

August 7, 2023

Submitted via regulations.gov

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW
Room 10276
Washington, DC 20410-0500

Re: Adoption of Energy Efficiency Standards for New Construction of HUD- and USDA-Financed Housing: Preliminary Determination and Solicitation of Comment
Docket No. FR-6271-N-01

Gentlepersons:

The undersigned organizations appreciate this opportunity to comment on the adoption of energy efficiency standards for new construction of housing financed by the Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture (USDA). We agree that HUD and USDA should apply the revised codes under the Energy Independence and Security Act (EISA) of 2007.

HUD and USDA rely on studies showing the energy efficiency improvements that would be required under these codes will readily pay for themselves through reduced energy bills over their useful lives, and in some cases almost immediately. We suggest that any difficulties posed by added upfront costs can be addressed by covering those costs rather than by declining to adopt new standards. This letter sets forth suggestions to help ensure that any increase in costs does not interfere with serving low-income people through both homeownership and rental housing:

- Protect homebuyers who may lose eligibility.
- Provide technical assistance for state officials, builders, construction workers, and others.
- Address differential rural impacts.
- Make adjustments as needed to account for ASHRAE 90.1 standards.
- Expand strong energy efficiency requirements to additional assisted housing programs.

Background

HUD's and USDA's determination involves the application of two building codes to assisted housing. The International Energy Conservation Code (IECC) is used for single-family homes and multifamily buildings with up to three stories. ANSI/ASHRAE/IES Standard 90.1 (ASHRAE 90.1) applies to multifamily buildings with four or more stories. In 2015, HUD and USDA adopted the 2009 IECC and ASHRAE 90.1-2007, but they have not taken action on the several updates to both sets of standards made since then. They are now taking the necessary steps to update to the 2021 IECC and ASHRAE 90.1-2019.

The federal standards apply to new construction only. Existing buildings are not covered, even when federal funding assists in their acquisition or renovation.¹

New construction is covered only when aided by specific HUD or USDA programs. Under HUD's jurisdiction, the standards apply to construction with single-family or multifamily mortgages insured by the Federal Housing Administration (FHA) and to the public housing, Choice Neighborhoods Implementation Grants, Section 202 elderly housing, Section 811 housing for persons with disabilities, Rental Assistance Demonstration, HOME, and Housing Trust Fund programs. HUD's Native American housing programs are not covered by these requirements, nor is manufactured housing, which is subject to its own set of standards established by HUD.

Regarding USDA's rural housing programs, the statute is even narrower. It applies only to single-family homes with mortgages made under USDA's Section 502 direct or guaranteed programs, or constructed under the Section 523 self-help technical assistance program. The statute does not create any requirements for any of USDA's multifamily programs or for acquisition or rehabilitation of existing single-family homes.

For all affected housing, when other federal statutes, agency regulations, or state laws apply stricter standards, those standards supersede the EISA-imposed standards. As the HUD-USDA preliminary determination explains, several states have adopted standards equivalent to or higher than EISA's, and several others are considering doing so. In those places, then, this determination will not require changes.

Protect Homebuyers Who May Lose Eligibility

As HUD and USDA point out, the added up-front cost of adopting the 2021 IECC for single-family housing is a small fraction of the total cost of a home. This small amount, however, could be enough to disqualify some low- and very low-income homebuyers, even as the resulting energy bill savings will be especially important for them as homeowners. For example, the annual incomes of USDA Section 502 direct borrowers averaged \$37,410 in FY 2020 and \$39,479 in FY 2021² – so just a few dollars more could make a monthly mortgage payment exceed the debt ratios used to determine their repayment ability. HUD and USDA conclude that “lower-income households will benefit more from the existence of energy-efficient housing but may be challenged in their ability to address first costs.”

We encourage HUD and USDA to protect these buyers, including in the following ways.

Help identify resources to cover added costs. The departments can help developers of affordable housing, especially nonprofits and public entities, to find ways to cover the upfront costs for their single-family clients or, in the case of multifamily housing, for themselves. State or federal funds administered by state agencies may be able to provide soft second mortgages. The Inflation Reduction Act established a number of new resources that can be used to improve energy efficiency, including in affordable housing, but affordable housing stakeholders are scrambling to learn more about these resources while

¹ The statute applies to renovations funded by only one program: HUD's HOPE VI, which is no longer active.

² Michael Feinberg and Lance George, *USDA Rural Development Housing Funding Activity: FY 2021 Year-End Report* (Washington, DC: Housing Assistance Council, 2022), <https://ruralhome.org/wp-content/uploads/2022/04/USDA-Housing-Activity-Report-FY-2021.pdf>.

states and localities are rushing to determine how they can use them. Detailed technical assistance and information will be extremely useful as the many layers of entities involved figure out what they can do and how.

Adjust underwriting standards to take account of anticipated lower energy costs. HUD and USDA can revise the calculations they use to determine eligibility and affordability to recognize that homeowners and renters can pay more for their mortgages or rents if they are paying less for their utilities.

Provide Technical Assistance for State Officials, Builders, Construction Workers, and Others

HUD and USDA should issue guidance for each program under the revised standards, including clarifying the compliance certification required for builders of homes with FHA loans. Because the updates will be new for many builders and other design and construction professionals, training and technical assistance are also important. Efficiency organizations, state energy offices, model code developers, community colleges, state codes collaboratives, industry consortia, and others have experience with codes training and could help if given sufficient funding.

For large programs, the agencies should also independently verify compliance rates to determine whether efforts are successful. The Department of Energy has a code compliance study methodology that could be adapted.³

Address Differential Rural Impacts

HUD and USDA ask whether there are particular challenges or issues facing rural areas in adoption and/or implementation of these codes. It does seem likely that the cost differential between a mortgage under the 2009 IECC and one under the 2021 IECC may be higher in rural areas than indicated by the preliminary determination's analysis. First, construction costs can be higher in rural places than elsewhere because materials or workers may need to be transported from elsewhere. Rural residents may not have easy access to specialized materials or specific worker skills when energy-efficient construction requires them. That is particularly likely in remote rural areas.

Second, the figures used for the analysis on which HUD and USDA relied may not be the same in rural places. For example, PNNL assumed a down payment of 10 or 12 percent,⁴ although USDA's Section 502 direct loans usually require no downpayment,⁵ yielding a higher mortgage amount even before the upfront costs of energy efficiency features are added. If the estimates were adjusted to account for such differences, as well as differences in construction costs, the rural incremental cost of complying with the 2021 IECC instead of the 2009 version might well be larger than the general national cost of \$5,500 used in the analysis.

³ "Residential Energy Code Field Studies," U.S. Department of Energy, accessed June 30, 2023, <https://www.energycodes.gov/residential-energy-code-field-studies>.

⁴ The HUD-USDA preliminary determination notice shows a 12 percent down payment assumption in Figure 3 on page 31786 and a 10 percent down payment in the text on page 31787.

⁵ "Single Family Housing Direct Home Loans," USDA Rural Development, accessed June 30, 2023, <https://www.rd.usda.gov/programs-services/single-family-housing-programs/single-family-housing-direct-home-loans>.

The signers of this letter have not attempted to quantify the potentially different impact in rural places. As stated above, our focus is on finding ways to cover the costs of each home's compliance with the updated standards.

Make Adjustments as Needed to Account for ASHRAE 90.1 Standards

HUD's and USDA's analysis makes clear that implementation of the ASHRAE 90.1-2019 standards will yield relatively small increases in construction costs with payback in less than two years. Although the net benefits from lower energy bills appear to be clear, HUD must ensure that any increases in construction costs do not result in higher rents that disqualify tenants who would previously have been eligible for these units.

Expand Strong Energy Efficiency Requirements to Additional Assisted Housing Programs

The Energy Independence and Security Act specifies which housing programs are subject to its requirements. The omission of others, such as USDA's multifamily programs, does not exempt them from energy efficiency standards. It simply means HUD and USDA can make their own decisions about which standards to apply to those programs. As the preliminary determination notice points out, HUD used its regulatory authority to apply EISA's standards to new construction financed through the Housing Trust Fund.

Improving the energy efficiency of housing nationwide is essential for many reasons. Energy costs have significant impacts on occupants' finances. Inadequate heating and cooling can lead to not only discomfort but also serious health consequences. And controlling energy use reduces greenhouse gas emissions to slow the devastating effects of climate change. Therefore we encourage both agencies to adopt regulations expanding strong energy efficiency requirements to additional programs.

Thank you for your consideration of these comments. If you have questions or need additional information, please do not hesitate to contact Leslie Strauss at the Housing Assistance Council, leslie@ruralhome.org, 202-869-4868.

Sincerely,

ABC tots care day center, Kentucky
Alexandria Development LLC, Georgia
Alliance 85, Georgia
American Council for an Energy-Efficient Economy, national
ARCH Community Health Coalition, Kentucky
Auburn University Rural Studio, Alabama
Bodaken & Associates, Maryland
CAC of Fayette County, Ohio
California Efficiency + Demand Management Council, California

cdcb | come dream. come build., Texas
Chippewa Valley Habitat for Humanity, Wisconsin
Collaborating Voices Foundation, Texas
Community Health Resource Center, Texas and Louisiana
Community Ventures Corporation, Kentucky
Cowlitz County Habitat for Humanity, Washington
Dance With Todd Inc., Texas
Delta Admin & Technical Assistance, Inc., Mississippi
Drops of Love, Pennsylvania
Embarras River Basin Agency, Illinois
ENERSTRUCTA, Oregon
Family Resources of New Orleans, Louisiana
Farmworker Housing Dev. Corp., Oregon
Fauquier Habitat for Humanity, Virginia
Gary E. Hanes & Associates, LLC, multistate
Georgia Advancing Communities Together, Inc., Georgia
Guadalupe Economic Services Corporation, Texas
Habitat for Humanity International
Habitat for Humanity Northeast Michigan, Michigan
Habitat for Humanity of Bulloch County, Georgia
Habitat for Humanity of Greater Jonesboro, Arkansas
Habitat for Humanity of Sumner County, Tennessee
Habitat for Humanity of York County, South Carolina
Home for All Coalition, New Hampshire
Housing Assistance Council, national
Housing Assistance Program of Essex County, New York
Housing Authority of City of Salem, Missouri
Institute for Market Transformation, national
Lincoln Institute of Land Policy, international
Local Initiatives Support Corporation, national
Lopez Community Land Trust, Washington
Low Income Investment Fund, national
Midwest Building Decarbonization Coalition, multistate
Minnesota Housing Partnership, national
Monroe Union County CDC, North Carolina
Moscow Affordable Housing Trust, Idaho
National Center for Healthy Housing, national
National Leased Housing Association, national
NC Indian Housing Authority, North Carolina
NeighborWorks Great Falls, Montana
Network for Oregon Affordable Housing, Oregon
Northeast Energy Efficiency and Electrification Council, multistate
Northwest Regional Housing Authority, Arkansas
Operation Confidence, California
Partners for Rural Washington
People's Organization for Strategic Excellence, Louisiana
Piedmont Housing Alliance, Virginia

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Prairie Island Indian Community - Housing Department, Minnesota
Price County United, Wisconsin
REACH Project of Dan River Region, Virginia and North Carolina
Richmond Metro Habitat for Humanity, Virginia
Rural Community Assistance Corporation, multistate
Rural Housing Partnership, Virginia
Rural Housing Coalition of New York
Rural Housing Opportunities Corp., New York
Self-Help Enterprises, California
Self-Help Housing Corporation of Hawaii
Sierra Club, national
Slipstream, national
Soldiers Realigned, Maryland
Southside Community Development and Housing Corporation, Virginia
Southwest Minnesota Housing Partnership, Minnesota and Iowa
Stewards of Affordable Housing for the Future, national
Stress less Consultancy, Arkansas
Tangi Community Development, Louisiana
The DAE Compound for Veterans, Georgia
Tierra Del Sol Housing Corporation, New Mexico, Arizona, Colorado, and Texas
Town of Cable, Wisconsin
Transylvania Habitat For Humanity, North Carolina
Under Gods Care Inc., Oklahoma and Arkansas
Ven Studio, LLC, multistate
Walker Montgomery C.D.C., Texas
Wisconsin Council for Affordable and Rural Housing