TESTIMONY BY
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ON BEHALF OF THE
NATIONAL MULTIFAMILY HOUSING COUNCIL
AND THE
NATIONAL APARTMENT ASSOCIATION

BEFORE THE
HOUSE COMMITTEE ON FINANCIAL SERVICES
HOUSING AND INSURANCE SUBCOMMITTEE

FOR A HEARING ENTITLED
THE COST OF GOVERNMENT REGULATIONS ON AFFORDA-
BLE MULTIFAMILY DEVELOPMENT

SEPTEMBER 5, 2018

Chairman Duffy, Ranking Member Cleaver, members of the Subcommittee, it is my privilege to appear before you today to speak on behalf of the multifamily rental housing industry, the National Multifamily Housing Council and the National Apartment Association regarding regulatory barriers to apartment community development. My name is Sue Ansel and I am the President and CEO of Gables Residential.

Gables Residential is an award-winning, vertically integrated, real estate company specializing in the development, construction, ownership, acquisition, financing and management of multifamily and mixed-use communities. Gables owns, develops and manages communities in high-growth U.S. markets such as Atlanta, Austin, Boston, Dallas, Denver, Houston, South Florida, Southern California and metropolitan Washington, D.C. Gables also provides third party management services in the New York, Baltimore, Tampa, Phoenix, Charlotte, Central and North Florida markets. Gables manages over 30,000 apartment homes and approximately 430,000 square feet of retail space and has received national recognition for excellence in development, construction, management, sales, marketing, learning and development, benefits and corporate accommodations. These achievements reflect the impact of experienced and dedicated team members, superior knowledge of the markets served, and expertise in development and management.

For more than 25 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (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 more than 160 state and local affiliates, NAA encompasses over 73,000 members representing nearly 9 million apartment homes globally. One-third of all Americans rent their housing and 39 million of them live in an apartment home.

I appreciate the opportunity to be here today to present the multifamily industry's perspective on the regulatory barriers at the federal, state and local levels that can prevent, slow or increase the cost of development of multifamily housing units across the country. I will also use this as an opportunity to highlight a wide array of policy solutions that would help increase production of multifamily housing and lessen the existing shortage of housing that is affordable that plagues our nation.

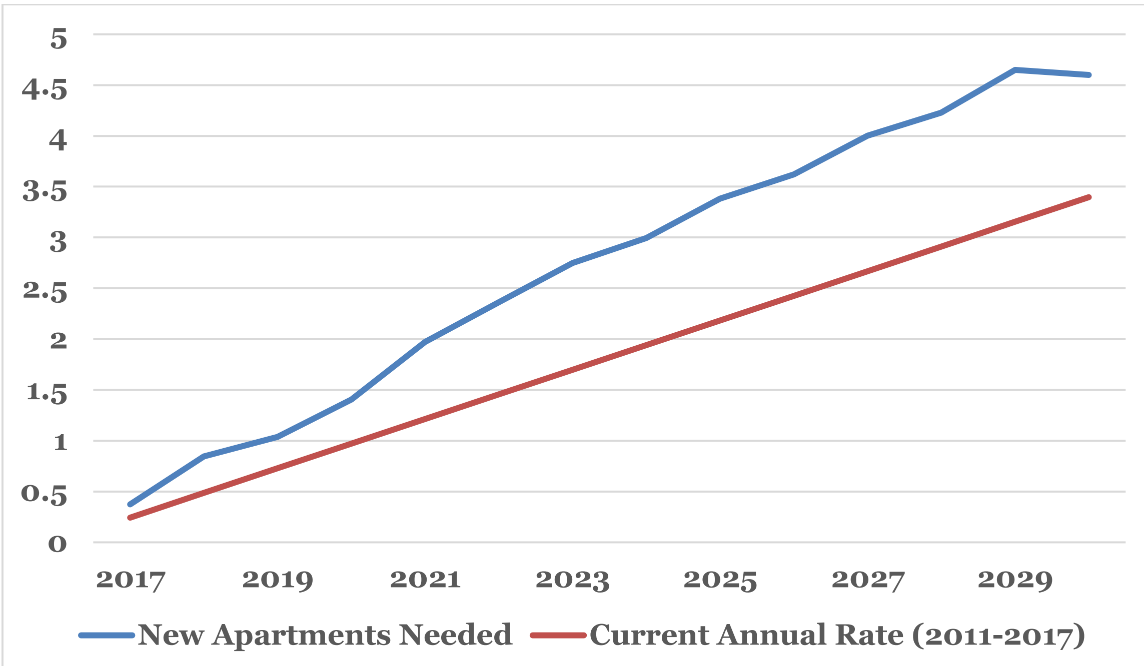
Before I do that, however, allow me to describe some key aspects of the apartment market and how changing demographics will demand policymakers at all levels of government to partner with the private sector to innovate our housing development and production process if we are to meet the nation's current and future housing needs.

The apartment sector is a competitive and robust industry that helps nearly 39 million people live in homes that are right for them. We help build vibrant communities by offering housing choice, supporting local small businesses, creating millions of jobs and contributing to the fabric of communities across the country. We are a critical sector in the housing industry and our economy overall.

Rental Housing – The Supply-Demand Imbalance

There has been a fundamental shift in our nation's housing dynamics as changing demographics and lifestyle preferences have driven more people away from the typical suburban house and towards the convenience of renting. This demand is fueled by a growing population, demand for rental housing by younger Americans, immigration trends and Baby Boomers and other empty nesters trading in single-family houses for apartments. There are more than 75 million people between 18 and 34 years old, many entering the housing market, primarily as renters.[1] Similarly, many of the over 74 million Baby Boomers and other empty nesters have the option of trading single-family houses for the convenience of rental apartments. In fact, more than half of the net increase in renter households between 2007 and 2017 came from the 45-plus demographic cohort.[2] Given these demographics, it is unsurprising that the apartment vacancy rate has remained at or below five percent for the past four years[3].

Apartments Needed by 2030 (Millions)



Source: Hoyt Advisory Services; NMHC/NAA; U.S. Census Bureau.

Beginning in the mid-2000s, the nation experienced the greatest renter wave in its history, as the number of households that rent rose by 7-12 million (different Census Bureau surveys show different figures). This increased apartment demand creates a critical need for 4.6 million new apartments at all price points by 2030 according to a study conducted by Hoyt Advisory Services and commissioned by the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA).[4] To meet that demand, we will need to build an average of 328,000 new apartments every year. Yet we have only hit that mark once since 1989.[5]

The western U.S., as well as states such as Texas, Florida and North Carolina, are expected to have the greatest need for new apartment housing through 2030, although all states will need more

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[1] Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States: April 1, 2010 to July 1, 2016, US Census Bureau.

[2] NMHC tabulations of 2017 Current Population Survey, Annual Social & Economic Supplement, U.S. Census Bureau.

[3] RealPage, Inc.

[4] Hoyt Advisory Services; NMHC/NAA

[5] U.S. Census Bureau, New Residential Construction.

apartment housing moving forward. Across all markets, the supply of multifamily housing at a variety of price points will play a role in promoting economic growth, attracting and retaining talent, and encouraging household stability for all American families.

There will also be a growing need for renovations and improvements on existing apartment buildings, which will provide a boost in jobs (and the economy) nationwide. Hoyt's research found that 51 percent of the nation's 20 million-plus apartment stock was built before 1980, which translates into millions of units that could need rehabilitation or renovation by 2030.

The growing demand for apartments – combined with the need to renovate thousands of apartment buildings across the country – will make a significant and positive impact on our nation's economy for years to come. For frame of reference, apartments and their 39 million residents contribute $1.3 trillion to the national economy annually.[6] As the industry continues to grow, so will this tremendous economic contribution.

While many factors influence the apartment industry's health and ability to meet the nation's growing demand for rental housing, the existing patchwork of overly complex, costly, duplicative and often counter-productive regulations at all levels of government remain one of the biggest threats to delivering much-needed housing units across the country.

Our Nation's Housing Affordability Challenge

Housing affordability is a significant challenge facing many Americans today who are seeking to rent an apartment. The number of households renting their homes stands at an all-time high, thus placing significant pressure on the apartment industry to meet the demand. This is making it challenging for millions of families nationwide to find quality rental housing that is affordable at their income level. For many families, the shortage of rental housing that is affordable creates significant hurdles that make it even more difficult to pay for basic necessities like food and transportation. Ultimately, this also impacts their future financial success.

Those at the lowest end of the income spectrum are especially vulnerable to these problems—for the one in five renter households that earns less than $15,000 annually, an affordable unit is one with a monthly rent of under $400. Yet from 2003 to 2013, 11 percent of these rentals were permanently lost from the housing stock.[7] This is also the hardest segment to build for without subsidy, given the costs associated with development.

The issue of lack of housing affordability is not unique to lower income households, however. The total share of cost-burdened apartment households (those paying more than thirty percent of their income on housing) increased steadily from 42.4 percent in 1985 to 54.8 percent in 2015.[8] Consider that the median asking rent for an apartment constructed in 2016 was $1,479. For a renter to afford one of those units at the 30 percent of income standard, they would need to earn at least $59,160 annually.[9] Affordability is an issue impacting the very fabric of communities

[6] Dr. Stephen Fuller; NMHC/NAA. "The Trillion Dollar Apartment Industry"
[7] Harvard Joint Center for Housing Studies, "America's Rental Housing" (2015), available at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/americas_rental_housing_2015_web.pdf.
[8] NMHC tabulations of American Housing Survey microdata.
[9] NMHC calculation based on U.S. Census Bureau, Survey of Market Absorption.

nationwide, including our teachers, firefighters, nurses, police officers and their families.

According to Harvard's Joint Center for Housing Studies,[10] in 2015 more than one in four renter households – approximately 11.1 million – paid more than half of their income for rental housing. Setting aside that real (inflation adjusted) incomes in the U.S. are only slightly above their 2000 levels, clearly the key factor driving the affordability crisis, housing industry leaders agree that promoting construction, preservation and rehabilitation are three of the vital ways to meet the surging demand for apartment homes.

Barriers to Multifamily Development and the Cost of Regulation

Developing real estate, whether multifamily, single-family or commercial, is difficult. Production of any kind has its natural barriers. Those are for the most part objective barriers that can, and often do, fluctuate, but are predictable enough to still meet a pro forma. Multifamily, however, brings with it a level of entitlement subjectivity and regulation layered on top of these common barriers and is much more difficult to predict.

Plainly stated, many localities have a development preference that works against multifamily housing production and ultimately worsens the country's affordability challenges. Multifamily development often faces stiff community resistance, competes with other forms of real estate that produce sales tax revenue desired by municipalities and is subject to increasing regulatory barriers at all levels of government.

In a speech before the Urban Institute in November 2015, Jason Furman, former chairman of The White House Council of Economic Advisers, said that the U.S. could build a lot more apartments but noted "multifamily housing units are the form of housing supply that is most often the target of regulation." In fact, a recent study by NMHC and the National Association of Home Builders (NAHB) based on responses from a variety of multifamily developers throughout the country found that on average, 32 percent of multifamily development costs are attributable to the costs associated with complying with local, state, and federal regulations. In a quarter of cases, that number can reach as high as 42.6 percent.

Breaking down the government regulation costs showed that an average of 7.0 percent of regulatory costs come from building code changes over the past 10 years, 5.9 percent are attributable to development requirements that go beyond what the developer would ordinarily provide (such as complex architectural design, landscaping, and parking requirements), and 4.2 percent of the costs come from non-refundable fees charged when site work begins.

[10] Harvard Joint Center for Housing Studies, "The State of the Nation's Housing 2017", Appendix Tables.

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%

These are not regulations that only a few developers face when trying to build new housing. The respondents to the NMHC-NAHB survey built in virtually all types of markets—from garden apartments in rural and suburban areas to high-rise buildings in the urban core—and at least half of developers in the survey responded that they were subject to every cost item but one (complying with affordability mandates). At least 90 percent of respondents indicated that they had to figure cost of specific regulations into their overall development cost, including the costs of applying for zoning approval; non-refundable fees charged when site work begins; development requirements that go beyond the ordinary; fees charged when construction is authorized; increased costs due to building code changes; and the pure cost of delay.

While many of the costs associated with regulation in the study are attributable to local requirements, respondents reported that federal regulations create costs, including 90 percent of developers surveyed that included the cost of complying with Occupational Safety and Health Administration (OSHA) requirements as part of their total development cost, accounting for an average of two percent of the total. And as stated before, the costs associated with changes to building codes over the past ten years, which the federal government has involved itself in, accounted for an average of 7.0 percent of total development cost. And some local regulations are subject to federal requirements as well, including requiring certain conditions at the local level to obtain grants.

Regulatory Red Tape at the Local Level

Often, well-intentioned local regulations can be onerous and cumbersome, can increase development costs across the board and, in some cases, prevent development altogether. Below is a brief summary of some notable barriers to development at the local level:

- **Land Cost**: In an attractive market—take any major metropolitan area as an example—land can account for a significant portion of total development costs. Land in those markets is not only fundamentally more expensive to purchase than land in secondary or tertiary markets, but it also typically attracts multiple bidders, each seeking to deploy the land for diverse purposes, which further drives up costs. According to the Harvard Joint Center for Housing Studies, between 2012 and 2017, the price of vacant commercial land rose 62 percent; by comparison, the general inflation rate rose seven percent. This cost increase can stretch or stress other financial assumptions and, in some extreme cases, even make the property impossible right out of the gate.

- **Zoning Laws**: Zoning laws impact what is permitted to be built at a site. In some places, zoning requirements can make it extremely difficult to build new multifamily housing. Changing zoning can be onerous and expensive if it is even possible.

- **Entitlements**: The entitlement process, which covers approvals, zoning and nearly everything in between, is an amalgam of outright costs, additional fees, land-use regulation (some of which can date back to the first half of last century) and code compliance. During the navigation of this often-lengthy process, an apartment developer bears both direct and indirect costs with no assurance of a successful outcome. In some high-barrier-to-entry markets, entitlements can take four, five, six years or more before construction actually begins. As an example, according to NAA's Barrier to Apartment Construction Index, development timelines for properties with 50 or more units including permitting, land development, non-conforming use and zoning ranged from an average of three years in Miami to over eight years in San Diego.[11] Some municipalities have tried to fast track this process, but they have been met with only varying degrees of success. The long lead time and significant upfront investment required to obtain entitlement on land is leading some investors to rethink continued interest in multifamily development. Reduced investor demand for multifamily development may lead to fewer units delivered in the future and increased cost per unit delivered as remaining investor capital becomes scarce.

- **Impact Fees:** Impact fees are payments required of new development by local governments for the purpose of providing new or expanded public capital facilities to serve that development. These fees typically require cash payments in advance of the completion of development, are based on a methodology and calculation derived from the cost of the facility and the nature and size of the development, and are used to finance improvements offsite from, but to the benefit of, the development.

- **Linkage Fees**: A linkage fee is assessed on a development to pay for the cost of providing a public service. These fees are attributed to select developments to pay for a benefit deemed outside of what is recovered from property taxes.

- **Business License Taxes**: These are additional municipal taxes assessed on property owners that is not assessed on other forms of housing. These are used to justify the cost of impacts not covered by property tax assessments.

- **Assessment and Inspection Fees**: These are additional municipal fees assessed on property owners to inspect rental housing for habitability. While these fees are often

[11] National Apartment Association, 'Barriers to Apartment Construction Index,' https://www.naahq.org/news-publications/barriers-apartment-construction-index

assessed annually, the rental housing communities often do not realize additional benefits reflecting the cost.

- **Parking Space Requirements**: The requirement to build or offer parking spaces, especially in urban settings, can significantly impact site use and cost and often run counter to current resident trends and needs. According to a recent report by NAA entitled "The Transformation of Parking," estimated costs to build parking vary widely, with estimated price tags of $30,000 to $75,000 per space, depending on the market. The type of parking also greatly influences the cost, with surface parking the least expensive, and underground parking the most.[12]

- **Environmental Site Assessments:** An environmental site assessment is a report that identifies potential or existing environmental contamination liabilities. The analysis typically addresses both the underlying land and physical improvements to the property. In many local jurisdictions, each development site requires an environmental site assessment, the results of which could require costly remediation and/or project reconfiguration. Additionally, these assessments have been used by development opponents to frustrate planning and can serve to severely hamper or defeat the entitlement process.

Housing Affordability Initiatives and Community Barriers to Development

In addition to the often-used local regulatory fees and processes that can drive the cost of multifamily housing production up, community led initiatives and policy solutions can add cost and time to a project that in some cases can prevent much-needed housing from being built. Efforts by local officials to impose artificial price controls on rent levels or mandate the construction of affordable housing units or developments, while well-intentioned, can have the adverse effect. In addition, community opposition to the development of multifamily housing is a great driver of project delays and cost. While local input is certainly important, it can often be counter-productive and add a great deal of expense, which in turn drives up development costs and ultimately rents. Outlined below are several of the most significant of these challenges:

- **Housing Affordability Initiatives:**

    - **Rent Control:** There are various forms of rent control outside of the traditional version that most are accustomed to seeing: a rent control board that sets maximum rent for a unit or the maximum amount that rent can be raised annually. Rent control, in this context, is any mechanism that obligates a property owner to set rental rates for all or a portion of the units on a property. In any form, this policy works as a disincentive to investing and developing the diversity of housing units that a community requires. There are alternatives to rent control that take slightly different approaches but have the same detrimental effect. The most common form of these is inclusionary zoning.

    - **Inclusionary Zoning:** Inclusionary zoning refers to municipal and county planning ordinances that require a given share of new construction to be affordable to

[12] National Apartment Association, "Transformation of Parking," https://www.naahq.org/news-publications/transformation-parking

people with low to moderate incomes without an investment from the municipality. It is normally a condition of approval of the development. Proponents of inclusionary zoning often fail to acknowledge that these policies drive up costs, and ultimately rents, for the entire project, as developers are forced to raise rents for market-rate units to make up the difference from the affordable units to make the project financially feasible.

- **NIMBYism:** Another substantial cost driver for multifamily housing development comes in the form of community resistance through efforts commonly known as "Not In My Back Yard" or NIMBY. The narrative of NIMBYism typically focuses on a handful of themes outside of the normal zoning approval process, including:

  - Traffic impact;
  - Homeowner property values;
  - School overcrowding; and
  - Community character.

  NIMBY opposition can frequently occur during the rezoning process—the NMHC/NAHB study cited earlier found that 85 percent of multifamily developer respondents had experienced added costs or delays due to neighborhood opposition. In the end, NIMBYism keeps apartments from being built where they are needed most and at prices many people can afford.

All the factors outlined above, or a combination thereof, can lead to increased hurdles for multifamily development. Too often, the combination of local housing affordability initiatives and NIMBYISM can lead to a complex, duplicative and costly regulatory landscape that can drive up the costs of multifamily housing development and exacerbate our nation's housing affordability problem.

A Snapshot of Multifamily Development

To give policymakers a sense of the practical challenges faced by multifamily housing developers, one has to look no further than a few neighborhoods away from the Capitol Building in the historic Shaw neighborhood of Washington, DC.

The Bozzuto Group, a large regional real estate firm, aided in the development of a transformational multifamily project. As the property manager, Bozzuto provided assistance to the owner and lead developers of the project while they navigated a long and painful entitlement process only to realize operation after 12 years. The property serves as the anchor to the redevelopment of a historic area of our nation's capital, the O Street market, which sits on a 3 ½ acre site. At one time, it was a thriving public market built in 1881 and served the surrounding neighborhood as both a center of commerce and community. After a troubled history following riots and gang violence, the market closed in 1994 and laid empty until the current project got underway.

In the early 2000s, developers saw an opportunity to reinvent the area and combine the O Street Market, which is listed on the National Register of Historic Places and 8th Street, which was part of the original L'Enfant plan for Washington, DC into one large, iconic and transformational development for DC. The development team collaborated with 3 mayoral administrations to secure approvals, financing and a development program that would accommodate community expectations.

The lead project developer teamed up with a local affordable housing developer for the development of The Hodge on 8th. Locating all affordable apartments in one building on the site allowed for 15% more units to be created. The building now serves seniors with median incomes below 60% of the median income.

Development was not easy—the site was purchased in 2001. Construction began a decade later in 2011 and both the historic market and the apartments opened in 2013. The market-rate apartments leased up within a year of opening – a record pace by any measure – and the affordable, senior housing building, the Hodge, was 95% leased before it even opened and maintains an ongoing waiting list of over 500 seniors.

The project was financed with a complicated stack of 12 different private and public financing sources totaling $315 million which included:

- Private land and cash equity investments
- $102 Million of EB-5 financing
- Mezzanine debt
- $35 million in TIF bond proceeds
- $128 million Section 220 HUD loan – the largest ever granted for a mixed-use development
- LIHTC and tax-exempt bonds from the DCHFA and Home loans secured by the DCHCD

The mixed-used community now features:

- 90K square feet of retail
- 549 market-rate apartments – in three buildings
- 90 affordable apartments in a 4th building for senior citizens
- 182 room/suite hotel
- Preservation of a historic market that houses a Giant grocery store

The entitlement process, regulatory hurdles at the federal and city levels as well as the need for so many different sources of funding for this project took a significant amount of time to overcome. And while no two projects are exactly the same, the challenges this project faced often are. In this case, the project is a raging success serving as the anchor to a revitalizing neighborhood and catalyzing over $1 billion in new investment since its inception by bringing new jobs and new businesses to the area. In addition, the developer and construction firms privately funded skills training resulting in 51% of new construction jobs going to DC residents and awarding $192 million in project contracts to minority owned businesses.

Red Tape Across the Country—A View from the Field

The following list is comprised of real-world examples encountered by multifamily housing developers as they sought to build or renovate apartments across the country. These highlight the complex and tangled web of regulation, zoning requirements and other barriers to development that multifamily developers face as they aim to deliver housing for American families.

- In Georgia, one city required a new development project to pay the entire cost of widening a road and upgrading the traffic signals. Projected additional costs are approximately $200,000.

- In Georgia, the sewer capacity was inadequate for the number of units that were being built in a new multifamily development. The city had upsizing of the sewer main in their future infrastructure plans, but they could not commit to the timing. The developer took on the task of upsizing the sewer line under the highway, through the rapid transit maintenance facility and across railroad tracks into the main basin. The cost was $2 million, and the city agreed to split the cost. This took a significant amount of man hours to administer and cost the developer $1 million in pure trade cost. It also enabled the city to have an upgraded sewer system delivered at a fraction of what otherwise would have been their full cost, labor and administration.

- In Georgia, it is common for inspectors to require additional work that is often not part of the code or part of the approved plans. At one multifamily project, the fire marshal required approximately $500,000 in additions or changes that were not part of the approved plans. The largest single item change was the inclusion of a heat detection system in the parking deck of the project. This accounted for an increase of close to $200,000 in project costs. The same fire marshal had approved the plans as part of the permitting process and then dictated changes when inspectors conducted their review in the field.

- In Georgia, one city required a project to install metal louvers on the parking deck at an added cost of approximately $105,000. The metal louvers sit on top of the concrete crash walls. The concrete crash walls serve a dual purpose providing vehicular protection and blocking vehicle lights from shining into the residential project to the north. Due to close proximity of the adjacent building to the north, the required louvers are not visible and do not serve a purpose.

- In Texas, a new development was required to run a water line extension almost 600 linear feet to serve both the multifamily development and future growth in the area. The line was upsized by 50% to accommodate future growth. All of the $370,000 in cost was absorbed by the developer. Additionally, this project was required to have a specific blend of limestone exterior and clay tile roof as determined in the zoning process. This requirement added approximately $450,000 to the total cost of the project.

- In Texas, one multifamily project was required to replace and increase the capacity of a storm line by 75% in conjunction with the development of the site and to help address community flooding south of the project. This resulted in two months of additional permit time, 30 days of additional build time and $250,000 in added cost.

- In South Florida, several municipalities have adopted "Art in Public Places" requirements and fees, which range from .5% - 1% of the total hard cost project budget. On a recent multifamily project, the additional cost was over $275,000. The city also required the developer to rebuild and restore the public plaza adjacent to the site at an additional cost of $1.2 million.

- In Florida, a municipality required the installation of natural stone in lieu of pre-cast on the ground level column wraps and building entrance at one development. The cost of the natural stone is approximately a $80,000 premium to pre-cast.
- In Florida, at a potential new development, the city is requiring the developer to rebuild a long section of public sewer and repave a long section of road that is not part of the development.

Regulatory Red Tape at the Federal Level

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 lie 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 a disproportionate effect on industries that serve as key drivers of our economy. As a highly regulated sector, the apartment industry is governed by a flood of regulations stemming from diverse federal agencies such as the Department of Housing and Urban Development (HUD), the Environmental Protection Agency (EPA), Department of Labor (DOL), OSHA, and the Department of Energy (DOE), as well as state and local jurisdictions.

NMHC/NAA members acknowledge the role that smart regulation has in ensuring the health and well-being of the American public. In the apartment sector, many such regulations allow for flexibility and complement the goal of building more multifamily housing in an efficient and cost sensitive manner. With that said, NMHC/NAA have worked with Congress and the Administration to identify and seek relief from federal regulatory barriers to multifamily development and operation. Excessive regulation and compliance uncertainty results in costly mandates that divert resources from the production and operation of multifamily housing.

Key State and Local Solutions to Address the Nation's Housing Shortage

Municipalities across the country are at the epicenter of the nation's housing affordability challenges. In that all politics is local, so is housing. Local officials have a leading role to play in driving development and reducing barriers to multifamily housing development while protecting the health and safety of their residents.

What works in one jurisdiction might not work in another but utilizing outside-the-box thinking can lead to progress. Officials have a range of options at their disposal. They can look to defer taxes and other fees for a set period of time to help the developer reduce the rents required to make the development viable. They also own tangible assets – buildings, raw land and entitled parcels – that can be leveraged to bring down the cost of construction or redevelopment. They can help streamline the development and approval processes with fast-tracking programs. Some additional state and local solutions to addressing the nation's housing shortage and affordability challenges are outlined below. These solutions enable the public and private sectors to bring their tools and assets into play and increase the likelihood of finding viable solutions to meet our rental housing challenges. Not all of these policies will work in every jurisdiction and oftentimes a variety of these policies must be utilized**:**

- **Adopt Policies that Leverage the Private Sector to Make Housing Affordability More Feasible:**

    - **Establish "By-Right" Zoning**—Most developments go through a discretionary review process such as public hearings or legislative review by the local land use authority or board of zoning appeals. Public review is certainly important, but it is often duplicative, arbitrary and inefficient, and establishing a "by-right" process allows the community to provide input on the character of an area before an individual project is proposed. Reviews also increase the cost of housing by slowing down its production or even preventing it from being built. "By right" development allows projects, both new construction and rehabs of existing properties, to be approved by local administrators without discretionary reviews as long as they comply with current zoning rules and community development plans.

    - **Expedite Approval for Affordably Priced Apartments**—Lengthy permitting processes add cost, time and uncertainty to housing construction. Fast-tracking review and permitting of housing that includes affordable units is a no-cost way for local jurisdictions to expand their supply.

    - **Reduce Parking Requirements**—Parking requirements are one of the biggest costs for a development, particularly in urban environments, ranging from $30,000 to $75,000.[13] The Urban Land Institute found that parking minimums were the number one barrier to building affordable rentals.[14] Many cities can significantly reduce or even eliminate parking requirements, particularly in transit-oriented or urban infill development.

    - **Establish Density Bonuses to Encourage Development of Affordable Housing**— Density bonuses make building affordable housing more cost-effective for developers. In return for including a certain number of affordable units in a building, the developer can build more market-rate apartments than are normally allowed. This allows for the developer to "make up" the difference from the

[13] National Apartment Association, "Transformation of Parking," https://www.naahq.org/news-publications/transformation-parking
[14] "Bending the Cost Curve: Solutions to Expand the Supply of Affordable Rentals," Urban Land Institute, 2014.

affordable units without being forced to pass the rent increase on to the market-rate units.

- **Adopt Separate Rehabilitation Building Codes**—Jurisdictions require developers to bring a building up to the current building code when they want to substantially rehab it, often making it prohibitively expensive to upgrade it. Localities can overcome this by adopting separate building codes for rehabilitation projects that balance the need to ensure safety and structural integrity, but do not sacrifice affordability. They can also offer tax abatement for properties that include affordable housing when property taxes rise because of improvements.

- **Create an Efficient Public Engagement Process**—New developments benefit from community input. But the public engagement process can also result in NIMBY opposition that creates long delays, and even lawsuits, that increase construction costs. There is no single model that works to strike a balance, but localities should examine their process to ensure it is not one-sided and does not create uncertainty.

- **Increase Public-Private Partnerships:**
  - **Leverage Underutilized Land**—Federal, state and local governments should prioritize affordable housing when disposing of public land. Land accounts for approximately 10 to 25 percent of an apartment project's cost, and even more in high-cost areas.[15] Developers also often struggle to find developable land in urban areas. Yet many localities own underused or abandoned land that could be used for affordable housing. Underutilized buildings, which can be renovated, are another resource. Making good use of these lands and buildings requires strong public-private partnerships.
  - **Use Property Tax Abatements**—Tax incentives and abatements are another way to spur development. While they do reduce public revenues, they are often more politically palatable than direct subsidies.
  - **Waive Fees for Properties that Include Affordable Units**—Housing developers often pay significant fees to expand public infrastructure or to support the creation of city amenities such as schools and parks. Because fees add to the cost of housing, jurisdictions should waive impact fees for properties that include affordable units.

- **Leverage State-Level Authority to Overcome Obstacles to Apartment Construction:**

[15] Based on evidence provided by NMHC members.

- **States should enact laws that override local zoning restrictions** that inhibit apartment construction, whether intentionally or not. States can also make some state financing contingent on a locality meeting a minimum affordable housing threshold or adopting policies that support housing production.

Key Federal Solutions to the Nation's Housing Challenges

The nation's challenge is to reduce the barriers and obstacles that inhibit the expansion of the housing stock and the federal government has a key role to play. While it is clear that new construction is often impeded at the local level, there are federal solutions that may be beneficial as well. Overhauling antiquated, overly-complex and costly regulations coupled with incentivizing new development, preservation and rehabilitation of existing apartments would go a long way to addressing our nation's housing affordability challenges. NMHC/NAA encourage Congress to take the following steps:

- **Retain and Expand Pro-Development Tax Policies** that incentivize investment in rental housing at all price-points:

  - **Expand the 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 produce affordable rental housing and stimulate new economic development in many communities. Since its inception in 1986, the LIHTC program has financed over 3 million apartments and served 7 million households. The LIHTC program provides critical support to the nation's affordable housing production. Given that there are currently just 45 affordable units for every 100 very low-income apartment households, lawmakers should strengthen the program by: (1) making permanent the increased credit authority enacted in March 2018 to enable the production of new units; and (2) establishing a minimum 4 percent credit rate.

  - **Create a Middle-Income Housing Tax Credit.** Build on the success of LIHTC and complement its work by establishing a Middle-Income Housing Tax Credit (MIHTC), which would spur the production of multifamily rental homes for America's working families. This type of production would address housing shortages for populations who do not qualify for any type of housing subsidy but who struggle to afford their living expenses.

- **Support Housing Finance Reform that Preserves the Multifamily Mortgage Liquidity Provided by the Government-Sponsored Enterprises (GSEs):**

  One of the foremost priorities of federal policy makers should be getting multifamily right in any housing finance reform effort by recognizing its unique characteristics; it is the single most important factor to ensuring that the apartment industry can meet the nation's growing rental housing demand.

  The bursting of the housing bubble exposed serious flaws in our nation's housing finance system. The very successful multifamily programs of the GSEs, Fannie Mae and Freddie Mac, were not part of the meltdown and have actually generated over $34 billion in net profits since the two firms were placed into conservatorship. Preservation of the mortgage liquidity currently provided by the GSEs in all markets during all economic cycles is critical. NMHC/NAA urge lawmakers to recognize the unique needs of the multifamily industry. We believe the goals of a reformed housing finance system should be to:

- **Maintain an explicit federal guarantee** for multifamily-backed mortgage securities available in all markets at all times;
- **Ensure that the multifamily sector** is treated in a way that recognizes the inherent differences of the multifamily business; and
- **Retain the successful components** of the existing multifamily programs in whatever succeeds them.

These principles can be achieved through a reformed structure that preserves the high quality and value of the current multifamily secondary mortgage market's activities.

- **Increase Funding and Support for Subsidy Programs** that address housing affordability such as the Section 8 Housing Choice Voucher Programs, Project-Based Rental Assistance, Rental Assistance Demonstration, HOME and Community Development Block Grants.
  - Housing costs continue to grow and demand for rental housing continues to escalate, but incomes for many low-income families remain stagnant. Given these realities, demand for subsidized affordable housing has increased dramatically through the economic crisis and into the recovery years since. However, federal funding for the primary programs serving low-income households has been virtually flat or declining.
  - Programs like Tenant Based Section 8 and Project Based Rental Assistance allow low-income families to rent market rate housing, taking advantage of the broad offering of privately owned and operated properties in a given market. Programs like HOME and CDBG allow developers to address financing shortfalls often associated with affordable housing properties and stimulate meaningful development and preservation activity as a result.
  - In order to address housing affordability challenges for all Americans across the income spectrum, increased funding for these programs is essential.
- **Support Funding for the FHA Multifamily Programs**, which are an important source of capital supporting apartment construction and redevelopment.

  FHA Multifamily is best known for offering an alternative source of construction debt to developers that supplements bank and other private construction capital sources. It also serves borrowers with long-term investment goals as the only capital provider to offer 35-40-year loan terms. FHA lending is essential to borrowers in secondary markets, borrowers with smaller balance sheets, new development entities, affordable housing developers and non-profit firms, all of which are often overlooked or underserved by private capital providers.

It is important to the apartment industry that FHA continues to be a credible and reliable source of construction and mortgage debt. FHA not only insures mortgages, but it also builds capacity in the market, providing developers with an effective source of construction and long-term mortgage capital. The FHA Multifamily Programs provide a material and important source of capital for underserved segments of the rental market and do so while maintaining consistently high loan performance standards. NMHC/NAA encourage Congress to continue funding FHA's Multifamily Programs, including:

- HUD 221 (d)(4) Multifamily Loans – New Construction and Substantial Rehabilitation of Multifamily Properties
- HUD FHA 223 (f) Multifamily Loans for the Refinance or Acquisition of Multifamily Properties
- HUD FHA 241(a) Supplemental Loans
- HUD FHA 223(a)(7) Refinance of an Existing FHA Insured Multifamily Mortgages and Healthcare Mortgages

- **Reform Overly Burdensome Regulations and Programs.** The following federal programs and regulations could benefit from improved efficiencies and review by Congress and the Administration:

  - **Section 8 Housing Choice Voucher Program**

    This public-private partnership has the potential to be one of the most effective means of addressing our nation's affordable housing needs and supporting mixed-income communities. However, the program's potential success is limited by too many inefficient and duplicative requirements, which discourage private providers from accepting vouchers. The program has also been plagued with a flawed and volatile funding system that has undermined private-sector confidence in the program. Research by Johns Hopkins University found that bureaucratic factors were one of the three major reasons for landlords having a preference for or against residents with Housing Choice Vouchers.[16] With Congress focused on austerity measures, insufficient funding is expected to be worse in the near-term budget cycles.

    Common- sense reforms that could help control costs, improve the program for both renters and property owners, and increase private housing participation include:

    - **Establishing** a reliable funding formula;
    - **Streamlining** the property inspection process; and
    - **Simplifying** rent and income calculations.

[16] Garboden, et. Al. "Urban Landlords and the Housing Choice Voucher Program: A Research Report"

It is also imperative for lawmakers to reinforce the voluntary nature of the program. Congress specifically made participation voluntary because of the regulatory burdens inherent in the program. However, state and local governments are enacting laws that make it illegal for a private owner to refuse to rent to a Section 8 voucher holder. Recent examples include "source of income discrimination" provisions passed by a number of cities. While often well intentioned, such mandates are self-defeating because they greatly diminish private-market investment and reduce the supply of affordable housing.

- **Rental Assistance Demonstration (RAD) Program**

  NMHC/NAA support RAD, which was established in 2011 as an affordable housing preservation strategy for public housing authorities (PHAs). The program allows PHAs to convert public housing properties at risk of obsolescence or underfunding into project-based vouchers or rental assistance contracts under the Section 8 program. Once the units are re-designated from public housing (Section 9 of the 1937 Housing Act) to Section 8 housing, housing authorities are able to leverage private capital to address capital needs. This allows housing authorities to work with private sector developers and managers to preserve their affordable housing stock. RAD is designed to reverse the trend of lost affordable units by accessing private capital to make up for related funding shortfalls. Congress should increase funding for this innovative program to prevent further public housing units from falling into obsolescence.

- **Modifying the Community Reinvestment Act (CRA)**

  The three main banking regulators – Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Federal Reserve – who control the regulations around CRA have begun the process to modernize the existing rules. The CRA could be modified to include greater incentives for banks to provide loans for multifamily apartments that include workforce and affordable housing development. CRA guidelines currently allow banks to obtain Community Development (CD) credit for multifamily units serving occupants with incomes of up to 80 percent of area median income. While this level captures a significant portion of workforce households, the rules themselves make it difficult to obtain the CD credit due to a requirement to report incomes, information that is not captured.

  We urge this Committee to work with the multifamily industry to encourage these regulators to make common- sense, modest changes that would remove impediments to obtaining CRA credit for workforce and affordable *multifamily housing*.

- **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

The apartment industry is committed to equal housing opportunity for all without regard to race, religion, color, sex, national origin, handicap or familial status. However, more guidance and clarity are needed from HUD on specific fair housing program areas. 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.

- **Davis-Bacon Wage Determination**

  Under current law, developers must adhere to Davis-Bacon wage rates for construction financed by federal dollars. Unfortunately, DOL's methodology and HUD's application of the wages are causing serious issues. The following Davis-Bacon issues are having a negative impact on the ability of the apartment industry to efficiently add new, or preserve existing, multifamily rental units: unwarranted split-wage decisions, disruptive updates to wages, applicability to the preservation of existing federally assisted housing stock and the determination of so-called prevailing wages suffers from structural defects related to the availability of data. DOL and HUD should look to reexamine and modify its methodology and process.

- **Affirmatively Furthering Fair Housing**

  While the Trump Administration has announced a review of this rule, as it is currently written, the Affirmatively Furthering Fair Housing rule'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.

- **American's With Disabilities Act (ADA) Enforcement**

  The apartment industry supports the goals of ADA and is committed to creating communities that are accessible to people with disabilities. The responsibilities of the apartment industry under the Act sometimes require the inclusion of specific building design features. However, the complex and sometimes conflicting nature of guidance, building codes and statutory language have led to varying interpretations of design and construction compliance. Apartment owners and operators, along with many others in the broader real estate industry, have recently been targeted by a substantial increase in ADA compliance complaints dubbed "drive-by" lawsuits. Congressional action is needed to address what should be the primary concern in ADA compliance –- fixing design issues and increasing access for people with disabilities. Specifically, business owners should be provided an opportunity to cure an alleged ADA deficiency prior to the initiation of a lawsuit. This would eliminate the incentive for complaints motivated purely by financial gain and reduce unnecessary operational expense on the housing provider.

Conclusion

We applaud the Committee for engaging stakeholders to look for innovative ways to reduce regulatory barriers that inhibit multifamily housing development and exacerbate our nation's affordable housing shortage. Policymakers at all levels of government must recognize that addressing housing needs—at all price points-- requires a partnership between government and the private sector. Officials must utilize a variety of tools to drive investment and support affordable and market rate housing production. They can do this by *incentivizing* for-profit entities to produce the necessary multifamily units at a range of price points that households can afford. Federal, state and local governments all have a role to play in encouraging public-private partnerships and incentivizing private developers to implement proven solutions to deliver housing that acknowledges our nation's changing housing demographics and its accompanying demand. On behalf of the apartment industry and our 39 million residents, we stand ready to work with Congress to ensure that every American has a safe and decent place to call home at a price that enables individuals to afford life's necessities.

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

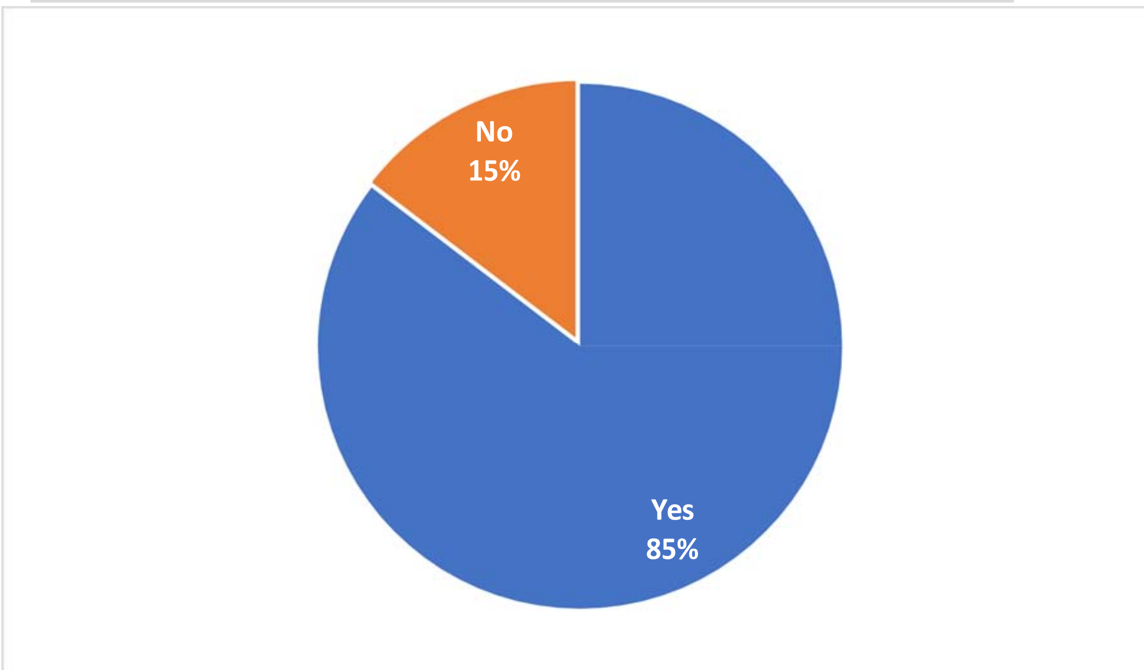
Although the NAHB-NMHC survey sought to be as comprehensive as possible, the above results do not capture everything. Some government actions impact development costs in a way a multifamily developer can't reasonably be expected to quantify. For example, federal immigration policy may affect the supply 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?

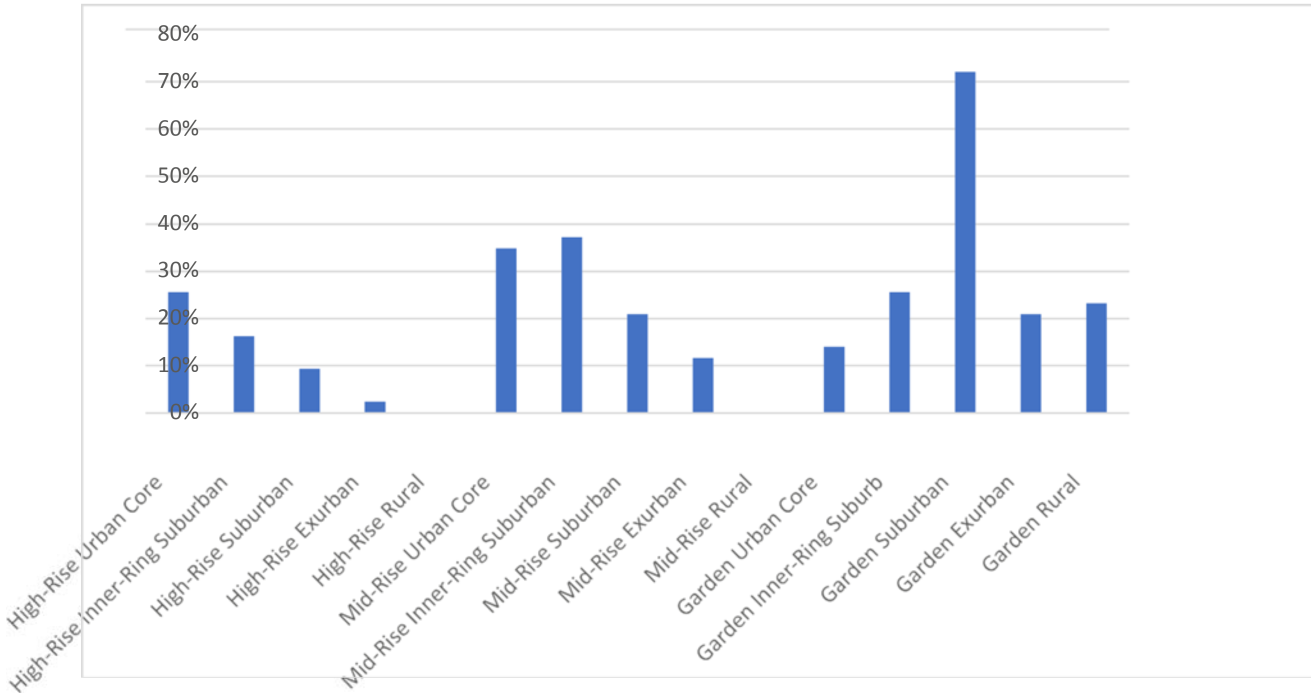


Profile of Respondents and Their Typical Projects

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.

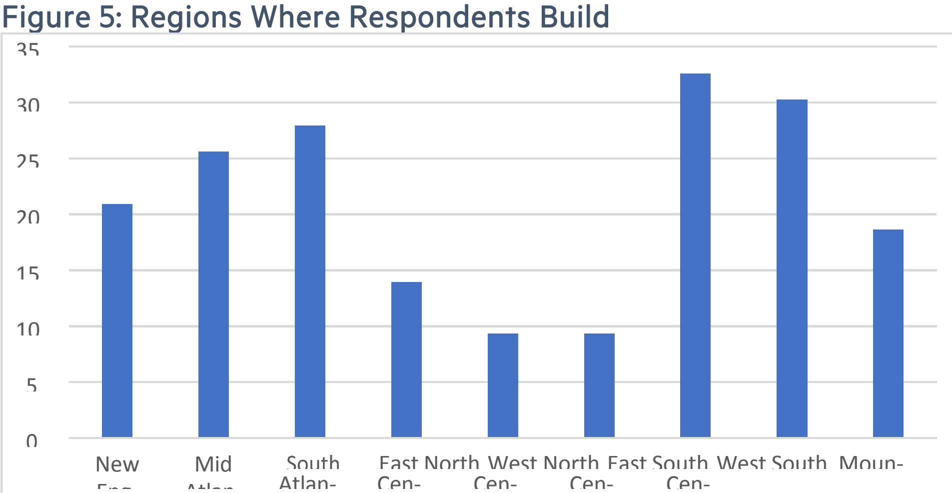
Respondents built a variety of product types that also varied by location (see Figure 4). The most common type of project was a garden development in the suburbs (72 percent). Mid-rise projects were the next common, with 35 percent building mid-rise developments in urban areas, and 37 percent building 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



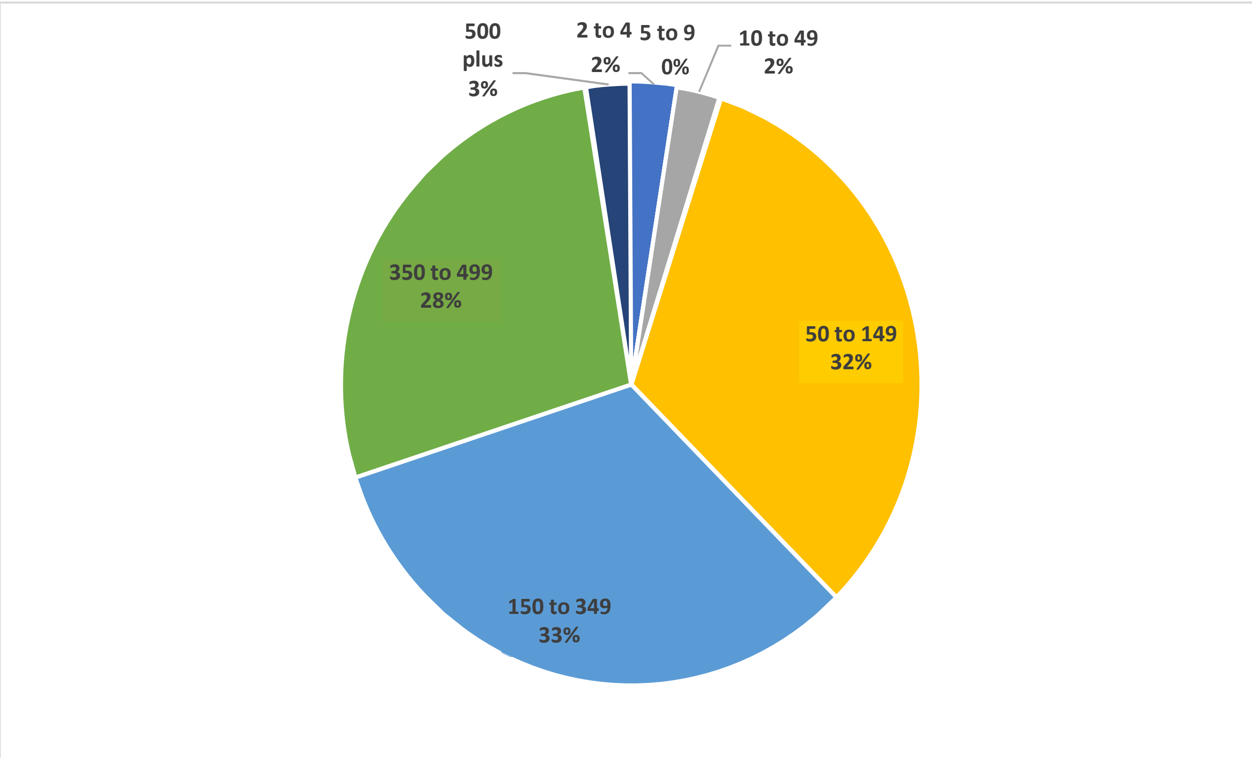
All regions of the United States were represented in the survey sample as well. The largest percentage of developers operated in the West South Central (33 percent) and Mountain (30 percent) regions (see Figure 5). The South Atlantic and Pacific regions featured the highest distribution of multifamily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

Figure 5: Regions Where Respondents Build



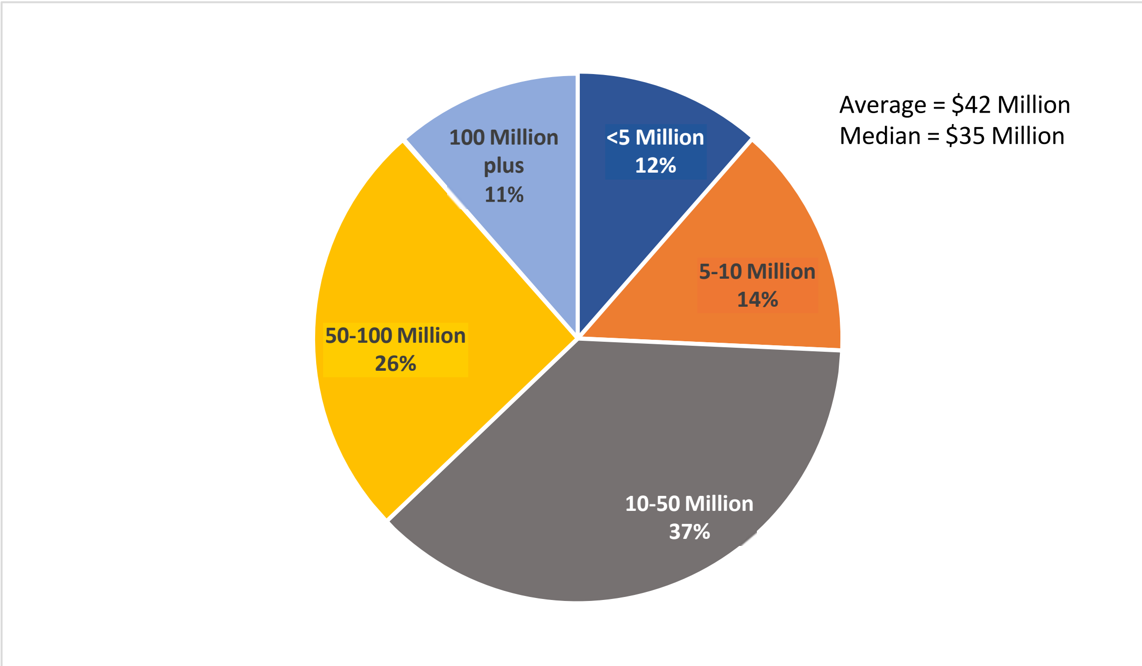
A fairly wide range of typical development size was represented by respondents as well (Figure 6). A small portion of respondents (4 percent) typically built projects fewer than 50 units or greater than 499 units (3 percent), while the remaining respondents were relatively evenly split between 50 to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