

Category/Government Agency	Regulation	Background	What the industry is doing?	Status (5/2019)	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 residential 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 and NAA submitted official comments to HUD and requested withdrawal of this flawed rule. NMHC and NAA also continue to pursue 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	President Trump issued an Executive Order that rescinded this proposed rule.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.	In August 2018, NMHC and NAA submitted comments to HUD detailing the conflicts between the 2013 Disparate Impact Rule and subsequent Supreme Court action. In February 2019, HUD submitted a new Proposed Rule on disparate impact to the Office of Information and Regulatory Affairs, where it is currently pending review.	Continue to raise industry fair housing concerns with the Administration and promote the reconsideration of inconsistent agency rules and guidance.
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 and NAA are working with the Administration to re-issue an AFFH rule that focuses on promoting new development of rental housing, and avoids endorsing local policies that have unintended consequences or otherwise create barriers for development and preservation of rental housing. We sent a letter to the Department on June 14, 2017 voicing our concerns with the Rule as drafted. We submitted a letter on October 15, 2018 in response to the Notice of Proposed Rulemaking reflecting Secretary Carson's views on AFFH.	Secretary Carson indefinitely suspended the AFFH rule in May, 2018 after imposing a temporary suspension in January, 2018. In August, 2018, HUD released a Notice of Proposed Rulemaking outlining the updated goals of AFFH: (1) minimize regulatory burden while more effectively aiding program participants to meet their statutory obligations, (2) create a process focused primarily on accomplishing positive results, rather than on analysis, (3) provide for greater local control and innovation, (4) seek to encourage actions that increase housing choice, including through greater housing supply, and (5) more efficiently utilize HUD resources	Continue to work with Congress and the Administration to implement AFFH to promote development and preservation of rental housing.
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 and 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 and 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 and NAA will continue to oppose efforts to implement mandatory benchmarking requirements and stress the administrative 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 and 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.	In March 2019, HUD submitted new Proposed Notice to the Office of Information and Regulatory Affairs concerning reasonable accommodation requests for animals under the Fair Housing Act.	Continue to raise awareness of the need for new guidance on emotional support animals.
Department of Housing & Urban Development	Implementation of H.R. 3700, the "Housing Opportunity Through Modernization Act of 2016," (HOTMA), Public Law 114-201	On July 29, President Obama signed HOTMA into law. The measure streamlines the Section 8 Voucher Program's property inspection process by allowing immediate occupancy if the apartment home has been inspected within the past 24 months.	NMHC and NAA continue to urge HUD to fully implement the changes in HOTMA. HUD has issued a Notice permitting Public Housing Authorities (PHAs) to adjust their Administrative Plans allowing them to utilize the streamlined inspection process for tenant-based voucher and project-based voucher programs. However, we have learned that the legal issues surrounding the streamlined inspection process, have caused some PHAs to be slow to adopt the changes. HUD may consider issuing further guidance, encouraging more PHA participation.	HUD has issued guidance, implementing the streamlining measures contained in HOTMA, however many PHA's are waiting for further guidance from HUD.	Continue to urge HUD to find ways to fully implement the streamlining measures contained in HOTMA, and encourage PHA's to take steps to act.
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 and NAA 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. Court challenges ongoing with recent opinion that the 2015 was issued in violation of the APA. EPA planning to issue revised rule by end of year.
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 or type of the building.	NMHC and 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.
Environmental Protection Agency	Lead Hazard Standards	EPA responsible for establishing lead levels for dust and soil that underpin the definition of hazards in residential housing built prior to 1978. HUD refers to these levels in its rules that apply to federally assisted housing. Dust hazard levels are used to guide inspection and clearance testing in housing that receives federal assistance.	NMHC and NAA has submitted comment letters to the docket and met with EPA officials.	Revised definitions still pending. EPA indicates that the revised regulation will be released this summer.	Once we see the regulation, we will determine what, if anything, we need to do.
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 and 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. We submitted additional comments in support of an interpretive rule stating that the proposed energy conservation standards for residential furnaces would result in the unavailability of "performance characteristics" within the meaning of the Energy Policy and Conservation Act of 1975 and as such were unlawful. DOE has yet to respond.
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.	The current Administration has been much more favorable towards examining changes to certain provisions of the the regulations. Due to industry efforts there was a bill signed into law in May 2018 that modified certain provisions from Dodd Frank that will favorable impact bank capital.	Other regulatory changes to Dodd Frank will be more difficult to enact due to split between Senate and House	NMHC and 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 and 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 and 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 and 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 and NAA worked with a cross industry group to enact legislative changes to HVCRE that modified the rules toward treatment of bank capital for these loans.	The bill was signed into law in May 2018.	NMHC and NAA will continue to monitor but the new regulation has favorably impacted bank capital for construction loans.
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 and NAA commented on the OCC's ANPR on proposed changes to CRA rules. Banking regulators are working on issuing a new set of proposed rules in 2019 but are struggling to come to an agreement on the rules	Proposed rules are being discussed between banking regulators with an intent to issue during 2019.	NMHC and NAA continue to meet with banking regulators to discuss provisions important to our industry and to determine the status of issuance of next set of proposed regulations.

Department of Labor	Labor Department Overtime Rule	The Obama Administration's Department of Labor (DOL) published a final overtime rule to increase to \$47,476 the salary threshold for white collar workers who are entitled to overtime pay protections under the Fair Labor Standards Act (FLSA). Reversed by a Federal court in August 2017, multifamily and other industry workers would have been impacted because overtime pay would be determined solely on falling below the threshold. Among other issues, the multifamily industry was 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. In March 2019, the DOL proposed a new rule to increase the overtime pay threshold to \$35,306.	NMHC and NAA in March 2019 wrote DOL and said we do not oppose the new proposed rule.	Awaiting final rule.	Awaiting final rule.
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 and NAA are working to improve the wage determination process. These are the major items to be addressed: 1. Split wage determination- DOL has modified long standing process and is now burdening apt construction; 2. Wage determination process when few survey results are available, DOL needs to update their methodology; 3. Wage determination timing- wages can change too frequently and causes issues with loan closings, HUD and DOL need to work together to solve this; 4. Affordable housing- DB wages drive up delivered costs especially for affordable housing, request to change this rule.	DOL has shown a lack of willingness to make any changes to their process. HUD has been more open to analyze requested changes but only if they can control the changes without DOL.	NMHC and NAA will reach out to DOL and HUD to continue to discuss issues with wage determination.
National Labor Relations Board	NLRB Joint Employer Ruling	The Obama-era 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. NLRB in September 2018 proposed to reverse its joint employer rule.	NMHC and NAA are urging the National Labor Relations Board (NLRB) to reverse its joint employer standard and revert back to the joint employer standard that was in effect prior to the Browning-Ferries Industries ruling.	NMHC and NAA submitted a comment letter in September 2018 supporting NLRB's proposed rule to reverse its joint employer rule.	Awaiting final rule.
IRS	Family-Owned Business Estate Tax Regulations	Proposed estate tax regulations would target intra-family transfers and valuation discounts that result from lapsing rights and restrictions on liquidations. The regulations would limit valuation discounts – resulting in greater estate tax liability for closely held family businesses, as well as imposing new risks on the continuity of family-owned real estate businesses. In addition to threatening the transfer of family-owned businesses from one generation to the next, the new regulations would impair the job creation and economic growth driven by these businesses.	NMHC and 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.	Treasury in October 2017 announced it would withdraw these regulations.	Issue completed.
IRS	Partnership Audit Rules	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. 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.	NMHC and NAA submitted a regulatory comment letter asking the IRS to address the partnership "push out" issue.	Treasury issued final regulations in February 2019 allowing for partnerships to push out tax adjustments to multiple tiers of partners.	Issue completed.
Bank Regulators	Private Flood Rule	Stemming from the 2012 Biggert-Waters Flood Insurance Reauthorization package, banking regulators were tasked with developing a Rule that would allow for lenders to accept private flood insurance policies so long as it is "at least as broad" as a standard NFIP policy when looking to fulfill the federal government's mandatory purchase requirement if the property involves a federally backed loan and lies within a FEMA designated flood zone.	NMHC and NAA submitted a comment letter urging that the regulators allow the private market to further complement the NFIP with coverage options that better meet the needs of multifamily and commercial property owners.	In February 2019, regulators issued a Final Rule that is set to take effect on July 1, 2019. The Rule allows lenders to accept private flood insurance policies so long as it is "at least as broad" as a standard NFIP policy. Under the final rule, private policies would need to contain a statement certifying that it does meet that standard. For apartment owners and operators, this rule will pave the way for greater flexibility and enhanced policy choices that will better allow them to mitigate the financial risks posed by flooding events.	
Federal Communications Commission	OTARD Wireless Expansion	As part of their efforts to bridge the digital divide and expand access to high speed broadband and cellular services across the country, the Federal Communications Commission (FCC) issued a proposed rule to speed the deployment of wireless infrastructure by modernizing the Commission's rule for over-the-air reception devices (OTARD). The original rule was intended to allow apartment residents the right to install satellite dishes and other devices to boost TV and cellular reception.	The NMHC and NAA-led coalition of real estate organizations filed comments in early June 2019 and are filing reply comments on the rule.	The NMHC and NAA-led coalition of real estate organizations filed comments in early June 2019 and are filing reply comments on the rule.	Work with FCC to ensure that the existing, successful market for rooftop space is maintained, that leased space is not subject to further regulation and that property rights and existing contracts are honored.