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Chairman Terry, Ranking Member Schakowsky, members of the subcommittee, thank you for the opportunity to testify this morning.

My name is William Shaw, and I am the Founder of William Shaw and Associates, a design build company located in Houston, Texas. William Shaw and Associates is a full service residential remodeling, design, and build company. We have been serving customers in the greater Houston area since 1984 when I founded the company. We focus primarily on residential renovations.

Few industries have struggled more during the Great Recession than the home building industry. The decline in home construction has been historic and unprecedented. Together, remodelers and home builders have weathered this economic decline. While remodelers have not experienced the extreme highs and lows, like single family home building, the remodeling industry has certainly struggled over the past few years. According to Harvard University's Joint Center for Housing Studies (HJCHS), spending on home improvements and repairs totaled $275 billion in 2011, down 4 percent from 2009 levels and some 16 percent below the market peak in 2007.[1]

The state of the remodeling industry has improved over time. Predictions indicate a very gradual, yet steady, recovery. According to U.S. Census Bureau estimates, home owner spending for improvements increased almost 9 percent last year alone. With the new home construction market still at historic lows, the effort to find work in retrofitting and upgrading older housing has been attractive to many builders. According to a member survey conducted by economists at the National Association of Home Builders (NAHB), 26 percent of their membership reported residential remodeling to be their primary business activity, while another 31 percent reported it to be a secondary activity. This implies that in "all," 57 percent of NAHB members were engaged in residential remodeling one way or another, topping the list as the activity with the highest overall share of builder involvement.[2]

[1] *Joint Center for Housing Studies of Harvard University, 2013*
[2] *Survey conducted by Rose Quint, National Association of Home Builders, 2012.*

Remodelers have an acute understanding of how the federal government's regulatory process impacts real-world small businesses. Many of these regulations have made it signifigantly more difficult for us to do business and hampers job creation. Housing serves as a great example of an industry that would benefit from smarter and more sensible regulation. Given the regulatory environment we face as an industry and as small businesses, I would like to share with you my thoughts on key regulations that should receive increased federal oversight.

EPA's Lead Renovation, Repair and Painting Rule (RRP)

Recent amendments and changes to the EPA's Lead Renovation Repair and Painting rule (RRP) have further constrained our business. The final rule, which took effect April 22, 2010, requires renovation work that disturbs more than six-square feet in a home built before 1978 to follow new lead-safe work practices supervised by an EPA-certified renovator and performed by an EPA-certified renovation firm. Poor development and implementation of the rule by EPA has resulted in considerable compliance costs and has hindered both job growth and energy efficiency upgrades in older homes.

Elimination of the "opt out" provision

The first important change to the RRP was finalized on July 6, 2010, and eliminated a consumer's ability to waive compliance requirements if no children under six or a pregnant woman resides in the home. Not only does this change further restrict a consumer's choice about critical renovation work in older homes, but it also dismantles everything EPA originally included its original 2008 RRP to ensure that it was not overly costly to small businesses. As a means of regulatory flexibility, the EPA allowed homeowners in pre-1978 homes that do not have young children or a pregnant woman to waive a contractor's compliance obligations, or "opt out" of the RRP, when undertaking renovation work. The EPA stated that the inclusion of the "opt out" provision decreased the number of homes subject to the RRP from 77.8 million down to 37.6 million.[3] Furthermore, EPA states that the removal of the "opt out" costs an additional $507 million for small businesses in the first year alone.[4]

Without even giving the original rule a chance to work, the EPA immediately amended it by removing the "opt-out", thereby taking away a key measure that made it easier for homeowners to absorb the regulatory impact.

According to the U.S. Census Bureau's American Community Survey, approximately 38,317,131 owner-occupied housing units built before 1978 do not have a child under six living there. This is roughly 88.5% of all the housing stock in the U.S. built before 1979.[5] With the removal of the "opt out" provision, those homeowners no longer have the option of foregoing the costs of compliance with RRP when hiring a professional remodeler to work on an older house. For the small contractors, these additional costs have to be passed onto the consumer which

[3] *U.S. EPA, Economic Analysis for the TSCA Lead, Renovation, Repair, and Painting Program Opt-Out and Recordkeeping Proposed Rule for Target Housing and Child-Occupied Facilities, ES-2. (October 2009).*
[4] *Economic Analysis for the 2009 Proposed Rule (page ES-4)*
[5] *U.S. Census Bureau, American Community Survey. 2007 Public Use Microdata Files.*

increases the chances a consumer will hire another, likely uncertified, contractor to do the work, or worse, do the work themselves and actually increase the likelihood of disturbing lead-based paint. The restoration of the "opt out" provision would allow households that do not have young children or pregnant women the chance to undertake professional renovation work – most frequently energy efficiency upgrades – without facing compliance costs for a regulation that legitimately does not apply to anyone in the household.

Lead Test Kits

In addition to incorporating the "opt out" to reduce the number of homes subject to RRP, the 2008 RRP also relied on the existence of a accurate test kit that, at the time the rule was enacted, was not available. Under the rule, if a pre-1978 home is tested and the results indicate there is no presence of lead-based paint, the contractor can bypass RRP compliance. This is a reasonable component to the rule, but it also hinges on the existence of an accurate testing kit.

In drafting the rule, the EPA claimed that an accurate test kit would be commercially available by September 1, 2010. As a result, they explicitly rejected other options to reduce the cost of the regulation because of the anticipated test kit.[6] The new test kit (Phase II) was to supposed to replace the first version (Phase I), which EPA acknowledges has a significantly high false-positive result rate, with false positive rates ranging from 47%-78%.

EPA said it was committed to having more accurate kits, thereby reducing the number of false positives and saving costs on RRP compliance. In fact, EPA's cost calculations rely upon the availability of the Phase II kits beginning in September 2010. <u>As of today, 2 ½ years after the EPA thought they would be on the market, Phase II test kits are still not available. To make matters worse, the EPA has no estimate as to when they will be available.</u>

Although EPA is still allowing contractors to use Phase I test kits, the entire benefit of having better kits that would reduce the compliance costs for small businesses has been entirely overlooked. After months of informal pleas to EPA to adjust the RRP to account for the substantially higher compliance costs, NAHB formally petitioned EPA to undertake a rulemaking and develop a revised economic analysis on September 27, 2010. The EPA has never responded to NAHB's petition or other requests about the test kits. With inaccurate and overly-sensitive test kits, and the removal of the "opt out," there is little opportunity for relief for remodelers undertaking renovation work in pre-1978 homes. Given the unreliability of commerically available lead testing kits, NAHB believes EPA should delay the rule's effective date.

<u>Commercial and Public Buildings Lead Rule</u>

The RRP rule will likely extend to renovation, repair and painting activities on and in public and commercial buildings. EPA is in the process of determining whether these activities create lead-based paint hazards and, if any of them do, it will develop certification, training, and work practice requirements under the Toxic Substances Control Act (TSCA). While we support the goal of reducing lead exposure, we want to fully understand the purpose of this rule and the

[6] *73 Fed. Reg. 21712 (April 22, 2008).*

process EPA is taking to collect relevant data. Of particular concern, EPA has yet to provide the required Section 403 rule to identify "dangerous levels of lead" in public and commercial buildings. I believe that EPA should not move forward with a rulemaking without clear evidence and data showing lead poisoning risks.

Green Building

The green remodeling trend is growing quickly and ranges from basic energy efficiency improvements to installing high-tech solar panels. Remodelers are answering the call for improving the American housing stock by earning their Certified Green Professional (CGP) designation to scoring remodeling projects to green rating systems. Not all consumers are willing to pay a premium for green, however, in those markets with educated buyers with available funds, it can be profitable. It is important to understand that green building encompasses more than just energy efficiency and extends to indoor air quality, resource conservation, etc.

Green Appraisals

One of the major barriers for builders choosing to invest in green construction, which can be in and of itself a risky undertaking, is that appraisers unfamiliar with green construction often neglect to include the true value of this investment in their valuations. As a result, green homes, which can cost the consumer less money in utility bills and long-term operations/maintenance costs, do not always reflect the increase in construction costs or value of these future savings. Unfortunately this has turned some builders away from this market. We still have a long way to go in terms of educating appraisers, ensuring that they have access to the information about the property and urging the developers of appraisal manuals and software to include cost data on green and energy features.

Green Building Rating Systems

One tool that has helped demystify the value of "green" and spurred the awareness of energy efficiency is the use of voluntary green building rating systems. There are many credible systems being used across the country. Unfortunately, the government solely relies on the U.S. Green Building Council's LEED Rating System. This has given USGBC a monopoly in the federal environment and bolstered their reputation as the "authorized" standard. The Energy Independence and Security Act of 2007 (EISA) authorized the General Services Administration (GSA) to review existing green rating systems, make a recommendation for use by federal agencies and revisit this recommendation every 5 years.

Unfortunately, in the initial review, GSA selected the LEED® Rating System as the only rating system to be used for federal buildings. There are a number of problems with this recommendation. Giving one proprietary organization a monopoly for federal buildings does not promote innovation or cost-effective decision making. Furthermore, different rating systems may be better suited for certain project types and allowing agencies the flexibility to select the appropriate rating system for each project is a better approach. For example, GSA has not reviewed any stand alone residential green standards, even though 16 percent of the federal portfolio is residential space[7] and having a system that targets this type of construction is essential.

LEED® is not a true consensus standard as defined by the American National Standards Institute (ANSI). Federal agencies are required by law to recognize and incorporate existing consensus standards in policy initiatives (National Technology Transfer and Advancement Act of 1995). A true consensus process allows for all relevant stakeholders and experts to participate, while also protecting against special interest groups hoping to prioritize one particular product or technique over another. LEED® does not meet this bar for a true consensus process.

In the residential sector, one of the more widely used rating systems is the ANSI approved ICC 700 National Green Building Standard. This standard applies to all types of residential buildings from single family homes to high rise multi-family buildings and focuses on energy efficiency, water conservation, resource conservation, indoor environmental quality, site design, and home owner education. It also features an entire section dedicated to remodeling, a key to addressing the inefficiencies found in older buildings, which are the real "gas guzzlers" of the built environment.

ICC 700 is unique among national systems for requiring that minimum benchmarks are met for each category, and these minimums increase with each certification level. This means that homes certified to the higher levels of ICC 700 are required to be more energy efficient, more resource efficient, etc. and the independent third-party verification system guarantees that these objectives are met. I was very surprised to learn that GSA did not even consider this Standard in its initial review of green building rating systems.

To comply with the law, GSA must revisit the recommendation every five years, and we are now waiting for their final ruling. I know that Congress is following this issue and many members of this Chamber have already weighed in with GSA. I am hoping that GSA allows the use of multiple rating systems, and in particular will examine residential construction.

Conclusion:

The deep recession that has pervaded all segments of the housing industry since 2008 continues to hold back economic recovery in the United States. The already-battered housing industry, however, cannot successfully face the forthcoming challenges while weighed down by additional regulatory burdens and requirements that provide little benefit.

I appreciate the opportunity to discuss these important issues.

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[7] *United States. General Services Administration. 2010. "The Federal Real Property Council's FY 2010 Federal Real Property Report. An Overview of the U.S. Federal Government's Real Property Assets."*