advocacy: a strong voice for rental housing

NMHC member **Mark J. Parrell**, EVP/CFO of Equity Residential, testified before the Senate Banking Committee on May 26, 2011, at a hearing on housing finance reform.

NMHC, and its Joint Legislative Partner, the National Apartment Association, will continue to **advocate on behalf of the industry**.

2011 began with a Republican takeover of the U.S. House of Representatives, 100 new members and an enormous challenge to educate the newly elected lawmakers about the importance of rental housing to our economy.

2012 NMHC Chairman **Tom Bozzuto** meets with **Rep. Steny Hoyer** (D-MD) to discuss tax reform and its impact on the rental housing sector in October.

Whatever hopes the new Congress might have had of enacting important legislation withered quickly as the body instead dissolved into total partisan gridlock. Bipartisan proposals languished because of vocal minority opposition. Must-pass legislation was enacted at the last minute, if not later. From the debt ceiling to the failed Super Committee, the debate was pitched and, at times, personal.

It was enough to cause noted Congressional scholar, Norm Ornstein, to declare this one the "Worst Congress. Ever." And the gridlock will only intensify going into an election year. The divided Congress means that while hearings will be numerous, meaningful legislative action on important issues such as housing finance reform or tax reform will be postponed until after the elections. It remains to be seen whether the 2012 elections will usher in a large turnover that might heal some of the partisan division and narrow the growing ideological rift.

Until then, NMHC, and its Joint Legislative Partner, the National Apartment Association, will continue to advocate on behalf of the industry. The results of those efforts may be postponed because of electoral politics, but even with inaction, important groundwork for many key legislative issues is being laid now.

Our biggest challenges were—and will remain—maintaining a stable source of capital across all markets at all times, ensuring that rental housing is not disadvantaged in any tax reform and pursuing a balanced regulatory environment that supports the industry's ability to provide the housing this country needs. And despite the legislative impasse that

characterized 2011, NMHC recorded a number of victories on issues that could have adversely affected rental housing.

Increased the Visibility of Rental Housing

Ten years ago, when NMHC/NAA launched our "balanced housing policy" initiative, few thought we could make a meaningful difference. And for several years we were a lone voice, but in 2010 tables started to turn, and in 2011 that change accelerated.

Everyone from members of Congress to Obama Administration officials to academic experts began to publicly echo our call that we do, in fact, need a more balanced housing policy. NMHC/NAA capitalized on the sea change with aggressive media outreach that resulted in countless articles questioning our homeownership obsession and promoting renting as a smart financial play. We also launched an ad campaign, "Rethinking the American Dream."

> " [The apartment] industry **didn't create the problem**. We're the ones propping them up."

Rep. Rick Berg (R-ND), (above) former apartment owner and current member of the House of Representatives

Green Building Mandates and Energy Policy

Looking ahead, capital and taxes are likely to be joined by energy policy as the areas with the most potential to dramatically change how apartment properties are developed, operated and even financed. NMHC/NAA have been actively promoting the industry's interests on a variety of fronts.

Working with Congress, we continued efforts to protect the apartment industry from onerous legislation to create a national model energy code, which would impose aggressive and costly energy efficiency requirements. In 2011, we secured numerous improvements to a Senate committee-approved measure, including the elimination of arbitrary percentage-based efficiency improvement goals, the removal of a "zero-net energy" building goal and the addition of a funding program to support energy efficiency in the building sector.

NMHC/NAA were also appointed to the committee responsible for updating the National Green Building Standard (NGBS, ICC-700) and selected to chair the Multifamily Task Group.

Repealed Onerous 1099 Reporting Requirements

NMHC/NAA successfully secured the repeal of extremely onerous reporting requirements enacted as part of the health care legislation that would have forced companies to issue 1099s for extremely common transactions, such as purchasing equipment, hiring maintenance companies and even establishing telephone service.

Eileen Lee, NMHC's Vice President of Energy and Environmental Policy and **Rep. Kirsten Gillibrand** (D-NY).

"The GSEs' investments in multifamily **are very successful**. Those programs are invaluable."

Sen. Kirsten Gillibrand (D-NY)

Fought for a Pro-Apartment Tax System, Opposed a Carried Interest Tax Increase

Comprehensive tax reform took on a new priority in 2011 as a result of the August debate over raising the debt limit and the creation of a Congressional "super committee" charged with developing a plan to reduce the deficit by $1.5 trillion. NMHC/NAA successfully opposed efforts to increase taxes on carried interest, or the developer's promote, during both those battles, as we have for the past several years.

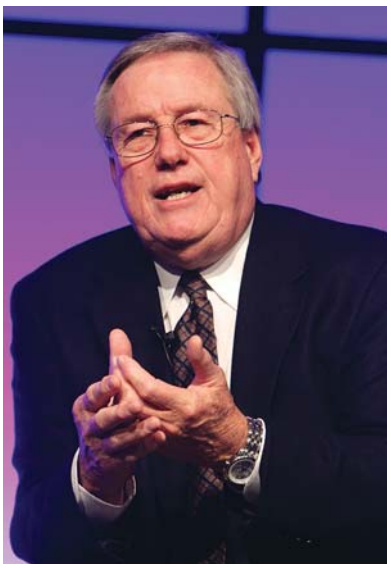
But Congress's failure to enact tax reform in 2011 means it will be one of our top priorities in 2012. Most lawmakers in Washington, DC—and taxpayers everywhere—agree that our byzantine tax code needs to be reformed to generate economic growth and make the nation more globally competitive.

Foreseeing this, NMHC/NAA spent much of 2011 preparing and beginning the education process with Congress. We will be active participants in the debate and will urge lawmakers not to implement reforms that disadvantage apartment owners and renters relative to other asset classes. We'll be working to protect the Low-Income Housing Tax Credit, partnerships, business interest deductions and, of course, favorable carried interest taxation.

Opposed Environmental Regulatory Expansion

NMHC/NAA convinced the U.S. Environmental Protection Agency (EPA) to reverse course and reject its own proposed lead testing rule, which would have required property owners to verify post-renovation lead levels through expensive laboratory testing. We continue to caution against the full extension of lead hazard rules to commercial buildings and are working with EPA and the Obama Administration to reduce the costs and uncertainty of any new rules.

We also opposed burdensome regulatory expansions of the Clean Water Act (CWA), including new wetlands guidance and stormwater management rules for existing buildings. In addition, we submitted a friend of the court brief on a case before the U.S. Supreme Court challenging EPA's authority and enforcement procedures under the CWA. The case has broad property rights impacts and important implications for clarifying the jurisdictional reach of the CWA and defining those wetlands subject to federal authority.



Bill Thomas, former Chairman of the House Ways & Means Committee, offered his perspective on Capitol Hill during NMHC's 2011 Annual Meeting.

Opposed Imbalanced Labor and Employment Rules

Although the Employee Free Choice Act is dead in this Congress owing to the Republican majority in the House, labor issues remained prominent on NMHC/NAA's agenda thanks to a series of pro-union actions by the National Labor Relations Board (NLRB). NMHC/NAA, as part of a cross-industry coalition, forcefully objected to several NLRB decisions and regulatory actions that disproportionately favor unions.

NMHC/NAA opposed an NLRB proposal that would have a chilling effect on businesses that want to seek legal counsel on labor issues, and we sought Congressional support to block funding to enforce these and other NLRB actions.

We also worked to educate the Equal Employment Opportunity Commission (EEOC) about the importance of allowing firms to consider criminal background information in employment decisions in order to ensure the safety of residents when the Commission discussed restricting such use.

Left to Right: **Rep. Judy Biggert** (R-IL) discusses housing finance reform with NMHC member **Peter Evans** *(Moran & Co.)* and **Lisa Blackwell**, NMHC Vice President of Housing Policy.

Rep. Pat Tiberi (R-OH) at NMHC's Board of Directors and Advisory Committee Meeting in Washington, DC.

"I'm not going to defend Fannie and Freddie. But some of my colleagues who believe the private sector is going to take care of this are **not up to speed on reality**."

Rep. Pat Tiberi (R-OH)

Advocated Federal Immigration Reform

NMHC/NAA continued to urge Congress to consider reform measures that would address the considerable shortcomings of existing federal immigration policy and ease the compliance burden created by a growing list of state and local immigration laws. Working closely with our industry partners, we have continued to advocate for reasonable worker verification requirements at the federal level.

Advanced Reasonable Building Codes

In recognition of NMHC/NAA's long-term and proactive building codes program, the International Code Council (ICC) appointed us to several key committees that not only review code change proposals but also recommend changes to the code development process. These influential posts have dramatically increased our influence and will pay meaningful dividends going forward.

In 2011, our participation on ICC's Code Technology Committee, in particular, enabled us to obtain the group's support to oppose issues that would have had a major negative impact on apartment construction. They include: fire protection; allowable building heights and area; fire separation; carbon monoxide; child window safety; climbable guards; emergency evacuation with elevators; fire service elevators; elevator lobbies; exit stairs; vertical openings; and, most importantly, the issues resulting from the World Trade Center disaster, in which we

NMHC staff members *(L to R)* **David Cardwell**, Vice President of Capital Markets and Technology, **Matthew Berger**, Vice President of Tax and **Betsy Feigin Befus**, Vice President, Employment Policy and Counsel provide a legislative briefing at NMHC's Board of Directors Meeting in May.

were able to obtain exceptions for apartments from new requirements for additional exit stairways and exit reflective markings.

Acted to Support Property Operations

When federal officials announced a recall of pool drains just as the summer pool season was kicking off, NMHC/ NAA stepped in to press for additional guidance and clarifications to assist pool owners with compliance.

We also published best practices guidance and hosted a webinar on new regulations requiring firms that use a "credit score" when taking an adverse action to make a disclosure of the score part of their process. And we asked Congress to direct HUD to work with housing stakeholders in the development of best practices or guidance to guide the efforts of property owners in dealing with bed bugs.

Left to Right: NMHC Senior Vice President of Government Affairs **Cindy Chetti**, NMHC Vice President of Business and Risk Management Policy **Jeanne McGlynn Delgado** and 2012 NMHC Chairman **Tom Bozzuto** on Capitol Hill.

Finally, we continued to press for long-term extension of the National Flood Insurance Program (NFIP). A five-year reauthorization was passed in the House and a comparable bill was awaiting Senate action as this report went to print. Increased limits for multifamily properties as well as several reforms to place the program on healthy long-term footing are included in the legislation.

"My own view has always been that it is a **mistake for the government** to heavily subsidize homeownership and that we are much better off trying to subsidize rental housing."

Rep. Barney Frank (D-MA), former Chair of the House Financial Services Committee

liquidity, liquidity, liquidity

"I believe that, if there is to be any government assistance to housing, **it should be limited** to first-time homebuyers or rental housing."

Rep. Scott Garrett (R-NJ)
Chair of the House Financial Services Capital Markets & GSE Subcommittee

Since 2008, the old adage of "location, location, location" has been replaced by "liquidity, liquidity, liquidity" as the key to surviving in a tumultuous economy. Preserving the sector's access to capital was NMHC's top priority in 2011. And we fought that battle on a number of fronts.

We took our message to lawmakers and thought leaders, including the Chairman of the Federal Reserve and all five members of the Fed's Board of Governors, who met with 50 members of NMHC's Executive Committee in September.

We explained that although apartment fundamentals are strong, the industry still faces significant liquidity issues both in terms of overall capacity and geographic dispersion.

Life Without the GSEs?

Three years after they were put into conservatorship, action to reform the government sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, kicked into gear. In 2011, there were more than 20 hearings in Congress on various aspects of the housing crisis and the future of

Above: 2011 NMHC Chairman **Peter Donovan** *(right)* at a meeting with **Rep. Scott Garrett** (R-NJ) *(left)*, chair of the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises, and his staff.

housing finance reform; there are nearly 40 bills pending in both chambers that focus on some aspect of Fannie Mae and Freddie Mac.

There is little doubt that the current structure of the GSEs will not continue as we know them, but questions remain on what will replace them, what the transition will look like and how long it will take. In an effort to ensure that reform "does no harm" to multifamily, NMHC launched a massive education program.

We made sure thought leaders knew that the GSEs' multifamily programs were not part of the meltdown and are vital to ensuring sufficient capital for rental housing in all markets and at all times.

It made a difference. Leaders from both parties have publicly declared that "multifamily is different."

> "It has not escaped our notice the much better performance of multifamily relative to single-family in the GSEs. **We want to preserve what worked well.**"
>
> *Mary John Miller*
> *Assistant Secretary for Financial Markets, U.S. Department of the Treasury*

Overcoming a Historic FHA Backlog

With capital markets still struggling to recover, HUD's FHA multifamily program remained the industry's primary source of construction lending in 2011, and demand for FHA-insured loans soared to historic levels.

NMHC member **Peter Evans**, a Partner with Moran & Company, testified before a key House Financial Services Subcommittee on the historic backlog at FHA on May 25, 2011.

The result of this increased demand was a staggering backlog in processing, which was compounded by FHA implementing the most extensive underwriting changes in decades.

NMHC/NAA were there to protect the industry's interests. We testified on the issue before Congress, and we met repeatedly with the HUD Secretary and senior HUD staff. Our efforts resulted in a new pilot program to expedite the underwriting process and implement more transparency in the underwriting process.

"In any reform proposal we have to make sure we have **a well-designed capacity** for the government to help support multifamily housing. …Fannie Mae and Freddie Mac gave us a model on how to do that well and prudently."

Timothy Geithner,
U.S. Treasury Secretary

Supporting the Resurgence of the Secondary Market

Our capital markets efforts involved more than just preserving access to the GSEs and FHA. We worked proactively to create a housing finance 2.0 system that would serve investors, lenders and borrowers. We were also actively involved with regulators developing new risk retention rules, highlighting several areas where proposed rules had the potential to adversely affect the availability and pricing of credit.

Left to Right: **Michael Berman** *(CWCapital),* **Rick Lyon** *(Capital One),* **Mark Wilsmann** *(MetLife)*, **Mike Brunner** *(JP Morgan Chase)* and **Grace Huebscher** *(Beech Street Capital)* discuss what the multifamily market would look like without the GSEs at NMHC's Board of Directors Meeting in May.