NATIONAL MULTIFAMILY HOUSING COUNCIL

NATIONAL APARTMENT ASSOCIATION

June 20, 2918

The Honorable Jeb Hensarling
Chairman
House Financial Services Committee
2228 Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Financial Services Committee
2221 Rayburn House Office Building
Washington, DC 20151

Dear Chairman Hensarling and Ranking Member Waters:

The National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) respectfully submit this statement for the record for the House Financial Services Committee's June 20, 2018, hearing titled *Empowering a Pro-Growth Economy by Cutting Taxes and Regulatory Red Tape.*

For more than 20 years, NMHC and NAA have partnered to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of 160 state and local affiliates, NAA encompasses over 75,000 members representing 9.25 million rental housing units globally.

At the outset, we would like to take this opportunity to congratulate Congress for enacting landmark tax reform legislation that we believe holds great promise for generating economic growth and fostering job creation. As multifamily housing firms begin to implement the new tax law, we want to draw your attention to several provisions that we request Congress and the Treasury Department work together to clarify so that our industry can build the 4.6 million new apartment units our nation needs by 2030. Without tax certainty, we are concerned that capital could sit on the sidelines and not be fully deployed.

In addition, we have also included information on the burdensome regulatory processes impacting the multifamily sector. We have highlighted some of the federal regulations that create compliance uncertainty, which result in costly mandates that divert resources from the production and operation of multifamily housing. NMHC/NAA support efforts by President Trump and the Administration to reform the federal regulatory landscape and reduce the burdens felt by American businesses of all types in complying with a profusion of unnecessarily costly and complex regulations.

Tax Reform

Depreciation Period of Existing Multifamily Buildings

Our first request is that Congress either enact a technical correction or work with the Treasury Department to issue guidance to clarify that multifamily buildings in existence prior to 2018 be depreciated over 30 years for firms that elect out of limits on interest deductibility. We believe forthcoming Treasury regulations addressing depreciation would be an ideal place to address this matter, and we encourage Members of the Financial Services Committee to reach out to Treasury to help foster that outcome.

By way of background, Section 13204 of the tax reform law ("Applicable Recovery Period for Real Property") reduces the recovery period for residential rental property from 40 to 30 years for purposes of the alternative depreciation system (ADS) and requires real estate firms electing out of the limits on interest deductibility of Section 163(j) to use ADS to depreciate multifamily buildings. While we believe that Congress' intent was to apply this 30-year period to multifamily buildings in existence before enactment of the tax law and those yet to be placed in service, we are extremely concerned that without clarification, the statute requires that multifamily properties in existence prior to 2018 be depreciated over 40 years with regard to their remaining life.

The confusion arises because the interest deduction limitation rules are based on taxable year concepts and have an effective date of taxable years beginning after 2017, while the effective date for the ADS recovery period change is based on a placed-in-service concept (as depreciation changes generally are). It is the combination of two different types of effective dates in section 13204(b) of the statute that gives rise to the confusion.

We believe that Congress did not intend for existing multifamily buildings to be depreciated over 40 years for real estate firms electing out of interest deductibility limits. Reading the statute to require existing buildings to be depreciated over 40 years is unlikely to reflect Congress' intent from a policy perspective. There are few policy arguments for requiring real estate firms electing out of interest deductibility limits to depreciate buildings in existence prior to 2018 over 40 years, instead of the previously applicable 27.5 years, while allowing only new buildings to be depreciated over 30 years. Congress seems unlikely to have consciously wished to make such a drastic change.

Congress can be a key player in enabling existing multifamily properties to be depreciated over 30 years by enacting a technical correction or encouraging the Treasury Department to issue guidance. We believe Treasury can address this issue through the regulatory process either using the broad authority provided in IRC Section 163(j)(7) that addresses how real property trades or businesses elect out of limits on interest deductibility or under the "change of use authority" of IRC Section 168(i)(5).

Section 163(j) as amended by the tax reform law generally limits a taxpayer's allowable deduction for business interest. The legislation, however, enables real property trades or businesses to elect out of the limitation and requires that "Any such election shall be made at such time and in such manner as the Secretary shall prescribe, and, once made, shall be irrevocable." One consequence of making the election is that real property trades or businesses must depreciate real property using ADS.

We believe that the "in such manner" language provides the Treasury Department with sufficient authority to allow electing real property trades or businesses to use post-enactment ADS (i.e., the 30-year life) for purposes of depreciating multifamily property. In other words, Treasury can allow real estate firms to make the option of interest deductibility limitation *in such manner* that requires a 30-year ADS life.

In addition, the legislative history makes it clear that Congress intended that the election out of the interest limitation and the required use of ADS be treated as a change in use of the property. (Footnote 455 of the Senate Finance Committee report). Treasury has broad authority under section 168(i)(5) to provide rules to implement changes in use of depreciable property, including rules to provide when such property is deemed placed in service.

In sum, we ask that Congress either enact a technical correction or encourage the Treasury Department to issue guidance that would enable real estate firms that elect out of the interest limitation to depreciate multifamily property in existence prior to 2018 over a 30-year ADS schedule. Again, we encourage Financial Services Committee members to affirmatively ask Treasury to address this issue in forthcoming depreciation regulations. A failure to swiftly take action will unnecessarily disrupt cash flows and increase the tax liability of multifamily firms, reducing their ability to invest in their assets or develop new properties. That result would be contrary to the goal of the tax reform bill, and we ask that it be avoided.

Pass-Through Tax Deduction for Qualified Business Income

The multifamily industry is also eagerly awaiting guidance regarding the 20 percent deduction for pass-through income under new IRC Section 199A. We believe that if properly implemented, this provision has the potential to unleash significant investment and job creation in the multifamily industry.

As the Treasury Department drafts implementing guidance, we would encourage Congress to request the Treasury Department to address three aspects of the pass-through tax deduction:

First, the new law requires that the pass-through deduction be determined for each qualified trade or business, but it does not provide a definition of trade or business. We request that the Treasury Department issue guidance enabling individuals to aggregate or group all qualified business activities at the partner level in a manner consistent with IRC Section 469. This would help ensure entities can focus on their business activities rather than engaging in costly restructuring efforts. Additionally, we would ask that Treasury specifically allow income earned from the development, operation and management of real estate assets to qualify for the deduction.

Second, the Treasury Department should provide rules regarding the unadjusted basis of property acquired pursuant to a like-kind exchange. While we believe that such unadjusted basis should be interpreted to be the acquisition cost of a property acquired pursuant to a like-kind exchange, in no event should such basis be less than the unadjusted basis of the property relinquished in the exchange plus any cash or other consideration provided in the exchange. Taxpayers engaging in like-kind exchanges remain fully invested in real estate and should not be negatively impacted when they reallocate a portfolio. Indeed, providing onerous rules regarding the unadjusted basis for exchange property would reduce the velocity of real estate transactions and amount of aggregate investment in the sector.

Third, the new law allows REIT dividends to fully qualify for the 20 percent deduction. Treasury, however, should clarify that shareholders who invest in a REIT through a mutual fund are eligible as well. Approximately half of REIT shares are held in mutual fund portfolios.

Finally, the new and novel pass-through deduction is likely to lead to further questions and concerns being raised. We look forward to working with Congress and the Treasury Department on additional matters related to the provision as the regulatory process moves forward to ensure this deduction is as effective as possible.

Deductibility of Business Interest

NMHC/NAA were most grateful that lawmakers enabled real estate firms to elect to fully deduct business interest. Given that a typical multifamily deal can be 65 percent debt financed and that the Federal Reserve reports there was $1.33 trillion in outstanding multifamily mortgage debt as of the end of the first quarter of 2018, implementation of this provision will be critical. We ask that Congress encourage the Treasury Department to quickly clarify that a taxpayer may use any reasonable allocation method to deduct business interest attributable to a real property trade or business, and that debt to capitalize such enterprises is fully deductible. Our goal is to avoid any disruption to the multifamily industry that relies so heavily on debt-financed capital.

Opportunity Zones

NMHC/NAA commend lawmakers for establishing Opportunity Zones as part of the new tax law. By providing for the deferral of capital gains invested in Opportunity Funds and eliminating tax on certain gains realized from Opportunity Fund investments, there is a strong potential to drive considerable investment in multifamily housing and workforce housing, in particular, in Opportunity Zones.

We ask that Congress work with the Treasury Department to make the Opportunity Zones program as effective as possible and that lawmakers encourage the Treasury Department to ensure:

- Multifamily housing is a qualified investment for Opportunity Funds;
- Multifamily properties receiving other tax benefits, including Low-Income Housing Tax Credits, Historic Tax Credits and New Markets Tax Credits, that are necessary to make a development viable are qualified investments for Opportunity Funds. It is often only a combination of incentives that make the difference between a project being able to move forward as opposed to never breaking ground;
- Properties of all sizes be able to receive Opportunity Fund financing.
- Opportunity Funds have sufficient time to deploy capital;
- LLCs and REITs can set up Opportunity Funds;
- Land be a qualified investment if sufficiently improved; and
- Infrastructure improvements as part of a multifamily property, including sewers and broadband, be considered a qualified investment.

Regulatory Red Tape

The multifamily sector is under increasing pressure to meet booming demand for rental housing across the country. Experts believe this trend will continue, if not increase, due to a host of factors including demographic changes and evolving consumer preferences. Our industry, and particularly apartment owners and developers, must balance a wide array of concerns regarding project viability, regulatory cost and compliance at all levels of government. While many regulatory hurdles and costs – such as impact fees, continual environmental reviews and antiquated zoning processes – are within the purview of state and local policymakers, there are a wide array of existing federal regulations that contribute to making housing less economically feasible to develop and operate.

We believe that regulations must have demonstrable benefits that justify the cost of compliance and that federal agencies should be aware that broad-stroke regulations often have disproportionate effects on industries that serve as key drivers of our economy. Excessive regulation and compliance uncertainty result in costly mandates that divert resources from the production and operation of multifamily housing.

Attached please find two items of importance. The first, a recently released study by the National Association of Home Builders (NAHB) and NMHC showing on average, 32 percent of multifamily development costs are attributable to the costs associated with complying with local, state, and federal regulations. The second is a letter sent to the Trump Administration applauding their efforts to overhaul the federal regulatory landscape. This will reduce the compliance burdens felt by American businesses in complying with a profusion of unnecessarily costly and complex regulations.

NMHC/NAA thank you for considering our views. We again congratulate you for enacting landmark tax reform legislation and applaud your efforts to eliminate regulatory red tape. We look forward to working with Congress to make the new tax law as successful as possible.

Sincerely,

Doug Bibby
President
National Multifamily Housing Council

Robert Pinnegar, CAE
President & CEO
National Apartment Association

cc: Members of the House Financial Services Committee

BACKGROUNDER | June 2018

Regulation: Over 30 Percent of the Cost of a Multifamily Development

Paul Emrath, National Association of Home Builders
Caitlin Walter, National Multifamily Housing Council

Regulation imposed by all levels of government accounts for an average of 32.1 percent of multifamily development costs, according to new research released today by the National Association of Home Builders (NAHB) and the National Multifamily Housing Council (NMHC). In fact, in a quarter of cases, that number can reach as high as 42.6 percent.

Apartment and condo development can be subject to a significant array of regulatory costs, including a broad range of fees, standards and other requirements imposed at different stages of the development and construction process. However, until now there had been no previous research done to analyze the extent of this regulation. This joint research effort surveyed NAHB and NMHC members to quantify how much regulation exists and how much it is adding to the cost of developing new multifamily properties.

About NAHB Multifamily

NAHB Multifamily represents the interests of builders, developers, owners and managers of all sizes and types of multifamily housing, including affordable and tax-credit housing, market-rate rental apartments, condominium housing, student housing and mixed-used multifamily communities. NAHB Multifamily strives to ensure that multifamily housing functions as a strong sector within a thriving housing and real estate industry, and effectively serves the housing needs of a broad range of American families and households. For more information, please visit NAHB Multifamily at www.nahb.org/en/members/committees-and-councils/councils/multifamily-council.aspx.

About NMHC

Based in Washington, DC, the National Multifamily Housing Council (NMHC) is a national association representing the interests of the larger and most prominent apartment firms in the U.S. NMHC's members are the principal officers of firms engaged in all aspects of the apartment industry, including ownership, development, management and financing. NMHC advocates on behalf of rental housing, conducts apartment related research, encourages the exchange of strategic business information and promotes the desirability of apartment living. Nearly one-third of Americans rent their housing, and almost 15 percent live in an apartment (buildings with five or more units). For more information, contact NMHC at 202/974-2300, e-mail the Council at info@nmhc.org, or visit NMHC's Web site at www.nmhc.org.

Introduction

Many Industry experts have become concerned about affordability of rental housing in America, and how difficult it has become to address the problem through new construction. According to the report on America's Rental Housing 2017 published by the Joint Center for Housing Studies at Harvard University, “The lack of new, more affordable rentals is in part a consequence of sharply rising construction costs, including labor and materials.” The Harvard report goes on to say, “Tight land use regulations also add to costs by limiting the land zoned for higher-density housing and entailing lengthy approval processes.“

Recently, the National Association of Home Builders (NAHB) and the National Multifamily Housing Council (NMHC) undertook a joint research effort to find out how much government regulation adds to the cost of building new multifamily housing. Results show that well over 90 percent of multifamily developers typically incur hard costs of paying fees to local jurisdictions, both when applying for zoning approval, and again when local jurisdictions authorize the construction of buildings.

However, government regulation can impose costs in other ways as well. Over 90 percent of multifamily developers also incur costs of delays caused by sometimes lengthy approval processes, development standards that go beyond what would ordinarily be done, changes to building codes over the past decade, and OSHA requirements. Other regulations, such as requiring developers to dedicate land to the government, are somewhat less common, but can be quite costly when they are encountered. The bottom line is that regulation imposed by all levels of government (whether local, state or federal) accounts for 32.1 percent of the cost of an average multifamily development.

A substantial amount of regulation is well intentioned and some of it undoubtedly serves a worthwhile purpose. Few would argue, for example, that basic safety standards for structures and workers are unnecessary. But regulation that exceeds 30 percent of a project’s development costs raises questions about how thoroughly governments are considering the consequences of their actions. Are they aware of how much regulation currently exists? Do they realize how multiple regulations with conflicting standards can cause delays and increase costs? And do they understand the extent to which these increased costs translate into higher rents and make it difficult to build new housing that families with modest incomes can afford?

Survey Design

While the assertion that regulations increase the cost of multifamily development is commonly heard, the extent to which this happens is not easy to measure, and currently does not exist on a national scale. The only way to gather data that is at all comprehensive is from multifamily developers, as they are the only ones who experience a wide range of the various forms regulation can take. NAHB and NMHC set out to accomplish this through a survey of both memberships. The purpose of the survey was to quantify how much regulation exists and how much it is adding to the cost of developing new multifamily properties.

Multifamily developers do not, in general, have accounting systems designed to tease out these regulatory costs, so NAHB and NMHC crafted questions that most developers would be able to answer. The questions asked developers about the typical projects they build. The questions covered various delays and costs incurred at different stages of the development process. Developers were asked to provide all hard costs as a percent of total development cost for their typical projects (see Appendix 2).

The survey was conducted in the fourth quarter of 2017. A total of 40 usable responses were received from multifamily developers, evenly split between NAHB and NMHC members (with no duplication). The developers who responded reported building multifamily projects in all regions of the country, and the typical projects they build vary widely: from fewer than 5 apartments to more than 400, and from under $2 million in total development costs to more than $100 million.

NMHC and NAHB combined the results with information from other survey collections and public data sources, such as typical terms on construction loans and the average time it takes to complete different phases of a project, to estimate the final costs (see Appendix 1).

Types of Regulation

Regulatory costs fall into several categories—fees, development standards, building codes, land dedicated to public purposes, etc. The range of these regulations can be broad, and the cost of complying with them substantial. Figure 1 shows the incidence of different types of regulations imposed on multifamily developers, as well as the average cost of complying with those regulations when they do exist.

Figure 1: Incidence and Typical Magnitude of Regulatory Costs

Type of Cost	Share of Developers' Projects Subject to the Cost	Average Cost When Present (as a Share of Total Development Costs)
Cost of applying for zoning approval	98%	4.1%
Interest costs on refundable fees charged when site work begins	50%	0.5%
Other (non-refundable) fees charged when site work begins	93%	4.5%
Development requirements that go beyond the ordinary	95%	6.3%
Land dedicated to the government or otherwise left unbuilt	50%	4.3%
Fees charged when building construction is authorized	93%	4.2%
Cost of complying with affordability mandates (e.g., inclusionary zon-	30%	5.7%
Cost increases from changes to building codes over the past 10 years	98%	7.2%
Cost of complying with OSHA requirements	90%	2.6%
Pure cost of delay (i.e., even if regulation imposed no other type of cost)	98%	0.7%

The first significant interaction between a multifamily developer and the government usually occurs when the developer applies for zoning approval to allow multifamily housing to be built on a particular parcel of land. The U.S. Constitution gives states the authority to regulate land use; and, although states sometimes try to influence land use patterns in various ways, they most often leave this up to local governments. Local governments, in turn, pass zoning ordinances that divide their territories into districts and specify how land in each district can be used (single-family versus commercial versus multifamily, for example). It's not impossible for a developer to acquire land that allows multifamily structures to be built on it without going through a rezoning process or obtaining some type of exemption to an existing ordinance, but this is the exception rather than the rule.

The typical projects of almost all the respondents (98 percent) were subject to costs at the zoning approval stage. When they exist, these costs average 4.1 percent of the total development costs. Regulatory costs incurred at this stage can include fees paid directly to a government but may also include other types of costs. For example, the developers may have to pay for environmental impact, archeological or other types of studies.

Although local governments have the authority to approve development, existing environmental laws also give a role to the federal government. A developer may need to obtain a wetlands, stormwater and/or endangered species-critical habitat permit, each of which is overseen by a different federal government agency. Many states manage the wetlands permits under federal guidance, and states and local jurisdictions may have their own sets of requirements. Indeed, it can be difficult to identify which level of government is ultimately responsible for some regulation and trying to reconcile conflicting requirements is one factor that can drive up the cost of compliance.

It is also common for governments to impose fees on a multifamily development when site work begins. Many communities charge impact, utility hook-up and other fees at this point. Impact fees are fees that are charged only on a new development and are supposed to be used only for capital improvements. State legislation establishes the types of impact fees local governments can charge. Examples are impact fees for the construction of new schools, roads, water facilities, sewer facilities, stormwater management, parks, fire, police, libraries, solid waste management, and general government. Some states allow all of these, while a select few of states do not allow them, such as Virginia. There are consultants who travel the country and specialize in calculating the maximum impact fees local governments can legally charge. Moreover, as a recently published University of California, Berkeley paper documented, cities often charge additional fees, negotiated on a case-by-case basis at different points in the development process, to allow a project to be built.

According to the 2012 Census of Governments, there are roughly 90,000 local governments in the U.S., and a particular development may be subject to fees from more than one of them—for example, from a municipality, a water district, and a school district with overlapping jurisdictions. The overwhelming majority (93 percent) of the typical projects of multifamily developers in the NAHB-NMHC survey pay fees at this stage of the process. When they exist, these fees average 4.5 percent of total development costs.

Some local governments charge developers guarantee or other fees that are refundable when the project is completed. Although these fees are also usually imposed when site work begins, the survey treats them separately, due to the different cost implications. If the fee is eventually refunded, the developer ultimately pays only the interest that accrues on the development and construction loans until that happens. Half of respondents' typical projects were subject to these fees; which, when present, averaged half a percent of the total development cost.

Many local governments require new development to conform to community design standards. This may include standards for streets and sidewalks, parking, height of buildings, landscaping and the architectural design of individual buildings. These standards impose little extra cost if they don't significantly exceed the developer's ordinary practices. In the absence of regulation, for example, developers will still ordinarily provide spaces for walking and parking, landscaping, and employ architects who attempt to design buildings that are attractive to potential tenants. The NAHB- NMHC survey asked multifamily developers specifically about the cost of standards that go beyond what they would otherwise do.

Almost all (95 percent) of the typical projects of the developers surveyed were subject to design standards that that go beyond what the developer would otherwise do. When these beyond-ordinary requirements were present, they accounted for an average of 6.3 percent of the overall development cost. Energy efficiency is a worthwhile objective, but NMHC and NAHB have argued that the up-front cost needs to be kept within reasonable bounds. NMHC and NMHC have supported some recent changes to the IECC but opposed others as not cost-effective. Not surprisingly, manufacturers of building products advocate for code changes that mandate more use of their products and tend to be less concerned than NMHC and NAHB about costs. Past analysis by NMHC on previous code cycles (which remain in effect in many states) has shown that changes to the IECC have the potential to drive up construction costs by over $3,000 per apartment (depending on type of building and climate zone) and argued that subsequent savings on utility bills come nowhere near justifying the cost.

Half of the typical projects required developers to dedicate land to the government or otherwise leave it unbuilt. This requirement can take many forms, such as creating a park on the property or reserving part of the property for the government to use in some way. In these cases, the developer must pay for the land but is not allowed to derive revenue from it, driving up the cost per unit for the housing that can be built. For those projects subject to this regulation, it represented an average of 4.3 percent of total development cost.

Almost all of respondents (93 percent) paid some sort of fee when construction in their typical project was authorized. This could be limited to a building permit fee, but additional impact, hook-up or other fees may also be charged at this point. When they exist, the fees charged at this point average 4.2 percent of development costs, large enough to suggest that they often encompass more than the building permit fees.

Local jurisdictions are increasingly beginning to consider imposing affordability mandates to attempt to create new affordable housing. These mandates without any offsetting incentive like a tax exception typically create few units and effectively tax some housing units (and their occupants) to subsidize others. The easiest way to see this is in cases where developers pay a fee to avoid the requirement—that amount gets added to the overall amount the developer must pay, thus raising the rents required. But even if they don't pay a fee, the regulation may require them to lose money on some of the housing they build, which is effectively a tax, resulting in higher rents on non-subsidized apartments. Almost one-third (30 percent) of developers who responded indicated that their typical projects incurred costs related to complying with such mandates. These costs, when they exist, averaged 5.7 percent of total development costs, enough to result in substantially higher rents.

The NAHB-NMHC survey also asked developers about the cost implications of changes to building codes over the past ten years. Most jurisdictions have been enforcing building codes for decades, and the codes have been updated and refined many times over that span. Most have adopted a version of national model codes, which have been in widespread use since the 1950s. These are updated every three years, and the number of refinements considered and voted upon during each three-year cycle runs into the thousands.

Virtually no one would argue against public standards for basic soundness and safety of residential structures, but over the decades codes have expanded well beyond this and are increasingly being used as a vehicle to advance various policy objectives. A leading example is energy efficiency. There is now a model International Energy Conservation Code® (IECC).

Energy efficiency is a worthwhile objective, but NMHC and NAHB have argued that the up-front cost needs to be kept within reasonable bounds. NMHC and NMHC have supported some recent changes to the IECC but opposed others as not cost-effective. Not surprisingly, manufacturers of building products advocate for code changes that mandate more use of their products and tend to be less concerned than NMHC and NAHB about costs.

This is another area where the federal government has become increasingly involved. The Environmental Protection Agency, the Federal Emergency Management Agency, and the Department of Energy (DOE), all actively participate in the development of national model codes, proposing changes to national model codes and testifying in favor of them during code hearings. DOE also has a share of its budget set aside for persuading state and local jurisdictions to adopt more stringent codes. Representatives from NAHB who witnessed all of the recent code hearings have criticized federal agencies for supporting certain code changes that removed flexibility and limited builders' options, driving up costs without improving energy efficiency, to the benefit of specific product manufacturers.

Nearly all (98 percent) of developers said changes in building codes over the past 10 years increased development costs in their typical projects, and these costs, when they exist, average 7.2 percent of total development costs.

Nine out of ten developers said complying with requirements of the Occupational Safety and Health Administration (OSHA) increased costs in their typical projects, and these costs, when present, average 2.3 percent of total development costs. Again, few would argue that safety standards for construction workers are unnecessary. In recent years, however, OSHA has issued a substantial number of regulations imposing costly compliance requirements all without providing any evidence that they would actually improve safety in the residential construction industry. In the Beryllium rule, for example, the evidence of a health risk came from workers in manufacturing industries or performing abrasive blasting activities. In the Volks rule, OSHA was criticized as doing little beyond driving up record keeping costs for businesses (and possibly violating the statute of limitations in the process).

Even when regulation imposes no direct costs, it can have a financial impact if it delays the development and construction process. If it takes longer to begin leasing and earning income on a property, it will take longer to pay off any development and construction loans and more interest will accrue.

Some regulatory delay is inevitable, as it will naturally take some time for local building departments to review and approve plans and respond to requests for inspections. Precisely how long it is reasonable for a developer to wait for approvals and inspections is open to debate, but there are examples that clearly seem excessive. One academic study, for example, found that it took an average of 788 days to prepare a submission and receive approval for an individual federal wetlands permit.

Virtually all the developers (98 percent) said complying with regulations caused some sort of delay for their typical projects. For these projects, NMHC and NAHB estimated that average additional interest was 0.7 percent of total development costs. This is a "pure" cost of delay that regulation would cause even if it imposed no other type of cost. It is calculated by subtracting every other type of regulatory cost, then estimating the additional interest accruing on the share of the remaining development cost that is typically financed.

Total Cost of Regulation

To estimate how much in total the government regulations described above add to multifamily development costs, it is necessary to take both the incidence and magnitude of the various types of regulation into account—in other words, to average in the "zeroes" when a particular regulation does not apply. Figure 2 shows that, when this is done, the listed categories taken together on average account for 32.1 percent of development costs for a multifamily project.

Among the listed categories, average cost is highest for changes to building codes over the past 10 years (7.0 percent of total development costs), followed by development standards imposed by government that go beyond what the developer would ordinarily do. It is interesting that government control over how a project is built can be more costly than actual fees charged, but unsurprising given that they can be time consuming and thus cost more.

Figure 2: Government Regulation as a Share of Multifamily Development Costs

Type of Cost	Lower Quartile	Average	Upper Quartile
Cost of applying for zoning approval	1.1%	4.0%	5.3%
Interest costs on refundable fees charged when site work begins	0.0%	0.2%	0.2%
Other (non-refundable) fees charged when site work begins	1.9%	4.2%	5.5%
Development requirements that go beyond the ordinary	1.1%	5.9%	8.4%
Land dedicated to the government or otherwise left unbuilt	0.0%	2.1%	3.3%
Fees charged when building construction is authorized	1.1%	3.9%	5.4%
Cost of complying with affordability mandates (e.g., inclusionary zon-	0.0%	1.7%	2.6%

Cost increases from changes to building codes over the past 10 years	5.2%	7.0%	7.1%
Cost of complying with OSHA requirements	1.3%	2.3%	2.3%
Pure cost of delay (i.e., even if regulation imposed no other type of	0.1%	0.7%	1.2%
TOTAL ESTIMATED REGULATION AS A SHARE OF DEVELOPMENT	**21.7%**	**32.1%**	42.6%

Affordability mandates, when they exist, are nearly as costly as relatively recent changes to building codes and beyond- ordinary development starts, but overall have a smaller average impact on costs because they are encountered less frequently. In contrast, regulatory delays are encountered very frequently, but have a comparatively small average impact on costs because they are limited to the extra interest that accrues on development and construction loans.

Refundable fees have the smallest impact of any of the types of regulatory costs listed, both because they apply only half of the time and because they are limited to the interest that accrues until they are refunded.

To illustrate the variability in regulatory costs, in addition to averages, Figure 2 shows the upper and lower quartiles (costs are below the lower quartile for 25 percent of respondents, and above the upper quartile for 25 percent). While on average regulation accounts for 32.1 percent of total multifamily development costs, the quartiles give a range of
21.7 to 42.6 percent.

Although the cost components sum to the bottom line total for the averages in Figure 2, the components of the upper and lower quartiles do not. The ten components in the "lower quartile" column in particular sum to considerably less than 21.7 percent. The implication is that multifamily developers can minimize some types of regulatory costs depending on where they operate—but not all of them proportionately at the same time.

Costs Not Captured

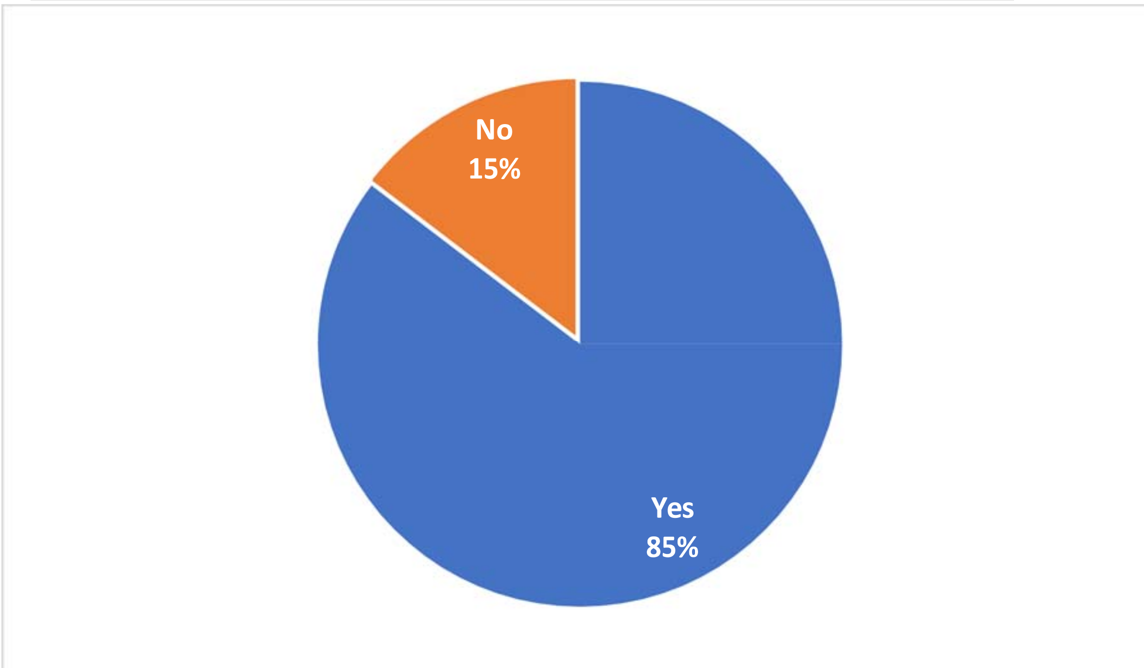
Although the NAHB-NMHC survey sought to be as comprehensive as possible, the above results do not capture everything. Some government actions impact development costs in a way a multifamily developer can't reasonably be expected to quantify. For example, federal immigration policy may affect the supply of construction labor, and tariffs can affect prices of building materials like lumber[1] and steel. Developers do not in general have a way of evaluating how much the prices they pay for labor and materials are influenced by these federal policies.

The survey asked developers about delays due to government regulation, but there can be multiple reasons for those delays not all unambiguously tied to a government action. One is neighborhood opposition to the development. At the local level, governments may encourage or facilitate local groups who oppose multifamily development. An obvious way to do this is by allowing local groups to sue any developer who proposes to build multifamily housing, but there are many more subtle ways to encourage opposition.

A developer may have to devote time and financial resources to deal with this opposition, by meeting with local groups before seeking zoning approval, for instance. To quiet the opposition, developers may find it necessary to make concessions to local groups, such as reducing size of the buildings so that land costs are allocated to fewer apartments and cost per apartment is increased. In an extreme case, local opposition may be able to cause a local government to reverse its decision to approve a project after the developer has already invested heavily in it. In many of these cases, there is an obvious cost to neighborhood opposition, but how much responsibility the local government bears for it may not always be clear. It is not uncommon for developers to hire consultants to debunk claims made by opposition to a project.

Figure 3 below shows that the overwhelming majority (85 percent) of the developers responding to the NAHB-NMHC survey have experienced added costs or delays due to such opposition.

Figure 3: Have you experienced added costs or delays due to neighborhood opposition to multifamily construction?

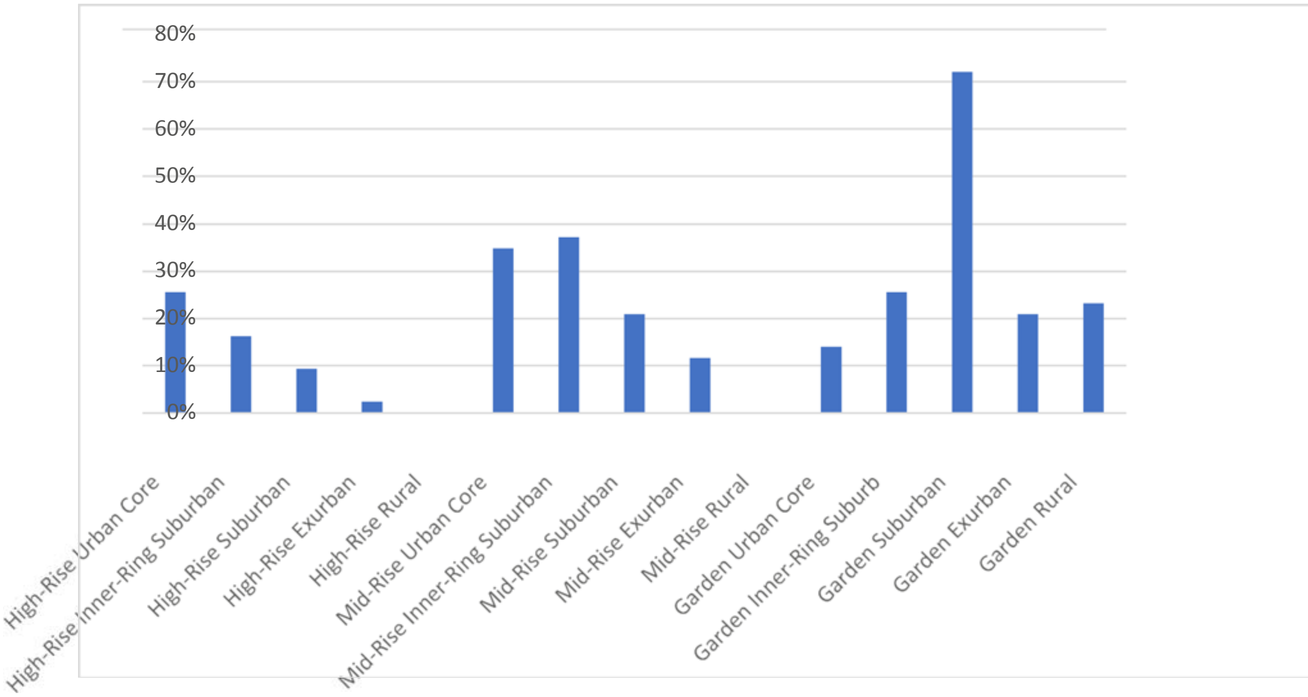


Profile of Respondents and Their Typical Projects

The range of costs highlights that not all development projects are the same. Costs can vary by jurisdiction, as well as by geographic location and type of project—garden apartments on undeveloped land can be much less complicated to build than a high-rise in an urban area, for example. Respondents were able to choose more than one option as to their typical project type.

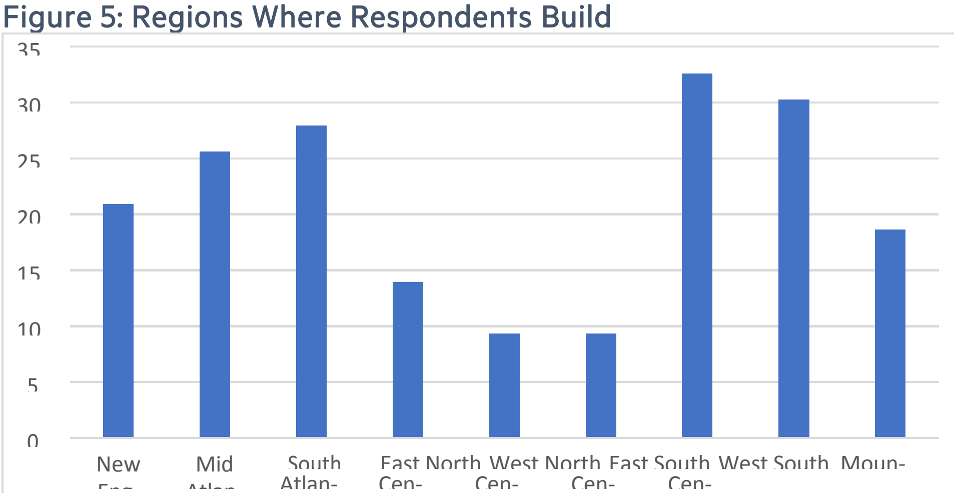
Respondents built a variety of product types that also varied by location (see Figure 4). The most common type of project was a garden development in the suburbs (72 percent). Mid-rise projects were the next common, with 35 percent building mid-rise developments in urban areas, and 37 percent building similar projects in inner-ring suburbs. About one-quarter (26 percent) of developers reported that they typically build high-rise apartments in urban settings.

Figure 4: Type and Location of Multifamily Projects



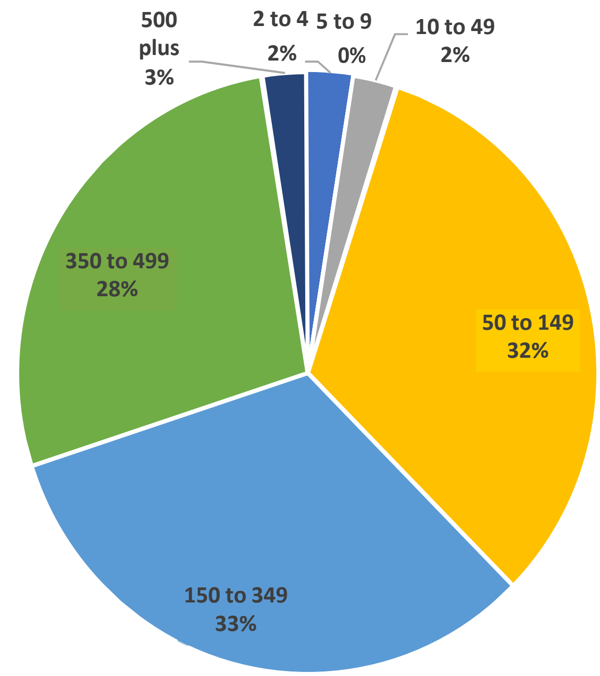
All regions of the United States were represented in the survey sample as well. The largest percentage of developers operated in the West South Central (33 percent) and Mountain (30 percent) regions (see Figure 5). The South Atlantic and Pacific regions featured the highest distribution of multifamily permits in the U.S. in 2017 and had the third and fifth largest distribution of respondents, respectively.

Figure 5: Regions Where Respondents Build



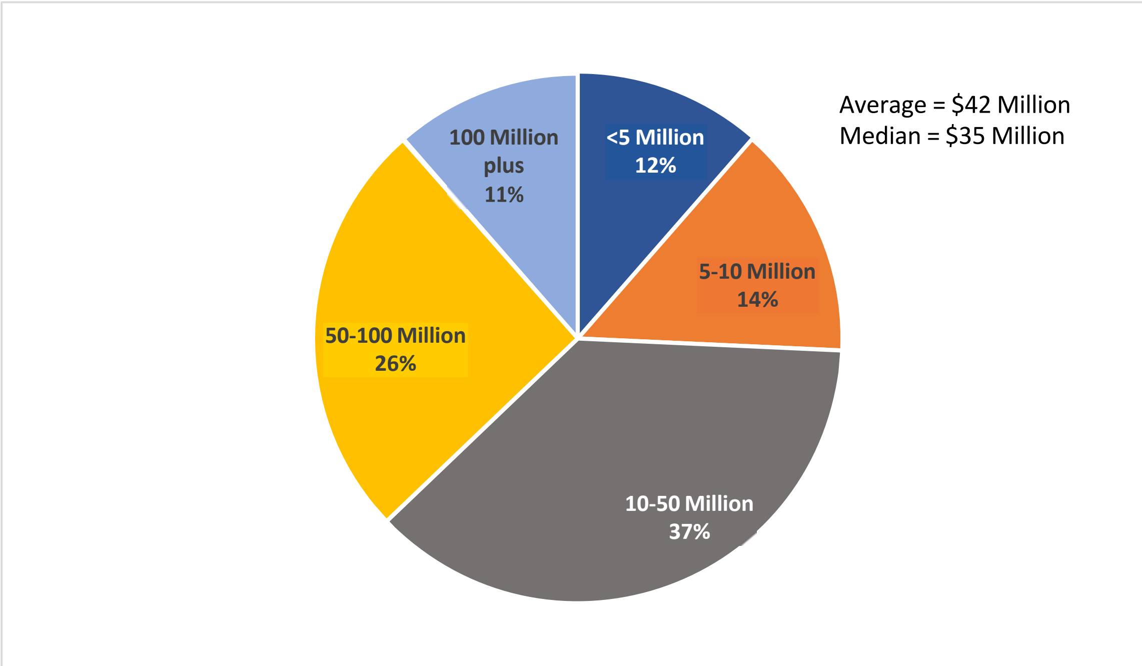
A fairly wide range of typical development size was represented by respondents as well (Figure 6). A small portion of respondents (4 percent) typically built projects fewer than 50 units or greater than 499 units (3 percent), while the remaining respondents were relatively evenly split between 50 to 149 units (32 percent), 150 to 349 units (33 percent) and 350 to 499 units (28 percent).

Figure 6: Typical Project Size (No. of Units)



In terms of financial costs, the cost was even more widely distributed (see Figure 7). The average cost of a typical development project for these developers was $42 million. Over one-third (37 percent) of respondents had a typical project size of $10-$50 million.

Figure 7: Typical Project Size (Development Costs)



Summary and Conclusion

As the above discussion has demonstrated, multifamily development can be subject to a bewildering array of regulatory costs, including a broad range of fees, standards, and other requirements imposed at different stages of the development and construction process. In view of this, it may not be surprising that regulation imposed by all levels of government accounts for 32.1 percent of multifamily development costs on average, and one-fourth of the time reaches as high as 42.6 percent.

Although local governments generally have authority for approving development and adopting building codes, state and federal governments are becoming increasingly involved in the process. Sometimes the federal involvement is readily apparent, as when issuing stormwater permits or enforcing OSHA requirements. At other times, the federal involvement is less obvious. Examples include federal participation in model building codes and attempts to influence local development through conditions for obtaining grants or other sources of funding. Indirect influences like these sometimes make it impossible to untangle which level of government is ultimately responsible for a given dollar of regulatory cost.

The current estimate that government regulation accounts for 32.1 percent of total development costs is almost certainly understated to some extent, as it was not possible to account for items like the effects of tariffs on building materials or the extent to which local jurisdictions may empower their citizens to oppose multifamily housing in their communities. Average costs could be even higher now or in the near future due to regulations taking effect since the multifamily projects in the survey were completed. For example, OSHA's Silica Rule went into effect in late 2017, a regulation that industry groups have criticized as unreasonably onerous and unnecessarily costly. Similarly, local jurisdictions are just beginning to adopt the 2018 versions of the model international building codes. Home Innovation Research Labs has recently estimated that the difference between the 2018 and 2015 versions of the codes can add thousands of dollars onto the cost of a multifamily building. As is typically the case, federal agencies supported several of the cost-increasing changes to the codes.

When the cost of multifamily development rises, it unavoidably translates to higher rents and reduced affordability of rental housing. Multifamily developers can not secure financing to build their projects unless they can demonstrate to lenders that the rents will be sufficient to cover costs and pay off the loans.

The purpose of this report is not to argue that all regulation is bad and should be eliminated, but to raise awareness of how much regulation currently exists, how much it costs, and to encourage governments to do a thorough job of considering the implications for housing affordability when proposing and implementing new directives.

Appendix 1: Assumptions Used in the Calculations

In order to calculate a final effect on development costs, many of the NAHB-NMHC survey responses need to be combined with additional information. Primarily these are assumptions about the terms of development and construction loans, and how long construction typically takes, and how to allocate costs to different stages of the development and construction process. This appendix lists all the assumptions used in the calculations and gives the sources for each.

Loan Terms

1. 1 point charged for all land acquisition, development, and construction (AD&C) loans, based on results from a Quarterly Finance Survey (QFS) that NAHB was conducting in the early to mid-2000s.

A 7.65 percent interest rate on all AD&C loans. The QFS indicates that rates are typically set one point above prime, and 6.65 percent is NAHB's estimate of the prime rate that would prevail in the long run under neutral Federal Reserve policy.

The estimates also assume that three-fourths of any category of costs are financed, based on typical AD&C loan-to-value ratios in the QFS.

Construction Lags

The source for information lags not directly collected in the NAHB-NMHC questionnaire is the Survey of Construction, conducted by the Census Bureau and partially funded by the Department of Housing and Urban Development.

Preliminary estimates are taken from the published annual tables, averaged over the 2001-2016 period:

If project is 2-4 units

- Authorization to start = 1.71 months
- Start to completion = 10.87 months

If project is 5-9 units

- Authorization to start = 1.95 months
- Start to completion = 11.64 months

If project is 10+ units

- Authorization to start = 1.94 months
- Start to completion = 13.21 months

The NAHB-NMHC survey collected data on how much time regulation adds to the development process. To assign this to a particular phase of the development the following assumptions are used.

The regulatory delay is split and attributed half to the lag between applying for zoning approval and the beginning of site work, and half to the period after site work begins. If half of the regulatory delay exceeds the lag between applying for approval and beginning of site work, the excess is also attributed to the period after site work begins. It is first assumed that the resulting regulatory delay is attributable to the period between the start of site work and the start of building construction, minus 3 months (the assumed minimum time it would take to do site work in the absence of regulation, based on conversations with developers). If any regulatory delay remains after being allocated to the zoning approval and site work periods, it is then attributed to the building construction period, and the start-to- completion lag is adjusted upward beyond the SOC-based average, accordingly.

The analysis assumes all loans are paid off when the buildings are completed.

Cost Breakdown

To implement the process described in the paragraph above and calculate a "pure" cost of delay (i.e., the effect regulatory delay would have even if the regulation imposed no other cost), estimates of costs incurred during different phases of the development process are needed.

The breakdown is based on the split between lot and construction costs in NAHB's Construction Cost Surveys (averaged over surveys conducted since 2000) and the Census Bureau's "noncostruction cost factor" for raw land. The calculations also assume three-fourths of these costs are financed, based on typical AD&C loan-to- value rations in the QFS.

Resulting assumptions:

- Only the cost of applying for zoning occurs at the very start of the development process. Financing costs associated with this are charged are to the regulatory cost of the application and not counted in the pure cost of delay.
- 10.2 percent of total development represent costs financed by a land acquisition loan at the start of the site work phase.
- 10.8 percent of total development costs represent costs financed by a development loan during the site work phase, assuming draws on the loan occur on average halfway through this phase.
- 54.0 percent of total development costs represent costs incurred after building construction has started and financed with a construction loan, again assuming draws on the loan occur on average halfway through the site work phase.

Appendix 1: Survey Questionnaire

1. What type of multifamily projects do you typically build in what areas? *Select all that apply*

	Urban Core	Inner-Ring Suburban	Suburban	Exurban	Rural
High-Rise					
Mid-Rise					
Garden/Low-Rise					

2. What regions do you build in? Please select all that apply.

New England (CT, ME, MA, NH, RI, VT)
Mid Atlantic (NJ, NY, PA)
South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)
East North Central (IN, IL, MI, OH, WI)
West North Central (IA, KS, MN, MO, NE, ND, SD)
East South Central (AL, KY, MS, TN)
West South Central (AR, LA, OK, TX)
Mountain (AZ, CO, ID, NM, MT, UT, NV, WY)
Pacific (AK, CA, HI, OR, WA)

3. Including units you may start before the end of the year, how many multifamily units will your company start in 2017?

When answering this survey, please refer all your answers to the typical (most common) multifamily project your company builds.

Respond only for your local office/division, if you are part of a larger company.

4. How many units does your typical project have?

2-4 units
5-9
10-49
50-149
150-349
350-499
500 units or more

5. What is the total dollar amount spent on development costs in your typical project?

$____________________

Land Use & Planning Regulations

6. For a typical piece of land, how much does it cost to apply for zoning approval as a % of total development cost? *(Include costs of fiscal or traffic impact or other studies, and any review or other fees that must be paid by time of application. Please enter "0" if application costs are Zero percent).*

_______%

7. For a typical project , how many months does it take between the time you apply for zoning approval and the time you begin site work?

_____________________months

8a. When you begin site work, do you pay any guarantee or other fees that are refundable when the project is completed?

☐ Yes No

8b. If "yes" in question 8A, how much are those refundable fees, as a % of total development costs?

______________________%

9. Other than the refundable fees mentioned in question 8a, how much does it cost to comply with regulations when site work begins, as a % of total development costs? *(Include costs of complying with environmental or other regulation as well as the cost of hook-up or impact or other fees.) Please enter "0" if cost of complying with these regulations is Zero percent).*

_______%

10. How much do development requirements that go beyond what you would otherwise do (in terms of property layout, landscaping, materials used on building facades, etc.) add to your cost, as a % of total development costs? *(Please enter "0" if the jurisdiction's requirements don't go beyond what you would normally do).*

__________%

11. In the typical case, what is the value of any land that must be dedicated to the local government or otherwise left unbuilt (for parks, open green space, etc.), as a % of total development cost? *(Please enter "0" if dedicating land is required infrequently).*

__________%

12. How many months does it take between the time you begin site work and the time you obtain authorization to begin construction of the apartment building(s)?

_____________________ months

13. How much extra time (in months) overall does complying with regulations add to the development process? *(Please enter "0" if regulations typically cause no delay).*

_____________________months

14. When you obtain authorization to begin construction, how much do you pay in additional fees, as a % of total development costs? *In many cases, this will be only a permit fee, but include any additional impact or hook-up or inspection fees if they kick in at this time. (Please enter "0" if fees paid during or after construction are Zero percent).*

_______%

15a. In the typical case, does a jurisdiction have inclusionary zoning/affordable housing requirements that apply to your project?

Yes No

15b. In the typical case, how much do these requirements (or a fee in lieu of affordable housing) cost as a percent of total development costs? (*Please enter "0" if inclusionary zoning/affordable housing mandates/fees in lieu of affordable housing are encountered infrequently).*

______%

Construction/Building Regulations

16. Over the past 10 years, how much have changes in construction codes and standards added to the cost of building a typical multifamily project, as a % of total development costs? *(Please enter "0" if code changes have had minimal impact on costs).*

_______%

17. How much does complying with OSHA or other labor regulations cost, as a % of total development cost? *(Please enter "0" if labor regulations have no impact on development costs).*

_______%

Don't know/use of subs makes it impossible to estimate

18. Have you experienced added costs or delays due to neighborhood opposition to multifamily construction?

Yes No

NATIONAL MULTIFAMILY HOUSING COUNCIL
NATIONAL APARTMENT ASSOCIATION

March 9, 2017

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

Dear President Trump:

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

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

We believe that regulations must have demonstrable benefits that justify the cost of compliance and that federal agencies should be aware that broad-stroke regulations often have disproportionate effects on industries that serve as key drivers of our economy. Excessive regulation and compliance uncertainty result in costly mandates that divert resources from the production and operation of multifamily housing. The apartment industry faces a flood of regulations from a wide range of federal agencies including the Department of Housing and Urban Development (HUD), the Environmental Protection Agency (EPA), Department of Labor (DOL), Occupational Safety and Health Administration (OSHA), and the Department of Energy (DOE).

Given your great interest in removing regulatory barriers to development and growth, NMHC/NAA would like to highlight some of the specific federal regulations that slow or prevent development of housing that is affordable, challenge otherwise legitimate business practices designed to ensure safe and decent housing for residents, decrease access to capital and make it difficult to transfer family-owned businesses from one generation to another. The regulations outlined in the attached document, while well-intentioned in nature, have negatively impacted the development and management of multifamily housing at a time when our industry strives

NMHC/NAA Joint Legislative Program
1775 Eye St., N.W., Suite 1100 | Washington, DC 20006 | 202 974 2300 WeAreApartments.org

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

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

Sincerely,

Douglas M. Bibby
President
National Multifamily Housing Council

Robert Pinnegar
President & CEO
National Apartment Association

Attachment (1)

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

NMHC/NAA Regulatory Relief Priorities by Agency

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

REGULATION	REGULATORY BURDEN FOR THE APARTMENT INDUSTRY
Federal Flood Risk Management Standard	In response to President Obama's Executive Order 13690, HUD has proposed a rule to expand its floodplain management oversight to increase disaster preparedness and flood resiliency of federally funded buildings and projects. Under the proposal, multifamily builders would face new, costlier elevation requirements if funding is derived from a HUD grant program (HOME, CDBG) or when using Federal Housing Administration (FHA) mortgage insurance for new construction or substantial rehabilitation projects. The rule will increase construction costs and threaten access to FHA mortgage insurance programs for multifamily builders in an already tight credit market.
Fair Housing Rules	**Including: 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.
Affirmatively Furthering Fair Housing Rule	As it is currently written, the Affirmatively Furthering Fair Housing proposal's broad mission to desegregate communities by combating exclusionary zoning and other practices deemed discriminatory could indirectly affect the multifamily industry. Specifically, the proposal could lead to delays in construction and permitting decisions. These types of disruptions may aggravate the housing market's already short supply of apartments.
Small Area Fair Market Rents (SAFMRs)	The Section 8 Housing Choice Voucher Program provides subsidized rents for qualifying low-income families. The program uses HUD-determined Fair Market Rents (FMRs) to establish maximum allowable rents the government will pay to a private apartment owner who rents to a voucher holder. The final rule implementing Small Area Fair Market Rents establishes rent rates by ZIP Code.

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 and drive up their servicing costs. In many cases the information is not available and owners could be restricted from borrowing from HUD if the data is not reported.
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.

ENVIRONMENTAL PROTECTION AGENCY

REGULATION	REGULATORY BURDEN FOR THE APARTMENT INDUSTRY
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 Occupational Safety and Health Administration's Lead in Construction Standard that already applies to the disturbance of lead on all properties – regardless of the age of or type of the building.

BANK REGULATORS

REGULATION	REGULATORY BURDEN FOR THE APARTMENT INDUSTRY
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.
Annual Production Caps on Government Sponsored Entity Multifamily Programs	Federal Housing Finance Agency (FHFA) imposes an annual production cap on the Government Sponsored Entity (GSE) multifamily business that could reduce the availability of debt capital needed by the market.
High Volatility Commercial Real Estate (HVCRE) Standards	Basel III capital standards increased the capital that banks have to hold for certain acquisition, development and construction loans, making them costlier and decreasing availability. This rule applies to every bank, no matter the size. Consequently, it has had an impact on the availability of construction loans during 2016.
Risk Retention Rules and Standards	Federal regulators have produced a number of regulations and standards during the previous Administration that could potentially constrain capital flows to the multifamily sector. Among those are Dodd-Frank risk-retention rules and Basel III capital standards, both of which impact how financial institutions must treat the multifamily debt they hold and originate.
Community Reinvestment Act Rules	The Community Reinvestment Act (CRA) was created to ensure that banks are serving the borrowing needs of all the communities within which they operate. The areas that CRA guidelines serve and the borrower demand for the types of loans that meet the guidelines often do not address the needs of the banks. Due to unclear regulations, banks are highly conservative in their analysis of what is eligible, thereby reducing the availability of loans to borrowers in areas that do not qualify for CRA credit.

<u>DEPARTMENT OF LABOR</u>

REGULATION	REGULATORY BURDEN FOR THE APARTMENT INDUSTRY
Labor Department Overtime Rule	The Department of Labor (DOL) final rule increases the salary threshold for workers who are entitled to overtime pay protections under the Fair Labor Standards Act. Multifamily and other industry workers would be impacted because overtime pay would be determined solely on falling below the threshold. Among other issues, the multifamily industry is concerned the rule will harm the ability of employers to implement, and employees to take advantage of, flexible scheduling options. In addition, it could limit career advancement opportunities for employees. Those nearing 40 hours of work in a week may not be able to participate in training or other opportunities because the employer is unable to provide overtime compensation for the hours spent.
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.

<u>NATIONAL LABOR RELATIONS BOARD</u>

REGULATION	REGULATORY BURDEN FOR THE APARTMENT INDUSTRY
NLRB Joint Employer Ruling	The National Labor Relations Board (NLRB) ruled that it could impose joint employer liability when an entity has "indirect" control and "unexercised potential" of control over another entity's employees. However, for 30 years before this ruling, entities were designated joint employers when both had "direct and immediate" control over "essential terms and conditions of employment." This could have a significant impact on multifamily firms that may become liable for the actions of subcontractors, suppliers, vendors and temporary staff. Joint employers are also required to negotiate with any union representing the jointly employed workers.

DEPARTMENT OF ENERGY

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

INTERNAL REVENUE SERVICE

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