the Renovation, Repair and Painting rule, which currently applies to pre-1978 housing. EPA has failed to demonstrate a public health reason for these changes. Congress should utilize its oversight authority to insist that EPA evaluate existing regulatory programs and industry practices before implementing expansive, duplicative programs for public and commercial buildings.

## **Green Building Labeling and Information Disclosure**

**NMHC/NAA are supporting the development of voluntary building performance labeling programs that recognize utility efficient operations.**

We are working with EPA to expand well-known and *voluntary* energy management tools, such as the federal Energy Star program, to apartment properties. As policymakers seek ways to reduce energy consumption, legislative and regulatory efforts have been undertaken to establish a building rating system that would grade buildings on their energy efficiency and publicly disclose that information. Most notably is the proposed Department of Energy Asset Rating Program. Building energy labels raise valuation concerns and transactional uncertainty, especially since the accuracy of these labels is not proven in the apartment sector.

## **National Green Building Standard**

**NMHC/NAA are promoting the NGBS as a cost-effective and industry-supported alternative to LEED and the new International Green Construction Code.**

Green building standards can benefit apartment firms, but they can also create significant costs and technical problems where they are not well tailored to multifamily construction. The National Green Building Standard (NGBS) is the most appropriate standard for residential construction. It was developed by a diverse group of stakeholders that included state and local building code officials, representatives of the Green Building Council, real estate industry representatives, product manufacturers, and other experts in green building and energy efficiency. The standard covers multifamily, single-family and mixed-use development. It is the only residential standard written to be seamlessly incorporated into existing building codes, and it has followed the strict standard-setting procedures established by the American National Standards Institute.

## **Construction and Development**

### **Building Energy Codes**

**NMHC/NAA are working to compel DOE to economically justify code activity, publically vet code proposals and collaborate with all stakeholders.**

The Department of Energy (DOE) has pursued an aggressive building efficiency agenda and their participation in the code development and adoption processes has significantly influenced recent model energy codes. Research shows that these codes negatively impact apartment affordability and could quell new apartment construction and building rehab. A diverse group of real estate stakeholders are pursuing opportunities to promote transparency and better define the federal role concerning building codes and standards through proposed, bipartisan energy efficiency legislation.

### **Model Code and Standard Development**

**NMHC/NAA are advocating for codes and standards that are technologically feasible and cost-effective.**

Codes and standards directly impact all aspects of apartment construction and affordability, including structural design, energy performance, fire protection, accessibility and green building. We regularly serve on code and standard development committees, craft code proposals, and represent the multifamily sector at code hearings. We provide resources to the industry to aid in new code adoption and implementation once updated codes and standards are published. The NMHC and NAA websites include extensive information on building codes and standards including primers, guidance on changes, and toolkits.

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