protecting your interests in washington

NMHC Secretary Bob DeWitt testified before the House Financial Services Committee in March at the first Congressional hearing on the issue of housing finance reform.

nmhc is widely considered the leading national advocate for the conventional apartment industry. For more than 30 years, NMHC has leveraged our extensive contacts in Washington, DC with our fact-based approach to lobbying to actively shape the legislation and regulations that affect the apartment industry.

From one-on-one meetings with elected officials to public testimony before Congressional committees to key regulatory filings, NMHC is consistently heard on the entire spectrum of housing-related issues.

We worked on more than 50 issues that could have adversely impacted your business in 2010, and we spent much of the year telling the story of the apartment sector as lawmakers dedicated more attention to housing due to the lingering housing crisis. We explained that the apartment industry didn't overbuild in the boom years, and that contrary to the glut of single-family houses, growing apartment demand is outstripping new apartment supply.

These stark differences helped us create a new awareness of – and appreciation for – rental housing. And it underscored our calls for policies that support a thriving apartment sector. Some of key victories for the year are listed below. But keep in mind we aren't looking back; we're looking forward to another challenging year.

We begin 2011 with a divided Congress and more power for Republicans than in recent years. Lawmakers are expected to take up a number of issues that could adversely impact us. Fortunately, our team of expert lobbyists is up to the task. No one is a stronger advocate for multifamily than NMHC.

Turned Back a Potentially Devastating Tax Increase on Carried Interest

All year long, we vigorously fought against changing the method of taxing carried interest to protect partnerships from extremely onerous tax increases. We formed a special task force and raised money dedicated to this effort. Although the provision

NMHC's Immediate Past Chairman Ric Campo testified before the Senate in September on the issue of covered bonds as a supplemental liquidity source for the apartment sector.

came up repeatedly during the year, when the final tax bill was enacted in December, carried interest was left unchanged. While the Republican takeover of the House of Representatives makes it less likely that a carried interest tax will pass, we will remain vigilant.

Secured $5 Billion Expansion of FHA Commitment Authority

When the FHA multifamily mortgage insurance program nearly ran out of commitment authority in July, within 10 days we got a $5 billion expansion of the program enacted into law.

Stopped Federal Efforts to "Take" Struggling Multifamily Properties

We turned back federal efforts to prematurely force vaguely defined "at risk" apartment properties into bankruptcy without the consent of the owner in order to convert them to affordable housing. We also blocked legislation that would have required assisted property owners to give the U.S. Department of Housing and Urban Development (HUD) the "first right of refusal" to purchase a property.

Halted Action on "Card Check"

NMHC helped stop the Employee Free Choice Act from moving forward this year despite the fact that it was a priority for President Obama, union activists and many Democrats

in Congress. The bill would limit a worker's right to a private vote on whether or not to join a union and would impose mandatory mediation and arbitration in first contract negotiations on companies unable to reach an agreement within a very short time.

Eileen Lee, NMHC's Vice President of Energy and Environment, with Representative Joseph Crowley (D-NY) on Capitol Hill.

Improved the Financial Regulatory Reform Law

NMHC secured revisions in the comprehensive financial regulatory reform bill (Dodd-Frank) enacted in 2010 to mitigate its impact on the flow of credit to our sector. Because of our efforts, the final bill created special treatment for commercial mortgage-backed securities from new "skin-in-the-game" requirements. Apartment firms that use derivatives to hedge interest rate risks were also exempted from new margin and registration requirements.

Advocated for Technically Feasible, Economically Viable Energy Standards

Although Congress was unable to forge an agreement on comprehensive energy legislation, we mounted an all-out effort to educate lawmakers about the unintended consequences of unrealistic energy performance standards and building code mandates. We explained that more than half the energy used in apartments falls outside the scope of building codes. We told lawmakers that a codes-based approach to energy conservation puts extreme pressure on apartment owners to invest in very expensive upgrades – and these costs must be passed on to residents – while leaving the vast majority of building energy use unaffected, and we succeeded in getting the Senate to dial back the unachievable mandates that passed the House in 2009.

Moderated FHA Underwriting Changes

Our comments on FHA proposals to implement the most extensive underwriting changes in 30 years to the FHA multifamily mortgage insurance program resulted in meaningful changes that will benefit apartment borrowers for years to come.

Preserved Stepped-Up Basis in Estate Tax Reform

As Democrats and Republicans sparred over the appropriate tax rates for estates and what size of estates should be exempt from the tax, we pressed for an even more important provision: that "stepped-up" basis rules be preserved. As a result of these efforts, the tax basis of inherited commercial real estate is reset to reflect the fair market value of the property at the time of the inheritance (rather than making it the same for the heirs as it was for the donor).

Blocked Higher Capital Gains Tax Rates

We worked with a broad industry coalition to block a scheduled increase in the capital gains tax rate from 15 percent to 20 percent and plans to tax qualified dividends

Post Properties CEO David Stockert testified before the Congressional Oversight Panel (COP) in January on behalf of NMHC. The COP, chaired by Harvard law professor Elizabeth Warren, oversees the $700 billion Troubled Asset Relief Program (TARP).

as ordinary income, up to the top rate of 39.6 percent. Instead, under legislation enacted in the final days of the year, the current 15 percent tax rate will be applied to both for two years.

Killed an $11.2 Billion Proposal to Tax Partnership Distributions

Working with a coalition, we blocked a proposal to tax a greater portion of partnership distributions as ordinary income even though they are often used for reinvestment purposes. Such a change would have subjected these partnership distributions to Social Security and Medicare payroll taxes.

Advanced Energy Incentives

We continued our work trying to create meaningful incentives for property owners to make investing in energy savings more attractive and financially viable. Working with Senate staff, we developed legislation that would increase the Commercial Building Tax Credit to $3 per square foot from the current level of $1.80. We also secured funding for a demonstration project of multifamily green buildings in House-passed legislation. We will press for final enactment of both measures in 2011.

Educated Lawmakers on Limitations of Covered Bonds as a Liquidity Source for Apartments

In response to suggestions that covered bonds could replace Fannie Mae and Freddie Mac as a source of apartment financing, we issued a white paper analyzing the limitations of covered bonds. We also testified before the Senate explaining that while covered bonds might provide some additional liquidity, they don't have the capacity, flexibility and pricing superiority necessary to become a major source of credit.

Affirmed the Legality of Exclusive Marketing and Bulk Billing Agreements with Video Providers

Through significant outreach to the Federal Communications Commission (FCC), the Council played a key role in an advocacy effort that led to the federal agency's conclusion that exclusive marketing contracts and bulk billing agreements between apartment owners and television service providers do not hinder competition. This resulted in a ruling by the FCC affirming their legality.

Halted an Onerous EPA Stormwater Data Collection Effort

We successfully intervened to force the Environmental Protection Agency (EPA) to halt and then revise a plan to conduct an onerous, mandatory survey of property owners' stormwater management practices. We also produced a guidance document to assist members in completing the revised, but still complex questionnaire.

We fundamentally recognize that a one-size-fits-all solution will not work because of differences in the single-family and multifamily markets. The Administration is fully committed to making sure multifamily is part of the solution.

Shaun Donovan - U.S. Housing and Urban Development Secretary

HUD Secretary Shaun Donovan at NMHC's Board of Directors and Advisory Committee Meeting in September.

Won Funding for Lead-Risk Assessments

Working with members of Congress, we pressed HUD to honor its commitments to reimburse owners of qualified federally assisted property for lead-risk assessment and inspections as promised in the Big Buy program.

Removed Unworkable Provisions from Green Building Guidelines

As a member of the development committee, we successfully removed the most onerous provisions from a new ASHRAE Standard 189.1, released in January 2010, that provides code-adoptable green building guidelines for new and substantially renovated commercial properties, including apartment buildings over three stories. Among other things, our work eliminated arbitrary caps on apartment unit size and requirements for on-site renewable energy systems.

Called for Improved Environmental Hazard Guidance

We obtained compliance assistance and interpretive guidance from EPA for member firms to help them comply with lead-based paint regulations. We also asked Congress to direct HUD to develop best practices to guide the efforts of property owners to deal with bed bugs.

Reduced Credit Card Merchant Fees

We secured legislation that makes it easier for apartment firms to accept credit card payments for rent and other fees by limiting the transaction fees that credit card networks can charge end-users, such as apartment firms, and by allowing apartment firms to charge different fees (or offer incentives) for renters who want to pay with debit or other automated check transactions instead of using credit cards.

Commissioned Valuable Accessibility Standards Report

To aid apartment firms facing a growing number of fair housing accessibility lawsuits, NMHC commissioned original research to investigate whether the current standards and existing safe harbors are the only means of achieving accessibility. The final report challenges the current standards as the only means of achieving compliance in these areas and recommends the use of tolerances in lieu of strict measurement protocols as defined in various safe harbors.

In January, NMHC Vice President Jeanne McGlynn Delgado testified before a House subcommittee on a proposed new fair housing testing program.

Obtained an Extension of the National Flood Insurance Program (NFIP)

We secured a one-year extension of the NFIP, providing good news for property owners who have struggled with multiple short-term extensions over the last two years. Comprehensive, long-term reform remained elusive in 2010, so we will continue to press for a five-year reauthorization, higher coverage limits, the retention of subsidized rates for certain properties and the addition of business interruption insurance.

Revised Proposed Fair Housing Legislation

Through Congressional testimony and other advocacy efforts, we amended legislation that would have created a new national testing program to assess apartment owners' compliance with fair housing laws. The bill, which was not acted on in the last Congress, sets a precedent for future efforts that NMHC will be tracking.

Selected for Important Building Code Committees

In recognition of our longstanding work on building codes, NMHC has been named to several important committees that will help draft future codes and standards, including the International Code Council's (ICC) Code Technology Committee (CTC), the ICC's Code Review Ad Hoc Committee and a special committee on sprinklers created by the National Fire Protection Association. Already, our work on the CTC has resulted in defeat of several proposals that would have adversely affected apartment construction.

Defeated Onerous Building Code Provisions

NMHC convinced an important ICC committee to vote against several proposals that would have adversely affected apartment construction, including provisions related to allowable building height and area, fire separation, emergency evacuation, carbon monoxide and more.

promoting your access to capital

By 2030, nearly three-quarters of our households will be childless. That's a profound change that has serious implications for the kind of housing we need and want.

As we work on reforming the housing finance system going forward, we should certainly look more at the effectiveness of the multi-family programs at Fannie Mae and Freddie Mac to determine best practices.

Former U.S. Rep. Paul Kanjorski (D-PA) - Former Chairman, House Capital Markets Subcommittee

access to reliable and affordable capital is issue number one for the industry, and never in the Council's history was our capital markets initiative more important than in 2010.

As lawmakers began to consider how to reform our nation's housing finance system to avoid future catastrophes, it was clear we had a lot of work to do.

With a few notable – but important – exceptions, fundamental misunderstandings about the Government Sponsored Enterprises' multifamily programs were the rule:

- **You mean they actually *make* money from their multifamily programs?**
- **Multifamily default rates are *less than 1 percent* – a 10th of the default rates plaguing single-family?**
- **Multifamily didn't overbuild and over-leverage like the single-family sector?**

These were the things we heard as we blitzed Congress as part of a massive education effort. We held countless one-on-one meetings with members of Congress and the Administration. We became a trusted source of multifamily information and were invited to testify three times before Congress and once before the financial bailout oversight panel.

Treasury Department officials asked us to prepare extensive background materials for them. The White House invited us to a high-level summit in August.

In all of our work, we made sure policymakers knew that the story of our housing finance system is indeed a tale of two markets. The GSEs' multifamily programs did

not contribute to the housing meltdown, did not put taxpayers at risk and could even serve as a model for a reconfigured housing finance system.

Their multifamily programs have attracted enormous amounts of private capital to help finance millions of units of workforce housing. They sustained liquidity in all economic climates; standardized multifamily lending; and did so with low default rates. Our message resonated, and others have started to repeat it. But there is still much to do. To begin with, there are more than 100 new members entering Congress in 2011.

Long-term reform of the GSEs probably won't occur until after the 2012 elections. But the groundwork for reform will be laid between now and then. So, NMHC will be there.

We will continue to advocate for a return of private capital to the multifamily mortgage market. But history makes it clear that private capital simply cannot meet 100 percent of our industry's capital needs. A federally backed secondary market is absolutely critical to the sector's health and our ability to continue to meet the nation's rapidly growing demand for rental housing. And any transition to a new system must be deliberately designed to avoid disrupting the current flow of capital to the apartment industry.

Fortunately, we have a good story to tell and a well-earned reputation as the go-to source for credible information on our industry among the people who will be making the decisions.

The benefits of a reduced subsidy for homeownership are clear.

Hank Paulson -
Former U.S. Treasury Secretary

promoting a more balanced housing policy

Between 2008 and 2015, nearly two-thirds of new households formed will be renters. That's 6 million new renter households, compared to just 3 million new owner households.

University of Utah Professor, Arthur C. Nelson

[Housing] policy should be tenure neutral. Renting should be a respectable alternative.

Mark Calabria, Cato Institute

what if you threw a party and no one came? That's how it felt 10 years ago when we launched our "Balanced Housing Policy" initiative. "How can you compete against homeownership?" "No one will listen." "Renters don't vote."

We heard the objections. But we weren't dissuaded. We believed there could be no better service to our industry than convincing the nation's thought leaders that instead of using our limited housing resources to further inflate the homeownership rate, our nation would be better served by a housing policy that seeks to provide all Americans with good, quality housing, regardless of whether they choose to rent or to buy.

For the first few years, we were the lone voice in the wilderness. Then, as the housing bubble began to inflate, a few courageous organizations joined us in saying the unthinkable – that there is such a thing as too much homeownership.

But we were still just a tiny, but vocal, minority. In 2010, that changed. Our small party became so much bigger.

We knew this year was different when Obama Administration officials started using our balanced housing policy tagline in speeches. Then House Financial Services Committee Chairman Barney Frank (D-MA) publicly proclaimed himself proud to be a renter. And the Federal Reserve convened a New Housing Policy forum and asked us to be a keynote speaker.

There were countless headlines questioning our national homeownership obsession throughout the year, but we knew our idea had gone mainstream when the cover of TIME magazine made "The Case Against Homeownership."

Signs kept mounting. The federal deficit-reduction task force took on one of the nation's most sacred cows: the mortgage interest deduction.

We realize that we are a long way off from actually having a more balanced housing policy. But it's nice to see that sometimes tilting at windmills actually makes a difference.

thought leaders weigh in

I think we've not paid close enough attention to rental housing and the advantages of that... government should think more clearly about how it can help with respect to rental housing.

Mark Zandi -
Chief Economist, Moody's Analytics

It is worth asking whether federal policy is devoting sufficient emphasis to the expansion of quality, affordable rental housing.

FDIC Chair Sheila Bair

The system must better balance rental housing and homeownership.

Sarah Rosen Wartell -
Center for American Progress

the media questions sacred cows

If there ever were a time to start weaning America off the idea that homeownership cures all our ills, now – after the worst housing crash in 75 years – would be it.

TIME Magazine - "The Case Against Homeownership" (August 26, 2010)

The U.S. has for decades overemphasized the virtues of home ownership.

The Wall Street Journal - "Rethinking Part of the American Dream" (June 17, 2010)

The relentless promotion of homeownership as the embodiment of the American dream has outlived its usefulness.

The Washington Post - "How a Homeownership Fetish Hurt the American Dream" (August 23, 2010)

By idealizing the act of buying a home, we have ignored the downsides.

TIME Magazine - "The Case Against Homeownership" (August 26, 2010)

Lake Calhoun City Apartments, Village Green, Minneapolis, MN