MORTGAGE BANKERS ASSOCIATION

August 7, 2023

Via REGULATIONS.GOV

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

Attention: Docket No. FR-6271-N-01, RIN 2506–AC55

The Mortgage Bankers Association[1] (MBA) thanks the Department of Housing and Urban Development (HUD) and the Department of Agriculture (USDA, and together with HUD, the Agencies) for the opportunity to comment on the Notice of Preliminary Determination for the Adoption of Energy Efficiency Standards for New Construction of HUD- and USDA-Financed Housing (the Proposal). The Energy Independence and Security Act of 2007, proposes review of these standards subject to a determination by the Agencies that the revised codes "do not negatively affect the availability and affordability of new construction of single and multifamily housing." Both HUD and USDA have found that they do not. MBA objects to this finding and believes that the Proposal will have significant impacts on the availability and affordability of new housing.

MBA and its members have always supported energy conservation efforts and other reasonable environmental protection initiatives and will continue to do so. However, at a time when there is an affordable housing shortage in the country, this proposal could be devastating for millions of Americans looking to buy or rent safe, decent, affordable housing.

With respect to single-family housing, an internal study cited by the Leading Builders of America (LBA) found that the average cost associated with updating an entry-level home from compliance with the 2009 International Energy Conservation Code (IECC) to the 2021 IECC was

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 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 to 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 more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

between $8,859 and $22,572, depending on the location of the property. This far outpaces the estimate provided by HUD and USDA. As LBA also notes, the cost to an FHA or RD homebuyer of including energy efficient upgrades may not correspond to an increased value in the home appraisal. As a result, the homebuyer may have a limited ability to finance these additional costs and/or face a larger down payment.

With respect to multifamily housing, the proposal provided by the Agencies will add significant costs to the construction of apartment buildings causing a commensurate increase in rent levels. Today's newly constructed apartment properties are more energy efficient than ever, and many properties are constructed far above the energy efficiency standards required by local building codes. However, the Proposal by the Agencies suggests a momentous increase in energy efficient requirements, which may conflict with local building codes, impact the supply chain of building materials which are already in low supply (like windows, certain insulations, and other components), delay or stop construction, and significantly impact costs.

Conflicts with Existing Building Codes

As noted in the Proposal, only three states have adopted the 2021 IECC. In fact, the vast majority of states require 2009 IECC or an older version. Similarly, only 6 states have adopted ASHRAE 90.1-2019, with more than 40 states having adopted ASHRAE 90.1-2013 or older. These new requirements for FHA and USDA insured and assisted properties are a significant leap in energy efficiency requirements and will create substantial burdens on developers of new or substantially rehabilitated multifamily properties and single-family homes.

There are many valid reasons for states not to adopt or to amend national building code standards. Climate zones, terrain, weather norms, and building conditions all contribute to their decision to adopt/amend or NOT adopt national building codes. Even those states that have adopted the HUD/USDA preferred codes are likely to have amended them. If these amended versions are not deemed equivalent, the MBA and its members need clarity as to how will this be determined. The Agencies should take these local conditions into consideration when requiring the latest codes at the national level.

This disparity in building codes will lead to significant market disruption. Local building code officials are only trained on the version of the code in effect in their jurisdiction. They do not know the requirements of other codes and cannot certify to any codes with which they are unfamiliar and untrained. In the overwhelming majority of states who do not meet the proposed codes, there will likely be a significant deficit in the number of officials who can certify the property is built to the FHA/USDA code requirement. Local building inspectors cannot certify to the higher code requirements because they are not trained on the 2021 IECC or ASHRAE 90.1-2019. Guidance will be needed for builders and local officials in states that have not adopted the required codes. If HUD or USDA inspectors will be used, sufficient time will be necessary to ensure there are a sufficient number of these trained inspectors available in all jurisdictions that do not meet the proposed standards.

Impact on Rental Affordability

Rental housing is home to more than a third of US households. According to Harvard University's State of the Nation's Housing Report for 2023, "between 2019 and 2021, the number of cost-burdened renters—defined as those spending more than 30 percent of their income on housing—increased by 1.2 million to a record 21.6 million households."[2] This proposal will only increase rents for American families.

A recent study by Home Innovation Labs found that the cost effectiveness of the 2021 IECC is far overstated[3]. Although this study analyzes the cost impact on single-family home construction, its results translate to multifamily properties as well. It is well documented that the costs of construction – including materials, regulations, interest rates, and labor, have increased dramatically. Any cost analysis completed by the Agencies must be updated to reflect the current realities. Understanding today's costs and conditions is essential to recognizing the additional burdens of the new requirements.

HUD's Notice of preliminary determination at 88 FR 31773 is based largely on "National Cost Effectiveness of the Residential Provisions of the 2021 IECC," prepared for the U.S. Department of Energy by PNNL. However, even that report determined that the simple payback period for the construction costs of the 2021 IECC over the 2018 IECC averaged over 10 years nationwide. In their analysis of cost effectiveness, they rely on a 30-year period. This is questionable even for single-family homes but ignores very important investment and construction cost considerations by developers of rental apartments. Apartment investors work with much shorter investment horizons, with 10 years typically the maximum. They must also consider the effect of construction cost on market value to plan the refinance of the construction debt and the exit horizon for initial investors. The PNNL analysis is also less accurate for 2023 given their assumed inflation of 1.4% and mortgage rate of 3%. As shown in the chart below, as of July 2023, inflation is 3.0% and mortgage rates are 6.97%.

[2] https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.pdf

[3] https://www.nahb.org/-/media/NAHB/advocacy/docs/top-priorities/codes/code-adoption/2021-iecc-cost-effectiveness-analysis-hirl.pdf

Parameter	Value in PNNL Report	Actual Value in July 2023
Mortgage Interest Rate	3%	6.97% [i]
Inflation Rate	1.4% annual	3.0% annual [ii]

Regardless of a life cycle cost analysis which may have some weight for the buyer of a home, for an apartment developer there is the more important hurdle of the initial cost of construction, which is a major consideration for developers of new rental housing. The costs used in these studies are significantly lower than today's construction costs, and these costs can be expected to continue to rise and bring into further question the timing of adopting the newer energy codes as a minimum. Probably the most serious failing of the principal study being relied upon, the PNNL study cited in the Proposal, is that its financial assumptions grossly overestimate the current value of the future savings.

Rental affordability is a serious problem at this time, with construction cost being a major reason for the rise in interest rates. HUD PD&R National Housing Market Summary, First Quarter 2023, notes several disturbing aspects of the current state of rental housing in the nation.

1. The affordability of renting has declined as rising rents outpace income growth. The affordability of renting a home fell to a new low point in the first quarter of 2023. The U.S. Department of Housing and Urban Development (HUD) Rental Affordability Index (RAI), at 92.1 in the first quarter, fell 8.8 percent from 101.1 in the previous quarter and was down 10.4 percent year over year.
2. Although multifamily vacancies rose slightly in the first quarter, vacancy remains at the lowest levels since 2000. From 2000 to 2014, vacancies ranged from 9% to 14%. From 2014 to 2022 vacancies were between 7% and 9%. Despite an uptick to 8.25% in the first quarter 2023, vacancies remain the lowest in the last 23 years.
3. Multifamily Housing Starts dropped in the first quarter by 1.3% from the last quarter of 2022 and were down 3.8% from first quarter 2022.[4]

Rising construction costs are expected to be an ongoing direct cause of this rental affordability problem. For example, CBRE proposes in "U.S. Real Estate Market Outlook 2023" that "*Construction costs in 2023 will not increase at the rate they have done over the past year but will nevertheless continue to rise*."[5]

[4] https://www.huduser.gov/portal/sites/default/files/pdf/NationalSummary-1Q23.pdf

[5] https://www.cbre.com/insights/books/us-real-estate-market-outlook-2023#

National Multifamily Housing Council's "Quarterly Survey of Apartment Construction & Development Activity" reports "*Despite their improvements from recent quarters, delays and costs remain challenges that are impeding the building of new housing, especially at the low and middle-income price points. In the first quarter of 2023, material prices increased overall, and some items were particularly noteworthy:*

Exterior Finishes & Roofing 4%
Electrical Components 9%
Appliances 7%
Insulation 3%[6]

In their report "Construction Costs Bite into Apartment Investment Returns" Wealth Management explains how construction costs are not only driven by the material costs but also by the slowly receding COVID supply problems:

"The cost of construction will probably keep rising—cutting into the yield of investments in apartment developments—even though a few materials, such as lumber and concrete, have become less expensive in the last few months.

The bids contractors submit to build new apartments keep including higher and higher prices. That's in part because material prices are likely to keep rising overall. And with the national unemployment rate below four percent, the cost of labor is growing as fast as ever. Also, many contractors already absorbed high prices for materials earlier in the pandemic recovery without passing them on to developers. Today construction contractors are in demand and seem to have the power to ask for higher prices when bidding out projects."[7]

Thus, even without the added cost of compliance with updated energy codes, initial construction costs will remain a major force in the lack of rental affordability.

Conclusion

Requiring the proposed code standards for properties utilizing FHA or USDA financing will result in fewer FHA and USDA constructed properties. This is contrary to what is needed in the market now – which is the counter-cyclical role that the Agencies play in the housing market. As conventional financing is limited, there will be growth in the utilization of FHA and USDA loans. But that cannot happen if the new requirements make it too expensive or too burdensome to build. Eliminating the construction of HUD and USDA insured and financed properties will greatly

[6] https://www.nmhc.org/research-insight/nmhc-construction-survey/2023/quarterly-survey-of-apartment-construction--development-activity-june-2023/
[7] https://www.wealthmanagement.com/multifamily/construction-costs-bite-apartment-investment-returns

reduce the number of units produced, limiting housing supply and driving up prices for all renters and many first-time homebuyers. At a time where there is a housing shortage in this country, interest rates are pricing families out of being able to purchase a home and rental housing is in high demand, the last thing we need is to implement a higher standard of energy codes that will stall housing development. Furthermore, this would be counterintuitive to HUD's 2022-2026 mission, which is to increase the nation's housing supply.

MBA urges you to reconsider the implications on affordability, as required by the Energy Independence and Security Act of 2007, which requires the Agencies to determine that the revised codes "do not negatively affect the availability and affordability of new construction of single and multifamily housing." We believe that these changes will have a significant impact on the development of both single and multifamily housing in nearly all areas of the country. MBA welcomes the opportunity to discuss this further and determine the best process to ensure that the need for more affordable housing is balanced appropriately against the need for continued development of energy efficient, safe, decent, and sustainable housing across the nation.

Sincerely,

Megan H Booth

Megan H. Booth
AVP, Commercial and Multifamily Policy
MBA

---

[i] Optimal Blue, 30-Year Fixed Rate Conforming Mortgage Index [OBMMIC30YF], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/OBMMIC30YF, August 4, 2023.
[ii] U.S. Bureau of Labor Statistics USDL-23-1523; retrieved from U.S. Bureau of Labor Statistics August 4, 2023.