

**Statement of Jerry Howard, on behalf of the**

**National Association of Home Builders**

**Before the**

**House Committee on Financial Services**

**June 11, 2008**

Mr. Chairman and distinguished members of the Committee, I want to thank you for the opportunity to present testimony today on behalf of the National Association of Home Builders (NAHB). My name is Jerry Howard, and I am the Executive Vice President and Chief Executive Officer of NAHB, representing 235,000 thousand members that, in turn, employ millions of individuals in the home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing, and light commercial construction industries. I am proud of the strides our industry is making in bringing sustainability and energy efficiency to the homes that provide shelter for our nation. My goal today is to offer constructive input on how the government could more effectively and affordably incorporate green building into our nation's housing programs.

**I. Introduction**

NAHB and its members have been building green homes and incorporating sustainable building practices into residential construction for nearly three decades, long before many organizations ever embraced the "green building" movement. Our leadership on this issue and NAHB's commitment to promoting green building is the result of an organic and voluntary process whereby a natural demand for greater sustainability and efficiency is occurring simultaneously for consumers, builders and developers. This evolution has ultimately moved our industry to undertake a system of self-regulation; a practice shunned by most industries, in which we collectively agree to establish benchmarks in the design and construction processes for resource conservation. Essentially, our industry voluntarily implemented standards for itself with respect to green building as a means to bring greater uniformity to sustainable design and construction on a national scale.

Incorporating more energy efficiency and sustainability within our nation's affordable housing programs is a goal that we all collectively share. Indeed, the consistent increase in energy prices disproportionately affects lower and moderate-income families. However, in this era of turbulent economic times, everyone is facing tough choices about how to conserve, not only natural resources, but also material resources. Now, more than ever, it is critical that we work together to ensure the availability of affordable housing options for everyone regardless of their economic status.

In this regard, NAHB has been a leading advocate for housing generally, working tirelessly to ensure that every American can enjoy safe, decent, and affordable housing. Our efforts supporting the work of this Committee to revitalize the FHA and to reform the GSEs is

only part of our commitment to working with Congress on completing critical housing legislation as quickly as possible. NAHB has been a constant champion for ensuring an effective national housing policy and is fighting for quick restoration of the health of our nation's housing economy.

The experience of NAHB both in green building and housing policy provides us with a unique perspective on the topics of today's discussion. NAHB members are experts both in construction technology and innovation in the realm of sustainability and green building, as well as in issues related to housing affordability. We appreciate the opportunity to share our thoughts on these issues and on the *GREEN Act* (H.R. 6078) introduced by Representative Perlmutter. We do not believe that, as currently structured, this legislation will ultimately produce the long-term energy savings that it envisions. However, we hope the Committee will consider several recommendations and revisions that could improve the chances of the *GREEN Act* achieving its goals for sustainability while simultaneously supporting the broader affordable housing mission.

## **II. Green Building – NAHB Pioneers Residential Green**

NAHB's experience and support for voluntary green building predates many of the available green rating systems typically advertised today. In the early 1990's, a movement began at the local level to drive sustainable residential construction that incorporates a flexible framework to accommodate geography, resources, and energy efficiency. As the movement grew, more NAHB members became engaged and, in 1998, NAHB established a special subcommittee at the national level to work specifically on green building issues. By 2004, the industry, including over sixty stakeholders, had developed a set of national guidelines that directs builders how to incorporate ever-increasing sustainability benchmarks for compliance with green criteria. However, as the need to develop a more reliable verification methodology became apparent, the members of NAHB agreed to work collaboratively with the International Code Council (ICC) to undergo a rigorous standards-developing process that would ultimately produce the first standard approved by the American National Standards Institute (ANSI) for green residential construction and remodeling in the United States – the *National Green Building Standard*<sup>TM</sup>.

The development of the *National Green Building Standard*<sup>TM</sup> is the most recent, and most robust, effort undertaken by the industry to set compliance markers for green building in the various aspects that comprise residential construction – single family, multifamily, remodeling, and land development. The process began in early 2007 when a group of 42 stakeholders convened in Washington D.C. representing federal, state, and local governments, building code officials, design professionals, building supplier manufacturers, sustainable building interest groups (including the U.S. Green Building Council), utilities, builders, and energy efficiency consultants. These experts worked together for over a year to develop rigorous, environmentally-sound, and defensible criteria for green residential construction incorporating the seven primary principles of sustainability: energy efficiency, water efficiency, resource efficiency, lot and site development, indoor environmental quality, global impact, and home owner education. Once the group finalized the criteria, balloted appropriately, addressed all appeals and responded to over 3,000 public comments, the resulting product was presented for approval to ANSI in April of this year. When approved, the *National Green Building Standard*<sup>TM</sup> will be the only standard approved by a third-party Standards Developing Organization (SDO), i.e., ANSI, for residential construction.

The approval and recognition of the *National Green Building Standard*<sup>™</sup> is incredibly important in order to fit within the framework of established federal law relating to voluntary consensus standards utilized by federal agencies. The National Technology Transfer Act of 1996 (PL-104-113) states in Section 12 (d)(1) that:

*In general.--Except as provided in paragraph (3) of this subsection, all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.*

NAHB understood the importance of providing a viable, rigorous, and ANSI-approved alternative to the plethora of privately developed green rating systems that are flooding the market as the dynamism of the green movement continues to grow. We believe the federal government similarly understands the importance of this concept. By passing this law, it has appropriately identified the need to recognize those standards that have undergone the lengthy and rigorous approval procedures inherently equipped with adequate safeguards against undue private influence, confirmed by approval from unaffiliated SDOs like ANSI.

Participating in the development of the *National Green Building Standard*<sup>™</sup> alone, however, was not enough to demonstrate NAHB's commitment to sustainability. NAHB also invested millions of dollars to develop a national framework that delivers green building locally to our members. In February 2008, NAHB launched the national green building program. NAHB's investment created a system whereby builders can use an internet-based design tool inputting green criteria into their building models and then allow for local verification by trained green professionals. These professional verifiers not only confirm compliance with green criteria, but also provide accountability for the builder and assurance for the home buyer that the home is truly green. This internet-based system will be able to accommodate the criteria established in the *National Green Building Standard*<sup>™</sup> once it is approved and will provide national access to turn-key, code-ready national green benchmarks that are verifiable at a local level.

One prominent and very important aspect of green building that deserves some special consideration is energy efficiency. To be sure, green building embodies more than just energy efficiency, however this is a major component of building performance; primarily because of the costs associated with it, i.e., utility bills. There is an important distinction that should be noted in terms of energy efficiency features that can be built into a structure and the actual savings that result from that home's operation. For example, the majority of energy consumed in a home is a result of independent resident choices – i.e., lighting, electronics, appliance use, etc. – and there is the potential for a home that is built to green standards to perform less efficiently if it is not utilized as intended. Essentially, energy efficiency does not always exactly equate to energy savings. Therefore, NAHB has underscored the importance of educating homeowners about building performance with a requirement in the national program to highlight this significant variable, i.e., consumer choice, for which builders typically bear little, if any, responsibility.

NAHB hopes that Congress can similarly match this commitment and support meaningful education and consumer awareness programs aimed at green building in a manner that addresses the discrepancies between energy efficiency incorporated through construction and energy savings in home operation. While several organizations have many studies showing

the disproportionate negative impact that energy costs place on lower-moderate income households, it seems short-sighted only to adopt green building requirements for the structure while not simultaneously providing information on general conservation practices within the home to maximize the benefits of energy savings.

### **III. Guiding Principles for the Incorporation of Sustainable Building Practices for Federally Assisted Housing Programs**

As noted previously, the development of green building criteria and standards is a complex process due to the wide variety of stakeholders involved, as well as to the rapidly changing technology related to green that is becoming more widely available in the market. As more green buildings are developed, enabling the collection of data on cost savings and efficacy of the methods and materials used, best practices can be updated.

Because federal housing programs are such a critical component of the nation's housing system, NAHB believes that it is important to ensure that the incorporation of sustainable building practices for these programs is accomplished in a thoughtful and practical manner. Too often, new programs or changes to existing programs are developed in a vacuum, without regard to potential unintended consequences such as increases in costs that may be created among the many programs that are often used together.

Also, it is important to maintain a balance between the goals of affordable housing development and maximizing energy efficiency. If this balance is undone by the imposition of overly stringent or unrealistic goals for energy efficiency compliance on affordable housing programs, the cost of building affordable housing could increase to a level which is not sustainable over the long run. This could ultimately result in the development of fewer affordable housing units.

As such, NAHB strongly urges the Committee to consider the following principles as it moves toward adopting green criteria that would apply to federally assisted housing programs.

- Recognize and plan for a variety of green building standards to help increase the sustainability of federally assisted housing and allow for regular review and updating of these standards and criteria. To accomplish this goal, Congress should avoid naming specific green criteria in federal legislation that may seem sufficient today, but that could become quickly outdated or unworkable in the very near term.
- Provide the resources necessary to accomplish the goals of sustainability, including the additional staff and technology needed to implement the programs, as well as appropriations to help support the additional costs of building green.
- Structure new programs in a manner that allows ease of use with other housing programs, avoids duplicative rules and regulations, and supports funding timelines in concert with other program rules.
- Provide financial and other incentives to developers and builders of affordable housing to help them meet or even exceed green building goals.

- Work with industry stakeholders, including builders, lenders, the government sponsored enterprises, nonprofits, community groups, appraisers and others to develop attainable goals for the development of supportive financing mechanisms such as energy efficient mortgages and location efficient mortgages as well as appraisal standards that appropriately recognize the value of green building.
- Develop educational materials that can be used by the various stakeholders to learn and communicate best practices and further the goals of promoting sustainable federally assisted housing.

#### **IV. H.R. 6078 – Green Resources for Energy Efficient Neighborhoods (GREEN) Act**

NAHB has been engaged in providing substantive input on various drafts and has participated in planning sessions throughout the early development of the GREEN Act. We have been an active participant in continuous discussions of this legislation, and are pleased to have the opportunity again to provide additional feedback on several provisions in this legislation that we believe will have a direct or indirect impact on the viability and sustainability of our nation's housing programs. Attached to this statement is a section-by-section discussion of these provisions.

#### **V. Additional Discussion on the Impacts of Energy Efficiency Improvements to Housing**

In addition to our testimony on NAHB's experience and commitment to sustainability, we would like to respond to the discussion topics identified in the invitation letter for today's hearing. In many instances, these topics highlight the point that NAHB makes with respect to the difficulty in finding practical solutions for conservation that fit into everyone's budget, including that of the federal housing programs. Popular rhetoric says that it only costs two to four percent to build green with long term benefits paying off the upfront capital investments in a very short time. However, it is critical to remember that even if it is only two to four percent, someone must pay these costs, either the resident or the taxpayer. In terms of the government housing programs, these costs should be as low as possible to ensure that housing developed through these programs remains truly affordable.

#### **Discussion Topics:**

- *The expected outcome of providing a minimum threshold for energy reduction to rehabilitate existing housing towards energy efficiency improvements.*

The underlying variable that exists when trying to estimate results of setting minimum efficiency standards is inevitably the successful enforcement of such standards. Many state and local jurisdictions have energy codes and standards on the books already that are not being enforced in large measure due to a lack of resources and trained personnel. In fact, Representative Dennis Moore (D-KS), a member of this Committee, has introduced legislation (H.R. 4461 – *Community Building Code Administration Grant Act of 2007*) to address this problem by providing grants for local building code enforcement. NAHB applauds Representative Moore for taking this initiative because there is a significant lack of resources in the local code enforcement community that is not

addressed by increasing energy code requirements or setting “minimum thresholds.” The challenge is truly not how to increase minimum thresholds, but rather how to increase enforcement of existing energy codes that will likely reap the results we are not currently seeing due to these resource deficits.

As previously noted, the energy performance verification requirement problem would still exist in a framework where verification of such “minimum threshold” compliance is mandated. As well, setting “minimum thresholds” begs the need for a verification bureaucracy to review compliance reports and maintain records. This could be burdensome for an agency like HUD that is consistently being challenged with new and evolving goal requirements for the plethora of housing program related initiatives that it must undertake. Overall, the best way to bring greater efficiency online when rehabilitating existing housing is to provide greater incentives for the purchase of high efficiency appliances, to develop educational materials and communicate best practices to residents on how to operate a home more efficiently, and to allow housing project owners to retain a portion of the savings in operating costs from efficiency improvements for which they have supplied the capital to install at the beginning of the project.

- ***The practicality of implement[ing] energy efficient standards needed to qualify for the outlined incentives.***

It is important to note that the specific energy codes and standards identified in Section 2 of this bill, i.e., 2006 International Energy Conservation Code (IECC) and ASHRAE 90.1-2007, intended to be used as a basis for certain incentives, have, in large part, not undergone the appropriate analysis as required by the federal government. The Department of Energy (DOE) is responsible for reviewing new building codes and standards upon publication to make an “affirmative determination” on the new code’s ability to achieve greater efficiency over the previous version of the national model code. DOE has not yet completed its analysis or issued any determinations on either of the codes in Section 2. Therefore, it is somewhat inconsistent to set these codes as new minimums for HUD, and similarly to benchmark them as the basis for incentives, when the federal analysis on these codes has not been completed. Furthermore, the new federal standards could potentially create an instance in which compliance with state codes does not match compliance with federal benchmarks. It is also possible that state and local green building programs, many of which are locally-developed, may not adequately fit within the framework of the new federal benchmarks, despite the fact that they may produce more sustainable structures. In this instance, the federal incentives tied to these codes would be irrelevant for builders and developers that might not willingly exceed code compliance with their state requirements or that choose green building programs that are not exact matches for the code compliance set forth under such standards.

- ***The impact this bill will have on creating jobs within the United States.***

As the residential construction industry continues to face the worst downturn since the end of World War II, it is safe to say that the number of jobs in our industry is not growing. Despite our desire to quickly resolve this problem, it is important to remember that the jobs that many popularly refer to as “green jobs” are, in fact, the same jobs our members have already been doing for years because we have been building green homes

for years. This new emphasis on job creation in the green infrastructure category seems to bypass the fact that NAHB has been successfully training workforce professionals in residential construction through programs like the Home Builders Institute (HBI) for quite some time. Although we are encouraged by the increased attention on green jobs and the desire to bring more resources to support the jobs associated with green building, NAHB strongly urges Congress to ensure equal access to all workforce training programs approved by Congress for those in our industry, and others, that are not traditionally implemented in concert with labor unions.

- ***The impact you believe this bill will have on the distribution of information to consumers on the availability of energy efficient financial products, such as mortgages.***

Financial institutions, in accordance with common industry practice, already distribute information about the plethora of mortgage products available to consumers, including Energy Efficient Mortgages (EEMs). Rather than focusing on the distribution of information about EEMs, financial institutions should be encouraged to develop meaningful and effective lending programs. Information about energy efficient, or green lending products, already exists and, as this bill suggests, requiring banks to maintain a library of such information will do little to increase the demand for such products.

- ***The expected impact of incorporating Energy Efficient Mortgages and green building efforts into the Community Reinvestment Act will have on underserved communities.***

Within the context of this legislation, financial institutions could receive positive Community Reinvestment Act (CRA) consideration from their investment or other support for a wide range of energy efficient activities. Broadening CRA to consider energy efficient activities would undermine the original intent of CRA, which is to insure that financial institutions meet the credit needs of their community, including low- and moderate-income neighborhoods. Providing CRA credit for the broad range of energy efficient activities provided for in this bill would dilute financial institution investment in underserved areas. Institutions would have the ability to meet CRA requirements through one of the designated energy efficient or green building activities, rather than through providing lending, investment or services to underserved areas. Further, broadening CRA to accomplish energy efficiency or other policy objectives would set a precedent that will diminish the original intent of CRA.

- ***Describe in detail the importance of creating a Residential Energy Efficient Block Grant program to distribute allotted resources to eligible communities.***

Establishing grants to more effectively support residential energy efficiency is a very positive first step. In the process of distribution, it will be incredibly important not to create conflicts with other program regulations, including competitive funding cycles that function similarly. Financing affordable housing is already complicated, typically involving multiple sources of financing. The goal of this block grant should be to create a cost-effective and efficient program that will be able to deliver residential energy efficiency in a meaningful way to residents. An alternative approach could be to provide more funding for the CDBG or HOME program and allow green building as an eligible activity. In this instance, a provision would need to be included that allows the use of

CDBG for multifamily new construction, as current law prohibits the use of CDBG for new construction except under certain circumstances.

- ***Describe in detail the expected impact of applying the energy efficient standards when rehabilitating or building new construction will have on reducing carbon emissions.***

As previously stated, most of the energy consumed in a home is a result of consumer behavior and independent resident consumption patterns. While it is true that space heating and cooling are a big component of energy bills for a home, the actual use of the home by the resident is the single biggest indicator of how much energy is either used or saved. While builders and remodelers can control some part of the efficiency related to envelope improvements, most of the energy lost in a home is a result of plug load and other resident behavior that has little to do with the building envelope. Since most of the greenhouse gas emissions that come from the residential sector are from energy consumption in the home (mostly older housing stock), it is quite possible that a reduction in energy use could generate a reduction in carbon dioxide emissions. However, even if a builder or developer applied all of the efficiency standards set forth in this bill, for example, or if a remodeler rehabilitated an existing building to achieve these standards, it is quite possible that the dwelling will not produce the energy savings envisioned by this bill due to the potential for residents to operate the home inefficiently or in an unintended manner. A combined and conscientious effort on the part of the residents and the builder/developer, local utility, housing authority, and even local government to save energy is the best way to achieve potential carbon emissions reductions. There is only so much a builder or developer can do on the construction end, it takes a commitment on the part of the resident to live conservatively if true energy savings, not just efficiency, will be realized.

- ***The impact of this bill on achieving long-term energy savings.***

Because this bill embraces a very ambitious approach to bringing energy efficiency and green building into the nation's housing programs, it is possible that not every goal, including long-term energy savings, will be realized. Although well-intentioned in many parts, as discussed, the bill still has several implementation issues that could prevent it from actually achieving the goals set forth in its various provisions. Wide ranging variables like consumer energy consumption and the lack of adequate staffing and funding for many new programs are just two areas that could preclude successful implementation on a broad scale. However noble the desire to bring more aggressive energy efficiency requirements and over the long term to our nation's housing programs may be, it is only going to be achieved if the resources and structure to support such a goal are actually available at the level where the rubber meets the road, i.e., in each individual household. For these reasons, it is difficult to agree that, as currently structured, this bill will produce the long-term energy savings that it envisions. Long-term energy savings must be driven through existing programs (CDBG or HOME), a commitment to broad scale support and funding for HUD and local governments to integrate these goals, and meaningful consumer education and incentives to bring efficiency to each and every household. This commitment involves not only Congress, but also builders, developers, the federal housing agencies, utilities, and certainly the residents themselves that occupy these homes.

## **VI. Conclusion**

NAHB appreciates the opportunity to share our views on H.R. 6078 and green building initiatives in federal affordable housing programs. NAHB strongly supports the goal of increasing energy efficiency in all housing, including that which is affordable to low- and moderate-income families. During this time when we are facing both environmental and economic challenges, we urge the Committee and Congress to ensure that the ability of these programs to serve low- and moderate-income Americans is maintained as you contemplate increasing their energy efficiency standards. As always, we stand ready to work with you to achieve that goal.

## Addendum

### Comments on H.R. – 6078 – GREEN Act

#### Section 2 – Minimum HUD Energy Efficiency Standards

HUD currently has established minimum efficiency standards that apply to single family and multifamily construction. These standards were recently updated via passage of H.R. 6 – *Energy Independence and Security Act of 2007* (PL 110-140), Section 481. The language in H.R. 6 provides appropriate safeguards to allow the Secretary to conduct “availability” and “affordability” reviews prior to increasing the building codes for HUD properties. Furthermore, this language was negotiated with both the Senate Energy and Natural Resources Committee and the Senate Banking Committee, both of which agreed the language was appropriate to cover authority and not unintentionally damage compliance requirements for residents in states that might be non-compliant with the new federal benchmarks. Altering building code requirements for HUD programs without reference to state building codes potentially puts home buyers using FHA mortgage insurance in those states at a comparative disadvantage to non-FHA borrowers. Therefore, the security of allowing HUD to increase codes when appropriate, based on these compliance issues, seems similarly important to include as part of this legislation. For these reasons, NAHB recommends that the language in H.R. 6 be substituted for Section 2 in the GREEN bill.

Requiring energy audits on existing homes to prove 30 percent reductions in energy consumption could be particularly problematic for a number of reasons. First, the infrastructure to support energy ratings on a national scale simply does not exist. For example, one of the energy rating organizations that is referenced in Section 12 of this bill, Residential Energy Services Network (or RESNET), currently lists no certified raters in West Virginia, lists only one in Montana, and only two in Mississippi. The exponential increase in demand for raters among new and existing homes, coupled with the relative absence of them in many markets, presents an implementation hurdle that would be hard to overcome.

Second, the Department of Energy’s Energy Information Administration (EIA) data shows that 48.5 percent of all the energy consumed in a home is used for water heating, lighting, refrigeration, electronics, clothes washing, cooking, and computers,<sup>1</sup> all of which are result of resident behavior and for which a builder bears zero responsibility. Thus, seeking proof of reductions from building envelope improvements, which is the primary basis for an energy rating, may not produce the desired results when most of the energy is lost via plug load and consumer activities, i.e., how often residents do laundry, use a computer, or what types of lighting is consumed. NAHB recommends against requiring energy audits for minimum standards compliance as the lack of infrastructure precludes successful implementation and the objective of showing energy savings may not be proven by building envelope improvements alone.

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<sup>1</sup> 2007 Buildings Energy Data Book, U.S. Department of Energy/Energy Information Administration, September 2007, page 32, table 1.2.3. The figure represents primary energy consumed across all fuels types – natural gas, electric, fuel oil, LPG, others, and renewables. The figure excludes space heating, space cooling, other, and SEDS, as these may be attributable to building envelope performance.

Finally, NAHB notes that the legislation currently only references three privately developed green rating systems and does not provide equal recognition for standards, either residential or commercial, that have been approved by an SDO (e.g., ANSI). This is particularly important because often private rating systems refer to themselves as “standards” without obtaining approval by an unaffiliated SDO or outside consensus body. This is a profound distinction in accordance with federal law that oversees the protocol relating to recognition of technical standards developed by consensus groups. In this instance, NAHB would recommend removal of all references to specific named programs and allow the Secretary to undertake a rulemaking that would adequately assess all standards prior to accepting green building benchmarks, even in terms of providing extra credit.

**Section 3 – Energy Efficiency and Conservation Demonstration Program for Multifamily Housing Projects Assisted with Project-Based Assistance**

NAHB believes the establishment of this demonstration program is worthwhile. Although HUD currently has a similar demonstration program underway, this section provides additional important incentives to participate that are not now available to property owners. For example, HUD is authorized to provide, for up to a maximum of ten years, adjustments in maximum monthly rents, additional rental assistance or additional assistance under the Native American Housing Assistance and Self-Determination Act (NAHADA) to help amortize some of the costs of meeting the energy efficiency and conservation goals for a project. HUD shall also create incentives for project owners to carry out energy efficient renovations by allowing a portion of the savings in operating costs to be retained by the project owners. The Secretary is granted the authority to waive existing statutory or regulatory provisions that would impair implementation of the program, except for statutory or regulatory requirements related to fair housing, labor standards, or the environment.

NAHB supports the creation of a database of energy efficiency and conservation, and renewable energy, techniques, energy savings management practices, and energy efficiency and conservation financing vehicles. The database should also include the costs of such techniques and practices and the projected savings in energy consumption.

This bill also requires HUD to establish a competitive process to participate in the demonstration program. NAHB suggests that a competitive process may not be the most practical approach for this program. Thousands of project-based contracts expire every year, at different times. Coordinating the timing of competing for funding under this program along with other financing may prove to be difficult and add unnecessarily to the cost of undertaking energy efficient and conservation measures. HUD’s current demonstration program allows participation at any time.

NAHB generally supports the establishment of advisory committees and appreciates that this provision includes a wide variety of stakeholders, including home builders, as representatives on such committees. However, NAHB’s major concern with this section of the bill is that there are no appropriations provided for additional rental assistance or other incentives to property owners, staff, administrative costs and technological support to develop and maintain a comprehensive data base.

**Section 4 – Additional Credit for Fannie Mae and Freddie Mac Housing Goals for Energy Efficient Mortgages**

This section provides extra credit toward fulfillment of the GSE housing goals for purchases of energy efficient mortgages (EEMs). The bill proposes credit of 125 percent or greater for purchases of EEMs that meet the requirements for the GSE housing goals (i.e., specific borrower income and geographic requirements). The proposed language is identical to the amendment successfully offered during markup of H.R. 1427 – *Federal Housing Finance Reform Act of 2007*.

The concept is similar to the bonus points (i.e., extra credit) system that HUD allowed for GSE purchases of small multifamily and single family rental mortgages under the 2001 – 2004 housing goals. The bonus points successfully incentivized the GSEs to focus on these underserved sectors of the housing market. Unfortunately, HUD eliminated bonus points under the current housing goals requirements.

NAHB is a strong proponent of the bonus points concept and thus could support this provision. It provides incentives, like the bonus points, that would give the GSEs the option and freedom to seek out these types of investments at their discretion. This type of incentive has worked in the past and on the margins could work in this instance.

**Section 5 – Authority of housing-related government-sponsored enterprises with respect to energy-efficient and location-efficient mortgages and reporting**

Section 5 provides for an expansion of Fannie Mae and Freddie Mac program authorities to include energy-efficient mortgages (EEMs) and location-efficient mortgages (LEMs). This section also provides authority for Federal Home Loan Bank (FHLBank) advances to be used for EEMs and LEMs, and requires that each FHLBank report annually on the extent of EEM and LEM financing by their members through advances. The initial draft version of this bill did not address FHLBanks. While this provision does not target a level of “green investing” for FHLBanks, NAHB is concerned that the reporting requirements would unnecessarily burden the FHLBanks, and all member depository institutions, with tracking such investments.

**Section 6 – Energy-efficient mortgage and location-efficient mortgage goals for Fannie Mae and Freddie Mac**

Section 6 amends the Fannie Mae and Freddie Mac Charter Acts by expanding their missions to include: “promote and facilitate the use of energy-efficient mortgages [EEM] and location-efficient mortgages [LEM].” Expansion of the Enterprises’ Charters to include promotion of EEMs and LEMs will weaken the Enterprises’ abilities to meet their primary mission which is to maintain a secondary market for the reliable, stable and liquid flow of mortgage credit. While NAHB supports the broadening of the Enterprises’ program authorities as provided for in Section 5, NAHB does not support the expansion of their mission as provided for in Section 6 and, therefore, would recommend removal of Section 6. The authorities provided in Section 5 will permit the Enterprises to support EEMs and LEMs without diluting their liquidity mission.

The section also establishes housing goals for purchases of EEMs and LEMs and requires the Enterprises to submit plans for using EEMs to achieve a 50% reduction in home energy use, as well as reports on potential markets for EEMs and LEMs and potential barriers to wider use of such mortgages. The bill revises the initial goals requirements specified in an earlier version by significantly reducing the goal targets and expanding the time frame for the Enterprises' to meet the goals. The new targets for EEM goals would start at 5% in 2012 and increase to 25% of total mortgage purchases by 2022 and each year thereafter. Targets for LEM goals would start at 3% in 2012 and then increase to 10% of total mortgage purchases by 2022 and each year thereafter.

While NAHB is pleased that the goals provisions have been revised to somewhat more reasonable levels and time frames, we continue to object to the establishment of EEM and LEM goals. Specifically, NAHB is concerned that requiring goals for EEM and LEM purchases, in addition to the current affordable housing goals, would weaken the ability of the Enterprises to support the conforming mortgage market, in much the same way that the ratcheting up of the current housing goals has diminished the Enterprises' ability to provide liquidity to the broader conforming market, which is sorely needed at the present time. In order to meet the current housing goals, the Enterprises began purchasing more risky "affordable" mortgage products which have constrained their capital and resulted in significant losses, diluting their ability to meet their broader liquidity mission.

This recent experience emphasizes the fact that individual housing goals cannot be viewed in isolation but must be considered in totality with the requirements of all required housing goals. EEM and LEM goal requirements must be reconciled with the current and increasingly burdensome affordable housing goal requirements so that meeting the goals will not interfere with the Enterprises' broader liquidity mission. NAHB believes a better way to encourage more participation by the Enterprises in the EEM and LEM markets would be through a form of additional credit for their current housing goals as provided for in Section 4 of this legislation.

Further, NAHB opposes the "Plan and Reports" requirements specified in Section 6. Compliance with these provisions will create bureaucracy, costs and inefficiencies at the Enterprises as well as at HUD or any other regulatory body charged with monitoring and enforcement of these requirements.

In sum, NAHB recommends removal of Section 6 entirely as it attempts to use mortgage entities as instruments to achieve broad public policy that is unrelated to their business of providing support to the mortgage finance system for qualifying families and individuals. NAHB believes that the intent of Section 6 is achieved through Sections 4 and 5 of this bill.

#### **Section 7: FHA Single Family Energy-Efficient Housing Requirement**

If enacted, this legislation would require FHA to have insured at least \$1 billion in loans by December 31, 2012, for which the homes must have met the higher energy standards as proposed in the bill. This section also requires FHA to compile reports on the default and foreclosure experience of GREEN mortgages relative to the default and exposure experience on all FHA-insured single family mortgages insured.

The House of Representatives and the Senate have recently passed legislation which would authorize the modernization of FHA's single family mortgage insurance programs while also creating programs that are aimed at using FHA's mortgage insurance authority to help home owners facing foreclosure retain their homes. If the differences between the various bills can be reconciled and subsequently enacted, FHA will serve a key role in the recovery of the mortgage credit markets. The FHA's role will become even more significant as private mortgage insurers continue to tighten their credit standards, which will leave millions of families without alternatives to the FHA's programs.

At the present time, the recovery in the housing and credit markets is still beyond the foreseeable future. NAHB suggests that the proposed deadline in Section 7 be extended by several years to enable FHA to meet the stated \$1 billion in insured mortgages without interfering in its vital role of aiding the housing recovery.

Further, NAHB questions the necessity of the default and foreclosure reporting requirements. Such data could be costly to track and likely would result in little difference between the default/foreclosure experience on GREEN mortgages compared to FHA's overall portfolio.

#### **Section 11: Mortgage Incentives for Energy Efficiency in FHA-Insured Multifamily Housing**

This section of H.R. 6078 directs HUD to establish incentives for increasing the energy efficiency of projects financed with FHA-insured multifamily mortgages so they meet the standards set in Section 2. NAHB supports the provisions that allow mortgages to exceed the dollar amount limits otherwise applicable, to the extent these amounts are used to finance the energy efficient improvements. NAHB also supports reducing the amount that the owner is required to contribute.

However, H.R. 6078 also provides that incentives shall include providing a discount on the chargeable premiums for the mortgage insurance (MIP) from the amount otherwise chargeable. NAHB does not support this provision. As required by the Federal Credit Reform Act, MIPs are set using an economic model that is based on the performance of the multifamily portfolio over time. This enables HUD to collect sufficient funds to pay for the costs of the program over the life of the loans in the portfolio. The MIP thus reflects a level sufficient to protect the integrity of the Guaranteed Insurance/Special Risk Insurance fund (GI/SRI).

Reducing the MIP on "green" properties presumes that such properties are less risky than other FHA-insured properties that are not "green." There are no data to support this presumption. Because HUD must charge an MIP that is calculated based on the overall risk of the portfolio, reducing the MIP for the "green" properties would require either an increase of the MIPs for other FHA-insured loans or a Congressional budget appropriation to fund the shortfall.

NAHB strongly believes that the MIPs should be based on the economic model and should reflect the appropriate risk related to the portfolio. Reducing the MIP for "green" properties simply because they are "green" is inconsistent with the Congressional

mandate expressed in the Federal Credit Reform Act. HUD should be required to collect data on the default rates of “green” properties so that an appropriate adjustment to the MIP could be made in the future, if warranted.

### **Section 12: Energy Efficiency Certifications for Housing with Mortgages Insured by FHA**

Section 12 mandates energy ratings for all mortgages insured by FHA and presents a major implementation hurdle, as previously noted, primarily because the infrastructure to support wide-scale energy ratings does not exist. This is especially true when delegated to the only two groups singled out in the legislation by name (HERS and RESNET). While the section does allow “other organizations” to apply, it does not solve the interim problem of how to get wide-scale energy audits while the Secretary reviews additional organizational requests to perform the ratings. In addition to the infrastructure hurdles, the artificially-induced increase in demand for such services could potentially raise their costs and also detract them from servicing the growing successful existing programs that also rely upon the same infrastructure, e.g., Energy Star<sup>®</sup>, federal tax credits – Internal Revenue Code, Section 45L.

NAHB suggests eliminating such a requirement for FHA-insured mortgages. Furthermore, in instances where it can be determined that energy ratings are available, then the eligibility for additional certifying authorities should be expanded beyond just two groups to include the plethora of qualified officials and energy consultants that can undertake the necessary analysis.

### **Section 13: Assisted Housing Energy Loan Program**

NAHB supports the concept of the privately financed loan program established in Section 13, which would be used to help pay for energy efficient improvements in FHA-insured multifamily properties with Section 8 project-based assistance (including projects using Section 221(d)(3) and (d)(4)). The program is established on a pilot basis and requires HUD to work with at least three and no more than five lenders. The program would finance capital improvements that meet the energy efficiency requirements established by HUD and be secured by a mortgage subordinate to the FHA mortgage. The program would also provide for a reduction in the principal obligation based on the actual cost savings realized from the improvements and allow the owner to receive the full financial benefit from any reduction in the cost of utilities resulting from the capital improvements financed by the loan. NAHB suggests that HUD work with lenders and program participants to develop appropriate underwriting and other program requirements before implementation.

### **Section 14: Making It Green**

NAHB has concerns with the requirement under Section 14 (b) Plan for Assisted Housing. It is unclear as to whom the plan must be submitted (for example, HOME and CDBG funds are distributed to states and localities, but FHA multifamily mortgage insurance is issued by HUD). It is similarly unclear how it will be evaluated. NAHB questions whether or not HUD staff will be required to review the plan for every single housing unit or project that it helps finance. It appears there is no provision for funding

additional staff to undertake such a task, which will be time-consuming and expensive. Until these issues can be resolved, NAHB would recommend removing Section 14(b).

**Section 15: Residential Energy Efficiency Block Grant Program**

This section establishes a block grant program, similar to CDBG, which would be used to provide funding for activities that improve the energy efficiency of the proposed housing to meet the standards under Section 2. NAHB believes that funding sources for meeting the green standards are critical and, as such, supports the establishment of a block grant program for these purposes.

However, NAHB urges consideration of a process to distribute the funds that does not create conflicts with other program regulations, including competitive funding cycles. Financing affordable housing is already complicated, typically involving multiple sources of financing. The goal should be to create a cost-effective and efficient program. An alternative approach could be to provide more funding for the CDBG or HOME program and allow green building as an eligible activity. A provision would need to be included that allows the use of CDBG for multifamily new construction, as current law prohibits the use of CDBG for new construction except under certain circumstances.

**Section 17: Grant Program to Increase Sustainable Low-income Community Development Capacity**

Section 17 establishes a matching grant program to provide training, education, support or advice to eligible nonprofit community development organizations to improve energy efficiency, resource conservation and reuse, among other activities. Again, NAHB suggests that such activities could be funded through CDBG, rather than establishing a new program. In any case, distribution of the funds should be coordinated with other programs to avoid conflicts and facilitate timely grant awards. Also, these funds would not be available to for-profit organizations, which NAHB suggests undermines the objective of fostering green activities in the broadest manner.

**Section 19: HOPE VI Green Developments Requirement**

Section 19 is simply a reiteration of the HOPE VI reauthorization bill, H.R. 3524, which NAHB opposed during Floor consideration on January 17, 2008. NAHB's primary objection is that the legislation will unfairly and unnecessarily drive up development costs by mandating compliance with privately-developed green building rating systems. The additional cost burdens for green compliance adds further impediments to an already complicated financing structure for HOPE VI projects and could greatly discourage developers from undertaking future projects.

There is a limited amount of HOPE VI funding, and a developer's ability to leverage significant amount of additional financing is limited. In addition, total development costs (TDC) are capped. Unless TDCs are allowed to increase (or alternatively, the costs of complying with the green building requirements are excluded from TDC), the developers may be forced to scrimp on other important aspects of these developments to pay for costly green components. Decisions on what aspects of green development can

be afforded in these properties should be left to the developers and their partner public housing agencies.

Furthermore, it was particularly disappointing that the specific reference to a privately developed green rating system was removed only on the non-residential portion of this bill, allowing instead the authority for the Secretary to choose an appropriate standard. Equal consideration was not afforded to the *residential* requirements in H.R. 3524 and it retains a reference to a privately-developed green rating system only for residential structures. As previously communicated, NAHB could support a provision that encouraged developers of HOPE VI projects to include green building in their projects by increasing the points awarded in the competitive process for such activities. This would allow the developer and PHA partner to determine the appropriate green components for the project in the most cost efficient manner.

#### **Section 20: CRA Credits for Energy Efficient Mortgages and Green Building Efforts**

This section adds consideration of financial institution investment in EEMs and green building as factors in meeting Community Reinvestment Act (CRA) requirements. Under this provision, a financial institution could receive positive CRA consideration from their investment or other support for a wide range of energy efficient activities. NAHB is concerned that broadening CRA to consider energy efficient activities would undermine the original intent of CRA which is to ensure that financial institutions meet the credit needs of its community, including low- and moderate-income neighborhoods. Providing CRA credit for the broad range of energy efficient activities provided for in H.R. 6078 would dilute financial institution investment in underserved borrowers and areas. Institutions would have the ability to meet CRA requirements through one of the designated energy efficient or green building activities, rather than through providing lending, investment or services to underserved areas. Further, broadening CRA to accomplish energy efficiency or other policy objectives, would set a precedent that could lead to further dilution of the focus of CRA lending.

#### **Section 21: Consideration of Energy Efficiency Improvements in Appraisals**

Section 21 amends Section 1110 of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 USC 3339) to add a requirement that appraisals require “consideration of any renewable energy sources for, or energy-efficiency or energy-conserving improvements of features of, the property”. This section would also require the banking regulators to promulgate new regulations to enforce the standard, above, in conjunction with all federally-related transactions.

The proposed changes to FIRREA constitute changes in appraisal standards that, under FIRREA, are the responsibility of the Appraisal Standards Board (ASB), an independent body that was created for this purpose. The ASB has a well-established process for drafting proposed appraisal standards and exposing these proposals for public comment. Congress created the ASB to develop appraisal standards. Therefore, it would not be appropriate for Congress to preempt the work of a body it has created for this purpose, especially given the vague language that defines this requirement.

In this particular case, the proposed amendments to FIRREA and agency appraisal standards are unnecessary. Those appraisal standards already require compliance with the Uniform Standards for Professional Appraisal Practice (USPAP), and USPAP requires consideration of the characteristics of the property that are relevant to the assignment (S.R. 1-2(e)). Such characteristics would include energy efficient items, as well as the property's location, condition and features. This principle – recognizing what characteristics affect value and accounting for them appropriately in the valuation process – is well established in appraisal literature and education.

**Section 25: Green Banking centers**

This section requires financial institutions to establish “Green Banking Centers” to provide information to consumers on EEMs and how to obtain financing on other types of energy saving home improvements. NAHB believes that the proposed Green Banking Centers will unnecessarily add costs to the banking system that will most likely be transferred to customers. Rather than focusing on the distribution of information about energy efficient mortgages, financial institutions should be encouraged to develop meaningful and effective lending programs for green homes. Information about green lending products already exists and requiring banks to maintain a library of such information will do little to increase the demand for such products.