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The Real Estate Roundtable

May 22, 2024

The Honorable Jeff Duncan, Chair
The Honorable John Curtis, Vice Chair
The Honorable Diana DeGette, Ranking Member
U.S. House of Representatives
Subcommittee on Energy, Climate and Grid Security
of the Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Re: Hearing, *"Green Building Policies: Jeopardizing the American Dream of Home Ownership"*

Dear Chair Duncan, Vice Chair Curtis, and Ranking Member DeGette:

The Real Estate Roundtable ("The Roundtable")[1] appreciates the opportunity to submit this statement for the record of today's Subcommittee hearing, "Green Building Policies: Jeopardizing the American Dream of Home Ownership."

The Roundtable values our track record of policy achievements in the energy and climate arena. Our advocacy has harnessed our members' leadership to encourage and incentivize buildings to significantly reduce energy use and lower carbon emissions. Across agencies, administrations, and Congresses, we have developed a portfolio of durable public-private partnerships that have made U.S. buildings cleaner, greener, and more efficient.[2]

Our members' experiences also inform our view that excessive energy-related ***mandates*** on residential and commercial buildings generate significant compliance costs that negatively impact affordable housing supplies, building construction, and operations. Such laws include state and local "building performance standards"[3] and natural gas bans that deploy heavy-handed regulatory approaches to compel buildings to strive for "zero emissions" levels that are unattainable and cost-ineffective for the vast majority of U.S. buildings at this time. We encourage the Committee to hold a separate hearing on the rise of these state and local mandates, their legality under federal preemption law, and their economic consequences.

[1] The Roundtable (www.rer.org) represents the Chairs, Presidents and CEOs of the nation's top 150 privately owned and publicly-held real estate ownership, development, lending and management firms. More information is provided in the addendum.

[2] For example, we have supported US-EPA efforts to expand the ENERGY STAR program to certify high-performance leased tenant spaces, recognize low-carbon assets with NextGen building labels, and enhance our industry's standard software tool ("Portfolio Manager") to benchmark building energy use and emissions. The Roundtable is an industry ally in US-DOE's market-based Better Climate Challenge, and we have worked cooperatively with the current administration to shape the imminent first-ever voluntary national guideline for a zero emissions building ("ZEB").

[3] US-DOE website, "Building Performance Standards."

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Another green building policy that will seriously impact housing affordability is a recent final determination on residential energy codes from the U.S. Department of Housing and Urban Development ("HUD") and the U.S. Department of Agriculture ("USDA"). The agencies acknowledge that their "Federal Codes Rule" will add $7,229 to the price of a new single-family home.[4] This Rule gives nationwide effect to the most stringent and costly energy efficiency standards adopted in only a handful of states. Specifically, the Federal Codes Rule determines that all homes assisted by HUD/USDA "covered programs" of grants, insurance, and other financial support must meet the 2021 version of the IECC residential code, and the 2019 version of the ASHRAE 90.1 standard for high-rise multifamily and commercial buildings.

Addressing the climate crisis is a priority for The Roundtable and must be for policy makers as well. Addressing the nation's housing crisis must be another top priority. However, the Federal Codes Rule is not balanced and will make the housing crisis worse. The Administration should avoid enacting new regulations that diminish housing supplies even further and make home purchases and rents even more unaffordable. Reasonable goals to achieve energy savings and emissions reductions are critical, but should not be so extreme that they price families out of buying a home or affording their rent.

The Federal Codes Rule is not the only regulation or headwind that impacts housing affordability. Local land-use laws frequently discourage high-density projects and limit the number of homes that can be built. Builders' margins get squeezed by inflation in rising material prices and labor costs. Ordinances cap the amount of rents that multifamily owners can charge – limiting the income available for building maintenance and improvements. Environmental laws reduce land supplies by requiring set asides of open spaces that are off-limits to new developments. Liquidity limits on banks to de-risk the capital markets restrict the amount of debt available for responsible borrowers to access. When debt is available, the highest interest rates in years make borrowing costs for home buyers, and developers taking out construction loans, stretch their pocketbooks and budgets to the max.

The Federal Codes Rule is now part of this mix. The most stringent energy code requirements make the costs to build, purchase, and rent a home more expensive.

We encourage the Subcommittee's examination of the Federal Codes Rule and urge HUD/USDA to re-think its position to strike a better balance between housing affordability and energy efficiency. The agencies should withdraw the Federal Codes Rule and more thoroughly re-assess its economic impacts.

[4] 89 Federal Register 33,112, 33,161 (April 26, 2024).

## ***The Economic State of U.S. Residential and Commercial Real Estate Markets***

On The Roundtable's behalf, earlier this month I testified to a subcommittee of the House Committee on Oversight and Accountability regarding the "Health of the Commercial Real Estate Markets and Removing Regulatory Hurdles to Ensure Continued Strength."[5] My testimony explained that commercial and residential markets are intertwined. Sufficient supplies of housing – that lower- and middle-income families can afford to buy or rent – are vital to the vibrancy, productivity and safety of our nation's downtown business districts and suburban neighborhoods. Property taxes paid by owners of homes and commercial buildings support the local tax bases for schools, infrastructure, emergency response, and other essential community services.

Now more than ever, American households and their earners need work-life balance. Parents and caretakers want to live near where they work so they can get home to pick up their kids from school, help with their homework, shuttle them to extra-curriculars, care for aging relatives, and shop for groceries along the way. However, finding homes that are affordable with reasonable commutes is a major problem for families. "[T]here's a massive shortage of homes – somewhere between four and seven million," according to one recent report.[6]

Basic economics explain the problem: the nation has a serious lack of housing units and demand exceeds supply. Home prices are at historic highs.[7] The cost of borrowing is the highest it has been in decades. Home mortgage interest rates are hovering around 7 percent, "slow[ing] the housing market with declines in home sales and new construction."[8]

## ***The Hyper-Regulatory State of U.S. Residential and Commercial Real Estate***

Single- and multifamily housing construction has become a hyper-regulated business. As my testimony to the House Oversight subcommittee explained:

> Increasing supply is the answer to the nation's housing problems. But the more housing is regulated, the less housing you will have. Layer upon layer of rules are piling up to restrict the production of modernized and affordable housing in the U.S.[9]

Regulations including rent controls; restrictions that limit evictions even if a tenant is a "bad actor"; local zoning and land-use rules that undercut or delay bringing new units to market; a complex section 8 housing choice voucher bureaucracy; state and local performance standards that set their own aggressive energy use and emissions limits on buildings; and distortionary programs that pressure home prices and rents to rates below the market, each work independently to depress housing supplies. In the aggregate, these rules build on each other to create the conditions for a "perfect storm" that deters construction of new homes and apartments, and intensifies the housing crisis. It is "death by a thousand cuts." The Federal Codes Rule is now a significant part of the overall problem, and its economic impacts should not be considered in isolation.

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[5] Written and oral testimony available on The Real Estate Roundtable's website.
[6] NPR, "Housing experts say there just aren't enough homes in the U.S." (April 24, 2024).
[7] The Hill, "The cost of buying a home has hit an all-time high," (April 25, 2024).
[8] FreddieMac, "U.S. Housing, Economic and Mortgage Market Outlook" (May 16, 2024).
[9] *Supra* note 5.

- ***Request:*** **HUD/USDA only considered the "incremental" economic impact of its actions without regard to other regulations on new home construction. The Subcommittee should instruct HUD/USDA to conduct a cumulative regulatory impacts analysis. The agencies should assess how costs to comply with heightened energy codes add more layers to the regime of excessive regulations in the aggregate, that already contribute to high housing costs and diminished housing supplies.**

***The Federal Codes Rule Should be Re-Considered in Light of the Administration's Plan to Create 2 Million Affordable Housing Units***

The Administration has a goal to build and preserve "over 2 million new homes to lower rents and the costs of buying a home."[10] Although HUD/USDA purport to have conducted a balanced housing economic impact analysis they never ***once*** mention this Administration priority in the Federal Codes Rule.

The Roundtable applauds the Administration's ambitious housing plan. Its goal to make two million homes available and affordable hinges largely on expanded and new tax credits to develop low-income and workforce housing. We have long supported bipartisan housing-related tax proposals[11] – but they require acts of Congress and are longshots to accomplish any time soon, especially during this federal election year. The Administration's plan also emphasizes strategies for agencies to use federal grants as levers that induce localities to issue land-use and zoning approvals necessary for high-density, transit-oriented housing developments. We strongly support such "yes in my backyard" strategies as well.

There is a lot the Administration can do ***now***, in its ***own*** "backyard" – without waiting for Congress to pass legislation or hoping for cities and counties to enact zoning reforms. Chiefly, the Administration should not make the housing crisis worse. It should avoid enacting new regulations that diminish supplies even further and make home purchases and rents even more unaffordable. It should start with a thorough re-assessment of the Federal Codes Rule.

- ***Request:*** **The Subcommittee should instruct HUD/USDA to reassess the Federal Codes Rule specifically in light of the Administration's housing supply goal to build and restore two million units.**

***The Economic Analysis in the Final Codes Rules is Flawed***

HUD and USDA concede their decision will increase home prices, drive-up construction costs, and make it more difficult for buyers to assemble a down payment. The agencies state that moving to the 2021 IECC (above the agencies' 2009 baseline) will add $7,229 to the upfront price of a single-family home.[12] This figure is a national average and will run higher or lower in certain markets.

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[10] White House Fact Sheet, "President Biden Announces Plan to Lower Housing Costs for Working Families" (March 7, 2024); White House Statement, "Biden-Harris Administration Announces Actions to Lower Housing Costs and Boost Supply" (July 27, 2023)
[11] Real Estate Coalition, open letter to Congress on policies to increase affordable housing (April 29, 2024).
[12] *E.g.*, 89 Fed. Reg. at 33,152.

The agencies try to justify their home price hike by narrowing the pool of potential buyers impacted immediately by the Federal Codes Rule. The agencies claim the $7.3K increase will have "limited impact on overall affordability" by focusing only on borrowers whose mortgages are insured by the Federal Housing Administration (FHA): "The down payment of FHA borrowers is a minimum of 3.5 percent, distinct from a typical 20 percent down payment requirement for conventional financing without private mortgage insurance."[13]

The agencies unfairly dismiss the impact – on both FHA and non-FHA borrowers – of raising home prices by an ***additional*** $7.3K. As to FHA borrowers, the Federal Codes Rule places a heavy financial burden on households that need the most help. FHA loans are intended to assist low- to moderate income families attain homeownership, and they are popular with first-time home buyers with low credits scores.[14] Certainly, for families living largely paycheck-to-paycheck, collecting any amount of additional funds to pay for high-end windows, lights and HVAC – at top levels to satisfy the 2021 IECC – is a household budgeting challenge and will impact mortgage qualification.

Second, for non-FHA borrowers who need to raise a 20 percent down payment (as per HUD/USDA's analysis), an extra $7.3K home price is a burden indeed. The Federal Codes Rule's reasoning to artificially restrict the buyer pool to FHA borrowers – and exclude non-FHA borrowers – is neither a fair nor realistic assessment of adverse cost impacts under the 2021 IECC. The avowed strategy of groups prioritizing the highest efficiency standards over housing affordability is to stretch the Federal Codes Rule to become the overarching policy of the Federal Housing Finance Agency (FHFA).[15] If that happens, all new single-family homes with mortgages held by Fannie Mae or Freddie Mac would be subject to the 2021 IECC's stringent and expensive efficiency levels.

Fannie and Freddie support more than double the amount of homes covered by HUD/USDA assistance.[16] Thus, the affordability and cost-benefit analyses in the Federal Codes Rule, just considering impacts on FHA-insured borrowers, lack a rational basis for policy intending the 2021 IECC to reach homes within Fannie's and Freddie's vast sphere of influence. Furthermore, as a matter of marketplace realities and permitting burdens, HUD/USDA's determination will likely move non-FHA insured units in housing subdivisions to meet the 2021 IECC anyway (as explained below).[17]

- ***Request:*** **HUD and USDA should be held accountable for any signs or intentions of "mission creep." The Subcommittee should investigate whether the agencies, in practice or effect, believe the Federal Codes Rule will set 2021 IECC levels for more than just homes covered by FHA insurance and the agencies' other programs. If that is the case – and the 2021 IECC applies to homes backed by Fannie and Freddie – the negative consequences on housing affordability will be magnitudes greater than the impacts calculated and shifted downward in the Federal Codes Rule.**

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[13] *Id.* at 33,121.
[14] HUD website, "Let FHA Loans Help You."
[15] See press release, "Groups Celebrate Updated Energy Efficiency Rules for New U.S.-Backed Homes" (April 25, 2024).
[16] In 2023 alone, Fannie and Freddie bought loans that financed 805,000 and 955,000 single-family homes, respectively. HUD reports that FHA Mutual Mortgage Insurance facilitated access to mortgage credit for more than 765,000 homebuyers and homeowners in FY-2023. See Fannie Mae press release (Feb. 14, 2024); Freddie Mac release on full-year 2023 financial results (Feb. 14, 2024); and HUD press release, (Nov. 15, 2023).
[17] *Infra* at pp. 6-8.

## ***The Federal Codes Rule is Too Much Too Soon***

Analogous to the Federal Reserve's rapid and sharp increase in interest rates,[18] in terms of energy policy, the HUD/USDA Codes Rule goes too far too soon. It does not allow builders and developers of homes and apartment buildings – and the buyers and renters they serve – the chance to absorb the drastic new rules that take effect in a week (*i.e.,* on May 28 as per the Federal Register publication.)

As USDA and HUD explain, the current IECC baseline for homes in their covered programs is the 2009 version. The Federal Codes Rule jumps ahead to the 2021 IECC – leapfrogging the 2012, 2015, and 2018 editions. This approach will improve energy efficiency by 34.3 percent relative to 2009 levels, according to the agencies.[19] Similarly, the Federal Codes Rule's adoption of the 2019 edition of ASHRAE 90.1 bypasses the 2010, 2013, and 2016 versions, representing an approximate 33 percent efficiency gain over the 2007 level.[20]

These decisions are lopsided. The agencies should have explained and considered a significant but more reasonable efficiency gain – such as a 20 percent improvement – to more fairly balance both energy policy and housing affordability objectives. For example, 23 states are at the 2009 IECC level of efficiency. What if the step-up was more gradual – to 2015 for the next few years, reaching 2021 levels three years later? Would that pathway still provide meaningful efficiency gains while also easing the burden on families to assemble a down payment, pay rent, and lower monthly energy bills?

- ***Request:*** **There are multiple scenarios and options for HUD and USDA to pursue to better accomplish and balance both energy and housing objectives. The Subcommittee should ask the agencies to report back on other outcomes and place a hold on the Federal Codes Rule pending a further regulatory alternatives analysis.**

## ***The Federal Codes Rule Creates a National Building Code "Through the Back Door"***

Congress knows how to establish federal-level energy efficiency standards when it wants to. Starting in 1975, Congress has passed "a series of statutes" giving DOE authority to set efficiency levels for appliances and equipment.[21] In 2007, Congress enacted legislation giving HUD authority to administer a federal energy code for manufactured homes.[22] And, since 1992, Congress gave DOE authority to develop energy efficiency standards for residential and commercial buildings constructed and owned by the federal government.[23]

However, Congress has never authorized a federal energy standard that applies to broad swaths of private sector U.S. buildings. In practical terms, markets will treat the Federal Codes Rule as a federal standard that applies generally to new residential construction across the country, whether or

[18] The Fed raised its benchmark interest rate 11 times between March 2022 and July 2023. See Fortune, "The Fed left rates unchanged but may make a cut before the end of the year. Here's what it means for your money," (May 2, 2024).
[19] 89 Fed. Reg. at 33,114.
[20] *Id.*
[21] See https://www.energy.gov/eere/buildings/about-appliance-and-equipment-standards-program.
[22] See https://www.federalregister.gov/documents/2023/05/30/2023-11043/energy-conservation-program-energy-conservation-standards-for-manufactured-housing-extension-of.
[23] 42 U.S.C. § 6834.

not it is HUD or USDA assisted. As a result, conflicts with state and laws will be commonplace and local permitting processes will become even more complicated and chaotic. Please consider the following:

- ✓ The overwhelming majority of state legislatures have adopted laws implementing residential code versions earlier than the 2021 IECC.[24] Georgia,[25] Texas,[26] and Utah,[27] for example, are currently at the 2015 IECC (with amendments). South Carolina is at the 2009 edition.[28]

- ✓ A builder of a subdivision in Georgia, Texas, or Utah will not construct new homes, under the same common development plan, using two different energy code standards. It will not build FHA-insured homes to 2021 IECC levels, and homes across the street to 2015 levels (that these states' legislatures have approved). Time is money. Home building businesses are trying to limit carrying costs, pay their construction loans, and move units to market as soon as possible. They cannot be reasonably expected to buy different materials and equipment to meet different IECC versions when they are trying to construct high quality homes under tight deadlines imposed by lenders, permitting bodies, and supply chain constraints.

- ✓ Before a landowner can actually start constructing homes in a subdivision, they must generally obtain approval of a site plan and record individual plats. After site plan approval, the builder must obtain a permit to construct homes. After construction is finished, each unit must be inspected and approved for sale and ultimate occupancy. Local zoning, permitting, and code officials will not be inclined (or have the resources) to parse varying energy standards home-by-home in a single subdivision project. Using Georgia as an example, will site plans be developed and reviewed with some homes at the 2021 IECC and others at the 2015 IECC? Will code inspectors go from house-to- house, keeping track of which units are constructed to the 2021 IECC and others to the 2015 IECC? Highly unlikely. Major complications will arise from delays, permitting, and fines for non-compliance if homes within the same common development plan are built to conflicting IECC levels.

- ✓ As a result, the Federal Codes Rule will translate in the marketplace as setting a new efficiency floor for all construction in a subdivision to meet the 2021 IECC. HUD/USDA have effectively established an overarching federal energy standard "through the backdoor" – whether or not homes or homeowners receive HUD or USDA financial support.

- ***Request:*** **There is no indication in the Federal Codes Rule that HUD/USDA considered the practical market, permitting, and code enforcement consequences of its decision. The Subcommittee should direct the agencies to conduct further inquiry as to whether their decision will drive *all* new homes in a subdivision – units covered by federal support and**

[24] Codes Rule, 89 Fed. Reg. at 33,114. Eleven states and DC are at the 2018 IECC, 2 states are at the 2015 IECC, 23 states are at the 2009 IECC, and nine are less stringent than the 2009 IECC or have no statewide building energy code at all.
[25] See Georgia | Building Energy Codes Program.
[26] See Texas | Building Energy Codes Program.
[27] See Utah | Building Energy Codes Program.
[28] See South Carolina | Building Energy Codes Program.

**those that are not – to be built to 2021 IECC levels. If the agencies' further analysis indicates that all units in a common development plan will reach the 2021 IECC, the agencies and Congress should assess whether the Federal Codes Rule effectively establishes a national energy code that lacks legislative authorization.**

* * *

Thank you for considering this statement. For more information, please contact Duane J. Desiderio (ddesiderio@rer.org), Senior Vice President and Counsel with The Real Estate Roundtable.

Sincerely,

Jeffrey D. DeBoer
President and Chief Executive Officer

cc:
The Hon. Cathy McMorris Rodgers, Chair, House Energy & Commerce Committee
The Hon. Frank Pallone, Ranking Member, House Energy & Commerce Committee
Members of the House Subcommittee on Energy, Climate and Grid Security

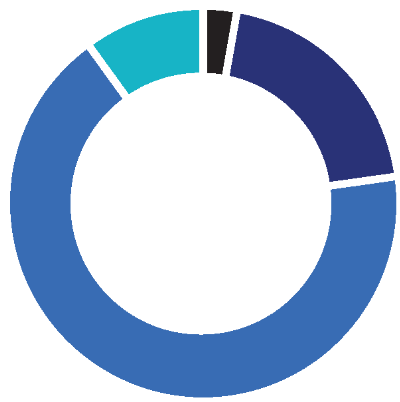
**ADDENDUM**

# About The Real Estate Roundtable

**www.rer.org**

The Real Estate Roundtable is the public policy advocate for the U.S. commercial real estate industry. Roundtable member portfolios contain over 12 billion square feet of office, retail and industrial properties valued at nearly $5 trillion; over 5 million apartment units; and in excess of 6 million hotel rooms. Participating trade associations represent more than 3 million people directly working in the real estate industry.

## Who We Are



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**3%**

### Financial Services

**20%**

58% Banks (Commercial & Investment)

16% Mortgage Bankers

26% Insurers

### Owners

**67%**

55% Private

44% Public

46% Mixed

14% Office

12% Retail

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11% Housing

4% Industrial

2% Other

### Real Estate Trade Organizations

**10%**

American Hotel & Lodging Association (AHLA)

American Resort Development Association (ARDA)

Association of Foreign Investors in Real Estate (AFIRE)

Building Owners and Managers Association Int'l. (BOMA)

CRE Finance Council (CREFC)

CREW Network (CREW)

International Council of Shopping Centers (ICSC)

Mortgage Bankers Association (MBA)

NAIOP, the Commercial Real Estate Development Association (NAIOP)

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National Association of Home Builders (NAHB)

National Association of Real Estate Investment Managers (NAREIM)

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