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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 industries;



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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 are also working with our industry partners to commission key studies on the vital role that like-kind exchanges and economically viable depreciation schedules play in developing and maintaining commercial real estate.

## **TAX EXTENDERS**

**Why It Matters:** Several dozen tax provisions of interest to the apartment industry expired at the end of 2013. These include: the extension of 50 percent bonus depreciation; enhanced small business expensing; the flat 9-percent Low-Income Housing Tax Credit; the deduction for energy efficient commercial buildings; the new energy efficient home credit; and the New Markets Tax Credit. The last Congress passed a bill extending them retroactively through 2014 in its last days; however, they are no longer in effect in 2015. As a result, Congress will have to once again revisit these now-expired provisions in 2015.

**What We Are Doing:** Calling on lawmakers to permanently extend these provisions.

## **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. Reforming FIRPTA 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 reform FIRPTA to promote foreign investment in the U.S. multifamily industry and meet the growing demand for rental housing.

## **LOW-INCOME HOUSING TAX CREDIT (LIHTC)**

**Why It Matters:** LIHTC is the only federal program to help subsidize the production of privately operated affordable housing. It has financed nearly 2.8 million units since its inception in 1986. While it generally operates effectively, some key reforms could further improve the program. Notably, the rate for the tax credit was fixed at 9 percent for new construction through the end of 2014. Upon expiration, the credit moved to a floating rate system, which in low-interest rate environments significantly reduces its value below 9 percent.

**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: making permanent the flat 9 percent credit rate and extending the same treatment to the 4 percent credit rate for acquisitions; and allowing "income averaging" to make the program more flexible and allow for more mixed-income housing.

## Finance and 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. We were successful in getting an NMHC/NAA supported multifamily-specific proposal included in the primary GSE legislation considered in the last Congress, the Johnson-Crapo bill, and the Carney-Delaney-Himes bill introduced in the House this year. 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 recently and are considering more that could potentially constrain capital flows to the sector. Among those are updated 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. Basel III began phasing in for larger banks in 2014 and will begin for the broader lending community in January 2015. In addition, high-volatility commercial real estate loan treatment changes went into effect on January 1, 2015, and Dodd-Frank risk-retention rules impacting securitization are scheduled for implementation on December 31, 2016.

**What We Are Doing:** Monitoring the rulemaking process by regulators to keep members apprised of coming changes. We are also communicating concerns to Congress and the Administration in order to educate them on the potentially negative consequences of misapplied regulations, including punitive increases in cost for multifamily debt.

### HIGH VOLATILITY COMMERCIAL REAL ESTATE LOAN

**Why It Matters:** Bank regulators have produced a number of regulations and standards recently and are considering more that could potentially constrain capital flows to the sector. Basel III capital standards for acquisition, development and construction loans went into effect on January 1, 2015. The regulations were unclear in many areas and the regulators issued guidelines in an FAQ in April 2015. There are still a number of critical areas left unaddressed that can potentially constrain or raise the cost of these loans. In addition, this set of rules applies to every bank, no matter the size, which could have a far reaching impact.

**What We Are Doing:** Working with a number of industry groups to seek better clarity on interpretation of the rules and provide rational relief to several of the provisions within the rules that constrain the capital contribution from borrowers. We are communicating our concerns to Congress and the regulators who issued the rule.



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## FOREIGN CAPITAL INVESTMENT

**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 FIRPTA legislation (refer to Tax Policy section) and reforms to improve and expand the EB-5 Investor Visa Program.

## 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. In addition, we have worked with FHA during their MAP Guide update to ensure changes benefit the borrowers and improve program execution.

## **Business and Property Operations**

### DATA SECURITY

**Why It Matters:** Multifamily firms and their third party service providers collect and maintain sensitive personally identifiable information including Social Security Numbers and 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 and 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



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states and the District of Columbia. Congress is considering legislation to encourage voluntary information sharing related to cyber threats between and within the private sector and the federal government. Such measures would create a framework that provides liability and antitrust protections for participating entities.

**What We Are Doing:** Supporting efforts by Congress and the Administration to create mechanisms for the private sector and Federal Government to share information about possible cyber intrusions. Advocating for reasonable data security standards and data breach notification requirements for multifamily firms while protecting consumers, our networks and our industry.

## 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.

## 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. Inadequate, unreliable service significantly impacts residents and 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 residents, including a potential rewrite of the nation's primary telecommunications law governing video, telephone and broadband, cellular service, net neutrality, provider consolidation, emergency communication standards, and more.

**What We Are Doing:** Educating policymakers about the growing need for reliable telecom and cable service for apartment operations and resident satisfaction, as well as the industry's interest in policies affecting broadband deployment 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.



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**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.

### 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, dramatically reducing 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.

### FLOOD INSURANCE

**Why It Matters:** The National Flood Insurance Program (NFIP) was reauthorized by Congress in 2012. The reauthorization included many reforms to the program to ensure its long term solvency. Of particular note was a provision that allows for higher coverage limits available to multifamily buildings covered under NFIP policies. The maximum NFIP policy coverage limit available for multifamily buildings increased from \$250,000 to \$500,000 per building. This increase is very positive for borrowers because it will be easier to comply with industry flood insurance requirements when securing project financing.

**What We Are Doing:** Monitoring implementation of the National Flood Insurance Program to ensure the program remains viable for the multifamily industry over the long-term. Additionally, we have commented on a proposed regulation by the Obama Administration to establish a Federal Flood Risk Management Standard that we believe could impact the development of new multifamily projects in a federally designated floodplain when using federally backed or insured financing programs such as FHA or the GSEs.

## Housing Policy

### 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 the reach of HUD’s 2013 disparate impact rule, including requesting regulatory clarification from HUD on specific lawful practices. We also submitted





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a “friend of the court” brief in a pivotal U.S. Supreme Court case, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*.

While the High Court upheld the validity of disparate impact liability under the Fair Housing Act in its final ruling on June 2015, the ruling offers some limitations on the theory that may prove helpful to businesses facing these types of actions. Nearly 500 participants tuned-in for the NMHC/NAA sponsored webinar in July 2015 on this recent decision and its potential impact on the industry. We continue to follow this issue closely and explore both legislative and legal remedies to help apartment firms avoid disparate impact claims.

## **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:** We are working to prevent potential rental payment losses by intervening when related budget cuts are proposed. We are also seeking reforms to modernize and streamline the program to better attract private sector participation and encourage 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.

Representing a success for NMHC/NAA, the House approved the “Tenant Income Verification Relief Act of 2015” in March 2015. The legislation significantly reduces administrative burdens by allowing for the recertification of incomes every three years, instead of annually, for residents on fixed incomes. We continue to promote reforms to the program regarding property inspections, tenant screening and reliable funding to avoid payment interruptions for property owners.

## **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:** NMHC/NAA are concerned with HUD’s action to move to a SAFMRs system, which establishes rent rates by ZIP Code. The SAFMR system remains unvetted, less flexible and less reflective of housing providers' needs for participation in assisted housing programs.

## **U.S. CENSUS BUREAU’S AMERICAN COMMUNITY SURVEY**

**Why It Matters:** The U.S. Census Bureau’s American Committee 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. As Congress continues to debate the



FY 2016 federal budget, funding of the ACS is still in jeopardy. 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:** NMHC/NAA are urging lawmakers to fund ACS, along with testing for the 2020 survey. We co-sponsored a congressional staff briefing where various economists and researchers highlighted concerns about potential funding short falls. In addition, we have submitted numerous letters with a broad coalition to the full Congress expressing our concern over the proposed deep cuts.

### **BASIC ALLOWANCE FOR HOUSING (BAH)**

**Why It Matters:** One million service members rely on their 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. Various federal proposals are seeking to significantly reduce 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 harmful provisions in the House. We are encouraging the Senate to adopt the House's position that fully preserves military housing benefits.

## **Energy and Environment**

### **ENERGY POLICY**

**Why It Matters:** Energy efficient multifamily buildings reduce energy consumption costs for apartment owners and residents and further the goal of national energy independence. Arbitrary energy performance standards negatively impact the industry. Policymakers are undertaking a number of efforts that have the potential to impose burdensome energy code mandates on apartment firms. Existing incentives are also insufficient to fully support efforts to improve the efficiency of the nation's existing housing stock. In addition, apartment firms now benefit from a new ENERGY STAR rating for multifamily, which NMHC/NAA helped develop and launch. However, they are blocked from participating in the program because they cannot get whole property energy consumption data from the utilities.

**What We Are Doing:** Pushing back on burdensome energy code mandates, promoting building energy research and working to help property owners access their energy consumption data. We are also spearheading an effort that raises awareness of expiring energy efficiency tax measures that encourage energy efficient new construction and rehabilitation of older properties. We also continue to work with HUD, EPA and the Department of Energy to expand opportunities that will assist property owners in improving building energy performance. We continue to focus on growing the ENERGY STAR rating for multifamily.



## CLEAN WATER ACT

**Why It Matters:** 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.” 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.

**What We Are Doing:** Pursuing an aggressive advocacy strategy before Congress, the Administration and with state and local policymakers on the impact of the overly broad approach outlined by federal regulators in the rule.

NMHC/NAA filed detailed comments in the course of the rulemaking argued against including ditches, and other conveyances that are federally regulated parts of Municipal Separate Storm Sewer Systems, as “Waters of the U.S.” We met with federal regulators and the Office of Management and Budget to express concerns regarding the impact of the rule on the apartment industry specifically, the treatment of certain storm water-retention features and development delays associated with expanded permitting requirements. Although EPA stated it would clarify that this was not intended, the final rule does not satisfy NMHC/NAA concerns. Lawsuits have been filed by 31 states and a number of groups representing a cross section of economic interests seeking relief from the rule that takes effect on August 28. These challenges will shape the implementation of the rule. Legislation is pending in the Senate that would require EPA and the Corps to re-draft the rule; the House has passed companion legislation.

## LEAD-BASED PAINT

**Why It Matters:** In 1993, Congress directed 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 disclosure and mitigation regulations for more than 20 years. The EPA proposal would require apartments built after 1978 to comply with lead-based paint regulations even though EPA has failed to demonstrate that these properties contain lead paint or pose a lead-hazard. Moreover, the Occupational Safety and Health Administration’s Lead in Construction Standard applies to the disturbance of lead on all properties – regardless of the age of or type of the building.

**What We Are Doing:** NMHC/NAA have filed 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. EPA recently announced that it is unable to meet a court-ordered deadline to issue a regulatory determination regarding whether and how to regulate public and commercial buildings. We will continue to work with lawmakers to ensure that sound science is the basis for any regulation.

## Employment and Immigration

### CRIMINAL BACKGROUND CHECKS

**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 37 million renters.

### IMMIGRATION REFORM

**Why It Matters:** One in five renter households is headed by an immigrant, and immigrants include 22 percent of the construction workforce, making reform a critical issue for the multifamily industry. Pressure is mounting for Congress to enact comprehensive reform. In the absence of congressional action, state and local governments have approved numerous immigration related measures, creating a burdensome patchwork of compliance obligations for apartment companies. Rental apartment firms are particularly concerned about those laws that would hold them responsible for the immigration status of apartment residents and impose various additional employment-related mandates beyond federal requirements.

**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.

## Construction and Development

### 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 2018 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.

**What We Are Doing:** Serving as members of the code and standard development committees, collaborating with the development bodies to craft code proposals, representing the multifamily sector at



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code hearings, developing code commentary, and serving as a resource for the code- and standard-making organizations.

## **SUSTAINABILITY**

**Why It Matters:** Apartment properties face significant challenges as federal, state and local governments undertake sustainability initiatives and look to incorporate green building and building performance mandates into building codes and federal program requirements. These efforts must address the specific needs of multifamily occupancies, including the continued affordability and availability of new 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. Where building codes, federal initiatives and other sustainability efforts seek to establish performance benchmarks for apartment properties, we advocate for the use of the National Green Building Standard.

## **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.



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