Testimony of Buddy Hughes

On Behalf of the

National Association of Home Builders

Before the

House Small Business Committee

Hearing on

"The Golden Age: Unleashing Main Street Through Deregulation"

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Introduction

Chairman Williams, Ranking Member Velázquez 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 Buddy Hughes, and I am a home builder and developer based in Lexington, North Carolina, with over 45 years of experience in the industry. I serve as NAHB's 2025 Chairman of the Board of Directors.

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. The vast majority of NAHB's builder members are small businesses who will build 10 or fewer homes per year with the median number of starts being just six.[1]

As a small business owner operating in a heavily regulated industry, I know how difficult and often costly it can be to understand and comply with the many government regulations that apply to my day-to-day work. These mandates, which are imposed by federal, state and local governments, include labor and environmental regulations, safety requirements, building codes and standards, zoning and subdivision ordinances, impact fees, and more. The time, effort, and costs associated with meeting these requirements can be significant.

In fact, an NAHB study on regulatory burdens shows that nearly 25% of the price of a typical newly-built single-family home is due to the broad set of regulatory burdens imposed by state, local and federal governments.[2] The burdens imposed on apartment construction are even higher, as an updated joint study by NAHB and the National Multifamily Housing Council conducted in June 2022 found that up to 41% of apartment development costs are due to regulations.[3] These burdens are particularly noteworthy for the residential construction industry because the profit margins are thin and consumers' sensitivity to price fluctuation is extremely acute.

Regulatory costs have a direct and negative effect on housing affordability. NAHB's "Priced Out" survey for 2025 show that 115,593 households would be priced out of the housing market if the median U.S. new home price rises by $1,000.[4] As a benchmark, 87.5 million households (roughly 75% of all U.S. households) are not able to afford a median-priced new home. Similarly, an analysis using 2018 data found that a $1,000 increase in the cost of building a new rental unit will price out almost 20,000 renters for that apartment.[5]

The nation is experiencing a housing affordability crisis. Government regulations are a significant driver of the escalating cost of constructing a home and thereby a major contributing factor to the

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[1] Most NAHB Builders are Small Businesses: https://eyeonhousing.org/2024/08/most-nahb-builders-are-small-businesses/

[2] Regulation Now Accounts for $93,870 of the Average New Home Price: https://eyeonhousing.org/2021/05/regulation-now-accounts-for-93870-of-the-average-new-home-price/

[3] New Research Shows Regulations Account for 40.6 Percent of Apartment Development Costs: New Research Shows Regulations Account for 40.6 Percent of Apartment Development Costs: https://www.nahb.org/news-and-economics/press-releases/2022/06/new-research-shows-regulations-accountfor-40-point-6-percent-of-apartment-development-costs

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

[5] Based on the 2018 median rent of $2,189, a $1000 increase in the cost of building a new apartment unit would price out 19,617 renters.

ongoing and growing housing affordability crisis in this country. Congress and the administration must look for ways to reform the regulatory rulemaking process while also eliminating excessive or unnecessary regulations so that more Americans can achieve homeownership.

Strengthening Agency Compliance with the RFA

Reasonable regulations are essential to protecting the health and safety of workers, the environment, financial institutions, and other interests, but they must strike a balance. Federal regulations must be carefully structured to achieve their intended benefits while minimizing the burdens on citizens, particularly small businesses. Unfortunately, it is often the case that federal rulemaking agencies fail to adequately consider how regulations will affect small businesses and in so doing fail to comply with the Regulatory Flexibility Act (RFA).

NAHB commends this committee for its investigation into agency compliance with the RFA that was initiated in 2023 and completed in 2024.[6] Many of the report's findings are consistent with NAHB's advocacy efforts and echo the sentiment included in several of our regulatory comment letters regarding the failure to properly analyze a proposal's costs, impacts, or reach. The following examples provide insight into how the failure to properly and fully assess a rule's impacts and alternatives can have a significant effect on the industry and further exacerbate the ongoing housing affordability crisis.

WOTUS

The regulatory phrase "waters of the United States" (WOTUS) determines the extent of federal jurisdiction under the Clean Water Act (CWA). This regulation directly impacts builders and developers if their land development or construction activities result in either a discharge of pollutants or the placement of dredged or fill material into CWA jurisdictional waters or wetlands.

Unfortunately, the WOTUS definition has changed numerous times over the past two decades due to Supreme Court cases and executive branch interpretations, and it remains nearly impossible for landowners to know for certain if their properties contain WOTUS. Even the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) – the agencies responsible for overseeing the CWA permitting process – are unclear as to the scope of their jurisdiction. If federal jurisdiction is found, builders and developers are subjected to an onerous and uncertain permitting process that can take years and cost hundreds of thousands of dollars.

Although the Corps typically processes over 60,000 Nationwide Permit applications per year, as the committee's RFA compliance report noted, EPA certified that the January 2023 proposed WOTUS rule would not have a significant impact on a substantial number of small entities, allowing the agency to skip the full RFA analysis. This finding defies all common sense.

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[6] House Small Business Committee Report on Federal Agency Compliance with RFA: https://smallbusiness.house.gov/UploadedFiles/05.22.2024_-_House_Committee_on_Small_Business_RFA_Report.pdf

Davis-Bacon and Related Acts

The Davis-Bacon Act establishes wage rates for a given area for nearly all construction projects that receive public funds, among other requirements. In the home building industry, the Davis-Bacon and Related Acts (DBRA) primarily affect multifamily builders who participate in certain U.S. Department of Housing and Urban Development (HUD) and Federal Housing Administration (FHA) multifamily mortgage insurance programs.

In 2023, the Department of Labor (DOL) issued a rulemaking that revised the prevailing wage determination process, expanded coverage for DBRA requirements and included needless paperwork requirements for contractors. Although DOL has estimated that 67% of Davis-Bacon contracts go to small businesses, the agency nonetheless determined that the rule would not significantly impact small businesses. Absent a full review or consideration of what impacts might accrue, the rule was finalized and now requires the payment of wages that are unrepresentative of the actual wages paid in a given market – increasing the costs of the project. Further, because the rule maintains the split wage determination policy and other recordkeeping requirements, the rule is complicated and overly burdensome.

Independent Contractor and Joint Employer Status

The residential construction industry relies on subcontractors to complete much of the on-site work. As a result, these specialty trade independent contractors are an essential part of the industry and its ability to meet housing demand and keep costs low. Unclear definitions on how to classify independent contractors and joint employers, however, have translated into regulatory burdens for businesses and higher costs for home buyers, while also jeopardizing home builders' operations.

In January 2024, the DOL issued a final rule to change the way it determines independent contractor status under the Fair Labor Standards Act (FLSA). This policy introduces more subjectivity on the part of the investigating entity to determine worker status, adds undue confusion for employers trying to comply with the more complicated system and threatens to impact many industries that rely on the subcontractor business model. Although DOL purportedly considered the impacts on small businesses prior to finalizing this rule, it failed to fully consider the disproportional impact on small businesses – particularly those in the residential construction industry and the myriad of challenges the new classification creates for both employers and independent contractors.

Similarly, recent policies from the National Labor Relations Board (NLRB) determining joint employment status could have the same costly impact on builders who hire various self-employed specialty tradespeople for providing several services throughout the lifetime of a project. As this committee's report recognized, "Moving the current clear and predictable joint employer standards prevents employers from predicting the risks and costs of their contracts with providers, vendors, subcontractors, and franchisees. Beyond predictability, the rule expands liability to alleged joint employers which will almost certainly increase costs." Although NAHB agrees with this finding, NLRB did not.

Restrictive policies, such as the NLRB's 2023 rulemaking, further complicate the regulatory landscape that employers must navigate due to its vague requirements and consideration of

indirect control over a worker as evidence of joint employment. Although the NLRB rule was struck down nationwide in March 2024, any future policies must recognize the ubiquity of the contractor-subcontractor relationship in residential construction, as well as the overall impact on small businesses.

Fixing the Rulemaking Process

Prove It Act

The committee's RFA compliance investigation highlighted how many of the federal rulemaking agencies have repeatedly failed to comply with the existing statute. It also pointed to potential paths to strengthen the now 45-year-old law. Legislation, such as the Prove It Act, would go a long way to increasing small business input into the regulatory rulemaking process and holding rulemaking agencies accountable for considering the impact of proposed regulations on small businesses.

NAHB is proud to support the Prove It Act and looks forward to continuing to work with this committee and Congress to see that the bill is signed into law.

Restoring Congressional Oversight to the Rulemaking Process

REINS Act and Increased Oversight

The federal rulemaking process is governed by several laws and executive orders that agencies must follow when developing, proposing and finalizing a new rule or amending or repealing an existing rule. These laws and orders set out the procedural and information requirements, such as clearly stating why the rule is being proposed, conducting public outreach, and sharing the data, information, and analyses that were relied on to develop the rule.

Over the past few decades, executive orders (EOs) have become an increasingly powerful tool, as they have been used to alter the rulemaking process to better reflect the policy priorities of each administration. Several recent EOs have addressed important procedural underpinnings of the processes to better account for costs and benefits, require review of guidance documents, and avoid biased outcomes.

Although agencies cannot issue regulations unless a statute gives them the authority to do so, since 1984, they have been given broad latitude to interpret the statutes as they see fit if the interpretation is viewed as 'reasonable.' As this committee discovered in its RFA study, despite these rulemaking procedures and guardrails, agencies have regularly misused their discretion to skirt portions of the rulemaking process, avoid conducting full cost-benefit analyses, expand regulations beyond their authority and/or continuously revise rules despite arguments to the contrary. The resulting overregulation and abuse of discretionary authority has resulted in confusion, additional permitting requirements, project delays and increased construction costs.

Importantly, the U.S. Supreme Court invalidated the deference historically given the agencies in June 2024 in *Loper Bright Enterprises v. Raimondo*.[7] Further, as part of both his regulatory reform

[7] 144 S.Ct. 2244 (2024).

and deregulatory agendas, President Trump directed the agencies to ensure their regulations are grounded in clearly applicable law. Small businesses are already overburdened and disproportionately affected by regulation. NAHB soundly supports legislative efforts, such as the REINS Act, as an important step toward fixing the broken regulatory rulemaking process. Likewise, although inferred in several of the EOs, agencies should be directed to review the basis of the rules that they have developed based on the 'reasonable' interpretation of statutes to determine if those are the best interpretation of statutes.

Increased Use of the Congressional Review Act

The optimism shared among NAHB's membership for a better regulatory environment extends beyond the potential for an improved rulemaking process and better agency compliance with existing laws. NAHB is encouraged that Congress is utilizing its authority under the Congressional Review Act (CRA) to do away with certain misguided rules and is hopeful that President Trump's deregulatory agenda results in measurable change.

Although the CRA has been used sparingly in the past, it is an important option for Congress when exercising its oversight of federal agencies and federal rules. In the final days of the Biden administration, the U.S. Department of Energy (DOE) released a final rule that effectively bans an entire segment of instantaneous natural gas water heaters from the market. The new DOE standards will have a significant negative effect on homeowners and home builders, raising costs and creating unnecessary challenges.

Equally problematic, the shift to more expensive condensing gas water heaters presents a substantial hurdle for remodeling and replacement projects, especially in older homes. Installing these cumbersome units often requires retrofitting existing spaces to accommodate the new technology, which can be both costly and complex. Non-condensing units, which are more affordable and practical for many households, will become harder to find, making home maintenance even more expensive for homeowners—especially those in older homes or with limited financial resources.

Furthermore, NAHB is concerned that this rule is part of a broader agenda to phase out natural gas appliances, ultimately limiting consumer choice and driving up utility costs. As the primary energy source for millions of American homes, natural gas plays a critical role in ensuring affordable and reliable energy. This rule's impact on the water heater market could set a dangerous precedent for further restrictions on natural gas appliances, ultimately making it harder for homeowners to maintain affordable living standards.

NAHB supported House passage of H.J.Res 20, the Congressional Review Act resolution to overturn this rule. We appreciate the strong support for overturning the rule and hope the Senate will follow the House's lead.

Outstanding Deregulatory Matters

Through the various EOs that have been issued, the agencies have been given specific directives to reform and scale back their regulatory reach. These mandates will require the agencies to take a number of proactive steps, including performing regulatory look backs; identifying 10 regulations to rescind for each new one proposed; and ensuring that the total incremental cost of all new

regulations, including repealed regulations, is significantly less than zero; among others.

To be most effective, NAHB urges Congress, thorough this committee and others, to exercise firm oversight to ensure that the agencies properly carry out these various directives. Amid the current housing affordability crisis, we are particularly interested in any immediate actions that can be taken to lower the cost of housing and expand housing supply, as directed by the executive order entitled, "Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis." Addressing the specific regulations raised within this testimony would be an important first step toward doing so.

While the Trump administration has taken meaningful action to reduce regulatory burdens, NAHB urges Congress and the administration to focus on several proposed regulations that remain under active consideration.

HUD/USDA Energy Code Requirements

In April 2024, HUD and the U.S. Department of Agriculture (USDA) issued a Final Determination that will require new single-family homes financed by these agencies to comply with the 2021 International Energy Conservation Code (IECC) beginning in May 2026. HUD-financed multifamily housing must comply with the 2021 IECC or ASHRAE 90.1-2019, effective November 2025. The Veterans Affairs (VA) Home Loan Program is also required to align with HUD/USDA, although it has not yet taken steps to do so.

Requiring the 2021 IECC and ASHRAE 90.1-2019 codes on virtually all new construction supported by HUD and USDA undoubtedly will have adverse consequences on the affordability and availability of newly constructed single- and multifamily housing. Further, this policy conflicts with energy codes in 42 states, which will lead to construction delays and implementation challenges, including uncertainty about compliance, a lack of qualified inspectors, inconsistent appraisals and confusion about mortgage products. This mandate is unnecessary, raises housing costs, limits access to mortgage financing and hurts vulnerable home buyers and renters.

We urge Congress to support legislation that would prevent HUD and USDA from adopting a minimum energy standard that harms housing affordability and the ability of HUD and USDA borrowers to purchase a new construction house. Additionally, we support legislation that would prohibit HUD and USDA from adopting a minimum energy standard that raises the cost of housing during a time when the nation is experiencing a housing affordability crisis. Finally, we support legislation that would prevent the adoption of a minimum energy standard that the majority of states have not determined to be appropriate for their respective needs.

Heat Injury and Illness Prevention Standard

In August 2024, the Occupational Safety and Health Administration (OSHA) published a proposed rule to establish a federal standard for preventing heat-related injuries and illnesses for indoor and outdoor work settings. Notably, the standard would enforce certain year-round requirements regarding heat-specific safety plans and recordkeeping obligations, as well as two levels of requirements for jobsites that reach a certain heat index or temperature threshold. If finalized, the same requirements would apply to all employers conducting outdoor and indoor work in all general industry, construction, maritime and agriculture sectors, with some limited exceptions.

OSHA estimates the standard would impact roughly 36 million workers, or one-third of the total full-time workers in the U.S. For the construction industry, the agency expects 725,200 total entities to be affected by the standard. Annualized costs for the industry are expected to be $3.1 billion ($1.8 billion in cost savings), with nearly $2 billion in costs alone from the Southern region of the U.S. Many elements in the proposed rule will likely have a disproportionate impact on small businesses – especially in residential construction. Where many small home builders and specialty trade contractors do not have the capacity to implement these overly prescriptive requirements without taking on additional burden, denying small employers the much-needed flexibility to tailor their safety practices in ways that meet the needs of their employees would result in costly delays to deliver much-needed housing supply.

We urge OSHA to abandon the current federal rulemaking on this. Failing that, OSHA should ensure any such rule creates industry-specific standards that promote flexibility; recognizes the uniqueness, challenges and best practices of the different regulated industries; creates a standard for construction that promotes the main tenets of "water, rest, shade;" establishes reasonable care for employees without overly prescriptive requirements and undue administrative and compliance burdens; and expands the exemptions to include construction operations as part of disaster recovery efforts in areas under disaster or emergency declarations.

HUD's Federal Flood Risk Management Standard (FRMS)

Under the FFRMS, all federal agencies are required to anticipate and predict the expected increased flooding risks due to climate change and improve the resilience of projects receiving federal funding. This is to be done by expanding the federal floodplain management requirements beyond the current 100-year base flood level to a larger vertical and horizontal area that better anticipates future flooding risks.

On April 22, 2024, HUD published its final rule to implement the FFRMS. For single-family new construction where building permit applications are submitted on or after Jan. 1, 2025, HUD will require all new single-family homes located within the 100-year floodplain to be elevated 2 feet above the base flood elevation to qualify for FHA mortgage insurance. For FHA-insured or HUD-assisted multifamily properties, the new FFRMS requires a complicated, three-tiered process for determining the extent of the FFRMS floodplain, with a preference for a climate-informed science approach. The rule then requires more stringent elevation and flood proofing requirements if federal funds are used to develop or provide financing for new construction within the newly defined FFRMS floodplain. The rule also applies to substantial improvement for structures financed through HUD grants, subsidy programs and applicable multifamily programs.

HUD's final rule unnecessarily expands floodplain management requirements and fundamentally threatens access to FHA mortgage insurance programs for single-family home buyers and multifamily builders. By establishing a higher flood risk standard, the proposed rule generates inconsistencies with the National Flood Insurance Program (NFIP) and creates unwarranted and expansive flood mitigation requirements beyond those established by the Federal Emergency Management Agency, the agency with the expertise, funding and statutory directive to oversee activities within the floodplain and administer the federal flood insurance and floodplain mapping programs.

For these reasons, we urge HUD to repeal its rule, “Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard,” which was published in the Federal Register on April 23, 2024.

Additionally, we recognize and sincerely appreciate HUD’s temporary partial waiver announcement on February 21, 2025, for single-family new construction in Special Flood Hazard Areas. While we understand the waiver means the new elevation standard requiring the lowest floor of new construction be elevated two feet above base flood elevation has been delayed until February 21, 2026, we urge HUD to repeal this two-foot elevation requirement as well as the rule permanently.

Improving Housing Affordability by Unleashing Main Street

Safe, decent, and affordable housing provides fundamental benefits that are essential to the well-being of families, communities, and the nation. For these reasons, housing affordability is NAHB’s top advocacy issue. In a clear sign illustrating the severity of housing affordability challenges facing Americans, the latest NAHB/Wells Fargo Cost of Housing Index (CHI) found that in the fourth quarter of 2024, a family earning the nation’s median income of $97,800 needed 38% of its income to cover the mortgage payment on a median-priced new home. Low-income families, defined as those earning only 50% of median income, would have to spend 76% of their earnings to pay for the same new home.[8]

Clearly, owning or renting a suitable home is increasingly out of financial reach for many households. 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.[9]

As a nation, we can and must do better. All home buyers and renters in America should have a choice in securing 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. NAHB strongly believes that increasing the inventory of new single-family and multifamily housing is key to improving housing affordability. While there are many factors making it more difficult for builders to increase housing supply, excessive government regulations represent a major driving force frustrating the efforts of home builders and multifamily developers to build more housing and address the housing affordability crisis.

Residential construction is one of the most heavily regulated industries in the country. The prospect of an improved regulatory climate where federal agencies are limited to regulations that follow the letter and spirit of the law and are tailored to meet the needs of small businesses can lead to more informed, less burdensome rules and unleash home builders to increase supply and address the nation’s housing affordability crisis. In these challenging economic times, the significant undersupply in housing coupled with rapidly increasing home prices clearly indicate the

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[8] NAHB/Wells Fargo Cost of Housing Index (CHI) Q4 2024: https://www.nahb.org/news-and-economics/press-releases/2025/02/families-must-spend-38-percent-of-their-income-on-mortgage-payments

[9] The Joint Center for Housing Studies - The State of the Nation's Housing 2024: https://www.jchs.harvard.edu/state-nations-housing-2024

need to reduce the regulatory burden on the housing industry. NAHB is encouraged that efforts are underway to do just that.

NAHB applauds the work of this committee in highlighting agencies' lack of compliance with the RFA and ways to improve our regulatory process. We thank the committee for convening this important hearing. NAHB stands ready to work with you and members of the committee to reform our broken regulatory rulemaking process, unburden and empower small businesses and make housing attainable for all Americans.