

In a big victory for the apartment industry, on July 15 EPA rejected its own proposed rule that would have mandated additional responsibilities for property owners and managers under the Lead Renovation Repair and Painting (RRP) rule.

The proposal would have required on-site maintenance staff and third-party contractors who engage in activities that disturb surfaces that may contain lead to replace simple post-renovation field tests with more expensive requirements to submit dust samples to an EPA-accredited lab for lead testing.

In comments on the original proposal, NMHC argued that the existing lead-safe work practices and detailed clean-up requirements, which went into effect in last year, are sufficient.

EPA's own studies concurred, and the Agency has thus allowed the existing field test protocol to remain in place. More information, including the final amendment and a link to an NMHC RRP guidance document, is available at www.nmhc.org/goto/5771.

House Legislation Addresses Lead Paint Test Kit Problem

In related news, on July 12 the House Appropriations Committee passed an amendment to H.R. 2584 that would prohibit EPA from enforcing the RRP until the Agency has certified the accuracy of commercially available test kits that can be used to reliably ascertain the presence of lead on various coated surfaces on job sites.

EPA's original estimates to comply with the RRP relied heavily on the availability of lowcost and accurate field tests that workers could use to determine whether a specific repair/renovation job would trigger the rule.

EPA's research, however, finds that currently available test kits significantly err on the side of false positives; that is, they wrongly detect lead levels below the legal threshold and result in more jobs being unnecessarily subjected to the costs of the RRP rule. Despite promises to the contrary, the Agency has not been able to certify any widely available accurate test kits. This failure prompted lawmakers to act. The next step is for the full House to consider the appropriations bill, and then it must be voted on by the Senate.

FHA Multifamily Backlog

NMHC continues to meet with HUD to seek ways to clear its backlog of multi-family mortgage insurance applications. At press time, Acting FHA Commissioner Carole Galante hosted NMHC and a group of lenders, developers and apartment owners at HUD's Baltimore Field Office to demonstrate an FHA pilot program designed to expedite its multifamily underwriting process.

NMHC will continue to press HUD to raise the threshold for requiring a loan to go through its

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central loan committee. Currently, loans over \$15 million or for projects with 150 or more units must get central loan committee approval. HUD officials acknowledged that the central loan committee is becoming more efficient, more approvals are being done via electronic review and the rejection level is less than 10 percent and declining.

Senate Committee Advances Building Energy Efficiency Measure

On July 14, a Senate committee approved an energy efficiency bill (S. 1000) with several provisions of interest to apartment firms. The measure encourages improvements in building energy performance through provisions such as a loan guarantee program to assist property owners in financing energy efficiency upgrades in existing buildings.

Significantly, the authors of the bill, Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH), substantially modified language regarding building energy code metrics that passed the House in 2009, which was strongly opposed by NMHC and other real estate trade associations, although the revised provisions remain problematic.

Proposed Privacy Legislation Would Affect Apartment Firms

NMHC is closely monitoring privacy legislation being considered by Congress that could impact apartment firms. On July 21, a House subcommittee marked up a data breach notification bill (H.R. 2577) that would require businesses that collect personally identifiable information to implement security practices to protect this information.

"Personally identifiable information" includes full name and a combination of other data elements, such as Social Security number, driver's license number and other information typically sought during the rental application process. This bill would also create a national standard for when businesses must notify consumers of data breaches within 48 hours.

EEOC Examines Employee Background Screening

The Equal Employment Opportunity Commission (EEOC) is reexamining employers' consideration of criminal records for screening job applicants and some current employees.

NMHC is urging the EEOC to refrain from limiting an employer's ability to conduct neutrally-applied criminal background checks that are job-related and consistent with business necessity. "We have explained that a criminal history is an important tool that can help apartment companies make informed employment decisions that protect both workplaces and residents," said NAA's Greg Brown.

NMHC Issue Carried Interest Alert

President Obama and a number of Congressional Democrats have identified carried interest as a possible revenue source in the debt limit negotiations. While it is not yet clear if tax increases will play a role in any final agreement, NMHC is working to ensure that lawmakers understand the devastating impact changing the tax treatment of carried interest would have on real estate,

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our housing supply and job creation. For more information including an updated quick-reference fact sheet, please visit www.nmhc.org/goto/carriedinterest.

SEC to Require Real Estate Advisors to Register

Recently, NMHC held a webinar on new regulations requiring certain advisors who provide advice with respect to real estate and real estate-related investments to register as investment advisors with the Securities and Exchange Commission (SEC) in one or more states by March 31, 2012.

Webinar presenters pointed out that many who never thought of themselves as financial advisors will fall under the new rules. Furthermore, presenters said potential registrants should take care to comply with the new rules because it is relatively easy for the SEC to process violations. The webinar, and an accompanying guidance document, are available to members only at www.nmhc.org/goto/6235.