NMHC and NAA Legislative and Regulatory Update

For more than 20 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered in a joint legislative program to provide a single voice for America’s $1.1 trillion apartment industry. The following is an update on our policy and legislative activities to date:

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- Housing Finance Reform
- HUD Multifamily Reorganization

BUSINESS OPERATIONS
- Terrorism Insurance
- Flood Insurance
- Patent Trolls
- Data Security
- Telecommunications

HOUSING POLICY
- FY 2015 HUD Spending Bill
- Military Housing
- Disparate Impact

TAX POLICY
- Tax Reform
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FINANCE AND CAPITAL MARKETS

Housing Finance Reform:

Why It Matters: Getting multifamily right in housing finance reform is the single most important factor to ensuring that the apartment industry can meet the nation’s growing rental housing demand.

What We Are Doing: Remaining consistently involved in housing finance reform efforts, including in both the drafting of legislation and related negotiations, to ensure that the multifamily industry is protected and that access to capital is preserved.

Where It Stands: We do not expect any movement on housing finance reform until next year. The latest in a series of reform bills was introduced in the House in July 2014, joining other legislation under consideration that includes the House’s PATH Act and HOME Forward Act, as well as the Senate’s Johnson-Crapo bill.

EMPLOYMENT, LABOR AND IMMIGRATION
- Criminal Background Checks
- Immigration Reform

ENERGY AND THE ENVIRONMENT
- Energy-Efficiency Legislation
- Clean Water Act Expansion

CONSTRUCTION AND DEVELOPMENT
- Building Codes

RESEARCH
- Census and American Community Survey Data

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HUD Multifamily Reorganization:

**Why It Matters:** HUD’s multifamily field offices provide mortgage insurance to HUD-approved lenders nationwide, facilitate multifamily housing projects and administer rental assistance programs.

**What We Are Doing:** Limiting the impact of the reorganization of HUD’s multifamily field offices on the apartment industry through in-depth discussions with the offices of the HUD Secretary and the FHA Commissioner.

**Where It Stands:** Reorganization plans are scheduled to be fully implemented by 2016, consolidating employees in HUD’s multifamily field offices from 17 hubs into five future regions. Each region will have one hub and one satellite office: New York (hub) and Boston (satellite); Atlanta (hub) and Jacksonville (satellite); Chicago (hub) and Detroit (satellite); Fort Worth (hub) and Kansas City (satellite); and San Francisco (hub) and Denver (satellite).

**BUSINESS OPERATIONS**

Terrorism Insurance:

**Why It Matters:** Apartment owners are required by lenders to have a terrorism insurance policy in place on existing properties and future development projects.

**What We Are Doing:** Most recently, we joined with the U.S. Chamber of Commerce for the second time this year in sending a letter to the House urging final passage of an extension of the Terrorism Risk Insurance Act (TRIA). We asked NMHC/NAA member firms to sign the letter that was open for signatures until September 4, 2014, and it was then sent to the full House when they returned from August recess.

**Where It Stands:** Congress left for the August 2014 recess without reauthorizing TRIA due to a division among House Republicans over their chamber’s bill that is stalling further action. House Financial Services Chairman Jeb Hensarling, R-Texas, has stated that the process for passage will not be settled for several months. The Senate passed its TRIA bill in July 2014.

Flood Insurance:

**Why It Matters:** The 2012 Biggert-Waters Flood Insurance Reform Act extended the National Flood Insurance Program for five years in order to return the program to solvency. However, as reforms were implemented, many apartment owner policyholders experienced significant price increases when they renewed their policies, transferred properties or were mapped into a riskier flood zone.

**What We Did:** Closely monitored implementation of flood insurance reform and the potential impacts on the industry, actively supporting legislation in Congress that would delay flood insurance rate increases for most policyholders.

**Where It Stands:** President Obama signed the flood insurance bill into law in spring 2014, easing the flood insurance premium rates that Congress enacted in 2012.
Patent Trolls:

**Why It Matters:** The real estate industry – including apartment owners and operators – have been the target of patent infringement allegations by so-called “patent trolls” threatening meritless legal action for the alleged unlicensed use of patented products or technologies.

**What We Are Doing:** Strongly supporting legislation under debate in Congress to address meritless patent claims for alleged unlicensed use of technologies involving WiFi and web-based platforms, among other claims that have targeted real estate companies.

**Where It Stands:** The Senate Judiciary Committee scheduled consideration of patent reform legislation in May 2014, but moved to table the bill shortly after calling it up. In coordination with a number of organizations representing various real estate sectors, we sent a letter to the Senate in April 2014 urging approval of legislation and we will continue to monitor related progress.

Data Security:

**Why It Matters:** Apartment owners and operators collect personally identifiable data, such as the name, address and Social Security Number of residents, prospective residents and employees.

**What We Are Doing:** Assessing legislative proposals to safeguard consumers’ personal information, which involves replacing the current patchwork of privacy and data breach laws with a national standard for all businesses that collect personal information; and surveyed members to assess the impact of and the preference for a federal data breach notification standard.

**Where It Stands:** The outlook for future action is uncertain at this time. We continue to follow this issue carefully, ensuring that any proposal or measure that advances in Congress is reasonable and does not impose overly burdensome compliance obligations on apartment firms.

Telecommunications:

**Why It Matters:** Apartment owners and managers increasingly rely on Internet-based platforms to communicate with residents, provide “smart” building amenities and implement operations systems from revenue management to maintenance. Reliable broadband service can also have a significant impact on resident satisfaction and attracting and retaining residents.

**What We Are Doing:** Advocating for the industry’s interests as the Federal Communications Commission (FCC) and Congress consider a range of telecommunications issues like the Commission’s net neutrality proposal that would prohibit Internet providers from blocking or slowing access to website and web-based platforms.

**Where It Stands:** The FCC voted 3-2 on May 15 to move forward with considering its net neutrality proposal that would prohibit Internet providers from blocking or slowing access to website and web-based platforms.
HOUSING POLICY

FY 2015 HUD Spending Bill:

**Why It Matters:** Apartment owners, renters and local communities benefit from HUD funded rental assistance programs.

**What We Are Doing:** Urging full funding of rental assistance programs in FY 2015. We also joined an industry coalition in sending a letter to Congress raising concerns about a funding change to the Section 8 Project-Based Rental Assistance (PBRA) program. The program is adequately funded in the Senate and House bills, but is prorated to reflect a shift in funding to a calendar year method. This could result in a shift in cost burden to FY 2016 that would likely cause Congress to rein in spending next year.

**Where It Stands:** The spending bill funding HUD activities in FY 2015 passed the Senate Appropriations Committee on June 5 following passage of a similar House committee bill on May 21. Recent debates on both the Senate and House floors have set the stage for conference negotiations between the two chambers this summer or in early fall. We continue to educate members on the related impact of the PBRA change.

Military Housing:

**Why It Matters:** A proposed reduction to the Defense Department’s Basic Allowance for Housing (BAH) benefit in the Senate version of the 2015 National Defense Authorization Act (NDAA) would negatively impact housing options for military families, as well as critical funding stability for apartment owners in and around military installations.

**What We Are Doing:** Raising awareness about the potential BAH cuts through letters to key decision-makers in Congress, cautioning against changes, and we also held a military housing “fly-in” lobby day in July 2014 where representatives from our member companies met with key members of the Senate and House.

**Where It Stands:** We asked Congress to adopt the House passed NDAA, which rejected changes to housing benefits until the findings and recommendations of the Military Compensation and Retirement Modernization Commission are completed in February 2015.

Disparate Impact:

**Why It Matters:** HUD’s 2013 disparate impact final rule creates uncertainty about potential liability risks for legitimate apartment operations practices like resident screening and occupancy standards.

**What We Are Doing:** Implementing a multi-faceted strategy, including submitting amicus briefs in September 2013 and in June 2014 to the U.S. Supreme Court requesting that disparate impact claims not be recognized under the Fair Housing Act.

**Where It Stands:** For the third time since 2012 the U.S. Supreme Court has recently been petitioned to hear a case that may decide the fate of disparate impact liability under the Fair Housing Act. Two previous cases were accepted by the Court, but the parties settled before review, leaving the issue unresolved.
TAX POLICY

Tax Reform:

**Why It Matters:** Apartment owners, operators and developers pay taxes when they build, operate, sell or transfer communities to their heirs, leaving a lot at stake when it comes to reform.

**What We Are Doing:** Supporting the enactment of pro-growth tax reform that does not disadvantage apartment owners and renters relative to other asset classes.

**Where It Stands:** The House unveiled a sweeping tax reform proposal in February 2014. The Senate is currently more focused on extending tax provisions, so-called tax-extenders that expired at the end of last year, than tax reform. The House and Senate are not expected to advance comprehensive legislation this year, but both chambers are expected to hold hearings.

Tax Extenders:

**Why It Matters:** Apartment owners, operators and developers would benefit from the renewal of bonus depreciation, the Low-Income Housing Tax Credit (LIHTC) and energy-efficient tax incentives that expired at the end of 2013.

**What We Are Doing:** Actively urging House and Senate members to extend tax incentives that expired in 2013, including bonus depreciation, the flat 9 percent LIHTC, and the Section 179D and 45L energy-efficient tax incentives.

**Where It Stands:** The House is moving expiring tax provisions on an individual basis and approved legislation on May 29 to make permanent bonus depreciation. Ultimately, however, current divisions between the House and Senate over whether expiring tax provisions should be extended permanently, instead of on a short-term basis, is likely to delay final legislation until after mid-term elections.

EMPLOYMENT, LABOR AND IMMIGRATION

Criminal Background Checks:

**Why It Matters:** Apartment owners and operators need to check the criminal histories of employees and job applicants to help protect the safety and security of residents and staff.

**What We Are Doing:** Working as part of a coalition to closely monitor the Equal Employment Opportunity Commission (EEOC) enforcement agenda and working to create a process for building on recent scrutiny of the EEOC’s tactics by some members of Congress and judges.

**Where It Stands:** The House Subcommittee on Workforce Protections held a hearing on June 10 on the EEOC’s regulatory and enforcement practices on criminal background checks by employers. Lawmakers challenged the vagueness of the guidance and noted that federal policy may actually conflict with state laws that require criminal background checks.

Immigration Reform:

**Why It Matters:** One in five renter households is headed by an immigrant and immigrants comprise 22 percent of the construction workforce, making reform a critical issue for the apartment industry.
**What We Are Doing:** Working closely with policymakers to ensure immigration reform provides legal clarity for employers, does not overly burden property owners with enforcement requirements, and promotes efficient labor markets for construction and property operations.

**Where It Stands:** House Republicans and Democrats remain unable to agree on a comprehensive bill. House Republicans have been the focus of immigration reform advocates since the Senate passed a bipartisan comprehensive reform bill in June 2013. President Obama has threatened executive action on immigration reform, but in September 2014 announced that he would postpone action. Many believe it’s due to his concerns for Democrats facing re-election in November.

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**ENERGY AND THE ENVIRONMENT**

**Energy-Efficiency Legislation:**

**Why It Matters:** Energy-efficient apartment buildings reduce energy consumption costs for apartment owners and residents, as well as further the goal of national energy independence.

**What We Are Doing:**

- **Energy Tax Policy** – Meeting with House Ways and Means and Finance Committee members to raise awareness regarding an expiring energy-efficiency tax measure that encourages energy-efficient new construction and rehabilitation of older properties;
- **Apartment Building Energy-Efficiency Challenge** – Working with HUD, the White House, and Department of Energy to launch the building energy-efficiency challenge in the apartment industry; and
- **Energy Star** – Successfully worked to help develop an Energy Star rating for the multifamily industry. Specifically, the Environmental Protection Agency announced that beginning on September 16 multifamily properties will be able to receive a 1-100 Energy Star score. Buildings located in areas where utility providers do not currently provide whole building utility consumption data will not be able to get a score. However, we will continue to work to help ensure that the program is available to the entire industry.

**Where It Stands:** In May 2014, the Senate fell short of the 60 votes needed to advance the bipartisan Shaheen-Portman energy-efficiency bill, likely ending the legislation’s chances of passage this year. The House has taken a different approach to energy legislation, choosing to take-up individual proposals in lieu of a larger package. One bill, the Energy-Efficiency Improvement Act of 2014, passed by an overwhelming majority in May 2014. The bill would extend the Energy Star rating to commercial buildings within mixed use properties through a Tenant Star energy program even if the building itself does not meet the Energy Star requirements.

**Clean Water Act Expansion:**

**Why It Matters:** Apartment owners and operators would face significant increases in costs associated with permitting requirements if an Environmental Protection Agency (EPA) and Army Corps of Engineers proposed rule is implemented that would essentially subject all bodies of water to federal jurisdiction.

**What We Are Doing:** Pursuing an aggressive congressional lobbying strategy, including working with a multi-industry group of stakeholders called the Waters Advocacy Coalition (WAC) to challenge the EPA and Army Corps’ proposed rule. We raised concerns that they were inappropriately rushing to finalize the rule and were successful in extending the related comment period from July to October 2014.
Where It Stands: The House Transportation and Infrastructure Committee unanimously passed a bill in July 2014 that would prevent the EPA from moving forward with the proposed rule. And while the measure is expected to easily pass the House in a floor vote the week of September 8, 2014, a companion measure in the Senate is not expected to move.

CONSTRUCTION AND DEVELOPMENT

Building Codes:

Why It Matters: Building codes and standards that promote building efficiency and increased transparency benefit apartment owners, operators and residents.

What We Are Doing: Advancing legislation to promote common sense, cost-effective building codes and standards, as well as participating in International Code Council final action hearings that include significant items of interest to the apartment industry.

Where It Stands: The ANSI A117.1 accessibility standard, used as the reference for accessible design in the national model codes, is undergoing a major revision that could change the basic requirement for accessible apartment design, including clear floor space, turning circles and reach ranges. In July 2014, the related accessibility committee met with a major focus on this scoping issue and whether it should be included in the standard versus being part of the building code. Please visit www.NMHC.org for an extensive and up-to-date toolkit on building codes and standards that directly impact the multifamily industry.

RESEARCH

Census and American Community Survey Data:

Why It Matters: Funding for both the 2020 Census planning and the administration of the annual American Community Survey (ACS) is in limbo due to congressional inaction on the U.S. Census Bureau’s FY 2015 spending bill. We use data from both surveys for numerous purposes, including estimating the economic impact of the apartment industry and providing members with the latest data about the industry.

What We Are Doing: Through a targeted outreach campaign, we have joined with a broad coalition of groups in urging Congress and the Obama Administration to support extra funding for the Census.

Where It Stands: The full House approved a funding measure in late May that would make participation in the ACS voluntary, which would reduce the reliability of the survey and likely make it more expensive because increased effort would need to be made to ensure a representative sample. The Senate Appropriations Committee approved a bill that provides more funding than the House version. The bill, however, has not been brought to the Senate floor due to politics.
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