



May 22, 2024

The Honorable Jeff Duncan, Chairman
Energy, Climate, & Grid Security Subcommittee
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Diana DeGette, Ranking Member
Energy, Climate, & Grid Security Subcommittee
Committee on Energy and Commerce
U.S. House of Representatives
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Dear Chairman Duncan and Ranking Member DeGette:

On behalf of the members of the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA), we thank the Subcommittee for exploring the impacts of new energy and environmental policies on the availability and affordability of America's housing. In addition to supporting energy efficiency and green building goals, we are committed to addressing the nation's pressing housing needs. As the House Energy and Commerce Subcommittee on Energy, Climate, and Grid Security holds a hearing on "Green Building Policies: Jeopardizing the American Dream of Homeownership," we urge you to consider the obstacles facing housing providers in containing rising costs and delivering much-needed supply and ensure that new federal policies do not undermine efforts to address the nation's acute housing challenges.

For more than 26 years, NMHC and 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 is where rental housers and suppliers come together to help meet America's housing needs by creating inclusive and resilient communities where people build their lives. As a federation of 141 state and local affiliates, NAA encompasses over 95,000 members representing more than 11.6 million apartment homes globally.

One-third of all Americans rent their housing, and our industry plays a critical role in meeting the nation's housing needs by providing apartment homes for 40 million residents and contributing \$3.4 trillion annually to the economy. Though we strongly support improved energy and environmental performance in the residential sector, we caution against policies that create barriers to new housing production and renovation of existing properties. In particular, new Department of Energy (DOE) appliance efficiency standards and federal efforts to mandate one-size-fits-all national energy codes can create serious, and sometimes cost-prohibitive, challenges for housing providers.

Critical Housing Shortages and Affordability Needs

The Biden Administration is pursuing a broad range of efficiency standards and building energy code policies with the stated intention to boost energy savings, provide climate benefits and lower utility bills. However, the analysis of the necessity and justification of new standards and code mandates must balance other considerations, including impacts on the nation's housing conditions. Importantly, it is essential that we build housing at all price points to address the nation's critical housing challenges and ensure economic stability for American households.

According to recent research commissioned by NMHC and NAA, **the U.S. needs to build 4.3 million**

new apartment homes by 2035 to meet the demand for rental housing.¹ This includes an existing shortage of 600,000 apartments stemming from underbuilding due in large part to the 2008 financial crisis. Further, underproduction of housing has translated into higher housing costs – resulting in a consequential loss of affordable housing units (those with rents less than \$1,000 per month), with a decline of 4.7 million affordable apartments from 2015-2020.

In fact, the total share of cost-burdened apartment households (those paying more than 30% of their income on housing) has increased steadily over several decades and reached 57.6% in 2021.² During this same period, the total share of *severely* cost-burdened apartment households (those paying more than half their income on housing) increased from 20.9 to 31.0%.³

In addition, following extreme, pandemic-fueled volatility in product costs, supply chain instability and staffing constraints, the apartment construction and renovation pipeline has seen some moderation, yet continues to face difficult conditions. Eighty-one percent of respondents reported construction delays in NMHC’s March 2024 Quarterly Survey of Apartment Construction and Development Activity, and 74% of respondents cited economic feasibility as a cause for delays in starts (up from 71% last quarter).⁴ The share of respondents attributing delayed starts to materials sourcing and delivery issues increased from 8% in December to 15% this spring.

Impacts of New Appliance Efficiency Standards

Our organizations have long been engaged in the rulemaking process for DOE appliance efficiency standards, ensuring that the unique needs of the apartment industry are recognized. As we explore opportunities for increasing building energy performance, it is important to recognize the immense, practical pressures on apartment development and construction that impact our ability to deliver new and renovated housing units. These challenging conditions are exacerbated by new regulatory burdens and changes to the availability and expense of appliances in particular.

This Administration has pursued a series of rulemakings seeking to change performance standards for essential residential appliances and equipment that have prompted concern from the housing industry. We have offered formal comments to DOE on proposals related to water heaters, furnaces, clothes washers, refrigerators, consumer cooking products and distribution transformers, explaining that these new regulatory burdens will inevitably raise housing costs. We have highlighted the impacts of these rules on housing production and affordability, voiced that the apartment industry faces unique compliance challenges in our building types and detailed technical barriers to implementation in multifamily construction.

We are concerned that overly prescriptive directives for marginal efficiency gains will outpace the ability of the manufacturing sector and installation providers to alleviate existing product shortages and delays, while creating new barriers to cost-effective and timely appliance procurement. Moreover, these efforts may

¹ Hoyt Advisory Services, “Estimating the Total U.S. Demand for Rental Housing by 2035.” (2022), <https://www.weareapartments.org/>.

² American Housing Survey, U.S. Census Bureau, “NMHC tabulations of 1985 American Housing Survey microdata.” (2021).

³ *Id.*

⁴ National Multifamily Housing Council, “Quarterly Survey of Apartment Construction & Development Activity.” (March 2024) <https://www.nmhc.org/research-insight/nmhc-construction-survey/2024/quarterly-survey-of-apartment-construction-development-activity-march-2024/>.

serve to disrupt the marketplace for certain products and appliances in a way that hinders our ability to produce necessary new housing and maintain existing communities. In particular, we have raised the importance of preserving product choice and ensuring there's flexibility to select those appliances that reflect the unique characteristics and wide array of multifamily building types and our residents.

We have specifically cautioned against moving forward with new efficiency standards that may significantly reduce our product options based on a particular fuel source. While DOE has oft stated that its intention is not to preclude the use of gas-fueled products, several of these rulemakings nevertheless promote building electrification, potentially heavily steer buyers towards electric equipment options and have the practical effect of restricting the use of gas appliances in favor of electric versions in certain applications. For example, new residential furnace rules finalized by DOE this winter eliminate a traditional furnace technology. New, compliant gas furnaces have space, venting and plumbing requirements that make gas products untenable for many multifamily consumers given the dense design and small size of typical apartment units. Where apartment providers cannot accommodate costly unit reconfigurations and reconstruction to use gas options, it is likely the product will be replaced with an electric unit.

Further, we asked DOE to consider the challenges posed by increased electric product use and urged that any anticipated increase in electrification needs should be coupled with efforts to ensure the electric grid is prepared, and that necessary components are available at scale to support such increases. To that end, our organizations submitted comments on DOE's proposal for new distribution transformer standards where we highlighted Administration-level concerns about the production capacity of critical electric grid components and raised concern about the costs, barriers and overall ability to realize electrification goals at this time.

Moreover, we have urged DOE to consider the collective impacts of these rulemakings and recognize that the effect of even relatively modest, individual pricing increases are magnified when housing providers are forced to manage cost escalations across multiple product classes at once.

Finally, essential residential appliances are already highly energy efficient, and the multifamily buildings they service have made significant energy performance gains in recent years, with many properties achieving EPA EnergyStar or other recognition of their distinguished efficiency. Efforts that result in only marginal efficiency increases should be balanced against the costs and burdens of new design and installation challenges, appliance performance changes and production or procurement disruption. Such challenges can result in undue delays or cancellation of construction and renovation efforts that would result in broader building performance improvements.

Building Codes are a Significant Driver of Regulatory Burdens and Costs in Housing

Building codes and standards are an essential component of all housing construction and our groups are deeply engaged in the development, adoption and implementation of building codes and standards in differing ways. This includes serving as voting members of code and standard development committees, partnering with code and standard-making organizations to support and promote their work and developing educational and guidance materials on the housing impacts of new codes and standards. As such, we are greatly committed to the development of cost-effective and technically feasible codes and standards, but federal policies that create expansive, new energy code requirements will unnecessarily burden home construction and ultimately increase housing costs.

It is becoming increasingly difficult to build housing that is affordable to a wide range of income levels. Ill-timed, unnecessary or unduly burdensome laws, policies and regulations at all levels of government prevent us from delivering the housing our country so desperately needs. Recent research published by the NMHC and the National Association of Home Builders found that **regulation imposed by all levels of**

government accounts for 40.6% of multifamily development costs.⁵ In fact, the highest average regulatory cost is the result of changes to building codes over the past 10 years (11.1% of total development costs).

Moreover, as part of a just-published survey by NMHC, respondents were asked about the compliance impacts of specific building code requirements. Nearly 70% of respondents (66%) agreed or strongly agreed that compliance with energy performance and efficiency requirements caused significant challenges for their business.⁶ Sixty-three percent of respondents further indicated that compliance with electrification or net-zero emissions-related provisions caused significant challenges. For those respondents who agreed or strongly agreed that at least one area of codes and standards posed significant challenges for their business, 90% attributed these challenges to the impact of construction costs. Separately, 89% of respondents agreed or strongly agreed that building code requirements in general impact the cost and viability of construction projects.

Model building codes and standards, such as the International Energy Conservation Code (IECC) and ASHRAE 90.1, establish minimum technical standards for the design, construction, alteration and maintenance of structures and routinely serve as the basis for state and local building codes. However, these codes and standards are not in effect or enforceable until they are adopted by a state or local jurisdiction. Accordingly, they are designed so that state and local governments may customize model codes and standards to accommodate specific market conditions and ensure they meet the needs of their communities. Any proposal that imposes a one-size-fits-all energy code requirement for buildings nationwide seriously conflicts with the intended purpose of model codes and standards.

As such, building codes are inherently governed by states and localities and tailored to their specific conditions and practices. Most jurisdictions amend energy codes before enacting them, and in fact, according to the DOE, 31 states have adopted the IECC statewide with amendments.⁷ Other states use totally customized energy code requirements or allow localities to further individualize energy code criteria in their jurisdictions. Therefore, federal efforts to establish a fixed layer of energy code requirements creates an unworkable system that does not provide communities, developers and builders with the needed flexibilities provided by existing code regulations.

Beyond the lack of jurisdictional accommodation, federal policymakers should recognize that the energy code adoption landscape varies by state, with the 2009 IECC being the most widely-adopted energy code. Typically, building codes are updated incrementally, with each version building off the prior edition. While the 2009 IECC is a very effective energy code and offers significant energy savings over previous versions, use of the recent 2021 IECC would still require new and unfamiliar products and practices. Therefore, builders and developers in jurisdictions currently using the 2009 IECC would face tremendous challenges in catapulting over a decade of code updates to comply with the newest energy codes and standards if they were adopted without amendment.

The adoption and implementation of building codes is a complex process with significant impacts on the

⁵ National Multifamily Housing Council and National Association of Home Builders, “Regulation: 40.6 Percent of the Cost of Multifamily Development.” (2022) <https://www.nmhc.org/globalassets/research--insight/research-reports/cost-of-regulations/2022-nahb-nmhc-cost-of-regulations-report.pdf>.

⁶ NMHC Pulse Survey on Building Codes, (2024) <https://www.nmhc.org/research-insight/survey/nmhc-pulse-survey-analyzing-the-impact-of-building-codes-on-rental-housing-development-affordability/>.

⁷ <https://www.energycodes.gov/state-portal#:~:text=State%20energy%20code%20adoption%20is,the%20overall%20state%20energy%20index.>

development and affordability of housing. As discussed, state and local governments are primarily responsible for these efforts, but certain federal agencies within the jurisdiction of this Subcommittee have specific roles related to building energy codes, namely the DOE. We believe that the DOE can make a meaningful contribution to code creation and implementation efforts by assisting the code-making bodies with research and data resources to inform cost-effective, practical code provisions. DOE can also pursue efforts to develop and distribute user-friendly code compliance tools. Building professionals and code officials alike can benefit from resources explaining compliance methods and customizable tools that easily demonstrate compliance with the model codes and jurisdictional modifications in place in their communities. Ultimately, training and compliance resources tailored to jurisdictionally-adopted code versions facilitate proper enforcement and user acceptance, while reducing compliance uncertainties and costly delays.

Moreover, we are concerned that federal code mandates will undermine numerous voluntary efforts to improve building efficiency and energy conservation already underway. Our industry has long-advocated for incentive-based policies that help improve the energy and environmental performance of our buildings. We support planning and land use practices that encourage density, transit-oriented and mixed-use development and adaptive reuse projects that promote energy, land, water and resource conservation. Building energy codes serve an important purpose, but federal policies that seek one-size-fits-all code requirements fail to appreciate the importance of marrying building energy codes with other voluntary and community-based efficiency efforts.

Conclusion

The apartment industry supports the goal of improving energy efficiency and lowering carbon emissions. At the same time, improving housing affordability and availability are key national priorities. We are committed to working with policymakers to further energy efficiency goals while supporting the creation of more housing, preserving affordability and ensuring that every American has a safe, quality place to call home.

Sincerely,



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