

## Government Affairs Legislative & Regulatory Report October 2013

### CONTINUING RESOLUTION AND DEBT CEILING TO DOMINATE CONGRESSIONAL SCHEDULE

Housing finance and tax reform are front-and-center on NMHC/NAA's legislative agenda, but these issues are unlikely to see final resolution this year. While NMHC/NAA are working to shape the action that is taking place on both these fronts, Congress will be focused on reaching agreement on a budget plan and a debt ceiling extension.

October brought one of the most contentious political debates in recent memory as the federal government shut down for 16 days after Congress failed to reach agreement regarding Fiscal Year 2014 funding prior to October 1. Hours before the government was slated to potentially default on its debt, Majority Leader Harry Reid (D-Nev.) and Minority Leader Mitch McConnell (R-Ky.) reached a compromise to fund the government until January 15, 2014, the date that the next round of sequestration budget cuts take effect. It also extended the debt ceiling to February 7, 2014.

While the debt ceiling crisis was averted, the compromise grants the House and Senate a limited amount of time to resolve significant ideological differences. The agreement requires the conference committee to reconcile proposed House and Senate budgets and submit recommendations by December 13.

Congress does not appear to have the political appetite to make a grand bargain to address longer-term budgetary concerns. Instead, we anticipate a smaller scale compromise that addresses the sequester and the stopgap spending bill. Congress will have to pass a continuing resolution by January 15 to avoid a repeat of the first half of October.

The ongoing budget negotiations and debt ceiling debate will continue to be the focus of congressional activity. However, President Obama has indicated his intention to move forward on immigration reform. While the prospects of reform are not clear, we do anticipate movement on the issue and will continue to advocate a comprehensive approach to reform.

### NMHC/NAA CONTINUES DIALOGUE WITH POLICYMAKERS AND ADMINISTRATION OFFICIALS

#### NMHC/NAA Testify Before Senate Banking Committee

Tom Bozzuto, Chairman and CEO of The Bozzuto Group, represented NMHC/NAA during a [hearing](#) before the Senate Committee on Banking, Housing and Urban Affairs on October 9. The hearing, titled [Housing Finance Reform: Essential Elements of the Multifamily Housing Finance System](#), resulted in

frank dialogue between key industry stakeholders and lawmakers about the challenges of moving forward with government-sponsored enterprises (GSEs) reform to address shortfalls in the single-family mortgage financing system without damaging the well-functioning, \$862 billion multifamily mortgage financing system.



Bozzuto's [testimony](#) highlighted elements of the multifamily finance system that worked well through the last economic cycle—and at no cost to taxpayers—while underscoring the need for a continued federal role in the system even as private capital returns to the sector.

“Private capital should bear the principal risk to protect taxpayers, but history has shown that private capital is unwilling or unable to meet the full financing needs of the multifamily sector, including the \$100 billion in mortgages that need to be refinanced each year,” said Bozzuto.

### **NMHC/NAA Meeting with HUD Secretary Shaun Donovan**

On September 5, NMHC Chairman Tom Bozzuto of the Bozzuto Group, NAA Chairman Alex Jackiw of McKinley and NMHC/NAA member Chris Cobb of Bonaventure Realty Group met with HUD Secretary Shaun Donovan, Federal Housing Agency (FHA) Commissioner Carol Galante and U.S. Department of Housing and Urban Development (HUD) Multifamily Program Deputy Assistant Secretary Ben Metcalf. The meeting was part of a series of industry meetings between administration officials and multifamily leadership from NMHC, NAA, the National Association of Home Builders and the Mortgage Bankers Association.



Tom Bozzuto stressed the need for a separate solution to housing finance reform and the importance of continued federal credit support to maintain mortgage liquidity and to serve as a backstop to sources of debt capital in all markets.

Secretary Donovan emphasized the President's support for rental housing but asserted that the purpose of federal credit should support moderate- and low-income families. He indicated that the Administration is reviewing a number of options on how best to promote multifamily housing affordability. The meeting also covered issues including HUD's reorganization of the multifamily field offices; the need to revisit underwriting and risk management practices implemented over the past five years; and the impact of exhausted credit authority on the processing of FHA multifamily construction and mortgage applications.

### **President Obama's Speech on Housing Finance Reform**

In a sign that NMHC/NAA's outreach efforts to raise the profile of multifamily are succeeding, President Obama explicitly acknowledged the importance of rental housing in a widely covered [speech](#) he gave August 6, in Phoenix, Ariz., on housing and the middle class.

In a [statement](#) issued after the speech, NMHC/NAA noted that “before the housing bubble burst, too often policymakers only thought about homeownership when talking about housing policy.” We also praised the president for making housing a priority in his economic initiative and for calling for an ongoing federal role in housing finance reform.

### **NMHC/NAA Testify Before House Energy and Commerce Subcommittee**

Highlighting the economic strength of the apartment industry, NMHC Chairman Tom Bozzuto, also Chairman and CEO of the Bozzuto Group, on June 4, represented NMHC/NAA before a House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade hearing titled, “[Our Nation of Builders: Home Economics.](#)”

Bozzuto’s testimony focused on many of the takeaways from the NMHC/NAA-commissioned report, [The Trillion Dollar Apartment Industry](#), and drew the connection between job creation, manufacturing and multifamily development.

## **HOUSING FINANCE REFORM**

Congress has started to take a serious look at GSE reform and the fate of Fannie Mae and Freddie Mac. In a party-line vote, Republicans passed the *Protecting American Taxpayers and Homeowners Act* (H.R. 2767, PATH Act) out of the House Financial Services Committee on July 24. The measure, for which floor prospects are currently unclear, would eliminate government guarantees for multifamily and single-family mortgage products, wind down government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac, overhaul the Federal Housing Authority’s (FHA’s) multifamily loan products, delay changes in Basel III bank capital standards and repeal real estate-related portions of the Dodd-Frank Act.

The Senate Committee on Banking Housing and Urban Affairs has begun to hold hearings on housing finance reform. Although legislative action is not imminent, a key group of Senators on the Banking Committee, led by Senators Bob Corker (R-Tenn.) and Mark Warner (D-Va.), introduced the *Housing Finance Reform and Taxpayer Protection Act of 2013* (S. 1217) on June 25, which would wind down Fannie Mae and Freddie Mac over five years, replace them with a single housing finance system that relies more heavily on private capital, and, importantly that retains a limited federal guarantee. It also includes provisions to better protect taxpayers from potential losses. As the Banking Committee moves forward, the Corker-Warner legislation could form the basis of a future bill.

### **Multifamily Housing Finance Reform Coalition Principles**

Joining a diverse group of housing lenders, owners, operators and developers, NMHC/NAA recently helped develop a [coalition document](#) that encourages policymakers to address the needs of the multifamily sector as a fundamental component of any reform of the housing finance system and the activities of the GSEs and also outlines five common principles for multifamily finance reform:

1. The nation’s multifamily finance system should rely on private capital.

2. The federal government is the only entity that can ensure the availability of liquidity in all market cycles.
3. The government should ensure liquidity for multifamily mortgages through a carefully crafted guarantee on multifamily mortgage-backed securities.
4. Taxpayers and the mortgage finance system itself should be protected through a strong regulatory framework and multiple layers of private capital. Policymakers should protect and preserve existing resources, as well as support greater transparency, during the transition to an overhauled housing finance system.

## **PATH Act**

House Financial Services Committee Chairman Jeb Hensarling's (R-Tex.) [PATH Act](#) would drastically change the manner in which capital flows in housing finance markets. More specifically, the legislation would:

- Wind down Fannie and Freddie on a five-year schedule, revoking the existing GSE charters and liquidating all remaining assets.
- Transfer the remaining securitization platforms at the GSEs to a newly created entity, the National Mortgage Market Utility, which would facilitate access to the secondary market for loan originators.
- Charge the new National Mortgage Market Utility with developing "best practices" standards for private origination, data collection, servicing, pooling and securitization of mortgages. Both functions of the utility organization would be regulated by the FHFA.
- Separate FHA from the U.S. Department of Housing and Urban Development (HUD), requiring that it be a self-sustaining, free-standing agency.
- Require FHA multifamily loans to meet occupancy and rent restrictions, including affordability requirements based on area median income.
- Repeal portions of the Dodd-Frank Act related to real estate and capital markets.
- Institute a stay on Basel III capital rules, pending a two-year "stop and study" on the costs, impact and complexity of the rules for lending institutions.

Leading up to the Financial Services Committee's vote, NMHC/NAA sent [two letters](#) to the panel encouraging a number of revisions important to the multifamily sector. A fundamental concern is the fact that the proposal fails to acknowledge and account for critical distinctions between single-family and multifamily finance, leaving the well-functioning multifamily mortgage market vulnerable.

The House Financial Committee has invited NMHC/NAA's input; we are actively engaged in working to ensure that multifamily capital markets are not disrupted. We continue to engage lawmakers to develop more workable solutions for the issues in the PATH Act as the bill moves to the full House for consideration. Given some of the strong opposition to the bill, it's likely some lawmakers will push to have amendments added before the bill goes to a final vote. While the Republican majority was sufficient to move the bill out of committee, it's unclear whether Republicans will have enough votes to win passage in the House.

## **Corker-Warner Housing Finance Reform Bill**

In contrast to the PATH Act, the [Corker-Warner bill](#) recognizes the unique characteristics of the multifamily finance market and takes steps to preserve the current multifamily platforms within the bill's new housing finance system structure.

The bill proposes the creation of a Federal Mortgage Insurance Corporation (FMIC) to oversee the mortgage industry. The FMIC would issue mortgage-backed securities with full or partial federal guarantees. Private capital would be required to take a first loss position, and the FMIC would regulate the lenders and issuers that participate in the FMIC mortgage insurance program. It would also oversee an insurance fund to further protect the taxpayers.

As a result of NMHC's five-year effort to educate lawmakers about the unique needs of our industry, the measure largely reflects the key principles for multifamily finance reform outlined by NMHC/NAA. Specifically, it includes a separate provision that preserves the multifamily lending programs that exist today. It also retains a federal guarantee that is critical to maintaining a high-level of liquidity for the sector.

## **FINANCE & CAPITAL MARKETS**

### **FHFA Director Nomination**

On October 30, NMHC/NAA submitted a [letter](#) to the Senate supporting President Obama's nomination of Representative Mel Watt (D-N.C.) as director of the Federal Housing Finance Agency (FHFA). NMHC/NAA underscored the need for a permanent director of FHFA because continuing uncertainty over the regulatory environment and the future of Fannie Mae and Freddie Mac has led to undue caution in the housing markets and a slowdown of the housing recovery.

### **FHFA Proposal to Reduce GSE Multifamily Lending**

On August 9, Fannie Mae and Freddie Mac's regulator, the FHFA, [announced](#) a request for public input on strategies to further reduce the government-sponsored enterprises' (GSEs') presence in the multifamily housing finance market in 2014. This latest move follows the regulator's March [mandate](#) of a 10 percent reduction in the GSEs' multifamily lending activities this year.

FHFA requested that stakeholders submit their responses to the announcement by October 8. The statement indicated that FHFA is considering:

- Eliminating shorter-term financing options such as five-year loan products;
- Reducing the GSEs' wide range of specialty financing offerings in favor of standardized loan products;
- Imposing multifamily loan limits to reduce higher-balance loans on the GSEs' books and ensure they are ultimately serving lower- and middle-income households; and

- Limiting the GSEs financing activities to loans that only provide new liquidity (versus the purchase of seasoned loans or loan pools), loans that can be securitized or loans for underserved market segments.

Given that FHFA's proposal for further retraction could have serious implications and create unnecessary uncertainty for multifamily finance, on October 8, NMHC/NAA submitted extensive [comments](#) to the FHFA opposing further reduction in Fannie Mae and Freddie Mac's presence in the multifamily housing markets. NMHC/NAA comments noted that, while the industry shares the regulator's desire to see more robust private capital participation in the market, such competition is already happening without arbitrary caps on the GSEs' lending. Fannie Mae and Freddie Mac's share of new multifamily mortgages dropped from 85 percent in 2009 to just 43 percent in 2012 as a result of market dynamics, and indications point to a further drop in 2013. Furthermore, there are market-based or credit risk reasons to justify federal involvement and that FHFA should avoid short circuiting the congressional debate on housing finance reform currently underway.

### **FHA Multifamily Construction Loan and Mortgage Insurance Program**

The recently passed short-term continuing resolution provided FHA with the credit authority to close multifamily loans through January 15, 2014, and possibly beyond. Before the passage of the continuing resolution, FHA had reached the limit of its credit authority, and Congress was unwilling to authorize additional authority. HUD asserts that it now has sufficient authority to respond to the backlog of commitments and to respond to commitment requests that were deferred. In an October 22 memo to Multifamily HUB and field offices, Deputy Assistant Secretary for Multifamily Housing Ben Metcalf instructed staff to review the status of the applications that were submitted prior to the September 17 credit authority expiration. He instructed staff to take new applications on a first-come-first-serve basis and only to grant priority to projects with Low-Income Housing Tax Credits deadlines.

FHA continues with its reorganization of the FHA's multifamily offices and headquarters staff. Currently, they are closing small offices in two phases. Phase one, which provided buyouts and relocations for employees in the offices that were closed, is complete. The offices that were impacted are Springfield, Ill.; Camden, N.J.; Flint and Grand Rapids, Mich.; Cincinnati, Ohio; Shreveport, La.; Dallas and Lubbock, Tex.; and Spokane, Wash. The next phase awaits final negotiations in Region 9 and funding under the continuing budget resolution. The offices in the second phase include Tampa and Orlando, Fla.; Tucson, Ariz.; and San Diego, Fresno and Sacramento, Calif. Applicants impacted by the reorganization should contact the HUB offices that oversee those regions. That information can be found at the [HUD website](#).

## **TAX POLICY**

### **Tax Reform**

While both the House Ways and Means and Senate Finance Committees continue to move forward on tax reform, prospects for legislative action are uncertain. On the House side, Ways and Means Committee Chairman Dave Camp (R-Mich.) continues to meet with Republican members regarding compre-

hensive reform legislation currently being drafted by the panel's staff. His goal is to move legislation that would reduce top corporate and individual tax rates to 25 percent. It is uncertain when legislation will be publicly unveiled or whether House Leadership will give Chairman Camp its blessing to move forward with a markup. Meanwhile, the Senate Finance Committee is said to be assembling proposals for reform for which there is bipartisan consensus. While the Senate Finance Committee may put out discussion drafts regarding international, education and tax administration provisions, it is unlikely to consider legislation prior to the House Ways and Means Committee.

The prognosis for tax reform is unclear as several issues await resolution. Chief among them is the question of whether a reformed tax system should raise additional revenue, given that the American Taxpayer Relief Act, enacted in January 2013, raised \$675 billion in new revenue. It is also uncertain whether policymakers are willing to curtail popular credits and deductions such as the mortgage interest deduction in favor of a lower tax rate.

## **EMPLOYMENT, LABOR & IMMIGRATION**

### **Comprehensive Immigration Reform**

Immigration reform showed momentum in June as the Senate passed comprehensive legislation (S. 744) on a 68-32 vote, with 14 Republicans supporting the proposal drafted by the "Gang of Eight". A deeply divided House, however, did not take up the Senate's sweeping legislation. Instead, Judiciary Committee Chairman Bob Goodlatte (R-Va.) indicated support for a piecemeal approach to immigration reform with a series of smaller bills designed to address issues contained in the comprehensive Senate bill. The prospect for meaningful reform depends on House action and remains uncertain.

In a victory for the rental housing industry, on July 26, the U.S. Court of Appeals for the Third Circuit again blocked a local ordinance that makes legal immigration status a requirement for entering into a residential lease, and imposes penalties against both renters and property owners. The court [ruled](#) the Hazleton, Penn. ordinance unconstitutional because it is preempted by federal immigration law. The law demands prospective residents to obtain an occupancy permit with identification proving citizenship or legal residency, and holds property owners responsible for anyone over the age of 18 who leases or resides in rental housing without a permit. Hazleton was among the first local governments in the U.S. to target undocumented individuals under the guise of housing laws.

This decision came only days after the U.S. Court of Appeals for the Fifth Circuit [ruled](#) against the City of Farmers Branch, Tex., on July 22, affirming a previous decision that blocked the Dallas suburb from enforcing a 2006 ordinance requiring renters to obtain a license to confirm their immigration status and threatening criminal and civil sanctions against property owners for renting to anyone without a license.

## HOUSING POLICY

### Fair Housing

During the July 30 congressional debate on H.R. 2610, the [Transportation-HUD Appropriations Act for Fiscal Year 2014](#), Rep. Scott Garrett (R-N.J.) offered an [industry-supported amendment](#) that would eliminate funding for the U.S. Department of Housing and Urban Development (HUD) to enforce the [disparate impact](#) rule under the Fair Housing Act. However, House leadership withdrew the bill from consideration without a vote on the Garrett amendment. While this legislation did not advance, [oral arguments](#) are scheduled for December 4 before the U.S. Supreme Court and will bring some resolution to this issue.

Additionally, HUD has proposed the [Affirmatively Furthering Fair Housing](#) rule, which clarifies and expands fair housing obligations for HUD program participants, including state and local public housing authorities. In response, NMHC/NAA, joined by the National Leased Housing Association, submitted [comments](#) to HUD requesting that the agency take a more comprehensive look at the proposed changes' potential unintended consequences.

While the rule would not directly impose new compliance obligations on apartment owners, developers and managers, the proposal's broad mission to desegregate communities by combating exclusionary zoning and other practices deemed discriminatory could indirectly affect the industry by creating delays in construction and permitting decisions. Such disruption could aggravate the housing market's already short supply of apartments.

The proposed rule underscores the Fair Housing Act's mandate that programs and activities relating to housing and urban development be administered in a manner to ensure that fund recipients do more than not discriminate; the act obligates them to take [proactive steps](#) to address segregation and related barriers for those protected by the Act. To this end, HUD plans to provide participants with geographically specific racial and socioeconomic data to assist them in their analysis and planning process.

### Privatized Military Housing

In response to sequestration-driven budget cuts, Congress and the Department of Defense (DoD) are reviewing proposals impacting privatized military housing. Congress has directed a Government Accountability Office study to report certain litigation expenses associated with military housing projects. While the measure's supporters maintain such transparency is intended to safeguard the fiscal health of housing projects, NMHC/NAA will work to ensure any reporting requirements are clear, narrowly tailored and do not unduly burden housing providers.

Additionally, as part of a strategic review, DoD proposed reductions to the Basic Allowance for Housing (BAH) in order to meet continued sequestration targets. This would substantially reduce the revenue collected at privatized housing projects and also negatively impact the rent rates and occupancy of private apartment communities serving military installations. NMHC/NAA are urging that DoD exercise caution before using BAH reductions to satisfy budget cuts and advocating for a measured approach to BAH changes that engages all stakeholders and assesses the impacts across the real estate sector.

## **Violence Against Women Act (VAWA)**

NMHC/NAA sent a [letter](#) on behalf of a group of housing providers to the HUD with several recommendations to aid the agency in implementing the Violence Against Women Reauthorization Act of 2013. More specifically, the letter encouraged HUD to consider the following with respect to several of the law's provisions:

- Lease bifurcation. In cases where a victim must establish eligibility for housing assistance following a lease bifurcation with the perpetrator, the coalition recommended establishing a 60- to 90-day period for a victim to establish eligibility under a new or existing housing program or find alternative housing.
- Notification. The coalition urged HUD to allow new notifications to be incorporated into existing standard program documents and materials provided to residents to reduce redundancy.
- Documentation. The coalition asked for HUD's guidance and forms to reflect housing providers' ability to require third-party certification when there is conflicting evidence of domestic violence.
- Emergency Transfer Plans. As HUD develops a model plan, the coalition urged the agency to recognize the differing characteristics, roles and capabilities of various housing providers and property types and provide guidance for use in situations where it is not feasible for a public housing authority or private owner or manager to effectuate a transfer.

## **BUSINESS & PROPERTY OPERATIONS**

### **Disparate Impact**

On September 3, NMHC/NAA joined other real estate groups in filing an amicus brief in the *Mount Holly v. Mount Holly Gardens Citizens in Action, Inc.* case which is scheduled for argument before the Supreme Court on December 4. The [outcome of the case](#) will determine if disparate impact claims are cognizable under the Fair Housing Act. The coalition brief supported the position that the Act does not recognize disparate impact claims. It also argued that disparate impact liability is a judge-made rule that improperly extends the scope of the Fair Housing Act and creates de facto protected classes.

### **Flood Insurance**

Last year, Congress enacted the Biggert-Waters Flood Insurance Reform Act of 2012 with overwhelming support due to the outdated rate structure that contributed to the \$24 billion debt of the National Flood Insurance Program (NFIP). The reforms enacted were designed to return NFIP to solvency by revising the pricing on the nearly twenty percent of all policyholders who pay a subsidized rate, i.e. low cost insurance, for those properties built before communities adopted floodplain management practices, effectively 1974.

To remedy the resulting shortfall in the program, subsidized policy premiums on most properties are set to increase over time to reflect the true cost of risk. Primary homes and apartment properties are not included in this initial phase-in, but these properties assume the higher rates once purchased by new

owners. Additionally, policyholders that currently enjoy a "grandfather" rate reflecting original mapping for their area may be impacted in 2014 as new maps are created. Favorable reforms include a five year reauthorization of the program and an increase in multifamily property policy limits to \$500,000. Absent this national program, it is questionable whether insurance would be available since the private market has never stepped into this space in a meaningful way.

As the reforms are beginning to be implemented, there has been public outcry from property policyholders who are currently experiencing unrealistic price increases when they renew a policy, transfer a property or are mapped into a riskier flood zone. Recognizing the unintended consequences associated with the program rollout, Congress has responded by acting to delay these new price increases. Bipartisan bills have been introduced in both the House and Senate to delay the flood insurance rate increases for most policyholders, excluding second homes and businesses for up to four years. Apartment properties are not considered businesses under the program and therefore are expected to benefit from this relief. Additionally, the extension legislation requires the Federal Emergency Management Agency (FEMA) to conduct a study on affordability challenges and propose alternatives to the rate hikes.

### **Music Licensing White Paper**

Performing rights organizations (PROs) have contacted a number of NMHC/NAA members regarding music in apartment community common areas. At least one PRO contends that an apartment community may be obligated to obtain a public performance license for certain uses of copyrighted music in leasing offices, fitness centers, swimming pools and other common areas. The law for music licensing is complex, and whether a license may be needed depends on specific facts including an area's openness to the public, square footage, the media used and the number and/or size of television screens and speakers, among other property-specific factors.

Three major PROs — SESAC, Inc., Broadcast Music, Inc. (BMI) and the American Society of Composers, Authors and Publishers (ASCAP) — sell license agreements to businesses, each representing different copyright owners and only licensing the material of those they represent. Given the complexity of the issue, we commissioned a members-only white paper to provide basic information about how copyright law may apply to apartment communities. This paper will be available on NAA's and NMHC's websites the week of November 4.

### **Terrorism Insurance**

In late September, both the [House Financial Services Committee](#) and the [Senate Committee on Banking, Housing and Urban Affairs](#) held hearings to begin discussion about the Terrorism Risk Insurance Act (TRIA) reauthorization, which provides a federal backstop for insured losses resulting from acts of terrorism. TRIA is set to expire December 31, 2014, and policyholders have been working to educate members of Congress on the need for the program and the certain disruption in the housing market that will result if the program is allowed to lapse.

Three pieces of legislation to extend the program have been introduced in the House by Rep. Grimm (R-N.Y.), Rep. Capuano (D-Mass.) and Rep. King (D-N.Y.). No legislation has been introduced in the Senate. It is expected that TRIA authorization will not move quickly given the objections by some lawmakers over the federal role in providing insurance. NMHC/NAA continue to work in partnership with the [Coalition to Insure Against Terrorism](#) to advance an extension of the program.

## **USPS Mail Delivery**

On July 24, the House Oversight and Government Reform Committee approved the [Postal Reform Act of 2013](#) (H.R. 2748), a broad proposal to improve U.S. Postal Service (USPS) operations and financial outlook, including a provision that strengthens existing policy favoring centralized and curbside mail delivery service for both residential and commercial addresses, including apartment communities. Under a proposed mandate to convert 30 million addresses receiving mail delivery to the door to centralized delivery by 2022, district postal offices would identify candidates for potential voluntary conversion, based on a number of factors that may affect the feasibility of centralized delivery to a specific property or address.

On August 1, Sen. Tom Carper (D-Del.) and Sen. Tom Coburn (R-Okla.) introduced a reform bill (S. 1486) similar to H.R. 2748 that they described as a rough draft that will change as the debate moves forward. The Senate Committee on Homeland Security and Governmental Affairs held hearings on September 9 and 26. Democrats and Republicans in the House and Senate agree that legislation is needed to address the worsening financial crisis facing USPS, but disagreement over some critical reforms remains, and the outlook for action is unclear as Congress focuses on numerous priorities during the remaining months of the year.

## **ENERGY & ENVIRONMENT**

### **Better Buildings Challenge**

Several NMHC/NAA member firms were invited to the White House in August for a roundtable discussion with representatives from the U.S. Department of Housing and Urban Development (HUD), the Environmental Protection Agency (EPA), the Department of Energy (DOE) and the White House Council on Environmental Quality to discuss extending the Obama Administration's [Better Buildings Challenge \(BBC\)](#) to the multifamily sector.

Apartment firms that choose to join the BBC partnership, which is already underway in the commercial and industrial sectors, are required to develop an organization-wide plan with a schedule and milestones for achieving a 20 percent reduction in energy consumption across their portfolios in a decade; participants also would showcase how they improved energy performance on a particular property and commit to periodic reporting and information sharing with other participants.

At the meeting, industry participants agreed that energy conservation and utility management are key elements of property management, although participants raised several concerns. Chief among them were the inability to obtain whole building consumption data in most areas of the country, the fact that

portfolios are not static for a decade, the lack of effective educational tools to improve resident/consumer awareness of energy efficient behaviors and concern that the 20 percent increment may not be feasible as an across-the-board target based on the specific technical building considerations and an owner's ability to access capital for this purpose.

As a result of this discussion, the Administration has indicated that DOE will develop a sampling methodology for energy consumption that could be used until the time that whole building data is available. Issues surrounding the 10 year time period for the challenge have been addressed in part by permitting owners to roll the clock back three years to establish the baseline figure for the portfolio's energy consumption and in the process capture the energy savings that have accrued as a result of improvements that may have already been made. In an effort to address the fluid nature of portfolios and the fact that many owners do not hold a property for 10 years, the federal partners have suggested that portfolios with high building turnover (typically greater than 5% of total committed square feet per year, on average) may track the average annual percent improvement across their portfolio, rather than their cumulative percent improvement since a baseline period. Participants will commit to achieving at least 2% average annual improvement, which is consistent with 20% improvement over 10 years.

The launch of the program has been affected by the government shutdown but is anticipated for some time in November. Additional information on the program is available from Maria Vargas ([Maria.Vargas@ee.doe.gov](mailto:Maria.Vargas@ee.doe.gov)).

## **Clean Water Act**

On October 30, the Environmental Protection Agency (EPA) and the Army Corps of Engineers withdrew a controversial NMHC/NAA-opposed guidance document that was being used to determine which properties were subject to the Clean Water Act's (CWA) protections. The Agency has submitted a draft rule to the Office of Management and Budget (OMB) for review that seeks to clarify jurisdictional issues raised as a result of recent U.S. Supreme Court decisions. OMB has 90 days to complete its review.

Through its membership in the Waters Advocacy Coalition, NMHC had objected to the *de facto* regulatory status of the guidance document and had called on federal regulators to pursue a full and open rulemaking effort.

In addition, EPA has released a long-awaited scientific study that evaluates the connection between intermittently flowing streams and certain wetlands to waters in the U.S. The draft report, "[Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence.](#)" is the scientific underpinning for anticipated regulations under the Clean Water Act. NMHC/NAA are concerned that the report provides insufficient analysis for the Agency to make determinations on which properties would be subject to regulation under the federal Clean Water Act.

## CONSTRUCTION & DEVELOPMENT

### Building Codes

In October, the International Code Council (ICC) held the final action hearings for several of the 2015 national model building codes. NMHC/NAA's efforts in this round of code development focused primarily on the energy, fire, property maintenance, existing building and residential codes.

Throughout the code development process, NMHC/NAA staff worked with code consultants and collaborated with other industry representatives to improve existing code provisions and oppose unnecessary escalations in construction costs. Our participation resulted in a number of hearing decisions favorable to multifamily firms and resulted in the disapproval of numerous proposals that would have had a negative impact on the apartment industry.

The action taken during the October's Final Action Hearings will be included in the 2015 ICC codes. The next round of codes will not be published until 2015 after the final round of code development is completed in 2014. For more information on NMHC/NAA code activities and the ICC code development process, visit <http://tinyurl.com/4td5kr> or <http://www.nmhc.org/goto/ICC-Codes>.

## PUBLIC RELATIONS

### "Apartments: We Live Here" Campaign

To continue the positive momentum created by the initial unveiling of the pro-apartment public relations campaign, "[Apartments: We Live Here](#)," NMHC/NAA have launched a new wave of digital advertising this month on three important online platforms—Real Clear Politics, Google and National Journal—for influencing lawmakers with stakes in housing policy.

The ongoing campaign communicates how apartments work in communities across the country—helping people live in a home that's right for them, supporting jobs and generating economic activity. The multimedia campaign also includes an [interactive website](#), print media ads, radio spots, online banner ads and direct mail collateral.

Results from the latest round of digital advertising have been strong, particularly with National Journal, where click-through rates from the ads are more than four times industry standards. Driving those high marks at National Journal is NMHC/NAA's decision to become one of four advertisers to work with a high-profile, "catalyst" execution on the digital advertising, featuring the new [campaign video](#).

As further testament to the campaign's success, it campaign was selected as a finalist for two significant digital communication awards: the [2013 Public Affairs Campaign of the Year](#) and the [2013 New Site Launch of the Year](#).



NAA/NMHC's high-profile, digital advertising module on National Journal's website.

## **NMHC LEGISLATIVE AND REGULATORY TEAM**

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