



August 7, 2023

SUBMITTED 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

RE: Comments in Response to Docket No. FR-6271-N-01, *Adoption of Energy Efficiency Standards for New Construction of HUD- and USDA-Financed Housing: Preliminary Determination and Solicitation of Comment*, 88 Fed. Reg. 31773 (May 18, 2023)

U.S. Department of Housing and Urban Development:

The American Gas Association (“AGA”) and American Public Gas Association (“APGA”) (collectively, “Joint Commenters”) respectfully submit these comments in response to the U.S. Department of Housing and Urban Development’s (“HUD”) and U.S. Department of Agriculture’s (“USDA”) Preliminary Determination and Solicitation of Comment in *Adoption of Energy Efficiency Standards for New Construction of HUD- and USDA-Financed Housing*, Docket No. FR-6271-N-01, 88 Fed. Reg. 31773 (May 18, 2023)(“Notice”).¹

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 77 million residential, commercial, and industrial natural gas customers in the U.S., of which 96 percent — more than 74 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets nearly one-third of the United States’ energy needs.² Currently, 52% of U.S. households use natural gas for space heating in their homes.³

APGA is the trade association for more than 730 communities across the U.S. that own and operate their retail natural gas distribution entities. They include not-for-profit gas distribution systems owned by municipalities and other local government entities, all locally accountable to the citizens they serve. Public gas systems focus on providing safe, reliable, and affordable energy to their

¹ See *Adoption of Energy Efficiency Standards for New Construction of HUD- and USDA-Financed Housing: Preliminary Determination and Solicitation of Comment; Extension of Comment Period*, 88 Fed. Reg. 45238 (July 14, 2023) (extending the comment period until August 7, 2023).

² For more information, please visit www.aga.org.

³ U.S. Energy Information Administration, available at <https://www.eia.gov/todayinenergy/detail.php?id=55940>.

customers and support their communities by delivering fuel to be used for cooking, clothes drying, and space and water heating, as well as for various commercial and industrial applications.⁴

AGA and APGA have a long and extensive history in support of energy efficiency in the development and state adoption processes of model energy codes and standards including the International Energy Conservation Code (“IECC”) and the ANSI/ASHRAE/IES Standard 90.1: Energy Standard for Buildings, Except Low-Rise Residential Buildings (ASHRAE 90.1). Joint Commenters appreciate the opportunity provided by HUD and USDA to respond and comment on the Notice.

Recommendations That Increase The Cost of Construction Without Reasonable Payback Should Not Be Adopted By HUD And USDA

In the May 18, 2023 Notice, HUD and USDA issued a preliminary determination and solicitation of comment pursuant to the Energy Independence and Security Act of 2007 (“EISA”) establishing procedures for HUD and USDA to adopt periodic revisions to the IECC and ASHRAE 90.1, provided there is a determination that the revised codes and standards do not negatively affect the availability or affordability of new construction of single and multifamily housing covered by EISA, and a determination by the Secretary of Energy that the revised codes “would improve energy efficiency.” In reviewing the Notice, Joint Commenters have the following comments and concerns. First, Joint Commenters believe that the Notice inappropriately includes the following recommendation:

Building Electrification. While the 2021 IECC did not include building electrification provisions in the final version of the code, provisions are available for adoption by states as amendments to the 2021 IECC: RE147–19, Electrification-Ready; RE126–19, Energy Efficient Water Heating, RE107–19, Eliminate Continuous Burning Pilot Light.⁵

The IECC code proposals referenced in this recommendation were not approved by the IECC Consensus Committee based on a failure to meet the scope and intent of the IECC because they did not guarantee energy savings or due to federal preemption by the Department of Energy federal appliance regulations. To recommend that these above provisions be included as criteria for Energy Efficiency Standards for New Construction of HUD and USDA Financed Housing cannot be justified since in fact, they would increase the cost of construction for the home or building without any guaranteed efficiency improvement or potentially prohibit the installation of appliances that are covered by the Department of Energy appliance efficiency regulations and thus, cannot be listed as a requirement. Furthermore, during the public meetings associated with this Notice, agency staff presented slides which further acknowledged that “Energy codes do not... Prevent

⁴ For more information, please visit www.apga.org.

⁵ Notice at p. 31780.

installation of any materials ... [or] Impose appliance requirements...”⁶ Accordingly, Joint Commenters request that this recommendation be removed from the adoption of energy efficiency standards for new construction of HUD and USDA financed housing.

Second, HUD should not wholesale accept the 2021 IECC and ASHRAE 90.1 - 2019 because wholesale adoption could reduce the affordability of certain homes. HUD and USDA should not accept the revised code or standard provisions that negatively affect the availability or affordability of new construction of single and multifamily housing covered by EISA, and the Secretary of Energy should not issue a determination that the revised codes “would improve energy efficiency,” without first removing those elements that will increase costs and reduce efficiency. The Notice announces the preliminary determination of HUD and USDA, as required under section 481(d)(1) of EISA, that the 2021 IECC and ASHRAE 90.1–2019 will not negatively affect the affordability and availability of housing covered by EISA. The Notice asserts that these codes are cost effective in that the incremental cost of the additional efficiency measures pays for themselves with energy cost savings on a life-cycle basis. However, it is critical that adjustments be made to ensure that the codes lessen the first cost burdens for homeowners and ongoing utility costs.

Adoption of the 2021 IECC and ASHRAE 90.1 – 2019 for USDA or HUD assisted housing, may lower homebuyer options and limit the availability of such housing to qualified buyers or renters. Joint Commenters believe that this is a real concern that can impact qualifying buyers and home and building construction costs that can significantly limit loan approvals. Recognizing that both the 2021 IECC and ASHRAE 90.1 – 2019 have provisions that are neutral or do not increase energy efficiency, we recommend that HUD and USDA review the determinations made on both documents and identify those provisions that do not increase energy efficiency and exclude those provisions as a requirement for the loan program. This can be done by reviewing the determinations for both the 2021 IECC and ASHRAE 90.1 – 2019 that list those provisions along with the provisions that do increase energy efficiency. The determination for the ASHRAE 90.1 – 2019 can be found here: [Energy Savings Analysis: ANSI/ASHRAE/IES Standard 90.1-2019 \(energycodes.gov\)](https://www.energycodes.gov/energy-savings-analysis-ansi-ashrae-ies-standard-90.1-2019).⁷ An excerpt from the analysis states:

In creating Standard 90.1-2019, ASHRAE published 88 addenda in total, of which:

- 29 are expected to decrease energy use (i.e., increased energy savings);
- none are expected to increase energy use (i.e., decreased energy savings), and;
- 59 are expected to have no direct impact on energy savings (such as administrative or clarifications or changes to alternative compliance paths).⁸

⁶ HUD hosted three listening sessions to discuss the Notice for 1) state, local, and tribal elected officials, local code officials and government representatives; 2) the general public; and 3) single family and multifamily financing and building industry representatives. The slide deck used during these listening sessions is available at <https://www.hud.gov/sites/dfiles/CPD/documents/Minimum-Energy-Standards-Listening-Session-deck-2023-05-24.pdf>. See Slide 9 (“What Energy Codes Do”).

⁷ See https://www.energycodes.gov/sites/default/files/2021-07/Standard_90.1-2019_Final_Determination_TSD.pdf (last visited August 7, 2023).

⁸ *Id.* at p. 8.

Additionally, the determination on the 2021 IECC can be found here: [Energy Savings Analysis: 2021 IECC for Residential Buildings \(energycodes.gov\)](https://www.energycodes.gov/sites/default/files/2021-07/2021_IECC_Final_Determination_AnalysisTSD.pdf).⁹ An excerpt from the determination analysis states that “a total of 114 approved code change proposals were analyzed for the 2021 IECC. The qualitative component of the analyses identified 35 changes with a direct impact on energy use in residential buildings—29 of which are expected to reduce energy use and 6 increase energy use.”¹⁰ Reviewing those provisions in the 2021 IECC and ASHRAE 90.1 – 2019 offer an opportunity to reduce compliance requirements and therefore the first cost of home or building with the code and standard without sacrificing energy efficiency improvement provision. Joint Commenters believe that this approach will improve the number of applicants gaining loan approvals.

Finally, to illustrate the significant magnitude of the compliance requirements in the 2021 IECC, Home Innovations Research Labs performed a [2021 IECC Residential Cost Effectiveness Analysis](https://www.nahb.org/-/media/NAHB/advocacy/docs/top-priorities/codes/code-adoption/2021-iecc-cost-effectiveness-analysis-hirl.pdf) for the National Association of Home Builders and issue a report in June, 2021.¹¹ The report states that “The objective of this analysis is to quantify the incremental construction cost and energy use cost savings associated with constructing a house compliant with the 2021 IECC relative to a 2018 IECC baseline and to evaluate the cost-effectiveness of the code changes.”¹² The Conclusion section of the 2021 IECC Residential Cost Effectiveness Analysis report includes the following:

Home Innovation conducted a cost effectiveness analysis of the 2021 IECC code changes for residential construction based on incremental construction costs and energy use costs developed for a Standard Reference House with multiple configurations and in multiple locations. Key findings are summarized here for the 2021 Reference House relative to the 2018 Baseline Reference House, based on weighted averages within climate zones (foundation type, wall type) and across climates for national averages (based on housing starts):

- The national average incremental construction cost ranges from \$6,548 to \$9,301 depending on the additional efficiency package option selected for compliance.
- Depending on climate zone, the weighted average incremental construction cost may range up to \$11,900.
- The national average energy use cost savings ranges from 6.4% to 11.6% depending on the additional efficiency package option selected for compliance.

⁹ See https://www.energycodes.gov/sites/default/files/2021-07/2021_IECC_Final_Determination_AnalysisTSD.pdf (last visited August 7, 2023).

¹⁰ *Id.* at p. 26.

¹¹ 2021 IECC Residential Cost Effectiveness Analysis at <https://www.nahb.org/-/media/NAHB/advocacy/docs/top-priorities/codes/code-adoption/2021-iecc-cost-effectiveness-analysis-hirl.pdf> (last visited August 7, 2023).

¹² *Id.* at p. 1.

- The national average simple payback for complying with the 2021 IECC ranges from 32 years to 67 years.
- The average simple paybacks for selected individual envelope code changes within associated climate zones are 78-103 years for wall continuous insulation, 23-28 years for slab insulation, and 90-177 years for ceiling insulation.
- The average simple payback for the additional efficiency package options within associated climate zones is 6-11 years for natural gas heating and 47-49 years for heat pump heating, 9-10 years for a heat pump water heater in CZ 2-3 relative to a conventional resistance water heater and 21-27 years for a natural gas water heater (except 89 years for a gas water heater in CZ 7), 54-240 years for Ventilation option, 25-53 years for Duct option for slab houses in CZ 2-4 and 8-16 years for Duct option in CZ 5-8.¹³

This study raises significant concerns with the 2021 IECC's affordability for low-income homebuyers that HUD and USDA must take into consideration when updating the energy codes for their assisted housing program.

Summary

Joint Commenters understand and support the HUD and USDA financed housing program because it offers the opportunity for home ownership to consumers who may not qualify for a loan under other financing resources. We also agree that energy efficiency requirements are also important to help ensure new homeowners will be able to afford the utilities for the property they purchase. However, we also recognize that the loan requirements and eventual utility costs must be reasonable so as to not limit approval of candidates because the loan requirements are too excessive and limit the number of qualified buyers or result in high utility bills that may lead homeowners to default in the monthly loan payments. We thank you for the review and consideration of these comments and look forward to continuing to partner with HUD and USDA as they finalize any energy code updates for this program. If you have any questions regarding this submission, please do not hesitate to contact us.

¹³ *Id.* at p. 14.

Respectfully submitted,



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