Testimony of Carl Harris

On Behalf of the

National Association of Home Builders

Before the

House Financial Services Committee

Subcommittee on Housing and Insurance

Hearing on

"Housing Solutions: Cutting Through Government Red Tape"

July 24, 2024

Introduction

Chairman Davidson, Ranking Member Cleaver and members of the committee, I appreciate the opportunity to appear before you today on behalf of the National Association of Home Builders (NAHB) to share our views on how burdensome government regulations and mandates impact our industry's ability to increase the production of quality, affordable housing. My name is Carl Harris and I am NAHB's 2024 Chairman of the Board of Directors and a small-volume home builder from Wichita, Kansas.

NAHB represents more than 140,000 members who are involved in building single-family and multifamily housing, remodeling and other aspects of residential and light commercial construction. NAHB's members, most of whom build 10 or fewer homes per year, construct approximately 80% of all new housing in the United States each year.

As a small business owner operating in a heavily regulated industry, I understand how difficult and often costly it can be to comply with the myriad of government regulations that apply to my day-to-day work. Home builders across the country are facing substantial regulatory challenges that directly impact housing production and affordability. Government regulations continue to make it increasingly difficult for them to meet their goals, and additional mandates will further complicate their ability to provide affordable housing.

Housing is by far the largest single expense for American households and rising costs are putting the nation in an untenable situation. A 2024 report by Harvard's Joint Center for Housing Studies found that a record-high 22.4 million households are paying more than 30% of their income on rent and that among those renters, more than 12 million are paying more than half their income on housing, also an all-time high.[1] Moreover, a newly released housing affordability index by NAHB shows that in the first quarter of 2024, 38% of a typical family's income was needed to make a mortgage payment on a median priced new single-family home in the United States.[2] Keep in mind that if an owner or renter is paying more than 30% of their gross income on housing, they are cost burdened, and if they are paying more than 50%, they are severely cost burdened.

As a nation, we must do better. All home buyers and renters in America should have the option to secure safe, decent, and affordable housing where they want to live. America's workforce families, including members of the armed forces, teachers, and first responders, should be able to afford to live in homes or apartments in the communities they serve. Increasing the inventory of new single-family and multifamily housing is key to improving housing affordability. While there is no silver bullet, NAHB continues to urge both Congress and the Administration to address the primary factors limiting builders' ability to increase the supply and affordability of new housing. Sensible policy solutions include reducing excessive regulations, promoting careers in the skilled trades to address a severe labor shortage in the construction industry, and fixing building material supply chains, to name just a few. Today, I would like to specifically discuss a few key policies that will notably escalate costs for home buyers and renters including the federal push to mandate costly and restrictive national energy codes, the suspension of FEMA floodplain mapping that is paralyzing housing production for certain regions of the country, and the Biden Administration's recent proposal to cap annual rent increases at 5%.

---

[1] America's Rental Housing Joint Center for Housing Studies, Harvard University, 2024. https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2024.pdf

[2] NAHB/Wells Fargo Cost of Housing Index (CHI). https://www.nahb.org/news-and-economics/housing-economics/indices/cost-of-housing-index

Building Energy Codes

Although referencing model building codes in federal legislation and regulatory programs is not new, over the past few years, the breadth of programs and issues for which more stringent building codes are purported to be the answer is increasing concern. This approach unfairly burdens and disadvantages new construction and often does little to meet the intended goals. One of the most common approaches to increasing the stringency of energy codes, for example, is to simply require higher insulation levels in walls, floors, and ceilings. Unfortunately, most new homes are long past the point where additional insulation will be effective, resulting in a home that simply costs more to build.

Similarly, the recent federal push to require certain new homes to meet the stringent energy efficiency requirements of the 2021 International Energy Conservation Code (IECC) will price many home buyers out of the market and give them no choice but to stay in older, less efficient homes. The IECC is designed to serve as a model for state and local governments, which can choose to adopt or amend the various provisions based on their localized economies, consumer needs, climates, construction methods, hazards, etc. The negative consequences of implementing a national energy code, with no consideration for local conditions, outweigh the minimal improvements to energy efficiency and is a misguided effort. At a minimum, federal policies and programs must provide sufficient flexibility and incentives so that the intended results can be met with minimal negative impacts.

Modern energy codes are already incredibly energy efficient. Unnecessarily forcing the use of costly and restrictive energy codes will exacerbate the current housing affordability crisis and limit consumer choices while providing minimal benefit to the homeowner. According to Home Innovation Research Labs, compliance with the 2021 IECC can add $22,572 to the price of a new home, but in practice, home builders have estimated increased costs of up to $31,000. Furthermore, it can take as long as 90 years for homeowners to see a payback from this investment.

In addition to adversely impacting potential home buyers, these increased requirements and higher costs can result in decreased production and longer permitting and construction times, further exacerbating housing affordability challenges. In the end, pushing for costly and restrictive energy code requirements at the federal level will result in fewer families achieving the American dream of homeownership.

Unfortunately, the 2021 IECC has already had damaging effects on the housing market near my own community. Kansas City, Missouri, recently adopted the 2021 IECC without amendments in hopes of receiving Inflation Reduction Act grant funds. The code went into effect on July 1, 2023. As a result of adopting these stringent energy codes, Kansas City has seen a 22% decrease in single-family construction permits in January and February of 2024 compared to last year while the Kansas City metro area, *excluding Kansas City,* has seen a 117% rise in permits. This is a move that has regrettably paralyzed the housing market in Kansas City at a time when area housing markets are booming. The resulting decline in homebuilding has had a domino effect on the rest of the economy, with fewer jobs, housing options, higher housing costs, and a lower tax base.

Cost Savings of the 2021 IECC are Minimal When Compared to Other Modern Energy Codes

One of NAHB's members in Kansas City, MO, recently shared a compelling example of the real-world impact of the 2021 IECC on housing costs and energy savings. The builder constructed two homes with identical floorplans in the same development, one built to the previous energy code (an amended

version of the 2018 IECC) and one built to the 2021 IECC. This provided a unique opportunity to perform a detailed comparative energy rating and on-site testing to accurately measure the energy efficiency of each home.

The ratings were conducted by a certified third-party energy rating company to ensure accuracy and impartiality. The results were telling. The older code house had a Home Energy Rating System (HERS) score of 64, and an annual energy cost of $1,936. The new 2021 IECC-compliant house had a HERS score of 50, and an annual energy cost of $1,811.

While the home built to the 2021 IECC did show a modest annual energy savings of $125, the additional costs to comply with the 2021 IECC were substantial. The total cost to the customer was $12,036 more than the house built to the previous code. With a mortgage, this translates to approximately $102 per month or $1,224 annually. The energy savings of $125 per year are dwarfed by the additional annual cost of $1,099, leading to an extra $32,970 over the life of a typical loan.

HUD and USDA's Final Determination of Energy Efficiency Standards for New Construction

Despite the lack of real-world cost savings for homeowners and the fact that the vast majority of states have not adopted the 2021 IECC, the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture (USDA) recently issued a final determination requiring all new single-family construction housing financed by these agencies to adhere to the 2021 IECC. Additionally, HUD-financed multifamily housing must comply with the 2021 IECC or ASHRAE 90.1-2019.[3]

Without adequate review or consideration of how it will affect home buyers or renters, HUD and USDA have rammed through this mandate that will do little to curb overall energy use but will exacerbate the housing affordability crisis. HUD and USDA are supposed to help the most vulnerable home buyers and renters — not price them out of the housing market. This nationwide codes mandate will significantly raise housing costs — particularly in the price-sensitive entry-level market for starter homes and affordable rental properties — and restrict access to affordable mortgage financing while providing little benefit to new home buyers and renters. It will also compel more buyers and renters to stay in their current, less efficient homes.

According to NAHB data, around 107 million households already cannot afford the median price of a new home. Even HUD's modest estimates indicate that compliance with the 2021 IECC would raise new home prices by an average of $7,200 per single-family home, thereby pricing an additional 724,525 households out of the market.[4] With the nation facing a housing affordability crisis, it is crucial to avoid regulations that would further hinder homeownership for more Americans.

This ill-conceived policy will act as a deterrent to new construction at a time when the nation desperately needs to boost its housing supply to lower shelter inflation costs. Moreover, it is in direct

[3] The residential provisions of the IECC apply to detached one- and two-family dwellings and townhouses and other residential buildings three stories or less in height above grade plane. ASHRAE Standard 90.1 applies to multifamily residential buildings with four or more stories.

[4] Nearly 77% of U.S. Households Cannot Afford a Median-Priced New Home, March 2024. https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics-plus/special-studies/2024/special-study-households-cannot-afford-a-median-priced-new-home-april-2024.pdf?rev=cb6f4f7d507341cb9ece97b90b6709c3

conflict with the current energy codes of 44 states.[5] This will lead to construction delays and a host of logistical and implementation challenges in the field, such as uncertainty as to how to comply, a lack of qualified inspectors, inconsistent appraisals, and confusion as to what mortgage products may be used to purchase any given home.

Thank you, Chairman Davidson, for introducing H.J.Res. 170, the Congressional Review Act resolution of disapproval, to allow Congress to overturn this harmful rule.

FHFA's Consideration of Alignment with HUD and USDA's Minimum Energy Standard

During the April 18, 2024 hearing before the U.S. Senate Committee on Banking, Housing, and Urban Affairs entitled "Oversight of Federal Housing Regulators," Federal Housing Finance Agency (FHFA) Director Sandra Thompson confirmed that FHFA is considering applying the same standards recently adopted by HUD and USDA for new homes and apartments financed by Fannie Mae and Freddie Mac (the Enterprises). The Enterprises provide 72 percent of financing for new home purchases.[6] Therefore, any requirements established by the Enterprises largely dictate the rules for the housing finance market overall. This is true today for underwriting and appraisal standards. If FHFA were to move forward and require a specific energy code, it would become a de facto national standard. It is crucial to note that the FHFA does not have a Congressional mandate to set minimum energy standard.

Currently, building codes, including energy codes (which are just one component of the full suite of building codes), are adopted and implemented at the state and local level as a package of coordinated codes. If this model, which has been in place since the onset of building codes, is disrupted, it would eliminate the important flexibility that allows state and local governments to apply energy codes relevant to the unique needs of communities and homeowners in their jurisdictions and would have a significant and untenable impact on governmental oversight of new housing construction and the housing market broadly.

NAHB is particularly concerned that FHFA has not provided a compelling reason why the Enterprises should consider requiring new single-family and multifamily homes be built to the updated energy codes to be eligible for Enterprise financing, especially given that research has determined these codes are cumbersome and not cost-effective. The Enterprises were created to provide liquidity, stability, and affordability to the U.S. housing market. Any mandate by FHFA that limits the availability of Fannie Mae and Freddie Mac financing for new construction to only those homes that meet the 2021 IECC or ASHRAE 90.1-2019 is counter to their charge and would severely disrupt the construction of new homes, exacerbate the housing supply shortage, and negatively impact the affordability of newly constructed homes. Such a mandate would not only increase the cost of new housing but would also create conflict between mortgage program requirements and local energy codes. Equally important, it would decrease affordable financing options for first-time and low- to moderate-income home buyers who want to purchase newly constructed homes but will be forced to purchase or stay in older, less efficient homes.

---

[5] As of June 28,2024 only six states (VT, CT, NJ, IL, WA, CA) have adopted a state-wide code determined by the Department of Energy to be equivalent to the 2021 IECC. Reference: State Portal | Building Energy Codes Program

[6] Share of Non-Conventional Financing Holds Steady in 2022, September 6, 2023.
https://eyeonhousing.org/2023/09/share-of-non-conventional-financing-hold-steady-in-2022/#:~:text=NAHB%20analysis%20of%20the%202022,in%202021%2C%20at%2028.8%25.

Appraisals

The appraisal process remains one of the major barriers to adding residential energy efficiency measures that have high upfront costs and long paybacks. NAHB notes that home builders have long expressed concern that upgrades, including energy efficiency enhancements, are often not accounted for in the appraisal. Requiring homes to be built to the 2021 IECC or other costly energy codes will not necessarily reflect current consumer demand and will therefore make it difficult for an appraiser to make an accurate assessment of market value.

Home buyers will have to pay much higher down payments when the appraised value does not fully include the increased costs. When an appraisal comes in less than the contract sales price due to upgrades, the borrower is required to pay the difference between the appraised value and the sales price. This places an additional burden on the home buyer, who may be unable to afford the out-of-pocket expense.

Existing Housing Stock

The American housing stock continues to age, and due to the recent decrease in production, there is increasing pressure to keep existing homes in service longer – homes that may not perform as well or be as efficient as newer homes. One hundred and thirty million homes out of the nation's housing stock of 137 million were built before modern buildings took effect in 2010. Equally problematic, the latest Census statistics show the number of homes built before 1970 that are taken out of commission is only about six out of every 1,000 being retired per year. These low rates of replacement mean that the built environment in the U.S. will change slowly and continue to be dominated by structures that are at least several decades old.

Older homes are less energy efficient than new homes. They were not built to the stringent requirements contained in modern codes, use (and lose) more energy, and often have less insulation and inefficient heating and air conditioning systems. According to NAHB research, even though newer homes are larger, their average site energy consumption is often lower as a result of higher energy efficiency. While a typical U.S. household consumes 77.1 million BTU per year, households occupying units built since 2010 use 67 million BTU per year. Clearly, improvements in construction practices and building codes have made significant strides in reducing energy use in new construction. However, the most cost-effective improvements have already been made, and further gains will be difficult and costly.

In order to meet our national energy efficiency goals, many have recognized improvements must be made in all sectors and that retrofitting the existing building stock will be necessary. According to the National Renewable Energy Laboratory, upgrades to the existing housing stock could yield a projected reduction of 5.7% of the total annual U.S. electricity consumption in 2030. Given this potential, coupled with the array of options and opportunities that exist to do so (e.g., replace/repair doors, windows, insulation, lighting, appliances; heating and cooling equipment, install energy management systems, heat pump, solar photovoltaics; window treatments, etc.) upgrades to the existing housing stock must be a primary focus if the nation is to make measurable progress.

Intersection of the National Flood Insurance Program and the Endangered Species Act

On July 1, 2023, the Federal Emergency Management Agency (FEMA) suspended the issuance of Letters of Map Revision-Based on Fill (LOMR-Fs) under the National Flood Insurance Program (NFIP) across 38

counties in California. This suspension has had a chilling effect on residential construction. For example, NAHB members from the greater San Francisco Bay area reported home builders walking away from projects which would have produced over 10,000 single-family homes as well as over 1,000 affordable housing units.

While suspending LOMR-Fs does not prohibit NAHB members from building new residential units, home builders frequently use fill material to build above the 100-year floodplain. This relieves home buyers and renters alike from the economic impact of flood insurance. At a time when new home construction costs are at record highs, burdening home buyers with additional costs, such as flood insurance, pushes the American Dream of owning a home further out of reach.

FEMA's decision to suspend processing certain map change requests is the result of a confidential legal settlement between FEMA and environmental advocates who claimed that the simple act of revising floodplain maps negatively impacts federally protected species or their designated critical habitat under the Endangered Species Act (ESA). NAHB disagrees. FEMA has a nationwide policy that requires individuals seeking these revisions to first provide FEMA with documentation that their planned activity either has no impact upon endangered species or they have already met the necessary ESA requirements. That should be sufficient to satisfy any landowners' ESA obligations. What makes this issue even more troubling is that FEMA has publicly acknowledged this will be a multiyear suspension while FEMA "consults" with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Services (NFMS).

A similar process in Washington State took over six years to complete, while in neighboring Oregon, over a decade has passed since FEMA initiated ESA consultation. Importantly, unlike what is occurring in California, FEMA did not suspend processing LOMR-Fs in Oregon or Washington or make any changes to the NFIP while it was engaged in the ESA consultation process.

Under this blunt and protracted suspension, home buyers and renters have far fewer housing options. Congress must act to provide an opportunity where home builders may obtain LOMR-Fs to build out of the 100-year floodplain to help provide more attainable housing.

Rent Control

NAHB's multifamily members are apartment builders, owners and managers who generally operate small businesses. They strive to provide quality, well-maintained and well-managed apartment communities for people at all income levels. Unfortunately, it is becoming harder for them to do so because of excessive regulations at all levels of government. In fact, nearly 41 percent of total multifamily development costs can now be attributed to complying with regulations imposed by all levels of government.[7]

To meet demand, maintain, and upgrade these communities, owners are often forced to increase rent to cover these costs. As a result, rent increases have attracted considerable media attention recently, along with calls for rent control. However, policy makers must understand that these rent increases

[7] Regulation: 40.6 Percent of the Cost of Multifamily Development, April 2022. https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics-plus/special-studies/2022/special-study-regulation-40-percent-of-the-cost-of-multifamily-development-june-2022.pdf

reflect the housing shortage, substantial construction costs and investment risk, and extreme operating cost increases for housing providers.

Although rent control may sound like a quick fix to the housing affordability crisis, it is the most harmful and counterproductive regulation that multifamily housing providers face. Rent control is a deeply misguided policy that will not build a single new unit needed to address the true cause of the housing affordability crisis—which is the lack of housing supply to meet demand. Rent control jeopardizes the long-term financial solvency of the property, hamstrings the ability of apartment owners and managers to respond to sudden operating cost spikes and creates a disincentive for new apartment construction. For example, one NAHB member experienced real estate tax increases on some properties under his management by as much as 90 percent in one year. Likewise, apartment providers across the country are struggling with the cost of insurance. Apartment owners and managers have had to find ways to offset the substantial increases. A report released by the National Leased Housing Association found that for 2022-23 insurance policy renewals, 29 percent of housing providers experienced premium increases of 25 percent or more compared to 17 percent in the prior year.[8] They have had to accept substantially higher insurance deductibles, cut other operating expenses, and raise rents to manage these costs.

Multifamily properties are underwritten to operate off of the rents. Rent control policies, including those that would cap the percentage of annual rent increases, effectively ignore this structure and create disincentives to new supply and insurmountable hurdles to keep pace with operating and maintenance costs. There are very few, if any, successful business models that allow the government to set the prices for a private business. And, indeed, what businessperson would agree to operate under such requirements? Because government rent control policies are so disruptive, 87.5 percent of developers will avoid building in a jurisdiction with rent control in place.[9]

Unfortunately, the Biden administration has succumbed to the false appeal of rent control. After HUD placed an additional rent increase restriction on the existing rent cap for Low-Income Housing Tax Credit Properties (LIHTC) earlier this year, President Biden now proposes a nationwide rent cap at 5 percent per year for landlords who own more than 50 units.[10]

NAHB unequivocally opposes rent control in any form at any level of government. Rent control in any form is bad for housing, and President Biden's tax plan to cap rents at 5 percent on existing multifamily structures will worsen the housing affordability crisis. NAHB is also skeptical that this plan would only be a temporary measure because tax provisions are often extended. These rent caps will hurt existing tenants – those that the president is trying to help -- because owners and developers would be unable to cover rising costs if rents are fixed. This will lead to deferred maintenance, fewer amenities, and properties that have declined in condition over time.

---

[8] Increased Insurance Costs for Affordable Housing Providers, October 2023. https://ndpanalytics.com/increased-insurance-costs-for-affordable-housing-providers/.

[9] Regulation: 40.6 Percent of the Cost of Multifamily Development, April 2022. https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics-plus/special-studies/2022/special-study-regulation-40-percent-of-the-cost-of-multifamily-development-june-2022.pdf

[10] FACT SHEET: President Biden Announces Major New Actions to Lower Housing Costs by Limiting Rent Increases and Building More Homes, July 16, 2024. https://www.whitehouse.gov/briefing-room/statements-releases/2024/07/16/fact-sheet-president-biden-announces-major-new-actions-to-lower-housing-costs-by-limiting-rent-increases-and-building-more-homes/

Likewise, it is absolutely incorrect to argue that the proposal will not affect new construction because it would only apply to existing apartments. Rather, this plan injects uncertainty into multifamily investment options. Accelerated depreciation for residential real estate is one of the most important incentives for attracting investors to the residential market as opposed to commercial real estate or other opportunities. Forcing apartment owners to choose between 5 percent caps on annual rent increases for the next couple years or losing accelerated depreciation tax benefits, as President Biden has proposed, will discourage developers from building new rental housing at a time when the nation is experiencing a shortfall of 1.5 million housing units. Apartment supply will far further below the demand, which will ultimately lead to even higher rents.

Research has proven repeatedly that mandatory rent control is a failed policy that does nothing to alleviate the root causes of housing affordability issues — namely the fact that our nation's housing supply has not kept pace with the needs of our growing population. Rent "stabilization" creates disincentives for multifamily housing investments across markets, particularly in low-income communities that already often have few affordable options.

Moreover, rent regulation is not equitable, as it does not target lower- and moderate-income renters that are in most need of assistance, support and stability. Instead, it incentivizes current renters to remain in place for longer periods of time and disincentivizes additional investments in housing. In this way, rent control limits opportunities for those who do not have access to the rental housing market in favor of those that already do. Rent control also undermines the local tax structure because controlled rental properties cannot be fully assessed. Engaging in this type of heavy-handed government policy would create more housing scarcity and penalize a large and increasing number of would-be renters as the rental housing supply is suppressed or shrinks.

An anti-competitive, anti-business edict from the president is certainly not the answer to resolve the complex housing affordability issue. If the White House and other policymakers are serious about lowering costs for renters, they should be looking for ways to reduce costly regulations and add incentives for developers to produce more housing, especially affordable and workforce housing. NAHB has developed a 10-point plan to tackle the housing affordability crisis that gets at the root of the problem — removing barriers that hinder the construction of new homes and apartments.[11]

At the federal level, the Biden administration should be calling on the Senate to approve the Tax Relief for American Workers Act, legislation that sailed through the House earlier this year and includes key provisions to expand and strengthen the Low-Income Housing Tax Credit (LIHTC). The LIHTC is the best tool to finance the production of affordable rental housing, but demand for this housing greatly exceeds available resources. The administration should also be urging Congress to support bipartisan proposals to create a new tax credit to produce affordable workforce rental housing geared toward middle-income households, such as teachers, health care professionals and law enforcement.

To increase housing supply and reduce affordability burdens, state and local governments can start by allowing for zoning to include more high-density housing, reducing regulations that stall building projects, encouraging public/private partnerships in development, and offering direct help to those that

---

[11] NAHB's Blueprint to Address the Housing Affordability Crisis A 10-Point Housing Plan. https://www.nahb.org/advocacy/top-priorities/solving-the-housing-affordability-crisis/housing-affordability-blueprint

need it. Implementing these practical solutions will boost multifamily housing production and make renting more affordable.

Conclusion

Thank you, Chairman Davidson and Ranking Member Cleaver, for convening this important hearing and allowing NAHB to share our views on how government red tape is impacting our industry's ability to increase the production of quality, affordable housing. These are important conversations, and NAHB stands ready to work with you and members of the subcommittee to achieve thoughtful, effective policies to address these concerns and expand the availability of attainable, affordable housing for all Americans.