May 20, 2024

Sandra L. Thompson, Director
The Federal Housing Finance Agency
400 7th Street, S.W.
Washington, D.C. 20219

Director Thompson,

The undersigned national real estate associations represent a broad coalition of housing providers that are committed to working together with the Federal Housing Finance Agency (FHFA) to bolster housing supply and address America's housing affordability crisis. We share in FHFA's goals of financing high-performing energy efficient and quality homes nationwide, but urge against any proposals to attach specific building code requirements to new construction. We urge you to consider the impacts of new requirements for financing on housing production and instead support voluntary efforts that promote energy efficiency without exacerbating America's acute housing challenges.

Our groups are committed to improving the availability and affordability of housing nationwide, however, we face serious obstacles in addressing rising housing costs and delivering much-needed supply. FHFA, in concert with the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively the Enterprises), is critical to this effort and serves an important role in the multifamily housing market. Therefore, as FHFA contemplates new requirements on Enterprise-backed financing, we strongly urge FHFA to avoid measures that run-counter to state and local requirements, create significantly different conditions for Enterprise versus non-Enterprise financed construction or unnecessarily burden housing production.

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. Our codes and standards efforts include serving as voting members of the International Code Council (ICC) and ASHRAE energy code and standard development committees, partnering with the code and standard-making organizations to support and promote their work, developing educational and guidance materials for adopting jurisdictions and industry stakeholders on the housing impacts of new code and standards, among other efforts. As such, we are greatly committed to the development of cost-effective and technically-feasible codes and standards, but expansive, new energy code requirements will unnecessarily burden home construction and ultimately increase costs for property owners and renters alike.

While building energy performance improvement is an important goal, we caution FHFA against efforts that duplicate or conflict with existing policies and stray from FHFA's mission to create and sustain critical market liquidity for the nation's housing. The adoption and implementation of building codes is a complex process with significant impacts on the development and affordability of housing. As discussed below, state and local governments are primarily responsible for these efforts, but certain federal agencies have specific roles related to building energy codes including the Department of Energy (DOE) and Department of Housing and Urban Development (HUD). However, FHFA has a distinct public purpose from these other agencies and does not have the specific, statutory mandates to act on energy codes as do the other federal actors.

Many factors influence our ability to meet the nation's demand for housing, but the availability of consistently reliable and competitively priced capital is essential. New requirements or restrictions attached to Enterprise-backed financing can interfere with the applicable programs' effectiveness and reliability, and ultimately, result in limitations on the markets or properties served by the Enterprises. This undermines the critical public policy mission they have historically served. Failure to ensure sufficient liquidity for all types of apartments will have an unfortunate spillover effect that could prove extremely harmful for American households.

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

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. Elevated regulatory costs create a barrier to affordable housing supply. Recent research published by the National Multifamily Housing Council (NMHC) and the National Association of Home Builders (NAHB) found that regulation imposed by all levels of government accounts for 40.6 percent of multifamily development costs.[1] In fact, the highest average regulatory cost is the result of changes to building codes over the past 10 years (11.1 percent of total development costs).

Moreover, as part of a just-published survey by NMHC, respondents were asked about the compliance impacts of specific code areas. Nearly 70 percent of respondents (66%) agreed or strongly agreed that compliance with energy performance and efficiency requirements caused significant challenges for their business.[2] 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 percent attributed these challenges to the impact of construction costs. Separately, 89 percent of respondents agreed or strongly agreed that building code requirements in general impact the cost and viability of construction projects.

Roughly half (49%) of respondents agreed or strongly agreed that building code requirements impact their decision of where to develop, build or invest in projects. Moreover, about half of respondents (49%) specifically indicated that their business would be less likely to develop, build or invest in a project where the latest energy code edition was required.

[1] National Multifamily Housing Councill 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.
[2] NMHC Pulse Survey on Building Codes, https://www.nmhc.org/research-insight/survey/nmhc-pulse-survey-analyzing-the-impact-of-building-codes-on-rental-housing-development-affordability/.

The Role of Model Building Codes and Standards

Model building codes and standards, such as the International Energy Conservation Code (IECC) and ASHRAE 90.1,[3] 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, they are developed and published by independent organizations and follow a variety of different development processes. Importantly, 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. Model codes and standards may therefore be adopted only in part or amended before enactment at the state and local level. Any proposal that imposes a one-size-fits-all energy code requirement for buildings nationwide seriously conflicts with the intended purpose of the IECC and ASHRAE 90.1.

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.[4] Other states use totally customized energy code requirements or allow localities to further individualize energy code criteria in their jurisdictions. Therefore, adding a fixed layer of FHFA 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, FHFA should recognize that the energy code adoption landscape varies by state, with the 2009 IECC being the most widely-adopted energy code. New construction in a 2009 IECC jurisdiction attempting to use an Enterprise for permanent financing would face tremendous challenges in catapulting over a decade of code updates to comply with the newest 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.

Notably, jurisdictional building code requirements are adopted and enforced in coordination across technical areas. Therefore, localities using earlier IECC and ASHRAE 90.1 editions will generally have other building, mechanical, electrical and fire codes in effect that have been coordinated with those earlier energy codes - either through national model code development processes or through local amendment. Those other building code requirements that correlate with the earlier editions of energy codes will not be correlated with the most recent energy codes and standards.

Moreover, updating and revising building codes is typically governed by state statutory requirements and that local jurisdictions may not have the authority to modify code requirements. A mandate of specific FHFA energy code requirements could result in local governments having to administer their current energy codes – correlated with their general building, fire, mechanical, structural and other codes – as well as FHFA energy code requirements. This creates significant

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[3] The IECC includes provisions for all multifamily construction types – the residential chapter applies to multifamily buildings up to three stories and the commercial chapter applies to multifamily buildings four stories or more. ASHRAE 90.1 is referenced in the commercial chapter as a compliance option under the IECC. Therefore, here we will focus on the development and adoption landscape of the IECC.

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

uncertainty, burdens local government code administration and could result in conflicts between code requirements.

In addition, there were specific failures in the development of the newest IECC. The 2021 development cycle revealed serious shortcomings in the process that undermine confidence in the final code without amendment. In fact, concerns raised during the development of the 2021 IECC resulted in ICC changing the entire IECC development process moving forward.

The imposition of FHFA energy code requirements would create costly, conflicting and in some cases impractical conditions for Enterprise-backed financing. Doing so would cause a market dislocation that discourages use of Enterprise-backed financing, disincentivizes investment in affordable housing and ultimately results in increased rents for Enterprise-backed properties.

Instead, we believe there are incentives and voluntary strategies that FHFA and the Enterprises can employ to better achieve FHFA's building performance goals that will increase housing opportunities for all. Opposed to one-size-fits-all mandates, FHFA should focus on promoting and enhancing the Enterprise's existing programs and tools for promoting energy efficiency and sustainable buildings. FHFA should build on the proven success of these voluntary efforts and encourage greater deployment and utilization of these and similar products. Further, new construction is already highly efficient, and we urge FHFA to focus on incentive-based solutions to address energy performance in older, existing buildings. The Enterprises hold over $1 trillion of multifamily debt that contains many older properties that hold the potential for FHFA to achieve a goal of increasing energy efficiency and sustainability for the industry.

Conclusion

We share FHFA's commitment to addressing the housing challenges across the nation. However, imposing additional obligations for Enterprise borrowers will create instability in an already challenged market and undermine the important goals of fostering a healthy housing market, increasing supply, and creating successful communities. Inherent in ensuring stability for our residents, is maintaining the current and future viability of the housing supply in this country. As such, we respectfully advise FHFA to refrain from placing new federal obligations on private housing providers and instead focus on leveraging federal resources in the form of incentives to bolster new affordable housing.

Sincerely,

Commercial Real Estate Finance Council

Council of Affordable and Rural Housing

Institute of Real Estate Management

Leading Builders of America

Manufactured Housing Institute

Mortgage Bankers Association

National Association of Home Builders

National Apartment Association

National Leased Housing Association

National Multifamily Housing Council

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