

March 9, 2017

The Honorable Donald J. Trump
President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC

Dear President Trump:

We are writing on behalf of the members of the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) who represent the \$1.3 trillion apartment industry and its nearly 39 million residents. We applaud your efforts to overhaul the federal regulatory landscape and reduce the burdens felt by American businesses of all types in complying with a profusion of unnecessarily costly and complex regulations. We believe that some federal regulations strayed from their intended purpose and instead stifled innovation and hampered economic growth at a time when our nation continues to recover from the worst recession since the Great Depression.

The multifamily sector is under increasing pressure to meet booming demand across the country. Experts believe this trend will continue, if not increase, due to a host of factors including demographic change and evolving consumer preferences. Our 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. While many regulatory hurdles and costs, such as impact fees, continual environmental reviews and antiquated zoning processes, are within the purview of state and local policymakers, there are a wide array of existing federal regulations that contribute to making housing less economically feasible to develop.

We believe that regulations must 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. Excessive regulation and compliance uncertainty result in costly mandates that divert resources from the production and operation of multifamily housing. The apartment industry faces a flood of regulations from a wide range of federal agencies including the Department of Housing and Urban Development (HUD), the Environmental Protection Agency (EPA), Department of Labor (DOL), Occupational Safety and Health Administration (OSHA), and the Department of Energy (DOE).

Given your great interest in removing regulatory barriers to development and growth, NMHC/NAA would like to highlight 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. The regulations outlined in the attached document, while well-intentioned in nature, have negatively impacted the development and management of multifamily housing at a time when our industry strives

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tirelessly to address the shortage of housing for American families. We urge the Administration to pursue reforms or rescind these regulations.

We appreciate the opportunity to share the multifamily housing industry's view on the importance of regulatory reform. We look forward to working with you and your Administration towards our shared goal of building housing that is affordable to more Americans and spurring continued economic growth across the country. Please call upon us if we can serve as a resource to you in this regard.

Sincerely,



Douglas M. Bibby
President
National Multifamily Housing Council



Robert Pinnegar
President & CEO
National Apartment Association

Attachment (1)

cc: The Honorable Michael Pence, Vice President
The Honorable Gary Cohn, Director, National Economic Council
The Honorable Mick Mulvaney, Director, Office of Management and Budget

NMHC/NAA Regulatory Relief Priorities by Agency

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

REGULATION	REGULATORY BURDEN FOR THE APARTMENT INDUSTRY
Federal Flood Risk Management Standard	In response to President Obama’s Executive Order 13690, HUD has proposed a rule to expand its floodplain management oversight to increase disaster preparedness and flood resiliency of federally funded buildings and projects. Under the proposal, multifamily builders would face new, costlier elevation requirements if funding is derived from a HUD grant program (HOME, CDBG) or when using Federal Housing Administration (FHA) mortgage insurance for new construction or substantial rehabilitation projects. The rule will increase construction costs and threaten access to FHA mortgage insurance programs for multifamily builders in an already tight credit market.
Fair Housing Rules	<p>Including: Disparate Impact Rule, Quid Pro Quo Rule, Resident Criminal History Screening Guidance, Limited English Proficiency Guidance, Local Nuisance Ordinance Guidance and Occupancy Memoranda</p> <p>During the Obama Administration, HUD actively expanded fair housing compliance and enforcement efforts. Their regulations and guidance documents reinforce an interpretation of disparate impact that conflicts with recent Supreme Court precedent and creates uncertainty for housing providers. HUD has also asserted new criteria for familial status and occupancy compliance that is contrary to long-held practices.</p>
Affirmatively Furthering Fair Housing Rule	As it is currently written, the Affirmatively Furthering Fair Housing proposal’s broad mission to desegregate communities by combating exclusionary zoning and other practices deemed discriminatory could indirectly affect the multifamily industry. Specifically, the proposal could lead to delays in construction and permitting decisions. These types of disruptions may aggravate the housing market’s already short supply of apartments.
Small Area Fair Market Rents (SAFMRs)	The Section 8 Housing Choice Voucher Program provides subsidized rents for qualifying low-income families. The program uses HUD-determined Fair Market Rents (FMRs) to establish maximum allowable rents the government will pay to a private apartment owner who rents to a voucher holder. The final rule implementing Small Area Fair Market Rents establishes rent rates by ZIP Code.

<p>Energy Benchmarking</p>	<p>HUD issued a proposed regulation that would require every FHA multifamily loan to track and submit energy benchmarking data through EPA’s ENERGYSTAR Portfolio Manager. The proposed regulation would be an administrative burden for owners and drive up their servicing costs. In many cases the information is not available and owners could be restricted from borrowing from HUD if the data is not reported.</p>
<p>Service and Assistance Animal Guidance</p>	<p>The Fair Housing Act permits persons with disabilities who require an emotional support animal – also known as companion animal – to request a reasonable accommodation for the animal from their rental housing provider. Federal regulations allow for a broad range of individuals to provide the verification of this need. However, a lack of clarity in the regulations enables abuse. In fact, the individual certifying the resident’s need for an emotional support animal is not required to have an established treatment relationship with the resident. In some cases, residents supply documentation to property owners in the form of a letter purchased online that reflects little or no contact with a mental health professional and not as the result of a treatment relationship.</p>

ENVIRONMENTAL PROTECTION AGENCY

REGULATION	REGULATORY BURDEN FOR THE APARTMENT INDUSTRY
<p>Lead Hazards in Public and Commercial Buildings Rule</p>	<p>EPA has failed to conduct any targeted research on lead hazards in public and commercial buildings, but has proposed a rule to expand lead-based paint regulations that apply to certain residential properties in public and commercial buildings. 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 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.</p>

BANK REGULATORS

REGULATION	REGULATORY BURDEN FOR THE APARTMENT INDUSTRY
<p>Bank Capital Standards: Dodd-Frank and Basel III Regulations</p>	<p>Dodd-Frank and Basel III have produced a number of effective regulations to boost bank capital and reduce bank and systemic risk. There has not been an effort by any regulator to evaluate the interaction between these two bodies, and as a result, some of the regulations are redundant and conflicting, resulting in constrained capital for banks.</p>
<p>Annual Production Caps on Government Sponsored Entity Multifamily Programs</p>	<p>Federal Housing Finance Agency (FHFA) imposes an annual production cap on the Government Sponsored Entity (GSE) multifamily business that could reduce the availability of debt capital needed by the market.</p>
<p>High Volatility Commercial Real Estate (HVCRE) Standards</p>	<p>Basel III capital standards increased the capital that banks have to hold for certain acquisition, development and construction loans, making them costlier and decreasing availability. This rule applies to every bank, no matter the size. Consequently, it has had an impact on the availability of construction loans during 2016.</p>
<p>Risk Retention Rules and Standards</p>	<p>Federal regulators have produced a number of regulations and standards during the previous Administration that could potentially constrain capital flows to the multifamily 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.</p>
<p>Community Reinvestment Act Rules</p>	<p>The Community Reinvestment Act (CRA) was created to ensure that banks are serving the borrowing needs of all the communities within which they operate. The areas that CRA guidelines serve and the borrower demand for the types of loans that meet the guidelines often do not address the needs of the banks. Due to unclear regulations, banks are highly conservative in their analysis of what is eligible, thereby reducing the availability of loans to borrowers in areas that do not qualify for CRA credit.</p>

DEPARTMENT OF LABOR

REGULATION	REGULATORY BURDEN FOR THE APARTMENT INDUSTRY
<p>Labor Department Overtime Rule</p>	<p>The Department of Labor (DOL) final rule increases the salary threshold for workers who are entitled to overtime pay protections under the Fair Labor Standards Act. Multifamily and other industry workers would be impacted because overtime pay would be determined solely on falling below the threshold. 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.</p>
<p>Davis-Bacon Rules</p>	<p>Construction wages on loans backed by the Federal Government are determined by Davis-Bacon rules. The DOL methodology of determining these so-called prevailing wages suffers from structural defects related to the availability of data. For example, the methodology frequently produces wage rates that exceed prevailing market-based wages, which only exacerbates the cost of developing multifamily housing.</p>

NATIONAL LABOR RELATIONS BOARD

REGULATION	REGULATORY BURDEN FOR THE APARTMENT INDUSTRY
<p>NLRB Joint Employer Ruling</p>	<p>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 that 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.</p>

DEPARTMENT OF ENERGY

REGULATION	REGULATORY BURDEN FOR THE APARTMENT INDUSTRY
Furnace Rule	The DOE issued a final rule establishing performance requirements for residential gas furnaces. The standard makes no provision for the technical limitations posed by the code-mandated venting requirements for the ultra-efficient equipment. This rule disproportionately affects older properties that will be unable to replace aging gas furnaces. Moreover, in establishing a nationwide, one size fits all standard, DOE failed to properly consider the cost impact of the rule on the nation’s climate zones and include options for manufacturers to produce equipment that addresses the retrofit market.

INTERNAL REVENUE SERVICE

REGULATION	REGULATORY BURDEN FOR THE APARTMENT INDUSTRY
Family-Owned Business Estate Tax Regulations	Proposed estate tax regulations would target intra-family transfers and valuation discounts that result from lapsing rights and restrictions on liquidations. The regulations would limit valuation discounts – resulting in greater estate tax liability for closely held family businesses, as well as imposing new risks on the continuity of family-owned real estate businesses. In addition to threatening the transfer of family-owned businesses from one generation to the next, the new regulations would impair the job creation and economic growth driven by these businesses.