June 27, 2012

The Honorable Trent Franks
Chair
Subcommittee on the Constitution
Committee of the Judiciary
United States House of Representatives
Washington, DC 20515

The Honorable Jerrold Nadler
Ranking Member
Subcommittee on the Constitution
Committee of the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairman Franks and Ranking Member Nadler:

On behalf of the National Multi Housing Council (NMHC) and the National Apartment Association (NAA), we commend you for your leadership on holding this hearing today to discuss H.R. 3356, the ADA Compliance for Customer Entry to Stores and Services ("ACCESS") Act.

NMHC and NAA represent the nation's leading firms participating in the multifamily rental housing industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management, and finance. The National Multi Housing Council represents the principal officers of the apartment industry's largest and most prominent firms. The National Apartment Association is a federation of 170 state and local affiliates comprised of more than 50,000 multifamily housing companies. NMHC and NAA jointly operate a federal legislative program and provide a unified voice for the private apartment industry.

NMHC/NAA embrace the goals of both the Americans with Disabilities Act (ADA) and the Fair Housing Amendments Act (FHAA), both of which are aimed at increasing physical access to the disabled community. Our members work very hard to comply with both of these important laws such as specific accessible design requirements, barrier removal provisions as well as making reasonable accommodations and modifications upon request in furtherance of these goals. The obligations under the public accommodations provisions of the ADA are generally limited to leasing offices, visitor parking and, in some instances, the lobby if serving as a public area. However our members are not exempt from the actions of "drive-by" predatory plaintiffs seeking quick settlements at the expense of both the property owner and disability community.

This legislation introduced by Rep. Lungren (R-CA) will encourage and facilitate business owner compliance with the ADA by offering a sensible approach to enforcement. This legislation does not remove the ability of an aggrieved person to pursue their rights under the Act but, will give pause to those who are not committed to the purpose of the ADA and instead seek to exploit the Act for financial gain. Further, in most cases, there is little evidence that once a business owner agrees to a financial settlement with the plaintiff, the alleged barriers to entry are even addressed. This scenario sets up a potential subsequent "professional plaintiff" to allege additional or even the same violation. This pattern

of abusive behavior does not advance the goals of the ADA and efforts to provide reasonable and effective solutions to these practices are strongly encouraged.

Specifically, this legislation would prohibit an aggrieved person from commencing a civil action for discrimination based on the failure to remove a structural barrier to entry into an existing public accommodation unless the owner or operator of such accommodation: (1) is provided a written notice specific enough to identify such barrier; and (2) has, within specified time periods, either failed to provide the aggrieved person with a written description outlining improvements that will be made to remove such barrier or provided such description and failed to remove such barrier .

We believe this represents a good start to curbing the number of abusive lawsuits while preserving the rights of individuals to pursue their legal rights under the law. We appreciate the opportunity to express our thoughts and support.

Sincerely,

Cindy V. Chetti
Senior Vice President of Government Affairs
National Multi Housing Council

Gregory Brown
Vice President of Government Affairs
National Apartment Association

cc: Members of the Subcommittee on the Constitution