NMHC National Multi Housing Council®
Apartments: Smart Communities, Smarter Living

APARTMENT-RELATED PROVISIONS OF FEDERAL ENERGY LEGISLATION
As of September 30, 2009

	House Bill Provisions (H.R. 2454)	Senate Bill – Energy Committee (S. 1462)	Senate Bill – EPW Committee (Clean Energy Jobs and American Power Act)	NMHC Analysis
Building Energy Codes	Requires the Secretary of Energy to establish a National Energy Efficiency Building Code that achieves energy savings targets of 30 percent upon enactment and 50 percent beginning in 2014. (Savings are compared to the 2006 IECC and ASHRAE Standard 90.1-2004.) If the existing code-development bodies fail to release codes meeting the savings requirements, the U.S. Department of Energy (DOE) must establish a compliant code. Requires states to adopt and enforce the National Energy Efficiency Code and allows federal takeover of code enforcement where state and local governments fail to do so. Requires Secretary of Energy to complete a rulemaking establishing violations and penalties under this section within three years. Provides grants up to $1 million for enhanced building code enforcement.	Requires states to adopt building energy codes that meet or exceed the 2009 IECC and ASHRAE Standard 90.1-2007 within 12 months of the bill's enactment. As the national codes are revised, states must also adopt codes that achieve 30 percent savings over earlier versions and a 50 percent savings in codes released after January 1, 2016. Savings are compared to the 2006 IECC and ASHRAE Standard 90.1-2004. If the existing code-development bodies fail to release codes meeting the savings requirements, the U.S. Department of Energy (DOE) must establish a compliant code suitable for state adoption. Does not provide for federal enforcement or penalties for non-compliance.	Requires the U.S. Environmental Protection Agency (EPA) to establish building code energy efficiency targets by 2014. EPA must also establish national energy efficiency building codes meeting the targets. This provision significantly differs from previously considered code proposals. Most notably: 1) The legislative language is very open-ended and leaves virtually all details up to the regulatory process. 2) The legislation does not establish any efficiency targets or specific timelines for compliance. 3) The rulemaking, and presumably enforcement authority, rests with the EPA instead of the DOE.	NMHC has long-cautioned lawmakers against a one-size-fits-all approach to improving building energy performance. NMHC-commissioned research shows that exceeding current codes by 30 to 50 percent presents practical and financial barriers for apartment firms. Since the majority of energy used in a multifamily building falls outside the scope of energy codes, codes-based conservation proposals put extreme pressure on apartment firms to invest in expensive upgrades without significantly improving overall building energy performance. Creating a federal cause of action for code non-compliance is a significant concern, raising questions over new inspection and permit compliance costs, liability issues and transactional barriers.

Building Energy Performance Labeling	Establishes a program to develop energy performance labels for new residential and commercial buildings. The label would be designed to display actual and as designed building energy performance for the purpose of making transactional, operations and maintenance decisions. States will receive funding in exchange for implementing the labeling program.	Same as House except program would apply to new and existing buildings.	None.	While NMHC supports voluntary energy labeling programs, such as Energy Star, we are concerned that this provision could result in problematic mandatory requirements.
Building Retrofit Program	Requires the U.S. Environmental Protection Agency (EPA) and DOE to develop and implement a national energy and environmental building retrofit policy for existing multifamily buildings (known as REEP). States will receive funding for voluntarily implementing the REEP program. At the states' discretion, they may make direct awards to buildings for energy and water efficiency improvements. Award funds are limited to $3,000 for a 20 percent savings, with opportunities for additional awards of several hundred dollars.	Establishes a grant program that would provide states with funds to carry out energy efficient retrofit programs. Owners of multifamily buildings four stories or more in height would be eligible to receive funds through the state programs. At the states' discretion, they may make direct awards to building owners that improve their energy performance by at least 20 percent. Incentives range from $0.15 per square foot for a 20 percent savings up to $3.00 per square foot for a 50 percent savings.	Same as House proposal.	Any building retrofit program should be voluntary, apply to the full range of apartment properties and provide funds sufficient to incentivize use. The REEP proposals encompass all multifamily buildings, but funds are strictly limited and priority will be given to public and assisted housing. Aligning multifamily buildings with commercial buildings (as in the Senate's grant proposal) instead of single-family homes in this section would provide access to considerably more funding. For example, a 30 percent improvement under the residential section could earn a building owner $4,500, while the same improvement

				under the commercial provision would yield a $24,000 award.
"GREEN Act of 2009 (H.R. 2336)"	Imposes new energy efficiency and green building standards in HUD-assisted buildings. Provides incentives for energy efficient improvements in multifamily buildings. Provides for an energy efficiency demonstration project in multifamily buildings. Promotes the use of energy and location efficient mortgages and attaches new energy efficiency goals to FHA insurance and Fannie Mae/ Freddie Mac loans.	None.	None.	The House proposal fully incorporates the GREEN Act of 2009 (H.R 2336), originally proposed last year by Rep. Perlmutter (D-CO). NMHC supports the overall approach of this section, which emphasizes incentives and technical assistance to improve building energy performance. However, several provisions undermine the voluntary nature of the section and create conflict with other sections of this legislation. As a result of NMHC's concerns over the GREEN Act, several changes were made. Of note, the provision now cites the National Green Building Standard as a compliance method for the bill's green building requirements.
Funding/Incentives for Multifamily Efficiency Improvements	Provides incentives for energy efficiency improvements in multifamily buildings and creates a multifamily energy efficiency demonstration project (by including the GREEN Act of 2009, see above.).	Establishes a grant program that would award funds for the energy efficient renovation and appliance retrofit of multifamily buildings.	None.	Although the Senate program prioritizes funding for low-income and assisted recipients, market-rate properties are still eligible for grants.
Lighting Efficiency Standards	Increases the efficiency of certain lighting manufactured after 2010. Includes outdoor lighting, portable light fixtures and incandescent reflector lamps.	Sets minimum efficiency standards for portable lighting fixtures and certain light bulbs.	None.	NMHC supports improved efficiency standards as long as new requirements reflect considerations like product availability, performance and cost-effectiveness.

Other Appliance Efficiency Standards	Increases minimum efficiency requirements for certain warm air furnaces.	Sets minimum efficiency standards for certain commercial furnaces.	None.	NMHC supports improved efficiency standards, so long as new requirements reflect considerations like product availability, performance and cost-effectiveness.
Appliance Efficiency Determinations and Building Codes	Revises the process for making federal appliance efficiency determinations and changes the role of appliance efficiency in building codes. Requires new determinations to consider greenhouse gas emissions, smart grid capability and availability of more efficient products and imposes new labeling requirements.	None.	None.	NMHC supports improved efficiency standards, so long as new requirements reflect considerations like product availability, performance and cost-effectiveness. While the role of federal appliance efficiency standards in building codes has created confusion in the past and needs clarification, federal involvement in building codes should be carefully tailored and limited.
Water Conservation Incentive Program	Creates an incentive program for single- and multifamily buildings to use water efficient plumbing fixtures and irrigation systems.	None.	Authorizes and funds EPA's WaterSense Program, a voluntary labeling program for water-efficient products and services. Provides funding for programs offering incentives to residential consumers for the purchase of water-efficient products.	NMHC supports voluntary incentive programs to increase energy and water efficiency.

Renewable Energy and Efficiency Requirements	Requires electric utilities to generate a percentage of electricity from renewable sources, from 6 percent up to 20 percent by 2020. Allows states to satisfy 25 percent of the requirement with energy efficiency measures.	Same as House, except the required percentage starts at 3 and expands to 15 percent in 2021. Allows states to satisfy 26.67 percent of the requirement with energy efficiency measures.	Provides federal grants and other assistance to states that adopt renewable portfolio standards, but does not mandate that states enact such standards.	While such proposals could create funding opportunities and other incentives for building owners to improve the energy performance of their properties, it could also result in increased energy costs, new building code requirements or other mandates.
Climate Change/ Greenhouse Gas Reductions	Establishes a market-based, cap and trade program for reducing carbon emissions. Covered entities must have "allowances" for each ton of greenhouse gas (GHG) emitted. Emitters of less than 25,000 tons per year of CO^2 are excluded. Directs the EPA to set emission standards for sources not covered by the allowance system. Amends the Clean Air Act to provide that CO^2 and other GHGs may not be regulated as air pollutants under the Act.	None.	Establishes carbon reduction goals that are more aggressive than the House proposal, but does not include a fully constructed cap and trade program. Instead, creates a structure for a cap and trade system, the details of which will be decided by various Senate Committees. Like the House, only large GHG emitters (emitters of 25,000 tons per year) will be directly regulated. Delays EPA regulation of certain carbon emitters under the Clean Air Act.	The allowance system targets the largest emitters of GHGs; however, the EPA regulations could affect large buildings. For instance, draft regulations proposed under the Clean Air Act would regulate buildings that emit more than 100 tons per year of carbon. The House provision prohibits this regulation under the Clean Air Act, but enables EPA to set such limits in another way. Any emissions reduction program is expected to raise energy costs. Cost increases may be severe depending on geographic region and fuel mix. As such, it is important to include mechanisms protecting consumers (including commercial consumers) from harsh rate hikes.