APARTMENTS
WE LIVE HERE

2015 NMHC and NAA Policy Priorities

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- Low-Income Housing Tax Credit

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Tax Policy

TAX REFORM

Why It Matters: Tax reform has the potential to significantly impact all facets of the multifamily industry because the owners, operators and developers of multifamily housing pay taxes when they build, operate, sell or transfer communities to their heirs.

What We Are Doing: Engaging with policymakers to protect the multifamily industry's tax reform priorities in any possible tax reform legislation. These include:
(1) protecting flow-through industries;
(2) maintaining the current-law tax treatment of carried interest;
(3) defending like-kind exchanges;
(4) retaining the deduction for business interest;
(5) ensuring depreciation rules avoid harming real estate; and
(6) preserving the Low-Income Housing Tax Credit.

To support our advocacy, we are also working with our industry partners to commission key studies on the vital role that like-kind exchanges and economically viable depreciation schedules play in developing and maintaining commercial real estate.

TAX EXTENDERS

Why It Matters: Several dozen tax provisions of interest to the apartment industry expired at the end of 2013. These include: extension of 50 percent bonus depreciation; enhanced small business expensing; the flat 9-percent Low-Income Housing Tax Credit; the deduction for energy-efficient commercial buildings; the new energy-efficient home credit; and the New Markets Tax Credit. The last Congress passed a bill extending them retroactively through 2014 in its last days; however, they are no longer in effect in 2015. As a result, Congress will have to once again revisit these now-expired provisions in 2015.

What We Are Doing: Calling on lawmakers to permanently extend these provisions.

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)

Why It Matters: FIRPTA imposes income tax on foreign persons disposing of U.S. real property interests that is not charged on a foreign person disposing of other U.S. assets such as stocks and bonds. As a result, it prevents commercial real estate from securing a key source of private-sector capital for developing, upgrading and refinancing properties. Reforming FIRPTA could unlock billions in foreign capital that could help to refinance real estate loans and drive new investment.

What We Are Doing: Calling on Congress to reform FIRPTA to promote foreign investment in the U.S. multifamily industry and meet the growing demand for rental housing.

LOW-INCOME HOUSING TAX CREDIT

Why It Matters: The Low-Income Housing Tax Credit (LIHTC) is the only federal program to help subsidize the production of privately operated affordable housing. It has financed more than 2.7 million units since its inception in 1986. While it generally operates effectively, some key reforms could further improve the program. Notably, the rate for the tax credit was fixed at 9 percent for new construction and 4 percent for acquisitions. That expired in 2014, though, moving the credit to a floating rate system, which in low-interest rate environments significantly reduces its value below 9 percent.

What We Are Doing: Urging lawmakers to resist calls to eliminate the LIHTC in any effort to reform the nation's tax code. We are also seeing program improvements, namely: (1) making permanent the flat 9 percent credit rate and extending the same treatment to the 4 percent credit and (2) allowing "income averaging" to make the program more flexible and allow for more mixed-income housing.

Finance and Capital Markets

HOUSING FINANCE REFORM

Why It Matters: Getting multifamily right in housing finance reform is the single most important factor to ensuring that the apartment industry can meet the nation's growing rental housing demand.

What We Are Doing: Working closely with lawmakers to ensure that housing reform legislation recognizes the unique characteristics of the multifamily industry and retains a federal backstop to ensure reliable and affordable access to capital in all markets at all times. We were successful in getting an NMHC/NAA-supported multifamily-specific proposal included in the primary GSE legislation considered in the last Congress, the Johnson-Crapo bill. We will seek to retain that proposal in GSE legislation introduced in the new Congress.

BANK CAPITAL STANDARDS: DODD-FRANK AND BASEL III

Why It Matters: Federal regulators have produced a number of regulations and standards recently and are considering more that could potentially constrain capital flows to the sector. Among those are updated Dodd-Frank risk-retention rules and Basel III capital standards, both of which impact how financial institutions must treat the multifamily debt they hold and originate. Basel III began phasing in for larger banks in 2014 and will begin for the broader lending community in January 2015. In addition, high-volatility commercial real estate loan treatment changes went into effect on January 1, 2015, and Dodd-Frank risk-retention rules impacting securitization are scheduled for implementation on December 31, 2016.

What We Are Doing: Monitoring the rulemaking process by regulators to keep members apprised of coming changes, communicating concerns to Congress and the Administration in order to educate them on potentially negative consequences of misapplied regulations, including punitive increases in cost for multifamily debt.

FOREIGN CAPITAL INVESTMENT

Why It Matters: Foreign investment is an important, and growing, source of capital for the multifamily industry. The strong current and historic performance of multifamily real estate attracts interest from a variety of international capital sources, but opportunities exist for policymakers to further enable investment from abroad. One mechanism through which the apartment industry attracts foreign capital is the EB-5 Investor Visa Program. The program provides visas to foreign investors in exchange for investments in American real estate projects, which eventually create jobs. Multifamily projects have attracted significant equity through the EB-5 Program in recent years, including an estimated $68 million last year from China alone.

What We Are Doing: Working to remove barriers and further encourage foreign capital participation through FIRPTA legislation (refer to Tax Policy section) and reforms to improve and expand the EB-5 Investor Visa Program.

HUD MULTIFAMILY PROGRAMS

Why It Matters: FHA's multifamily programs currently account for 9.2 percent of the total outstanding multifamily mortgage debt and are a material and important source of capital for underserved segments of the rental market. Importantly, because of appropriate risk-based premiums and strong underwriting, the multifamily programs are able to operate as self-funded, fully covered lines of business at HUD. In past years, however, they have been hampered by artificial constraints on the volumes of mortgage they can insure. In addition, HUD has undertaken a multi-year effort to streamline and consolidate its multifamily field offices. These field offices provide mortgage insurance to HUD-approved lenders nationwide, facilitate multifamily housing projects and administer rental assistance programs.

What We Are Doing: Educating policymakers about the different performance histories of the FHA's multifamily and single-family programs to retain FHA as a reliable source of capital for the apartment sector. Continuing in-depth discussions with the offices of the HUD Secretary and the Federal Housing Administration Commissioner to limit the potential adverse impact of the reorganization on multifamily borrowers.

Business and Property Operations

DATA SECURITY

Why It Matters: Multifamily firms collect and maintain sensitive data like Social Security Numbers and financial details about residents, prospective residents and employees that is valuable to data thieves and those wishing to do harm to a company's reputation and financial standing. Federal lawmakers are work-

ing to create a national data breach standard to replace the current patchwork of privacy and data breach laws.

What We Are Doing: Advocating for reasonable data breach protections and disclosure requirements in any federal legislation that do not impose overly burdensome compliance obligations on multifamily firms.

MUSIC LICENSING

Why It Matters: Performing Rights Organizations administer and enforce copyrights on behalf of copyright owners. Some claim that apartment communities may be obligated to obtain a public performance license for certain uses of copyrighted music.

What We Are Doing: Seeking potential opportunities to clarify music licensing requirements for apartment firms as Congress and the Obama Administration evaluate music copyright laws.

TELECOMMUNICATIONS

Why It Matters: The multifamily industry increasingly relies on Internet-based platforms and mobile connectivity for property operations and corporate functions from marketing to revenue management and leasing to maintenance. Inadequate, unreliable service significantly impacts residents and may involve costly technical solutions. The Federal Communications Commission and Congress are considering a range of regulatory and legislative issues that could impact apartment operations and residents, including a potential rewrite of the nation's telecommunications act.

What We Are Doing: Educating policymakers about the multifamily industry's interests, including net neutrality, broadband deployment and solutions for connectivity and capacity challenges.

U.S. POSTAL SERVICE REFORM

Why It Matters: U.S. Postal Service policies impact the security and convenience of mail and package delivery to multifamily communities as well as safety and efficiency for residents and employees. Congress is expected to consider significant postal reform measures that would affect mail and package delivery–especially centralized delivery locations–that could impact both existing and future communities.

What We Are Doing: Educating congressional decision-makers and regulators about the implications of postal reform on the multifamily industry.

FLOOD INSURANCE

Why It Matters: The 2012 Biggert-Waters Flood Insurance Reform Act, endorsed by NMHC/NAA, extended the National Flood Insurance Program for five years in order to return the program to solvency. However, as reforms were implemented, significant price increases for coverage were reported nationwide upon policy renewal, property transfer or when mapped into a riskier flood zone. Congress subsequently enacted legislation to slow down the rate of premiums overall. It allows properties to maintain their current rates under certain conditions even when a new map reflects higher risk. And it also permits the transfer of a subsidized rate to a new owner at a property's sale for one year before gradually increasing premiums each year until reaching an actuarial rate.

What We Are Doing: Monitoring implementation of the National Flood Insurance Program to ensure the program remains viable for the multifamily industry over the long-term.

Housing Policy

FAIR HOUSING DISPARATE IMPACT

Why It Matters: HUD's 2013 disparate impact final rule creates new uncertainty about the lawfulness of otherwise legitimate apartment operation practices like resident screening and occupancy standards. Absent clarification, this HUD interpretation can be the basis for increased allegations of Fair Housing violations.

What We Are Doing: Seeking certainty and/or clarification of the HUD rule's reach. This includes requesting regulatory clarification from HUD on specific lawful practices. We also submitted a "friend of the court" brief in legal proceedings before the U.S. Supreme Court to determine the validity of disparate impact liability under the Fair Housing Act.

SECTION 8 RENTAL ASSISTANCE

Why It Matters: The Section 8 program is plagued by inefficiencies that make it more expensive to rent to a Section 8 renter than a market-rate renter. At the same time, a growing number of jurisdictions are trying to enact "source of income" fair housing protections that effectively make the program mandatory.

What We Are Doing: Preventing potential rental payment losses by intervening when related budget cuts are proposed. We are also seeking reforms to modernize and streamline the program to better attract private sector participation and encourage new opportunities for private industry engagement in affordable housing through programs like the Rental Assistance Demonstration. We are also working to reaffirm the voluntary intent and design of HUD's affordable housing programs by Congress and HUD.

Energy and Environment

ENERGY POLICY

Why It Matters: Energy-efficient multifamily buildings reduce energy consumption costs for apartment owners and residents, as well as further the goal of national energy independence, while arbitrary energy performance standards negatively impact the industry. Policymakers are undertaking a number of efforts that have the potential to impose burdensome energy code mandates on apartment firms. In addition, existing incentives are insufficient to fully support efforts to improve the efficiency of the nation's existing housing stock. Finally, apartment firms now benefit from a new ENERGY STAR rating for multifamily, that NMHC/NAA helped develop and launch, but they are blocked from participating in the program because they cannot get whole property energy consumption data from the utilities.

What We Are Doing: Pushing back on burdensome energy code mandates, promoting building energy research and working to help property owners access their energy consumption data. We are also spearheading an effort that raises awareness of expiring energy efficiency tax measures that encourage energy-efficient new construction and rehabilitation of older properties. In addition, we continue to work with HUD, the White House and the Department of Energy to further expand the building energy efficiency challenge for the multifamily industry that we helped launch in 2014. We also continue to focus on growing the ENERGY STAR rating for multifamily.

CLEAN WATER ACT

Why It Matters: EPA proposed a rule to expand the scope of the waters that would be regulated under the federal Clean Water Act. This far-reaching rule would significantly increase the costs and time associated with permitting requirements, provide greater opportunities for citizen lawsuits and essentially federalize local land use planning.

What We Are Doing: Pursuing an aggressive advocacy strategy through the multi-industry Waters Advocacy Coalition, which resulted in House passage of a bill to prevent the agencies from moving forward on the rulemaking last year. Unfortunately, the companion Senate measure was not considered, but much work is being done on our part to raise policyholders' awareness and to lay the groundwork for action in the current Congress to mitigate the harmful impact of this overreaching water rule.

LEAD-BASED PAINT

Why It Matters: EPA has proposed a rule to expand lead-based paint regulations to apply to the interior and exterior paint of public and commercial buildings. Pre-1978 residential properties have been guided by a number of disclosure and mitigation regulations for more than 20 years. The new EPA proposal would create a financial liability for multifamily property owners and managers without a clear public health reason. In addition, it may require apartments built after 1978 to comply with lead-based paint regulations by classifying them as commercial properties for the purposes of this rulemaking.

What We Are Doing: Educating policymakers on the potential costs and regulatory burdens of the rule to the multifamily industry through advocacy and comment letters. We are asking that lawmakers require EPA to base its proposal on scientific evidence and have retained experts to review the agency's related technical analysis. In addition, we are participating in the Small Business Advisory Review panel that is providing advice to EPA on the proposal and are working with the Small Business Administration to convene a briefing on the rulemaking.

Employment and Immigration

CRIMINAL BACKGROUND CHECKS

Why It Matters: The multifamily industry depends on professional staff who routinely enter apartment homes, handle confidential information and carry out financial transactions. Multifamily owners and operators need the ability to check criminal backgrounds to help protect the safety and security of residents and staff and to reduce the risk of violence, theft and fraud. The use of criminal background checks has come under increased scrutiny by some members of Congress and the Equal Employment Opportunity Commission (EEOC), but EEOC's strengthened enforcement policy has been challenged by other members of Congress and judges.

What We Are Doing: Working as part of a coalition to educate decision makers about the importance of criminal background checks in creating safe housing for the nation's 37 million renters.

IMMIGRATION REFORM

Why It Matters: One in five renter households is headed by an immigrant, and immigrants include 22 percent of the construction workforce, making reform a critical issue for the multifamily industry. Pressure is mounting for Congress to enact comprehensive reform. In the absence of congressional action, state and local governments have approved numerous immigration-related measures, creating a burdensome patchwork of compliance obligations for apartment companies. Rental apartment firms are particularly concerned about those laws that would hold them responsible for the immigration status of apartment residents and impose various additional employment-related mandates beyond federal requirements.

What We Are Doing: Working closely with policymakers to improve temporary worker visa programs and prevent multifamily property owners from being required to enforce immigration laws through their business operations.

Construction and Development

BUILDING CODES

Why It Matters: Cost-effective building codes and standards that promote building safety and efficiency benefit multifamily owners, operators and residents. Burdensome code requirements discourage multifamily development, increase construction costs and negatively impact housing affordability. The International Code Council is beginning work now on the 2018 model building codes, which will affect many areas of concern to apartment properties, including fire safety requirements, energy efficiency measures, accessibility and green building requirements.

What We Are Doing: Serving as members of the code and standard development committees and collaborating with the development bodies to craft code proposals, represent the multifamily sector at code hearings, develop code commentary and serve as a resource for the code- and standard-making organizations.

SUSTAINABILITY

Why It Matters: Apartment properties face significant challenges as federal, state and local governments undertake sustainability initiatives and look to incorporate green building and building performance mandates into building codes and federal program requirements. These efforts must address the specific needs of multifamily occupancies, including the continued affordability and availability of new apartment homes.

What We Are Doing: Developing robust tools to help building owners and managers improve the environmental performance of the nation's housing stock. Where building codes, federal initiatives and other sustainability efforts seek to establish performance benchmarks for apartment properties, we advocate the use of the National Green Building Standard (NGBS).

LAND USE

Why It Matters: Changing demographics, employment patterns and lifestyle preferences are challenging the sprawling, low-density development patterns of the past 50 years. Understanding that existing growth models are unsustainable, new efforts to promote infill, mixed-use and transit-oriented development that features apartment communities are being considered.

What We Are Doing: Promoting land use policies that recognize the benefits of apartments, including compact development and efficiency.

Military Housing

BASIC ALLOWANCE FOR HOUSING (BAH)

Why It Matters: Millions of renters who serve in the armed forces rely on their Basic Allowance for Housing (BAH) to help pay their rent. The BAH is also a key to the viability of the Defense Department's Military Housing Privatization Initiative (MHPI), which the multifamily housing industry has participated in for nearly 20 years. In the last Congress, legislation was proposed to significantly reduce the BAH to help balance the military's budget. Reducing military housing benefits limits housing options for military families and can undermine apartment investments in and around military installations.

What We Are Doing: Working to ensure that the success of the MHPI and the private rental markets around military housing installations are not jeopardized through reductions to the Basic Allowance for Housing or any other proposals that envision long-term changes to military housing benefits.

NMHC Legislative and Regulatory Team

Cindy Chetti, Senior Vice President, Government Affairs
Kim Duty, Senior Vice President, Public Affairs & Industry Initiatives
Betsy Feigin Befus, General Counsel
Matthew Berger, Vice President, Tax
Lisa Blackwell, Vice President, Housing Policy
David Borsos, Vice President, Capital Markets
Paula Cino, Vice President, Construction, Development and Land Use Policy
Jeanne McGlynn Delgado, Vice President, Business Operations & Risk Management Policy
Jim Lapides, Vice President, Strategic Communications
Eileen Lee, Vice President, Energy and Environmental Policy
Ron Nickson, Vice President, Building Codes
Sarah Yaussi, Vice President, Industry Communications
Kimble Ratliff, Director, Government Relations
Michele Anapol, Manager, Policy and Advocacy Communications
Julianne Goodfellow, Manager, Government Affairs