

Reg Reform Tracking Chart

Category/Government Agency	Regulation	Background	What the industry is doing?	Status (9/2017)	Next Steps
Department of Housing & Urban Development	Federal Flood Risk Management Standard	In response to President Obama's Executive Order 13690, the Department of Housing and Urban Development (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 FHA mortgage insurance for new construction or substantial rehabilitation projects. The rule will increase construction costs and threatens access to FHA mortgage insurance programs for multifamily builders in an already tight credit market.	NMHC/NAA submitted official comments to HUD and requested withdrawal of this flawed rule. NMHC/NAA are also continuing to pursue a legislative/appropriations strategy as well. This rule falls under the White House memorandum that imposes a 60-day review and delay of all regulations moving forward, pending review by the Administration.	President Trump issued an Executive Order that rescinded this proposed rule. This move was undertaken as part of a larger effort by the Administration to streamline the permitting process for infrastructure projects.	In the wake of Hurricanes Harvey, Irma, and Maria much attention has been paid to building resiliency and there is a chance that the Trump Administration may look to revisit this issue.
Department of Housing & Urban Development	Fair Housing Rules and Guidance Including the Disparate Impact Rule, Quid Pro Quo Rule, Resident Criminal History Screening Guidance, Limited English Proficiency Guidance, Local Nuisance Ordinance Guidance and Occupancy Memoranda	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.	While enforcement efforts are influenced by agency regulation and guidance, fair housing complaints from private individuals and advocacy groups are not restrained by such regulation or their amendment or repeal. However, we will continue to pursue efforts to reconcile recent Supreme Court precedent with HUD rules to promote consistency in agency enforcement and actual legal outcomes. In addition, we will seek to realign current HUD compliance efforts with established industry practice.	New Assistant Secretary for Fair Housing was sworn in mid-August. NMHC/NAA have finalized our latest fair housing white paper, explaining the final Obama disparate impact policies and legal outcomes. In addition, we continue to work with the Administration on Quid Pro Quo Rule, Resident Criminal History Screening Guidance, Limited English Proficiency Guidance, Local Nuisance Ordinance Guidance and Occupancy Memoranda.	Meet with and/or send information letter to new HUD personnel outlining fair housing concerns. Provide background and resources on industry fair housing challenges.
Department of Housing & Urban Development	Affirmatively Furthering Fair Housing Rule	As it is currently written, the Affirmatively Furthering Fair Housing (AFFH) 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.	NMHC/NAA are pursuing a legislative solution and are encouraging the Administration to implement, adjust, or reprioritize AFFH and the assessment tool.	Affirmatively Furthering Fair Housing Rule remains in place.	Continue to work with Congress and the Administration to implement, adjust, or reprioritize AFFH and the assessment tool.

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Department of Housing & Urban Development	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 (SAFMR) establishes rent rates by ZIP Code.	NMHC/NAA and the real estate industry oppose the use of SAFMRs/ZIP codes as a substitute for real estate markets in setting rents. While there is no perfect solution to establish FMRs, we continue to work with HUD to refine the methodology so it takes into account real estate markets.	Final rule has been suspended for two years (except for the Dallas-Plano-Irving Metro Division), with additional research being completed.	Continue to work with HUD in reviewing the research aspects of the proposal.
Department of Housing & Urban Development	Energy Benchmarking	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, 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.	NMHC/NAA met with HUD to discuss our concerns and issued a comment letter outlining our concerns about the scope, timing and financial impact of implementing the regulation. This rule falls under the White House memorandum that imposes a 60-day review and delay of all regulations moving forward, pending review by the Administration.	The mandatory reporting energy benchmarking requirement has been suspended for HUD assisted properties and is voluntary for those properties using green MIP.	NMHC/NAA will continue to oppose efforts to impliment man- datory benchmarking requirements and stress the administrataive burden and additional costs it would pose for the industry.
Department of Housing & Urban Development	Service and Assistance Animal Guidance	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.	NMHC/NAA are urging HUD to revise notice FHEO-2013-01 issued on April 25, 2013, regarding Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs to mitigate abuse. We are also building support from other advocacy organizations who share our views on this issue. The goal is to ensure that the benefit of a reasonable accommodation applies only to those individuals with a disability.	HUD fair housing staff generally support guidance to mitigate abuse, but still working towards a solution. Also, continuing to review NAA/NMHC emotional support animal toolkit.	Meet with new DAS for Fair Housing to discuss this issue in addition to other Fair Housing concerns.

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Environmental Protection Agency	Waters of the U.S. Rule	The Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) have issued a rule intended to clarify the scope of the waters regulated under the federal Clean Water Act. This far-reaching "Waters of the U.S." (WOTUS) rule would significantly increase the costs and time associated with permitting requirements, provide greater opportunities for citizen lawsuits and essentially federalize local land use planning.	The Trump Administration issued an Executive Order requiring EPA to re-write the WOTUS rule. The EPA administrator has signed a directive implementing the Executive Order to repeal the current rule and develop a replacement. Congress is expected to consider draft measures that would more narrowly define the term "Waters of the U.S." later this spring. NMHC/NAA will continue to aggressively advocate for a Clean Water Act that protects private property rights and the quality of the nation's waters.	Submitted coalition comment letter to EPA notice of proposed repeal of WOTUS and recodification of preexisting rules.	ongoing meetings with Members of Congress and work with technical experts to guide communications with Administration.
Environmental Protection Agency	Lead Hazards in Public and Commercial Buildings Rule	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 the Occupational Safety and Health Administration's (OSHA) 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.	NMHC/NAA have joined other groups representing affected property owners in objecting to a potential rule that was not based on science and a thorough understanding of the relationship between lead dust in a building due to external environmental sources and the relationship to elevated blood lead levels in children. Until EPA conducts foundational studies on the extent of potential contamination in these properties and the exposure route for children under six years of age and issues a thorough cost and benefit analysis, this rule should not be issued.	EPA has not issued any additional notices on this rulemaking.	EPA has to come out with proposal in order for us to do anything more at this point.
Department of Energy	Furnace Rule	The Department of Energy (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.	NMHC/NAA submitted comments to DOE expressing concern about disproportionate impact on older properties. We successfully included language to address the furnace rule in energy legislation last year however, the bill was not signed into law. We are now advocating for DOE to vacate the rule and reconvene a stakeholder group to develop a workable, cost effective and technically feasible furnace rule based on an accurate and complete dataset.	Submitted stakeholder request for interpretation of efficiency rule to DOE seeking clarification of disparate standards for gas-fueled furnaces.	DOE has to act on our ask for interpretation. If they don't, we will have to consider whether to go to next step of filing legal petition

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Bank Regulators	Bank Capital Standards - Dodd Frank and Basel III Regulations	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.	With the new Administration, there is an opportunity to request a study to determine the impact of these regulations and request changes to certain enacted or proposed rules.	There has been no change to Dodd-Frank and Basel III regulations.	NMHC/NAA will continue to work with real estate coalition to get changes made that ensure continued capital flow to the multifamily industry.
Bank Regulators	Annual Production Caps on Government Sponsored Entity Multifamily Programs	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.	NMHC/NAA have worked with FHFA to ensure the annual GSE production cap accurately represents the size of the market and does not constrain the borrowing needs of multifamily businesses. NMHC/NAA have also provided guidance and successfully had comments on small loans, energy efficiency and allowing the GSEs on a limited basis to purchase tax credit equity incorporated into the proposed Duty to Serve rules issued by FHFA.	Changes to the determination of loans exempt from the cap have been successful in alleviating constraints in providing debt for the industry.	NMHC/NAA will continue to work with FHFA to ensure regulators analyze the scope and size of the market to ensure that there continues to be an adequate flow of capital for the multifamily industry and to be engaged in GSE reform debate
Bank Regulators	High Volatility Commercial Real Estate (HVCRE) Standards	Basel III capital standards increased the capital which banks have to hold for certain acquisition, development and construction loans, making them more costly 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.	NMHC/NAA is working with a cross industry group to request bank regulators to modify certain provisions of the existing rule.	A bill will be introduced that will clarify the existing rule and to incorporate certain modifications.	NMHC/NAA will continue working with other real estate partners to request bank regulators to modify the existing HVCRE rule shortcomings.
Bank Regulators	Risk Retention Rules and Standards	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.	NMHC/NAA originally worked with regulators to reduce risk retention levels from 10% to 5% for commercial mortgage-backed securities (CMBS) securitizations. More recently NMHC/NAA has worked with industry partners to examine the impact of other bank regulations.	NMHC/NAA supported a letter asking for greater clarity of and relief from parts of the Volcker rule	Continue working with real estate partners to address legislation that will remove complexity in the interpretation and implementation of banking regulations.
Bank Regulators	Community Reinvestment Act Rules	The Community Reinvestment Act (CRA) was created to ensure that banks are serving the borrowing needs within all the communities they operate within. The areas that CRA guidelines serve and the borrower demand for the types of loans that meet the guidelines often do not meet 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.	NMHC/NAA issued a letter requesting clarification of the rules and will be seeking expansion of eligibility to cover a broader range of affordable loans.	There has been no change to CRA rules	NMHC/NAA plans to continue working with other real estate groups seeking clarification of the rules and expansion of eligibility to cover broader range of affordable loans.

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Department of Labor	Labor Department Overtime Rule	The Department of Labor (DOL) final rule increases 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 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.	A federal judge in August 2017 overturned the rule. The DOL has also put out a Request for Information asking for input about how a possible new rule should be written.	A federal judge in August 2017 overturned the rule. The DOL has also put out a Request for Information asking for input about how a possible new rule should be written.	We are awaiting further DOL action and a new rulemaking that it make take after reviewing responses to its Request for Information.
Department of Labor	Davis-Bacon Rules	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.	NMHC/NAA are working to improve the wage determination. Along with industry partners, we have worked with HUD to shorten the timing of the determination of the applicable wages. NMHC/NAA have requested that HUD and the DOL reexamine and modify the methodology for wage rates. We have also urged the House of Representatives to review these concerns in testimony on "The Future of Housing in America: Government Regulations and the High Cost of Housing."	NMHC and industry partners recently met with HUD to discuss issues with split wage determination and timing of wage determination. HUD is now taking a more active role in working to address these issues.	NMHC/NAA will reach out to DOL to discuss issues with wage determination and split wage determination based on recommendatiton from HUD.
National Labor Relations Board	NLRB Joint Employer 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.	NMHC/NAA are urging congress to legislatively overturn the National Labor Relation Board's (NLRB) joint employer standard and revert back to the joint employer standard that was in effect prior to the Browning-Ferries Industries ruling.	The House of Representatives passed a rider to its version of omnibus FY2019 appropriations legislation to deny funding to enforce the joint employer rule. Free-standing legislation (HR 3441) has also been introduced to overturn the rule.	Support legislative solution.

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IRS	Family-Owned Business Estate Tax Regulations	<p>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.</p>	<p>NMHC/NAA and a coalition of real estate groups have asked the Treasury Department to withdraw these burdensome proposed regulations regarding the valuation of interests in family-owned businesses for estate and gift tax purposes. This rule falls under the White House memorandum that imposes a 60-day review and delay of all regulations moving forward, pending re-view by the Administration.</p>	<p>Treasury/IRS have withdrawn this proposal.</p>	<p>Awaiting Treasury's decision on how to handle the rule</p>
IRS	Partnership Audit Rules	<p>The Internal Revenue Service (IRS) on June 13, 2017, re-released proposed regulations that would overhaul how partnerships are audited. Currently, the IRS generally holds individuals within a partnership responsible for their share of tax liability. Effective for taxable years beginning after December 31, 2017, the proposed rules would instead mandate that a partnership be audited at the entity, not the individual, level. Therefore, the partnership would be responsible for any additional taxes. Partnerships will be required to designate a representative to represent the entity before the IRS.</p> <p>Notably, the proposed regulations provide an option that would allow partnerships to remit amended K-1s to the individual partners instead of paying tax at the partnership level. Unfortunately, the regulations do not fully address the issue of enabling a partner that is itself a partnership to push through adjustments to its own individual partners. NMHC/NAA are working to resolve this issue so that there are no cases in which one multifamily partner becomes liable for another partner's tax obligations. Noting its concerns about allowing such push outs through multiple partnership tiers, the IRS said it is considering approaches on how to address this issue that will be the subject of regulations to be proposed in the near future.</p>	<p>NMHC/NAA submitted a regulatory comment letter asking the IRS to address the partnership "push out" issue.</p>	<p>The IRS is considering issuing new regulations to address the push out issue.</p>	<p>We are awaiting further IRS action and will evaluate such action when it occurs.</p>