

## 2017 NMHC and NAA Policy Priorities

For more than 20 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered on behalf of America's apartment industry. Drawing on the knowledge and policy expertise of staff in Washington, D.C., as well as the advocacy power of nearly 170 NAA state and local affiliated associations, NAA and NMHC provide a single voice for developers, owners and operators of multifamily rental housing. One-third of all Americans rent their housing, and 38 million of them live in an apartment home.

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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: protecting flow-through entities; maintaining the current-law tax treatment of carried interest; defending like-kind exchanges; retaining the deduction for business interest; ensuring depreciation rules avoid harming real estate; and preserving the Low-Income Housing Tax Credit.

To support our advocacy, we have worked with our industry partners to commission key studies on the House Republican tax reform blueprint and the vital role that like-kind exchanges and economically viable depreciation schedules play in developing and maintaining commercial real estate.

## LOW-INCOME HOUSING TAX CREDIT (LIHTC)

**Why It Matters:** LIHTC is the only federal program that helps subsidize the production of privately operated affordable housing. It has financed nearly 3 million units since its inception in 1986. While it generally operates effectively, additional resources could spur added construction of units.

**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 seeking program improvements. These include expanding program resources by 50 percent and allowing "income averaging" to make the program more flexible and allow for more mixed-income housing.

## MIDDLE-INCOME HOUSING TAX CREDIT (MIHTC)

**Why It Matters:** MIHTC was introduced in September 2016 by Senate Finance Committee ranking member Ron Wyden (D-OR) to spur the production of multifamily rental homes for America's working families and would complement the LIHTC. The apartment industry strongly supports the bill based on our concerns that there is a lack of affordable housing available to millions of Americans that comprise the nation's workforce.

**What We Are Doing:** Continuing to work closely with Senator Wyden, his staff and other key lawmakers in pushing this critical legislation forward because it would make building needed units financially viable. Specifically, under the "Middle-Income Housing Tax Credit Act of 2016," states would receive allocations of tax credits that would be distributed competitively to finance 50 percent of the cost of qualifying units. In order to qualify, a development would have to ensure that 60 percent of units were affordable to families earning no more than 100 percent of area median income. Allocated credits would be paid out over 15 years, the same period over which a development would have to commit to maintaining units at restricted rental rates.

Importantly, we responded to the introduction of the MIHTC legislation by following up with a letter of support to Senator Wyden that urged him to coordinate the legislation with the Community Reinvestment

Act (CRA) so that investments using the proposed tax credit would qualify for CRA credit – a vital change that would enable the new credit to reach its full potential in all housing markets.

### 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. As part of tax legislation enacted in late 2015, Congress reduced FIRPTA's negative impact on U.S. real estate investment by increasing from 5 to 10 percent the ownership stake that a foreign investor may take in a U.S. publicly traded REIT without triggering FIRPTA. Congress also removed a tax penalty FIRPTA imposed on foreign pension funds investing in U.S. real estate. While these provisions represent real progress, repealing FIRPTA or enacting additional reforms 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 either repeal FIRPTA or enact additional reforms to FIRPTA to promote foreign investment in the U.S. multifamily industry and meet the growing demand for rental housing.

## Construction & Development

### CLEAN WATER ACT

**Why It Matters:** The Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) finalized a rule that claimed to clarify the scope of the waters regulated under the federal Clean Water Act. The controversial rule was found to significantly increase the costs and time associated with permitting requirements, provide greater opportunities for citizen lawsuits and essentially federalize local land use planning. The rule would also subject municipal separate storm sewers to an additional level of regulation as "Waters of the US." The Trump Administration has ordered that the rule be repealed and replaced.

**What We Are Doing:** Pursuing an aggressive advocacy strategy before Congress and the Administration on the appropriate scope of federal jurisdiction over water. Existing authority under the 1986 regulation and 2008 guidance to define "waters of the United States" covered by the Clean Water Act has led to a spate of lawsuits and was the impetus for the last Administration to issue the flawed WOTUS rule.

### SUSTAINABILITY

**Why It Matters:** Apartment properties face potentially costly challenges as federal, state and local governments increase various green building requirements and building performance mandates. These efforts must address the specific needs of multifamily occupancies, including the continued affordability and availability of new, and the preservation of existing, 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. We support strong and cost effective green standards and represent the interests of the industry in the area of green building and operations certification. We are working in coordination with the EPA and Department of Energy to obtain wider access to aggregated whole building data for voluntary benchmarking purposes and look to expand opportunities to share case studies and other resources with our members.

## 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.

## Finance & 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. Because of our efforts, Members of Congress have come to understand that any credible housing finance reform effort must have dedicated consideration for the multifamily industry.

### BANK CAPITAL STANDARDS: DODD-FRANK AND BASEL III

**Why It Matters:** Federal regulators have produced a number of regulations and standards during the previous Administration that could potentially constrain capital flows to the sector. Among those are 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.

**What We Are Doing:** Working to educate regulators, Congress and the new Administration on existing and proposed regulations that could constrain and increase the cost for multifamily financing. Where appropriate, we are seeking changes or roll-backs.

### HIGH VOLATILITY COMMERCIAL REAL ESTATE LOANS

**Why It Matters:** Basel III capital standards for acquisition, development and construction loans went into effect on January 1, 2015, increasing the amount of capital banks have to hold by 50 percent. The regulation was unclear in many areas. In April 2015, the regulators issued guidelines in an FAQ in an effort to clarify implementation of the rule. This rule applies to every bank, no matter the size. Consequently, it has had an impact on the availability of construction loans during 2016.

**What We Are Doing:** Working with a number of industry groups to seek better clarity on interpretation of the rule and provide rational relief to several of the provisions within the rule that constrain the capital contribution from borrowers. We are seeking changes with Congress and the regulators who issued the rule. As a result of our efforts, legislation was introduced in 2017 that would achieve our goals.

## WORKFORCE HOUSING

**Why It Matters:** America is facing significant rental affordability challenges. Rental demand is growing, supply is limited and resident incomes have been stagnant while housing costs have risen. Roughly 54 percent of apartment households spend more than 30 percent of their incomes on housing and 30 percent spend more than 50 percent, according to the most recent data from the American Housing Survey. State and federal collaborations, and partnerships between the public and private sectors, are critical to addressing this issue.

**What We Are Doing:** Contributing to the discussion and aiming to help policymakers develop effective solutions that will preserve programs that work, stem the loss of additional housing stock and promote the development of new units. We took our message to Capitol Hill, testifying before the House Financial Services Committee, Subcommittee on Housing at a hearing entitled, *The Future of Housing in America: Government Regulations and the High Cost of Housing*. We outlined the key reasons why America faces a growing affordability problem – stagnant wages, a supply-demand imbalance and numerous hurdles and regulations in developing new apartments – along with potential solutions.

## HUD MULTIFAMILY PROGRAMS

**Why It Matters:** The Federal Housing Administration’s (FHA) multifamily programs traditionally account for approximately 10 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 mortgages 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 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 FHA Commissioner to limit the potential adverse impact of the reorganization on multifamily borrowers. NMHC/NAA have also worked with HUD and Congress to lift the multifamily lending authority for FHA to levels more reflective of market demand.

## FOREIGN CAPITAL INVESTMENT (EB-5)

**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 a long-term reauthorization of the EB-5 Investor Visa Program, retaining essential elements of the program and promoting multifamily investment.

## Fair Housing

### FAIR HOUSING AND DISPARATE IMPACT

**Why It Matters:** Recent increases in regulatory and legal action related to disparate impact theory creates new uncertainty about the lawfulness of otherwise legitimate apartment operation and development practices like resident screening and use of tax credits. Absent limitations, housing providers can face increased allegations of Fair Housing violations.

**What We Are Doing:** Seeking certainty and/or clarification of HUD enforcement practices in light of regulatory efforts, including HUD's 2013 disparate impact rule, the U.S. Supreme Court's decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* and HUD guidance on criminal history screening, limited English Proficiency and more.

While the High Court upheld the validity of disparate impact liability under the Fair Housing Act in its final ruling in June 2015, the ruling offers some limitations on the theory that may prove helpful to businesses facing these types of actions. However, HUD and advocacy groups continue to test the bounds of disparate impact theory. We have produced a series of white papers and webinars to help apartment firms understand changes in fair housing law and we continue to explore both legislative and legal remedies to help apartment firms avoid disparate impact claims.

### ACCESSIBILITY: ADA AND FAIR HOUSING ACCESSIBILITY

**Why it Matters:** Housing providers have responsibilities under both the Americans with Disabilities Act (ADA) and Fair Housing Act (FHA) to ensure that their communities are accessible to people with disabilities, including the inclusion of specific building design features. However, the complex and sometimes conflicting nature of guidance, building codes and statutory language have led to varying interpretations of compliance with the Acts. Litigation related to allegations of non-compliance poses significant costs, operational barriers and other challenges for apartment firms.

**What We Are Doing:** Supporting legislation to stem the growing trend of ADA compliance complaints dubbed "drive by" lawsuits. These complaints often result from tester visits to a business for the express purpose of finding violations and filing suit. Plaintiffs then typically demand settlement money in lieu of filing a lawsuit. We are supporting legislation introduced in Congress that provides a business owner with the opportunity to cure an alleged ADA deficiency prior to the initiation of a lawsuit, which would disincentivize complaints motivated purely for financial gain.

## Energy

### ENERGY POLICY

**Why It Matters:** Energy efficient multifamily buildings reduce utility consumption costs for apartment owners and residents and further the goal of national energy independence. Although the industry has embraced energy efficient design and operations, it is important that federally-sponsored energy performance standards be cost-effective. Expensive code requirements that have a pay-back outside of traditional financing terms will exacerbate the shortage of affordable housing. Federal tax incentives are insufficient to improve the efficiency of the nation's existing housing stock and should be expanded. New Federal Housing Administration financing programs will assist owners and developers in improving building

energy performance. The apartment industry welcomes the newly available ENERGY STAR rating for multifamily, however, the lack of access to whole building energy consumption data in many regions of the country limits the ability of properties to participate in the program.

**What We Are Doing:** Advocating for policies that include cost-effectiveness as a consideration in building code adoption, promoting building energy research and working to help property owners access their energy consumption data. We are also lobbying for energy efficiency tax measures that encourage energy efficient rehabilitation of existing properties. Finally, we continue to work with HUD, EPA and the Department of Energy to expand opportunities that will assist property owners in improving building energy performance and remain focused on growing the ENERGY STAR rating for multifamily.

## **Business & Property Operations**

### **FLOOD INSURANCE AND MITIGATION**

**Why It Matters:** The National Flood Insurance Program (NFIP) was last reauthorized by Congress in 2012 and is set to expire in September, 2017. Existing law requires apartment properties with federally regulated and insured mortgages in high-risk flood areas to purchase flood insurance. In many cases the NFIP is the only coverage option available across the country. In the absence of a robust private flood insurance market, the multifamily industry has come to rely on the NFIP as a critical risk management tool and to ensure financing. Yet too often, the current constructs of the program and its limitations can serve as a challenge.

**What We Are Doing:** Working with Congress and industry allies to see the program reauthorized and reformed in such a way that ensures flood coverage continues to be available at all times, in all market conditions, for every at-risk rental property. Reform of the NFIP is necessary both to ensure the fiscal solvency of the program and so that it is structured in such a way that it is able to offer sufficient and needed lines of coverage to property owners. We have called upon Congress to enable FEMA to offer additional, policy options such as Business Interruption coverage, Replacement Cost Value claim payments, and allow umbrella policies for all structures on a property. Allowing multifamily owners the flexibility to secure these additional lines of coverage, at full actuarial rate, would bring new premium revenue into the program and better mitigate the financial risk held by multifamily owners/operators. These, and other reforms, would reduce risk exposure and financial liabilities for multifamily properties in the wake of a disaster. Further, the industry has long called for greater private sector participation in the flood insurance market and we have strongly urged Congress to adopt policies that can help foster its development. We also continue to push Congress to reform and properly fund flood mapping efforts and prioritize pre-disaster mitigation efforts.

### **LABOR DEPARTMENT OVERTIME RULE**

**Why It Matters:** In May 2016, the Department of Labor (DOL) issued its final rule to increase the salary threshold for white collar workers who are entitled to overtime pay protections under the Fair Labor Standards Act (FLSA). Multifamily and other industry workers would be impacted because overtime pay would be determined based only on falling below the threshold. Specifically, under the final rule, the salary threshold for executive, administrative and professional employees' overtime pay would be raised from \$455 a week (\$23,660 a year) to \$913 a week (\$47,476 a year). While the rule was slated to go into effect on December 1, 2016, a federal judge has issued an injunction blocking enforcement.

Meanwhile, DOL has indicated its willingness to reconsider the rule. During his confirmation hearing, Secretary of Labor R. Alexander Acosta indicated a threshold of around \$33,000 might be appropriate. Following his hearing, DOL issued a request for information soliciting industry views. In response, NMHC/NAA recommended that DOL index the current \$23,660 overtime threshold for inflation. Further litigation, regulation and/or legislative activity will determine the rule's fate.

Among other issues, the multifamily industry is concerned the rule will harm the ability of employers to implement, and employees to take advantage of, flexible scheduling options. In addition, it could limit career advancement opportunities for employees. Those nearing 40 hours of work in a week may not be able to participate in training or other opportunities because the employer is unable to provide overtime compensation for the hours spent.

**What We Are Doing:** Urging Congress and the new Administration to repeal or provide relief from the proposed rule.

### NLRB JOINT EMPLOYER RULING

**Why It Matters:** Joint employers occur when the supervision of an employee's activity is shared between two or more businesses. In its August 2015 Browning-Ferris Industries ruling, the National Labor Relations Board (NLRB) ruled that it could impose joint employer liability when an entity has "indirect" control and "unexercised potential" of control over another entity's employees. However, for 30 years before this ruling, entities were designated joint employers when both had "direct and immediate" control over "essential terms and conditions of employment." This could have a significant impact on multifamily firms who may become liable for the actions of subcontractors, suppliers, vendors and temporary staff. Joint employers are also required to negotiate with any union representing the jointly employed workers.

**What We Are Doing:** Urging congress and the new Administration to mandate that the NLRB revert to the joint employer standard that was in effect prior to the Browning-Ferries Industries ruling. The House of Representatives is currently considering appropriations legislation that would deny funds to enforce the rule.

### CRIMINAL BACKGROUND SCREENING

**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). However, 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 38 million renters.

### CONSUMER REPORTING

**Why It Matters:** Apartment owners and operators rely on professionally furnished consumer reports in their daily operations to make informed decisions about the creditworthiness of prospective residents at their communities. These reports often include financial, credit, and housing history/records and as a result fall under strict compliance requirements of the Fair Credit Reporting Act (FCRA).



**What We Are Doing:** Educating policy makers of the importance of accurate consumer reports and their impact on multifamily operations. Further, we are urging that any reforms of the consumer reporting process and resident screening system do not hamper necessary business operations of multifamily operators.

### IMMIGRATION REFORM

**Why It Matters:** One in five renter households is headed by an immigrant, and immigrants comprise 22 percent of the construction workforce, making reform a critical issue for the multifamily industry. Pressure is mounting for Congress to enact comprehensive reform for a number of reasons, many of which impact the multifamily industry. Recent data and industry surveys suggest labor shortages in a number of trades across numerous markets are driving up construction costs, and the cost of housing as a result. Also, in the absence of congressional action, state and local governments have approved numerous immigration related regulatory measures, creating a burdensome patchwork of compliance obligations for apartment companies. Rental apartment firms are particularly concerned about laws that would hold them responsible for the immigration status of apartment residents and impose various additional employment-related mandates beyond federal requirements. Lastly, attracting foreign investment to multifamily real estate is a critical part of ensuring adequate capital is available to develop and maintain American rental housing needed now and in the future, which programs like the EB-5 Investor Program are designed to address.

**What We Are Doing:** Working closely with policymakers to improve temporary worker visa programs, including the H2-B Visa Program. We are also empowering employers, creating legal safe harbors through the E-Verify Employee Verification Program, and promoting new sources of investment capital through the EB-5 Immigrant Investor Program.

### U.S. POSTAL SERVICE REFORM

**Why It Matters:** U.S. Postal Service (USPS) 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 that could impact both existing and future apartment communities. Some proposed cost-cutting measures would mandate centralized delivery locations for both new and existing addresses. This would dramatically reduce the number of USPS delivery points including “to the door” delivery.

**What We Are Doing:** Educating congressional decision-makers and regulators about the practical implications of legislative or regulatory changes to USPS mail delivery policy for apartment communities and our residents.

## Telecom & Technology

### DATA SECURITY AND BREACH NOTIFICATION

**Why It Matters:** Apartment companies and other consumer facing entities are increasingly targets of cyber-criminals because of the treasure trove of personal and financial information they possess. Multifamily firms and their third-party service providers collect and maintain sensitive personally identifiable information. This includes Social Security numbers and the financial details of 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 working to enhance existing data privacy and security laws. They

are considering the creation of a national data security standard and data breach notification requirements to replace the current patchwork of privacy and data breach laws in 47 states and the District of Columbia.

**What We Are Doing:** Supporting efforts by Congress and the Administration to implement mechanisms for the private sector and Federal Government to share information about possible cyber threats and intrusions. We are also advocating for reasonable data security standards and data breach notification requirements for multifamily firms while protecting consumers, our networks and our industry. In addition, we released a cybersecurity white paper that serves as a roadmap to enhanced security for the industry and launched a cybersecurity alert system that distributes time-sensitive threat information to member companies.

## TELECOMMUNICATIONS

**Why It Matters:** The multifamily industry increasingly relies on web-based platforms and mobile connectivity for property operations, as well as corporate functions from marketing to revenue management and leasing to maintenance. Reliable communications services significantly impact residents and inadequate connectivity 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 services for apartment communities. This includes laws governing video, telephone and broadband, expanded broadband deployment, cellular service and more.

**What We Are Doing:** Educating policymakers about the growing need for reliable telecommunications services for apartment operations and resident satisfaction. This, is in addition to the industry's interest in policies affecting broadband deployment, service provider agreements and access to property and solutions for connectivity and capacity challenges.

## PATENT REFORM

**Why It Matters:** Multifamily companies and service providers have been targeted by abusive "patent trolls" who threaten legal action and demand fees without evidence supporting their claims. Targeted firms are forced to pay licensing fees or defend against illegitimate patent infringement claims for using common technology products. This includes resident-facing programs for marketing, payments, maintenance requests and other property-level communications, as well as off-the-shelf products like on-site security systems. There is strong bipartisan support in Congress to curb the problem. Proposed legislation would require greater detail in demand letters and legal filings, and stronger litigation standards. However, disagreement remains over several aspects of the issue as lawmakers try to address abuse and protect incentives for innovation.

**What We Are Doing:** Urging Congress to pass legislation that would bring greater transparency and efficiency to patent regulation and enforcement, and create disincentives to fraud and abuse. NMHC/NAA have joined with other real estate and business groups in asking lawmakers to address predatory demand letters, patent trolls and improve the patent litigation system.

## 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 Administration evaluate music copyright laws.

### HOME SHARING SERVICES (Airbnb, VRBO, HomeAway)

**Why It Matters:** The multifamily industry is increasingly dealing with the implications, both positive and negative, of peer-to-peer home sharing services like Airbnb, VRBO and HomeAway. While these services are increasingly popular with consumers, some of the potential issues at hand include tenant lease violations, on-site security concerns and questions around liability and property insurance. While there are unanswered questions for our industry, and our economy as a whole, the “sharing economy” is booming. With such incredible growth, Congressional and federal oversight is likely to increase.

**What We Are Doing:** Continuing to support the right of multifamily firms and other property owners to participate in all aspects of the “sharing economy,” if they so choose and if it is done in full compliance with existing law and regulations. While most legislative and regulatory action in this area has been at the state and local levels, Congress and several federal agencies have begun to examine the impact of Airbnb, Uber and other companies considered part of the sharing economy. Both the Federal Trade Commission and the House have held hearings on the topic and this oversight is not expected to ease. We continue to monitor the issue for developments that could impact the apartment industry from a legal or regulatory perspective.

## Housing Policy

### 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:** Working to prevent potential rental payment losses by intervening when related budget cuts are proposed. We are also working to ensure that any reform measures encourage private sector participation and we are supportive of new opportunities for private industry engagement in affordable housing through programs like the Rental Assistance Demonstration. In addition, we are working to reaffirm the voluntary intent and design of HUD’s affordable housing programs by Congress and HUD.

We worked tirelessly to enact reforms signed into law by President Obama in July 2016 that will maximize the impact of taxpayer dollars and eliminate inefficiencies in critical federal housing programs. Specifically, these reforms streamline the Section 8 Housing Choice Voucher Program’s property inspection process by allowing for immediate occupancy if the apartment home has been inspected within the past 24 months. The reforms also include extending the contract term for project-based vouchers from 15 to 20 years.

Additionally, we helped enact legislation signed into law by the President in December 2015 that significantly reduces the Section 8 voucher program’s administrative burdens by allowing for the recertification of incomes every three years, instead of annually, for residents on fixed incomes. We will work with Congress and the new Administration to actively promote future reforms to the program regarding funding to avoid payment interruptions for property owners and to further streamline the program.

## RENTAL ASSISTANCE DEMONSTRATION

**Why it Matters:** The Rental Assistance Demonstration, or RAD, is an affordable housing preservation strategy for public housing authorities, allowing for the conversion of public housing properties at risk of obsolescence or underfunding into project-based vouchers or rental assistance contracts under the Section 8 program. This conversion provides opportunities for private sector participation through the redevelopment, management and financing of the converted properties.

**What We Are Doing:** Working with Congress and HUD to expand the RAD program. The effort was initially approved to convert 60,000 units to affordable housing in 2011. We worked with Congress and HUD to expand the program in 2014 to 185,000 units, and will explore opportunities for further expansion to meet the substantial demand for affordable housing preservation.

## FAIR MARKET RENTS (FMRs) AND SMALL AREA FAIR MARKET RENTS (SAFMRs)

**Why it Matters:** The Section 8 Housing Choice Voucher Program provides subsidized rents for qualifying low-income families. The program uses HUD-determined FMRs to establish maximum allowable rents the government will pay to a private apartment owner who rents to a family with a Section 8 voucher. HUD's current method for establishing FMRs and determining housing assistance payments is a proven, efficient system.

**What We Are Doing:** Expressing concern with HUD's action to move to a SAFMRs system, which establishes rent rates by ZIP Code. The SAFMR system remains un-vetted, less flexible and less reflective of housing providers' needs for participation in assisted housing programs. NMHC is pleased that HUD has notified Public Housing Authorities (PHAs) that the mandatory implementation of the SAFMR methodology would be suspended until 2020 for all metro areas except for the Dallas-Plano-Irving Metro Division. NMHC applauds this decision, as we have long [held](#) that zip codes, the geographic level that SAFMRs currently use, do not represent real estate markets.

## BASIC ALLOWANCE FOR HOUSING (BAH)

**Why It Matters:** One million service members rely on their Basic Housing Allowance (BAH) to pay their housing expenses. The BAH is also key to the viability of the Department of Defense's Military Housing Privatization Initiative (MHPI), which the multifamily industry has participated in for nearly 20 years. Military compensation and benefits reform efforts have looked at significantly reducing the BAH, and how it is allocated, 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 BAH or any other proposals that envision long-term changes to military housing benefits. We have advocated against changes to the BAH in the annual defense authorization and spending bills and successfully held back aggressive reductions proposed in previous years in favor of a one percent per year reduction capped at 5 percent.

## U.S. CENSUS BUREAU'S AMERICAN COMMUNITY SURVEY

**Why It Matters:** The U.S. Census Bureau's American Community Survey (ACS) provides Congress, state and local governments, businesses and non-profits with the objective, reliable data they need to invest wisely, stimulate economic and job growth, and meet the needs of vulnerable populations, such as veterans, people with disabilities, older Americans and low income households. Funding of the ACS, as well as its mandatory nature, is regularly in jeopardy when budgets are discussed. The ACS is important to the multifamily industry because it helps in estimating the economic impact of apartments and provides the latest relevant data.

**What We Are Doing:** Continuing to urge lawmakers to fund ACS, along with testing for the 2020 survey. In addition, we continue to work with a broad coalition expressing our concern over the proposed deep cuts in the most recent budget cycle.

## Indoor Environmental

### LEAD-BASED PAINT

**Why It Matters:** In 1993, Congress directed the EPA to determine whether there were lead hazards existing in public and commercial properties and, if so, to develop a regulation to protect the public health. Despite the passage of time, EPA has failed to conduct any targeted research on this matter, but has proposed a rule to expand lead-based paint regulations that apply to certain residential properties to public and commercial buildings. Pre-1978 residential properties have been guided by a number of lead-based paint disclosure and mitigation regulations for more than 20 years. The EPA proposal would require apartments built after 1978 to comply with similar regulations even though EPA has failed to demonstrate that these properties contain lead paint or pose a lead-hazard. Moreover, this regulation would duplicate the intent of the Occupational Safety and Health Administration's Lead in Construction Standard that already applies to the disturbance of lead on all properties – regardless of the age of or type of the building. The concentration of lead in drinking water is regulated by EPA under the Safe Drinking Water Act. Water suppliers as defined in the Act are responsible for complying with this regulation.

**What We Are Doing:** Continuing to file numerous comments on the regulatory proposal with EPA, including a technical appraisal of EPA's theoretical model of lead exposure during renovation and repairs on public and commercial properties. We have worked with the Small Business Administration to ensure representation of the multifamily industry on regulatory review panels. We have also raised concerns about the flawed regulatory process with the White House Office of Management and Budget. The Administration is currently reviewing the status of pending regulations under the Toxic Substances Control Act (TSCA). Whether the Agency will continue to pursue this rulemaking given the flawed process, is very much in question. Therefore, we will continue to monitor the status of lead rules under the TSCA framework.

## Building Codes

### 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 2021 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. Special emphasis is being placed on fires in both existing and new apartments because of the recent fires that have gotten special attention.

**What We Are Doing:** Participating and serving on committees in the codes and standards development activities of the International Code Council, National Fire Protection Association, and ASHRAE. We also work with other organizations with like interests, including the National Association of Home Builders, the American Institute of Architects and the Building Owners and Managers Association. In addition, we craft code proposals, develop commentary and serve as a resource on code issues for our members.

Of note, the issue of fires in both new and existing apartments is of special concern. The massive news coverage of the various fires in apartments has made the issue a major concern to everyone involved in code and standards development with several proposals coming forward in 2016 to address the issue. Many of the proposals if adopted would have been very detrimental to the development and construction of apartments. To counter the onslaught of proposals, we have developed a proposal in partnership with our members to directly address the fire issue by emphasizing changes to the codes, but limiting the impact on construction. Our proposal was supported by code and fire officials nationwide, as well as the ICC Fire Code Action Committee, and it was approved for inclusion in the 2018 ICC Codes.

The issue of fires in apartments will continue to be a major issue in 2017-2020. Ideas and additional changes, in addition to the one supported by the industry and approved for the 2018 codes, are already coming forward for discussion and consideration for changes in the 2021 codes.

## Regulatory Reform

**Why It Matters:** At a time when the multifamily industry is facing increasing pressure to meet booming demand, an overly burdensome regulatory infrastructure is forcing financiers, developers and operators to manage numerous compliance hurdles and rising costs. The industry, and particularly apartment owners and developers, must balance a wide array of concerns regarding project viability, regulatory cost and compliance at all levels of government. Existing federal regulations from a wide range of federal agencies including HUD, EPA, DOL, OSHA and DOE contribute to making housing less economically feasible to develop. While well-intentioned in nature, some regulations have negatively impacted the development and management of multifamily housing at a time when our industry strives tirelessly to address the shortage of housing for American families. Regulations should have demonstrable benefits that justify the cost of compliance and that federal agencies should be aware that broad-stroke regulations often have disproportionate effects on industries that serve as key drivers of our economy.

**What We Are Doing:** Continuing to advocate for regulatory reform. In March, NMHC/NAA sent a [letter](#) to President Trump highlighting some of the specific federal regulations that slow or prevent development of housing that is affordable, challenge otherwise legitimate business practices designed to ensure safe and decent housing for residents, decrease access to capital and make it difficult to transfer family-owned businesses from one generation to another. We are urging the Administration and leaders in Congress to provide guidance or clarity, repeal or reform and provide on inefficient or outdated rules and regulations to encourage economic growth, spur job creation and further expand housing for all Americans.

## NMHC Legislative and Regulatory Team

**Cindy Chetti**, Senior Vice President, Government Affairs  
**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  
**Lisa Costello**, Vice President, Political Affairs  
**Kevin Donnelly**, Vice President, Government Affairs  
**Eileen Lee**, Vice President, Energy and Environmental Policy  
**Ron Nickson**, Vice President, Building Codes  
**Kimble Ratliff**, Senior Director, Government Affairs  
**Julianne Goodfellow**, Director, Government Affairs  
**Hailey Ray**, Manager, NMHC PAC  
**Connor Dunn**, Associate, Government Affairs

## Communications and Industry Initiatives Staff

**Kim Duty**, Senior Vice President, Public Affairs and Industry Initiatives  
**Rick Haughey**, Vice President, Industry Technology Initiatives  
**Jim Lapidés**, Vice President, Strategic Communications  
**Sarah Yaussi**, Vice President, Industry Communications  
**Alison Johnson**, Director, Programming  
**Colin Dunn**, Director, Policy and Advocacy Communications  
**Devin Bartley**, Associate Director, Web and Digital Communications  
**Ashley Moghari**, Manager, Marketing and Communications Projects  
**Racquel Madlala**, Associate, Communications