

APARTMENTS

WE LIVE HERE

2013 POLICY AND REGULATORY ISSUES

Overview

The apartment industry, with \$2.2 trillion in real estate assets and 662,000 individuals directly employed in the operation of those properties, represents a critical and rapidly growing sector of our economy. The rental construction and property management sectors provide 17 million renter households a range of options to meet their particular needs and, in doing so, help create vibrant communities where affordable housing and increased consumer choice create jobs, support local small businesses and contribute to the fabric of communities across the country.

Changing demographics and new economic realities are driving a surge in rental demand. In this decade, renters could make up half of all new households—more than seven million new renter households. Although demand for apartments is growing, the industry will have to redouble its efforts to meet supply challenges: The fact is that while 300,000 units a year must be built to meet expected demand, ground was broken on just 167,400 apartments last year.

Policies emanating from both Washington, D.C., and state capitals will play a key role in either assisting or hindering our industry from being able to continue to provide safe and decent housing to America's workforce. For this reason, NMHC and NAA have joined in a campaign to educate federal, state and local policymakers and the media on the apartment industry. When the 113th Congress convenes in January, our top priorities will be to advocate for a tax system that promotes economic growth without disrupting the real estate industry, a housing finance system that provides liquid capital to all corners of the nation and a regulatory environment that does not inhibit our ability to provide housing to millions of American families.

Balanced Federal Housing Policy

We urge policymakers at all levels of government to work with the apartment industry to craft a smarter housing policy that:

- Respects the rights of individuals to choose the housing that best meets their financial and lifestyle needs without disadvantaging, financially or otherwise, those who choose apartment living;
- Promotes healthy and livable communities by encouraging responsible land use and promoting the production of all types of housing;
- Recognizes that all decent housing, including apartments, and all citizens, including renters, make positive economic, political and social contributions to their communities; and
- Balances the expected benefits of regulations with their costs to minimize the impact on housing affordability.



NMHC/NAA PRIORITY ISSUES

Tax Reform

Although the American Taxpayer Relief Act of 2012, enacted in January 2013, permanently set tax rates on ordinary and capital income, as well as on estates, it did little to simplify the tax code. As a result, policymakers will undoubtedly continue to call for tax reform, the prospects for which are uncertain given underlying political realities. That said, lawmakers are looking at every aspect of the tax code, from individual and corporate tax rates to carried interest to the deductibility of business interest and even programs such as energy tax incentives and the Low-Income Housing Tax Credit.

NMHC/NAA urge policymakers, as they consider tax reform, to be mindful of doing so in a way that doesn't harm the increasingly important apartment industry and our ability to construct, rehabilitate and manage the rental housing America needs.

Housing Finance Reform

The apartment industry's success depends on a stable and sufficient supply of liquid capital in ALL markets at ALL times. That capital is not only needed to enable the industry to build more apartments but also to allow existing owners to renovate and maintain their buildings and to enable owners to refinance maturing mortgages. An absence of such capital does not just affect apartment owners; it impacts millions of renters and the communities they live in given that our industry provides shelter to America's workforce, including teachers, firefighters and police officers.

Although NMHC/NAA strongly support a financing structure dominated by private capital, history has shown that even during healthy economic times the private sector has been unable to meet the industry's financing needs. All private sources of capital, from commercial banks to life insurance companies to the commercial mortgage-backed securities (CMBS) market, have limitations either in the terms of loans they offer, the kinds of properties and markets they target or even their capacity or willingness to lend to certain types of borrowers and in less attractive markets.

As a result, NMHC/NAA urge policymakers to maintain a federal guarantee for multifamily mortgages whether or not they choose to retain Fannie Mae and Freddie Mac in their present forms. This is crucial to ensuring that liquid mortgage capital is available in secondary and tertiary markets during all economic climates. Furthermore, providing a federal guarantee in the multifamily sector has not come at a cost to taxpayers, even during the financial collapse. Fannie Mae's and Freddie Mac's multifamily lines of business were not part of the housing crisis and have actually produced \$10 billion in net profits for the government since they were placed into conservatorship.

Regulatory Reform

The apartment industry is a highly regulated sector, governed by a flood of regulations from agencies as diverse as the Department of Housing and Urban Development (HUD), the Environmental Protection Agency (EPA), the Department of Energy (DoE) and even the Federal Reserve. While these regulations may be well intentioned, many will lead to costly mandates that divert resources not only from the production and operation of multifamily housing but, ultimately, also from job creation. In fact, according to research commissioned by the Small Business Administration's Office of Advocacy, the total cost of federal regulations in 2008 topped \$1.75 trillion, or \$10,585 per employee for firms with fewer than 20 employees.

NMHC/NAA recognize the need for regulations but urge agencies to insist that new rules have demonstrable benefits that justify the cost of compliance. In addition, federal agencies should be aware that broad-stroke regulations often have disproportionate effects on various industries; therefore, those rules and regulations affecting commercial real estate should reflect the industry's business and operational structure. Finally, all regulations must be grounded in fact and rely on the latest scientific and/or economic evidence.

Immigration Reform

Immigration policy has moved to center stage and captured public attention once again, and pressure is mounting

for Congress to act on comprehensive reform legislation. Since 2007, when Congress last focused on this issue, the economic recession and political dynamics have chilled meaningful debate on immigration reform. But shifting electoral demographics and the outcome of the 2012 presidential election have changed the political calculus in favor of a comprehensive approach to addressing federal immigration policy.

NMHC/NAA urge policymakers to address our national immigration policy through comprehensive federal legislation. Immigration policy is a federal responsibility with national security and economic implications that should be handled by the federal government. Comprehensive immigration reform would be a disincentive for state and local governments to enact a patchwork of laws, including those measures imposing mandates on rental housing providers to verify the immigration status of apartment residents, thereby creating greater predictability and efficiency.

PROPERTY OPERATIONS REGULATIONS AND COMPLIANCE

Telecommunications

Rapid growth in mobile and wireless technology and heightened consumer and business demand for reliable connections highlight the need for telecommunications policies to keep pace. Reliable, competitively priced Internet, video and telephone services in apartment units and throughout apartment communities can have a significant impact on resident satisfaction and an apartment owner's ability to attract and retain residents. Moreover, apartment firms increasingly depend on reliable connections to interact with residents through mobile platforms and provide "smart" amenities to the community. In 2013, lawmakers and regulators will debate policies addressing spectrum for wireless broadband and rules for technology-based solutions to cellular and other mobile connectivity challenges, obstacles to first responder communications inside residential buildings and a potential rewrite of the Telecommunications Act, which was last updated in 1996. Regulators may also amend or clarify federal rules covering the installation, use and maintenance of satellite dishes in apartment communities.

NMHC/NAA will continue our leadership in advocating the industry's interests as the Federal Communications Commission and Congress consider a range of telecommunications issues that could impact apartment owners.

Data Privacy and Breach Notification

With a goal of reducing identity theft, efforts are underway in Congress to replace the patchwork of privacy and data breach laws enacted by 46 states and the District of Columbia with a national standard for all businesses that collect personal consumer information. This includes apartment firms that collect personally identifiable information such as the name, address and Social Security number of residents, prospective residents and employees. The requirements of state laws vary and sometimes conflict, creating a significant compliance challenge for businesses. Congress is considering a number of legislative proposals that require covered firms to adopt data security programs, define data breaches that trigger notification to affected individuals and stipulate the method of notification. Other provisions include notification safe harbors for encrypted data and publicly available information. Some proposals also require the provision of consumer assistance in the form of credit monitoring.

NMHC/NAA will continue to monitor these proposals and support reasonable efforts to safeguard a consumer's personal information without imposing onerous notification requirements unless a real threat of identity theft exists.

Accessibility: Fair Housing and ADA

Multifamily property owners and managers have obligations under both the Americans with Disabilities Act (ADA) and the Fair Housing Act to include accessible design features in covered apartment communities. The complexity of apartment building design, confusing and limited federal compliance guidance and a lack of recognition by regulatory agencies for construction tolerances has contributed to a significant number of complaints for noncompliance leveled against apartment properties. We anticipate this activity will continue in light of new attention to the shortage of accessible housing for returning war veterans.

NMHC/NAA will continue to educate members about the law and requirements, legal trends, regulatory changes and best practices, as well as seek opportunities to improve the regulatory environment.

Fair Housing and Disparate Impact

The doctrine of disparate impact maintains that even if an action or policy is not intended to discriminate, it can still be considered discriminatory if its effect has an "adverse impact" on members of a protected class. The Supreme Court is currently reviewing and will soon decide whether it will hear *Mt. Holly v. Mt. Holly Gardens Citizens in Action, Inc.* and determine whether or not disparate impact claims are cognizable under the Fair Housing Act and if so, prescribe the test or standard to apply. On a parallel track, HUD published a final rule in February of 2013 to formalize their position that disparate impact exists under the Fair Housing Act. The rule also establishes a uniform standard for determining when an act can be considered discriminatory based on a disproportionate negative impact on a protected class under the Fair Housing Act.

NMHC/NAA filed an amicus brief with the court in support of the review. Apartment industry practices, such as resident screening and income qualifications, have recently been the subject of legal challenges, alleging disparate impact on protected classes. NMHC/NAA will continue to monitor HUD activity and court proceedings on this issue.

ADA: Pool Accessibility

ADA rules that impose new accessibility requirements for swimming pools "open to the public" become effective January 31, 2013, after an initial compliance date of March 15, 2012, was postponed at the urging of NMHC/NAA. Among other things, the rules require pool operators to install permanent lifts, but such rules have limited applicability to the apartment industry. An apartment property may be considered a "public accommodation" and thereby trigger compliance with this new rule if it sells memberships to people outside the resident community or allows the hosting of public swim events.

NMHC/NAA will continue to monitor implementation of this rule to ensure the scope and interpretation do not unduly burden the apartment industry.

ADA Notification Act Compliance and "Drive-By" Lawsuits

Legislation is pending before Congress to address the growing number of complaints filed by professional litigants whose primary goal is to extract settlement money from business owners allegedly noncompliant with the ADA. Specifically, the measures would allow businesses an opportunity to cure a deficiency before a civil action is initiated.

NMHC/NAA will work to advance this legislation in the 113th Congress.

Bed Bugs

Pesticide resistance and bans, as well as increased international travel, have resulted in a resurgence of bed bugs in the United States. Controlling the spread of bed bugs has proved to be a significant challenge for many industries, including hotels, retail and multifamily. While apartment firms are actively deploying the Integrated Pest Management (IPM) programs recommended by EPA and HUD to identify and minimize infestations, property owners are challenged in their efforts to eradicate infestations because there are few effective pesticides; bed bugs have even developed resistance to the now-banned DDT.

NMHC/NAA will continue to call for expanded research efforts to develop solutions to control bed bugs and to identify low-interest loans, grants and other options to assist owners in dealing with catastrophic bed bug infestations. Further, we will continue to work with Obama Administration officials to ensure that actions through notices, rules and regulations are consistent with best practices for bed bug management.

Servicemembers Civil Relief Act (SCRA)

The SCRA offers a range of protections for active duty service members, reservists and members of the National Guard, including postponing or suspending certain financial obligations such as outstanding credit card debt, auto loans and leases and mortgage payments. The law also includes provisions protecting service members from certain eviction actions and allows those who are deployed or given transfer orders to terminate a lease without penalty. The law, which has been in place since 1940, was most recently amended and expanded in 2003. The

SCRA is reviewed regularly by Congress and, therefore, may be subject to additional protections and reforms going forward.

NMHC/NAA will continue to monitor such changes and engage in legislative efforts as necessary.

AFFORDABLE HOUSING PROGRAMS

Section 8 Voucher Reform

The Section 8 Voucher Choice Program, which has long served as America's primary rental subsidy program, provides subsidized rents for low-income families in private rental housing. Unfortunately, it has long been plagued with inefficiencies and onerous bureaucratic requirements that make it more expensive for apartment owners to rent to a Section 8 voucher holder.

Owners who participate in the program must sign a three-way lease with the resident and the housing authority, and they are subject to (often cumbersome) program restrictions such as repetitive unit inspections, resident eligibility certification and other regulatory paperwork. The program has also been plagued with a flawed and volatile funding system, which is expected to worsen in future budget cycles and has undermined private sector confidence in the program. As a result, many private owners are discouraged from accepting Section 8 vouchers. This exacerbates the nation's affordable housing shortage and has led some states and local municipalities to enact regulations that force apartment firms to accept vouchers.

NMHC/NAA support Section 8 reform legislation that removes duplicative regulatory requirements, streamlines the inspection process, simplifies rent calculations, reinforces the voluntary nature of the program and establishes a reliable funding formula.

Low-Income Housing Tax Credit Utility Adjustments

Properties built under the Low-Income Housing Tax Credit (LIHTC) program have limits on the rents they can charge in order to keep them affordable. Those rents include a utility allowance for resident-paid utilities; however, before 2008, the methods the Internal Revenue Service (IRS) allowed owners to use to estimate resident utility costs tended to overestimate them. This, in turn, reduced the gross rent received by owners and threatened the financial viability of many LIHTC properties. In 2008, NMHC/NAA led an effort that resulted in the IRS issuing new rules expanding the sources of data owners can use to calculate resident-paid utilities. On August 7, 2012, the IRS requested comment on a proposal that would allow state agencies that allocate tax credits the option of rejecting any of the currently approved methods.

NMHC/NAA will continue to promote a standard that will maintain flexibility in how developers and owners of LIHTC apartment properties estimate the utility charges for units where the residents pay rent.

Violence Against Women Act

Congress has reauthorized legislation to reauthorize the Violence Against Women Act (VAWA), which includes a number of housing provisions that apply to owners of federally assisted properties. This reauthorization builds on the previous law and expands VAWA's application to additional housing programs, which now include Section 8 voucher and project-based programs, low-income housing tax credit properties, HOME and a variety of elderly, disabled and rural housing programs.

In addition, the bill improves upon existing law by allowing property owners and managers who receive "conflicting information" about a domestic violence incident to require third-party verification before extending benefits under the act.

The legislation also adds several new provisions of concern to housing providers including emergency transfer provisions and new notification requirements.

NMHC/NAA will continue to support reforms through the regulatory process that protect victims and clarify the proper role of private sector participants.

Department of Housing and Urban Development (HUD) Budget

The nation's fiscal situation has led to significant cuts in many of the HUD programs that the apartment sector relies on to support its ability to provide affordable housing to the nation. These include the Section 8 program, the Home Investment Partnership Program, FHA multifamily programs and the Community Development Block Grant Rehabilitation Program. As federal support of these vital programs is cut, state and local governments are forced to make up the shortfall through increased fees, including impact fees, which can have a disproportionate impact on the apartment industry.

According to the Congressional Budget Office, in 2009, the federal government devoted almost four times the dollar amount to support homeownership (about \$230 billion) than it did rental housing (\$60 billion). If federal subsidies were adjusted to reflect the current share of households that rent versus own, the rental housing subsidies would have to increase by roughly \$36 billion. If federal housing subsidies were adjusted to address the nation's greatest housing needs (that is, households spending more than 30% of their income for housing or living in substandard housing), rental housing subsidies would need to increase substantially more.

As lawmakers struggle with our mounting deficits, NMHC/NAA will urge them to retain sufficient support for HUD's rental housing programs, which are already seriously underfunded.

Fair Market Rents

Fair Market Rents (FMRs) are developed by HUD on an annual basis to determine the housing payment standard for the Housing Choice Voucher Program. As federal budgets tighten, there is concern that HUD may be pressured to make changes to the methodology used to calculate the FMR to result in lower rents. Further, there is concern that HUD will stop publishing the proposed FMRs and will adopt the concept of Small Area Fair Market Rents (SAFMRs), which sets rents in smaller geographic areas (by ZIP code) that exclude larger, higher-cost metro areas as a way to decrease costs.

NMHC/NAA will continue to encourage HUD to publish proposed FMRs annually and allow a sufficient comment period before implementation. We will also oppose the unproven concept of SAFMRs.

INSURANCE

Terrorism Insurance

Most lenders require apartment firms to have terrorism insurance coverage; however, after the events of September 11, 2001, private insurers were unwilling to provide such coverage. The federal government stepped in and through the Terrorism Risk Insurance Act (TRIA) created a program to make the government the insurer of the last resort in what was designed to be a temporary program until the private market could fill this void. The program has been extended twice, most recently in 2007 through the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA), and is currently set to expire in 2014. Although the private sector is still unlikely or unable to step into the shoes of the federal government, further extension will not come easy.

NMHC/NAA will work in a coalition with real estate industry partners to advance an extension.

National Flood Insurance Program

On July 6, 2012, President Obama signed a five-year reauthorization of the National Flood Insurance Program into law. The measure not only extended the program but also made several reforms to it.

NMHC/NAA will monitor the regulatory implementation of these reforms and will educate the industry on changes to the program.

CAPITAL MARKETS

Dodd-Frank Regulation and Compliance

In 2010, Congress enacted the 2,300-page Dodd-Frank Act (P.L. 111-203) to address many of the root causes of

the 2008 financial collapse and create a new system of oversight for banks and the broader financial sector. The legislation requires or permits federal regulators to issue hundreds of regulations to implement it. Some of these new regulations could negatively impact investment and lending activities that are critical to the apartment industry. Concerns center around the new lender and issuer requirements for commercial mortgage-backed securities that continue to forestall an effective return of CMBS debt; regulations on how non-financial firms use interest rate swaps; and the impact of registration and fees on firms that advise commercial real estate and multifamily investors.

NMHC/NAA is working to eliminate unintended consequences of the Dodd-Frank law as it is implemented. We will continue to carefully monitor the regulatory process to protect the apartment industry and its access to reliable and affordable credit.

Basel III Tier-1 Risk-Based Capital Standards

Basel III is a global regulatory standard on bank capital adequacy, stress testing and market liquidity risk agreed to by global regulators in 2010-2011 and scheduled to be introduced from 2013 until 2018. This third installment of the Basel Accords is in part a response to banks' inadequate capital reserves to meet credit requirements given the connected nature of global bank investments and liabilities. Effectively, it triples the level of overall capital reserves the world's banks must hold against losses. These larger set-asides, combined with increased reporting and monitoring requirements, are expected to increase the cost of capital across the board, including for lending to multifamily borrowers, and could limit liquidity for these activities. Specific types of loans, such as construction loans and other loan types considered riskier, could be more significantly affected.

NMHC/NAA have submitted comments to U.S. banking regulators on proposed risk-based capital rules to implement Basel III that are set to go into effect in January 2013. We will continue to monitor the ongoing implementation process to protect multifamily liquidity.

Multifamily and Health Care Mortgage Insurance Programs

The Federal Housing Administration (FHA) notified Congress in March 2013 that based on current demand levels it will exhaust its commitment authority for multifamily and health care facilities under the General Insurance/Special Risk Insurance (GI/SRI) Fund for multifamily rental and health care facilities for fiscal year 2013. Failure to provide the additional commitment authority has the potential to cause significant disruptions to financing for rental housing.

NMHC/NAA along with its industry partners are urging Congress to act expeditiously to provide FHA with an additional \$5 billion of commitment authority to ensure continued access to this important multifamily financing source.

FHA Large Loan Program Requirements

FHA has proposed restrictive and costly new requirements for loan applications over \$35 million. The changes included requiring higher levels of borrower net worth, liquidity and experience for principals, changes in property valuation and additional delays in the release of cash proceeds.

NMHC/NAA have provided comments to HUD objecting to the changes and will continue seeking greater flexibility and a more reasonable approach to large loans during the 113th Congress.

Premium Capture Capital Reserve Account (PCCRA)

The Premium Capture Capital Reserve Account (PCCRA) is a regulatory proposal implementing credit risk retention rules contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act. The PCCRA requires that issuers hold as cash reserve for the life of the transaction any premium that they receive as part of the commercial mortgage-backed security issuance. The premium from the sale is part of the income and profit to the issuer generated by the transaction. The removal of this income from the transaction is likely to increase the rate to make the deal profitable, directing borrowers to other financing sources and increasing the cost of mortgage financing to the borrower.

NMHC/NAA sent a letter to regulators indicating our concern that the PCCRA is likely to be costly to borrowers and could significantly curtail incentives for investment banks to participate in the securitization of commercial/multifamily mortgages.

FHA Small Loan Program Proposal

HUD has proposed a pilot program to engage housing finance agencies and bank consortia for affordable housing and to expand the HUD risk sharing program to increase debt capital to small apartment properties that meet set affordable housing requirements. Part of the proposal, which would require legislation, would allow Ginnie Mae to guarantee mortgage-backed securities. In the interim, HUD/FHA are considering a pilot that would allow select Housing Finance Agencies to issue securities on FHA-insured affordable housing transactions without risk sharing.

NMHC/NAA have advocated for a broader pilot that would reach a greater number of small multifamily property owners and will continue to work with lawmakers on this proposal during the 113th Congress.

TAX POLICY

Tax Reform

Although the American Taxpayer Relief Act of 2012, enacted in January 2013, permanently set tax rates on ordinary and capital income, as well as on estates, it did little to simplify the tax code. As a result, policymakers will undoubtedly continue to call for tax reform, the prospects for which are uncertain given underlying political realities.

NMHC/NAA support enacting pro-growth tax reform that does not disadvantage apartment owners and renters relative to other asset classes. Our principles for reform include insisting that Congress take a comprehensive approach and not reduce rates for corporate taxpayers at the expense of flow-through taxpayers (e.g., LLCs, partnerships and S Corporations) that remit business taxes on their individual income tax returns. We also strongly support maintaining the current-law tax treatment of carried interest; the full deductibility of business interest; the Low-Income Housing Tax Credit; and the estate tax compromise agreed to in the American Taxpayer Relief Act of 2012 that calls for a \$5.12 million exemption (indexed for inflation) and a 40 percent top rate.

Low-Income Housing Tax Credit

The Low-Income Housing Tax Credit (LIHTC) is a public/private partnership that leverages federal dollars with private investment to support the production of affordable rental housing. The program has a long history of successfully generating the capital needed to produce low-income housing while also enjoying broad bipartisan support in Congress. According to the National Council of State Housing Agencies, the program has led to the construction of more than 2.4 million units during the past 25 years. Maintaining this supply of affordable housing supply is critical given that the market is short at least three million affordable rental units, according to the Harvard Joint Center for Housing Studies estimates.

The LIHTC has two components: The so-called four percent tax credit can be used to subsidize 30 percent of the unit costs in an acquisition of a project and can be paired with additional federal subsidies; and, in contrast, the nine percent tax credit supports new construction without any additional federal subsidies by subsidizing 70 percent of the costs. In 2008, Congress enacted a flat nine percent tax rate to replace the previous floating rate to prevent it from falling below nine percent.

NMHC/NAA urge lawmakers to retain the LIHTC program as they undertake comprehensive tax reform. We further urge them to make permanent the flat nine percent tax rate, which was extended to cover projects that received an allocation prior to January 1, 2014, as part of the *American Taxpayer Relief Act of 2012*, to avoid reducing the value of the program.

Tax Incentives for Energy-Efficient Commercial Buildings and Multifamily Retrofits

Since 2005, the Commercial Building Tax incentive (Sec. 179D) has provided property owners with a financial tool to assist in the construction or rehabilitation of properties that meet certain energy performance criteria. A full

deduction of up to \$1.80 per square foot (sf) is available for a property that achieves energy savings of 50 percent or more over the baseline energy consumption of the ASHRAE 90.1-2001 standard regardless of the date of construction of the property. A partial deduction of up to \$0.60/sf is available for building subsystems (interior lighting, HVAC or building envelope) that meet certain performance standards in excess of the ASHRAE 90.1-2001 standard. This credit will expire at the end of 2013, and policymakers are likely to consider this measure in the context of tax reform. In order to promote rigorous energy performance, the baseline code reference will likely be updated to reference a more recent code version (2007). A bill expected to be the starting place for discussion is the Commercial Building Modernization Act (S. 3591), which was the subject of a Senate Finance Subcommittee hearing in December 2012. NAA/NMHC submitted testimony in support of the measure that would increase the full tax credit from \$1.80/sf to \$3.00/sf and establish an incentive to encourage the retrofit of existing properties. Importantly, this incentive was pegged to improvements over a building's own baseline performance. This would assist owners of older properties in making meaningful energy conservation retrofits to properties that, due to their age, would be unlikely to be able to exceed the requirements of the latest energy codes. The incentive was tied to the increase in performance improvement beginning at \$1.00/sf for a 20 percent savings in source energy up to \$4.00/sf for a retrofit that achieved 50 percent or more savings in source energy.

NMHC/NAA has submitted a letter in support of the extension and expansion of this provision to the House Ways and Means Committee as it considers overall tax reform. We believe that support for energy efficiency measures is a necessary counterpart to energy production incentives.

IRS Repair Regulation

In late 2011, the Internal Revenue Service (IRS) issued temporary (T.D. 9654) and proposed rules (REG-168745-03) regarding the tax treatment of costs incurred in acquiring, maintaining and improving tangible property, including multifamily buildings. These so-called repair regulations clarify whether such expenditures should be considered a capital improvement and depreciated over time or, alternatively, be viewed as an ordinary and necessary repair and deducted immediately from income. They specify that expenses related to constructing or permanently improving a building, restoring property or converting property to an alternate use must be depreciated. However, the new rules allow taxpayers to deduct the cost of routine maintenance. Although the IRS originally announced that its temporary and proposed repair regulations would be effective as of January 1, 2012, the agency announced (Notice 2012-73) on November 20 that taxpayers will not be forced to comply until 2014. The IRS added that it expects to release final regulations in 2013.

The multifamily industry is extremely concerned that the IRS' regulations would create severe administrative cost burdens, result in noncompliance due to their complexity and penalize older apartment communities. NMHC/NAA have submitted written comments to the IRS that call for the regulations to be delayed, which, as noted above, has occurred, until key areas of concern are resolved. Prior to finalizing the regulations, the IRS should: (1) add bright-line examples to clarify gray areas that could tip the balance between depreciating and expensing; (2) reduce recordkeeping burdens that would require substantial tracking of relatively minor expenses; and (3) expand de minimis rules that would allow for greater expensing.

LABOR AND EMPLOYMENT

Unionization

Proposed legislation and controversial regulatory actions aim to ease union election rules and promote organizing and collective bargaining rights in ways that could unfairly favor unions and place disproportionate burdens on employers.

Legislative proposals to advance "card check" elections over private ballots, including the Employee Free Choice Act (EFCA), would compromise employee independence and favor unions. The National Labor Relations Board's (NLRB) "ambush election rule" would accelerate the union election process, deprive employers of sufficient time to communicate with staff and postpone resolution of key issues—including whether particular employees are eligible to vote in a union election—until after an election has occurred. The NLRB also acted to require most employers to prominently display union organizing information. Although EFCA has been sidelined and NLRB regulations were postponed pending litigation, supporters will continue to push for legislative and regulatory measures to advantage unions, posing a potential threat to apartment companies.

NMHC/NAA will continue to oppose those actions that would disproportionately favor unions and impose unreasonable burdens on employers without benefitting workers.

Immigration

As the debate about immigration policy continues, congressional inaction has generated uncertainty among federal administrative agencies and state and local governments and resulted in a patchwork of compliance requirements that do not adequately address national security concerns or economic and workforce needs. Although Congress approved legislation to extend the E-Verify Program, a federal employment eligibility verification system, and the EB-5 Immigrant Investor Program, which aims to stimulate development and job creation by foreign investors, political considerations and other obstacles have prevented meaningful consideration of comprehensive immigration reform legislation at the federal level. As a result, employers, including apartment companies, must comply with various federal, state and local immigration laws. Some local laws would even hold apartment companies responsible for the immigration status of apartment residents.

NMHC/NAA support comprehensive federal reform to address border security, employment eligibility verification, documentation for unauthorized individuals currently living and working in the U.S. and a workable, amply-sized guest worker program that adjusts for changes in the economy and covers all industries.

Criminal Background Checks in Employment

The Obama Administration and some members of Congress have indicated their concerns about the use of criminal arrest and conviction records in employment matters. In April 2012, the Equal Employment Opportunity Commission (EEOC) updated its enforcement guidance on the issue, citing judicial precedent and existing policy. According to the revised guidance, an employer may still consider arrest and conviction records, but under the “disparate impact” theory, doing so may not adversely impact groups protected by federal civil rights laws unless an employer can establish job relatedness and business necessity. Further, EEOC’s Strategic Enforcement Plan for Fiscal Years 2012-2016 prioritizes continued examination of employment screening practices.

NMHC/NAA will continue to educate lawmakers and regulators about apartment companies’ critical need to check criminal histories of employees and job applicants to help protect the safety and security of apartment residents and the staff who manage and maintain apartment communities.

ENERGY AND ENVIRONMENT

Lead-Based Paint

There are many federal regulations that address lead in the environment. Providers of housing built before 1978 have been subject to additional regulations aimed at minimizing the exposure of children to potentially harmful levels of lead. Collectively, these regulations have been enormously successful, as demonstrated by the most recent national survey conducted by the Centers for Disease Control and Prevention that found reductions in the average blood lead level in individuals of all ages.

Despite these significant improvements, EPA is expanding already stringent regulations to further reduce permissible lead levels in air and drinking water, lower the permissible lead in coated surfaces and reduce the threshold level for lead in dust and soil. EPA has indicated that it is considering a modification of the lead hazard standard, including the definition of lead-based paint. EPA has begun rulemaking focused on activities on public and commercial properties that may disturb lead-coated substrates. According to EPA, this rule will not be bounded by the pre-1978 definition that has been applied to target housing, since lead paint was available for use on nonresidential properties after 1978. EPA is required by a court settlement to issue a proposed rule in 2015.

NMHC/NAA will continue to engage Congress, federal regulators and other stakeholders in seeking health-protective and cost-effective regulations to ensure lead-safe housing.

EPA Efforts to Regulate Stormwater Runoff from Existing Properties

Under the Clean Water Act, EPA is authorized to regulate activities that affect water quality and has long regulated stormwater control during the construction phase of development. In 2009, EPA announced plans to

issue new and significantly expanded stormwater management rules for already developed and redeveloped properties. Such rules will require costly modifications to existing properties. The regulations, to be issued in 2013, are expected to require the use of expensive green infrastructure and low-impact development techniques such as a 50 percent reduction in impervious surfaces, green roofs and increased onsite water retention. The regulations may also increase municipal water fees, as jurisdictions face higher stormwater management compliance costs. EPA has committed to this rulemaking as part of a litigation settlement agreement with environmental interests over restoration of the Chesapeake Bay, but it has failed to produce a cost-benefit analysis in support of it.

NMHC/NAA believe this expansion of stormwater regulation exceeds EPA's statutory authority, and the agency should not proceed without first allowing congressional review as required by the Clean Water Act.

Clean Water Act Expansion

Several recent Supreme Court decisions have pointed to the ambiguities in parts of the Clean Water Act, particularly as it defines the scope of waters that are subject to federal jurisdiction. EPA and the U.S. Army Corps of Engineers have issued a preliminary guidance document that would expand the number of waters subject to federal jurisdiction. States currently have authority to impose additional regulations on waters under their control that they identify as being threatened or endangered. We will continue to address this issue by working with Congress and demanding that the agencies comply with the Administrative Procedures Act and go through a formal rulemaking process, which includes notice and comment by affected parties.

NMHC/NAA oppose the expansion of the scope of waters under federal jurisdiction. Furthermore, we believe that state and local regulators are in the best position to apply more stringent criteria for the management of water resources that may require specific, heightened intervention for maintaining high water quality standards.

Green Building Labeling and Information Disclosure

As policymakers seek ways to improve energy efficiency, legislative and regulatory efforts have been undertaken to establish a building rating system that would grade buildings on their energy efficiency and publicly disclose that information. Most notably is the proposed DoE Asset Rating Program. Building energy labels raise valuation concerns and transactional uncertainty, especially since the accuracy of these labels is not proven in the apartment sector.

NMHC/NAA oppose the development of mandatory building performance labeling programs and continue to work with EPA to expand well-known and *voluntary* energy management tools, such as the federal Energy Star program, to apartment properties.

National Green Building Standard

Green building standards can benefit apartment firms, but they can also create significant costs and technical problems where they are not well tailored to multifamily construction. The National Green Building Standard (NGBS) is the most appropriate standard for residential construction. It was developed by a diverse group of stakeholders that included state and local building code officials, representatives of the U.S. Green Building Council, real estate industry representatives, product manufacturers and other experts in green building and energy efficiency. Moreover, the standard, which covers multifamily, single-family and mixed-use development, is the only residential standard written to be seamlessly incorporated into existing building codes, and it has followed the strict standard-setting procedures established by the American National Standards Institute.

NMHC/NAA are committed to promoting the NGBS as a cost-effective and industry-supported alternative to LEED and the new International Green Construction Code in legislative, regulatory and code-adoption efforts.

Energy Efficiency Incentives

NMHC/NAA are actively engaged in discussions with federal policymakers and interest groups to develop programs to expand opportunities for property owners to make investments to reduce the energy and water intensity of their properties. Energy usage associated with buildings accounts for 40 percent of the total energy expended in the United States. Substantial investments in new building systems and technology require access to

financing, including incentives for building efficiency improvements such as building retrofit loan programs, grant/rebate programs and favorable tax treatment.

NMHC/NAA's priority is to ensure that these incentives are accessible and available for use on multifamily properties. We have advocated for an expansion of the current commercial building energy efficiency incentive (Sec. 179D) to assist property owners in investing in meaningful building performance upgrades that are not tied to particular code metrics but to quantifiable energy savings relative to the buildings energy performance baseline.

Appliance Efficiency

Congress has included appliance efficiency mandates in several laws as well as directing federal agencies such as the Department of Energy and the Environmental Protection Agency to impose stricter standards on the energy consumption of certain products ranging from light bulbs to furnaces. In several instances, overly prescriptive directives have outpaced the ability of the manufacturing sector to bring these technically advanced products to market at a price that is competitive with other options. In addition, certain regionally imposed appliance efficiency standards have the potential to disrupt the routine replacement of furnaces, air conditioners and hot water heaters on certain properties that may have specific space constraints.

Federal requirements have also been imposed on emissions from appliances. Regulations adopted pursuant to international treaties on greenhouse gas reduction have mandated that certain ozone-destroying chemicals be phased out of production. R-22 is among the class of chemicals that are being phased out of use for refrigeration application. As of 2010, manufacturers were not allowed to produce equipment charged with R-22. Production of R-22 will end in January 2020; after that date, supplies of R-22 will be limited to available supplies of recycled product. EPA believes that equipment inventory dependent on R-22 will have largely reached the end of its useful lifetime by 2020. In the interim, EPA intends to ensure that supplies of R-22 are adequate to meet demand however product pricing will be volatile.

The Department of Energy's (DOE) energy conservation standards for residential furnaces, central air conditioners and heat pumps, which also include regional standards for specific product types, set to go into effect on May 1, 2013 mandated the use of 90 percent annual fuel utilization efficiency for non-weatherized gas furnaces in the northern region, creating some retrofit installation hurdles. NMHC/NAA had sought an exemption for buildings that could not technically accommodate the new replacement furnaces; in early April 2013 NAA/NMHC sought an 18-month extension of the effective date of the rule pending resolution of this matter. On April 5, the DOE released a [statement](#) that said it would hold off on enforcing the new furnace standards pending the resolution of a related lawsuit.

NMHC/NAA will continue to work with federal policymakers to assure that smooth and orderly market transition to more environmentally safe and energy-efficient equipment takes into account the business concerns of the multifamily industry.

Building Energy Codes

NMHC/NAA will continue to oppose efforts to develop federal building efficiency targets in the 113th Congress, which would force the use of strict, new building energy codes. Research shows that these codes negatively impact apartment affordability and could quell new apartment construction and building rehab.

NMHC/NAA are particularly concerned by DoE's aggressive energy efficiency agenda. Their participation in the code development and adoption processes has significantly influenced recent model energy codes. Instead, NMHC/NAA will work with lawmakers to advance efforts to compel DoE to economically justify their code activity, publically vet their code proposals and collaborate with all stakeholders.

BUILDING CODES AND STANDARDS

Model Code and Standard Development

NMHC/NAA advocate for codes and standards that are technologically feasible, cost-effective and reflect the unique needs of the multifamily industry. As active participants in the code development process, we regularly

serve as members of code and standard development committees, craft code proposals, represent the multifamily sector at code hearings and otherwise serve as a resource for the code- and standard-making organizations. These codes and standards directly impact all aspects of apartment construction and affordability, including structural design, energy performance, fire protection, accessibility and green building.

NMHC/NAA also provide resources to the industry to aid in new code adoption and implementation once updated codes and standards are published. These include a building codes primer, guidance summarizing important changes to the 2012 editions of the International Building Code and the International Fire Code and building code toolkits providing specific recommendations for the adoption of the new energy and green building codes.

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