



May 27, 2014

Carol Galante
Assistant Secretary for Housing, Federal Housing Commissioner
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Tony Hernandez
Administrator, Rural Housing Service
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

RE: Preliminary Affordability Determination—Energy Efficiency Standards (HUD FR-5647-N-01; RIN 2501-ZA01; USDA RIN 0575-ZA00)

Dear Commissioner Galante and Director Hernandez:

The Mortgage Bankers Association¹ (MBA) appreciates the opportunity to comment on the above-referenced Preliminary Affordability Determination issued by the Departments of Agriculture (USDA) and Housing and Urban Development (HUD). MBA understands that USDA and HUD are required, under statute,² to adopt an energy code standard for new construction as a prerequisite for funding USDA and HUD loans. Under the Preliminary Determination, USDA and HUD new single-family homes would have to meet the 2009 International Energy Conservation Code (2009 IECC), while multifamily housing assisted or insured by USDA and HUD would have to meet the 2007 Refrigeration and Air-Conditioning Engineers (ASHRAE) 90.1 code. We also understand that adopting the standard is contingent on a Final Determination that the standard will not negatively impact the “affordability and availability” of housing.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

² Section 481(d) of the Energy Independence and Security Act of 2007 (EISA).

While MBA does not disagree with the USDA and HUD's estimates about affordability, MBA is concerned about how mortgage lenders should demonstrate compliance for single-family new construction. This concern is particularly important when underwriting loans for new construction in unincorporated localities, where there may not be public inspectors and other third-party specialists, such as Home Energy Rating System (HERS) rating specialists within several hundred miles, such as in states like Colorado or South Dakota. In these cases, lenders are currently using a commonly accepted HUD form, HUD's Builder's Certification form (HUD Form 92544), which, among other things, can certify that the property is compliant with the 2006 IECC, a predecessor to the 2009 IECC.

MBA recommends that HUD make a simple modification to Form 92544 by changing box number four, "IECC International Energy Conservation Code) 2006," to read "IECC International Energy Conservation Code) 2009 or a higher standard." The new form should be available when the Final Determination of Affordability is issued. (Please see the attached form with the recommended modification). MBA also recommends that the HUD Handbook be updated to reflect the single-family new construction requirement and that this form be treated as an acceptable method of certifying the property's minimum energy efficient status.

MBA is also concerned about the availability of USDA and HUD single-family credit in the 18 states that have not yet adopted the 2009 IECC. MBA is encouraged that several members report that high performance energy efficient homes are increasing in the states where they do business, and that more states may adopt the standard in the near future. Several large home builders report that all of their homes are energy efficient, and that trend is continuing across the country. While MBA does not anticipate a broad, significant decline of the availability of USDA and FHA financing because of the statutory requirement, some consumers may be unable to secure USDA or FHA credit. In these cases, borrowers would not be able to take advantage of USDA and FHA's favorable underwriting and the costs of the loan may be higher.

In regard to the requirements for multifamily lenders, MBA is concerned that the transition period from the Final Determination's effective date and implementation date for multifamily lenders of 90 days is insufficient. MBA recommends that USDA and HUD revise the transition period so that the standard will go into implementation in 180 days, not 90 days. Multifamily new construction or substantial rehabilitation transactions have a long lead time and for locations where the new standard represents a change, the standard should not affect financings already in development or application stages.

These standards are important to the mortgage industry and to our customers and we look forward to working with you in implementing these new requirements. If you have any questions or concerns, please do not hesitate to contact Andrew Szalay

MBA Comments on USDA-HUD Preliminary Affordability Determination

May 27, 2014

Page 3 of 3

(aszalay@mba.org or (202) 557-2941) on single-family issues or Eileen Grey
(egrey@mba.org or (202) 557-2747) on multifamily issues.

Sincerely,

A handwritten signature in black ink that reads "Stephen A. O'Connor". The signature is written in a cursive style with a long horizontal line extending to the right.

Stephen A. O'Connor
Senior Vice President, Public Policy & Industry Relations

Attachment

**Builder's Certification
of Plans, Specifications, & Site**

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0496
Exp 01/31/2016

Property Address (street, city, State, & zip code)	Subdivision Name
Mortgagee's (Lender's) Name & Address (this is the lender who closed the loan)	FHA Case Number
	Phone Number

NOTE: If any of 2,3 or 4 is not checked, the property is **ineligible** for FHA insured financing

1 Site Analysis Information: To be completed on all proposed and newly constructed properties. **YES** **NO**

a. Flood Hazards. Are the property improvements in a Special Flood Hazard Area (SFHA)?

1) Provide the community number and date of the Flood Insurance Rate Map (FIRM) used to document your answer.

Community Number _____ Map Date _____

2) Is the community participating in the National Flood Insurance Program and in good standing?

3) If "Yes" to 1a. above, attach:

(i) a Letter of Map Amendment (LOMA) or;

(ii) a Letter of Map Revision (LOMR) or;

(iii) a signed Elevation Certificate documenting that the lowest floor (including basement) is built in compliance with 24 CFR 200.926d(c)(4).

4) Is the property located within a Coast Barrier Resource System (CBRS)? (if yes, the property is ineligible for FHA insured financing)

Items b-f see additional instructions on page 3

b. Noise. Is the property located within 1000 feet of a highway, freeway, or heavily traveled road?

Within 3000 feet of a railroad?

Within one mile of a civil airfield or 5 miles of a military airfield?

c. Runway Clear Zones / Clear Zones. Is the property within 3000 feet of a civil or military airfield?

If "Yes," is the property in a Runway Clear Zone / Clear Zone?

d. Explosive /Flammable Materials Storage Hazard. Does the property have an unobstructed view, or is it located within

2000 feet of any facility handling or storing explosive or fire prone materials?

e. Toxic Waste Hazards. Is property within 3000 feet of a dump or landfill, or a site on an EPA Superfund (NPL)

list or equivalent State list?

f. Foreseeable Hazards or Adverse Conditions.

(1) Does the site have any rock formations, high ground water levels, inadequate surface drainage, springs, sinkholes, etc.?

(2) Does the site have unstable soils (expansive, collapsible, or erodible)?

(3) Does the site have any excessive slopes?

(4) Does the site have any earth fill?

If "Yes," will foundations, slabs, or flatwork rest on the fill?

If you marked "Yes" to any of the above questions in f, please attach a copy of the State licensed engineers' (soils and structural)

reports, designs, and/or certifications showing compliance with HUD requirements to ensure the structural soundness of the

improvements and the health and safety of the occupants. Refer to HUD Handbook 4145.1 and HUD Handbook 4140.3 pg. 64-92.

Complete this section for all properties. The property complies with:

2 HUD Minimum Property Standards in the Code of Federal Regulations at 24 CFR 200.926d.

3 HUD Handbook 4145.1, Architectural Processing & Inspections for Home Mortgage Insurance, including Appendix 8, Site Grading & Drainage Guideline.

4 **IECC (International Energy Conservation Code) 2009 or a higher standard**

5 Other Code or Local/State Code as follows: _____

Applicable Provisions _____

6 CABO One- and Two-Family Dwelling Code, as listed in 24 CFR 200.926b, replaced by IRC (International Residential Code)

7 Electrical Code for One-and-Two-Family Dwellings, as listed in 24 CFR 200.926b, or equivalent, **name code:** _____

8 This is a manufactured (mobile) home and was constructed in accordance with the Federal Manufactured Home Construction & Safety

Standards (FMHCS). The label on the manufactured home shows compliance with the FMHCS. I hereby certify that the plans and

specifications for all other construction (i.e., site, foundation) comply with the applicable building code or HUD requirement listed

above, including paragraph. 3-4, Handbook 4145.1, and the Permanent Foundations Guide for Manufactured Housing.

HUD Label Number(s):

Builder or Builder's Agent: I hereby certify that the site analysis information above is true and accurate to the best of my knowledge and belief and that the plans and specifications were designed to mitigate any foreseeable hazards or adverse conditions. On all properties eligible for maximum LTV financing, I further certify that I have personally reviewed the plans, specifications, and site information submitted herewith. Based upon my review, I hereby certify that such plans, specifications comply with the applicable building codes specified above as well as complying with the HUD construction requirements listed above. An "X" marked in the blank by each numbered item indicates that provisions from the marked code apply.

9a. Name of Builder's Company or Builder's Agent (type or print)	10 a. Name & Title of Builder or Builder's Agent (type or print)	
b. Street Address	b. Signature of Builder or Builder's Agent Date	Date
c. City, State, & Zip Code	c. Telephone Number (include area code)	

11 Affirmative Fair Housing Marketing Plan (AFHMP) Did you sell five (5) or more houses in the last twelve (12) months or do you intend to sell five (5) or more houses within the next twelve (12) months with HUD mortgage insurance? **YES** **NO**

If "Yes," check either a, b, c, or d below.

a. I am a signatory in good standing to a Voluntary Affirmative Marketing Agreement (VAMA).

b. I have an AFHMP which HUD approved on (mm/dd/yyyy) _____

c. I have a contract with _____ to market this house.

d. I certify that I will comply with the following: (a) Carry out an affirmative program to attract all minority and majority groups to the housing for initial sale or rental. Such a program shall typically involve publicizing to minority persons the availability of housing opportunities regardless of race, color, religion, sex, handicap, familial status or national origin, through the type of media customarily utilized by the applicants; (b) Maintain a nondiscrimination hiring policy in recruiting from both minority and majority groups; (c) Instruct all employees and agents in writing and orally in the policy of nondiscrimination and fair housing; (d) conspicuously display the Fair Housing Poster in all Sales Offices, include the Equal Housing Opportunity logo, slogan and statement in all printed material used in connection with sales, and post in a prominent position at the project site a sign which displays the Equal Opportunity logo, slogan or statement, as listed in 24 CFR 200.620 and appendix to subpart M to part 200. I understand that I am obliged to develop and maintain records on these activities, and to make them available to HUD upon request.

Builder: I hereby certify that the site analysis information is true and accurate to the best of my knowledge and belief. On all properties eligible for maximum LTV financing, I further certify that the plans and specifications submitted herewith have been reviewed by the individual signing above and that the individual has the knowledge and experience necessary to determine whether such plans and specifications comply with the HUD/FHA requirements set forth at 24 CFR 200.926d and with other applicable HUD requirements as determined in accordance with 24 CFR 200.926(d)(1) and (2). Any subsequent changes to these plans and specifications shall comply with the aforementioned requirements. Upon sale or conveyance of the property, the undersigned will promptly furnish to lender a Warranty of Completion of Construction, form HUD-92544 on all properties eligible for maximum LTV financing.

12 a. Name of Builder's Company (type or print)	13 a. Name & Title of Builder (type or print)	
b. Street Address	b. Signature of Builder	Date
c. City, State, & Zip Code	c. Telephone Number (include area code)	

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1 0 10 , 1012; 31 U.S.C. 3729, 3802).

This form must be complete and legible and must be reproduced to include all three pages.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Executive Order 11988 and HUD environmental regulations (24 CFR Part 51) require builders who build newly constructed properties to ensure that the property is not affected by: flood hazards, noise, runway clear zones, explosive/flammable materials storage hazards, toxic waste hazards, and other foreseeable hazards that may affect the site. HUD requires this information to determine whether the site/location factors would adversely affect the dwelling or homeowner. A response is required whenever a builder builds new properties. Confidentiality is not applicable.

Instructions for Builder's Certification, form HUD-92541

Item 1. Site Analysis: All builders must answer all the questions in this item. An addendum may be added, if necessary, to provide a full explanation about any of the site conditions listed.

a. **Flood Hazards:** HUD prohibits new construction in Special Flood Hazard Areas unless there is a Letter of Map Amendment (LOMA), a Letter of Map Revision (LOMR), or an Elevation Certificate in accordance with 24 CFR 200.926d(c)(4) provided to the lender.

Items 1b.-f The builder must provide this information for all properties. If the property is a condominium, the builder may have to mitigate the site issue if the project has not yet been approved by HUD.

b. **Noise:** Self-explanatory.

c. **Runway Clear Zones/Clear Zones:** If the property is located in a Runway Clear Zone / Clear Zone, the lender must require, as a condition of borrower approval, that the borrower will sign a statement acknowledging receipt of the notification required by 24 CFR 51.303(a)(3).

d. **Explosive/Flammable Materials Storage Hazard:** Self-explanatory.

e. **Toxic Waste Hazards:** Self-explanatory.

f. **Foreseeable Hazards or Adverse Conditions:** Self-explanatory.

Items 2 - 8: The builder/builder's agent must complete these items as follows:

Items 2, 3&4. Place an "X" in the box in Items 2, 3 and 4. The certified builder must complete Items 5 thru 8 as follows:

Item 5. The local/State code in Item 5 is the accepted code for a locality. The additional requirements needed from the Table in 24 CFR 200.926c, to supplement a partially acceptable local code, must be shown in Item 5.

Item 6. When the whole CABO Code is used as the HUD referenced code in jurisdictions with "no code" or an "unacceptable code," place an "X" in the box in Item 6 and place the word "All" in the space.

Item 7. Place an "X" in the box on line 7, and, if applicable name equivalent code.

Item 8. If the dwelling is a manufactured (mobile) home, place an "X" in the box in Item 8. Properly complete lines 4 through 7 for all "foundation and site work." Insert the HUD label number(s) in the box provided.

Items 9 & 10. The builder or the builder's agent must complete and sign these items. If the builder's agent completes and signs these items the builder's agent is certifying that builder's agent has the knowledge and experience to determine whether the plans and specifications comply with HUD/FHA requirements set forth in 24 CFR 200.926d and with other applicable HUD requirements in 24 CFR 200.926(d)(1) and (2). The builder's agent is further certifying that the information about the site is accurate to builder's agent's best knowledge and belief.

Item 11. If a builder has sold or intends to sell five (5) or more newly constructed properties within a twelve (12) month period, the builder is required to have one of the following:

- Be in good standing to a Voluntary Affirmative Marketing Agreement
- Have a HUD approved Affirmative Fair Housing Marketing Plan (AFHMP);
- Have a contract with a Marketing Agent to implement its approved AFHMP; or a contract with a Marketing Agent with signatory to a National Association of Realtors VAMA; or
- Certify to the requirements which are hereby listed, taken from 24 CFR 200.620.

Items 12 & 13. The builder must complete and sign Items 12 and 13. The certification is self-explanatory. All changes to the original form must be initialed and dated by the builder.

Appraiser / Direct Endorsement Lender's Responsibility

FHA Roster Appraiser. The appraiser must receive a fully executed form HUD-92541 before performing the appraisal on proposed or under construction properties or properties less than one year old and never occupied.

The appraiser must review Item 1 and note in the Appraisal Report any discrepancies between the information in Item 1 and the actual conditions observed on site. The appraiser must take into consideration the effects of any site conditions on the value of the property.

Direct Endorsement Underwriter. The DE Underwriter must review the Appraisal Report and the Builder Certification as part of the underwriting process, taking into consideration the effect of any site conditions on the value of the property. Page 1 of this form must be complete and legible. Only the builder or the builder's agent is authorized to complete or change this form. The DE Underwriter cannot change and/or modify this certification form.