

Builder's Certification of Plans, Specifications, & Site

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0496
(exp. 08/31/2012)

Property Address (street, city, State, & zip code)	Subdivision Name
Mortgagee's (Lender's) Name & Address (this is the lender who closed the loan)	FHA Case Number
	Phone Number

- 1. Site Analysis Information:** To be completed on all proposed and newly constructed properties regardless of LTV ratio.
- a. **Flood Hazards.** Are the property improvements in a Special Flood Hazard Area (SFHA)? Yes No
- 1) Provide the community number and date of the Flood Insurance Rate Map (FIRM) used to document your answer. Community Number _____ Map Date _____
- 2) Is the community participating in the National Flood Insurance Program and in good standing? Yes No
- 3) If "Yes" to 1a. above, attach:
 (i) a Letter of Map Amendment (LOMA) or;
 (ii) a Letter of Map Revision (LOMR) or;
 (iii) a signed Elevation Certificate documenting that the lowest floor (including basement) is built in compliance with 24 CFR 200.926d(c)(4).
- b. **Noise.** Is the property located within 1000 feet of a highway, freeway, or heavily traveled road? Yes No
 Within 3000 feet of a railroad? Yes No
 Within one mile of a civil airfield or 5 miles of a military airfield? Yes No
- c. **Runway Clear Zones / Clear Zones.** Is the property within 3000 feet of a civil or military airfield? Yes No
 If "Yes," is the property in a Runway Clear Zone / Clear Zone? Yes No
- d. **Explosive /Flammable Materials Storage Hazard.** Does the property have an unobstructed view, or is it located within 2000 feet, of any facility handling or storing explosive or fire prone materials? Yes No
- e. **Toxic Waste Hazards.** Is property within 3000 feet of a dump or landfill, or a site on an EPA Superfund (NPL) list or equivalent State list? Yes No
- f. **Foreseeable Hazards or Adverse Conditions.**
- (1) Does the site have any rock formations, high ground water levels, inadequate surface drainage, springs, sinkholes, etc.? Yes No
 (2) Does the site have unstable soils (expansive, collapsible, or erodible)? Yes No
 (3) Does the site have any excessive slopes? Yes No
 (4) Does the site have any earth fill? Yes No
 If "Yes," will foundations, slabs, or flatwork rest on the fill? Yes No
- If you marked "Yes" to any of the above questions in f, please attach a copy of the State licensed engineers' (soils and structural) reports, designs, and/or certifications showing compliance with HUD requirements to ensure the structural soundness of the improvements and the health and safety of the occupants. Refer to HUD Handbook 4145.1 and FHA Data Sheet 79g.

- Complete this section when seeking eligibility for Maximum Loan-to-Value Financing.** Items 2 and 3 must be checked.
2. HUD Minimum Property Standards in the Code of Federal Regulations at 24 CFR 200.926d.
3. HUD Handbook 4145.1, Architectural Processing & Inspections for Home Mortgage Insurance, including Appendix 8, Site Grading & Drainage Guideline.
4. Local/State Code Applicable Provisions
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5. CABO One- and Two-Family Dwelling Code, as listed in 24 CFR 200.926b.
6. CABO 1992 Model Energy Code
7. Electrical Code for One- and Two-Family Dwellings, as listed in 24 CFR 200.926b. (current edition; NFPA 70A/1984).
8. This is a manufactured (mobile) home and was constructed in accordance with the Federal Manufactured Home Construction & Safety Standards (FMHCS). The label on the manufactured home shows compliance with the FMHCS. I hereby certify that the plans and specifications for all other construction (i.e., site, foundation) comply with the applicable building code or HUD requirement listed above, including para. 3-4, Handbook 4145.1, and the Permanent Foundations Guide for Manufactured Housing.

Builder or Builder's Agent: I hereby certify that the site analysis information above is true and accurate to the best of my knowledge and belief and that the plans and specifications were designed to mitigate any foreseeable hazards or adverse conditions. On all properties eligible for maximum LTV financing, I further certify that I have personally reviewed the plans, specifications, and site information submitted herewith. Based upon my review, I hereby certify that such plans, specifications comply with the applicable building code specified above as well as complying with the HUD construction requirements listed above. An "X" marked in the blank by each numbered item indicates that provisions from the marked code apply.

9 a. Name of Builder's Company or Builder's Agent (type or print)	10 a. Name & Title of Builder or Builder's Agent (type or print)
b. Street Address	b. Signature of Builder or Builder's Agent Date (mm/dd/yyyy)
c. City, State, & Zip Code	c. Telephone Number (include area code)

11. **Affirmative Fair Housing Marketing Plan (AFHMP)** Did you sell five (5) or more houses in the last twelve (12) months or do you intend to sell five (5) or more houses within the next twelve (12) months with HUD mortgage insurance?

Yes No

If "Yes," check either a, b, c, or d below.

- a. I am a signatory in good standing to a Voluntary Affirmative Marketing Agreement (VAMA).
- b. I have an AFHMP which HUD approved on (mm/dd/yyyy) _____.
- c. I have a contract with _____ to market this house.
- d. I certify that I will comply with the following: (a) Carry out an affirmative program to attract all minority and majority groups to the housing for initial sale or rental. Such a program shall typically involve publicizing to minority persons the availability of housing opportunities regardless of race, color, religion, sex, handicap, familial status or national origin, through the type of media customarily utilized by the applicants; (b) Maintain a nondiscrimination hiring policy in recruiting from both minority and majority groups; (c) Instruct all employees and agents in writing and orally in the policy of nondiscrimination and fair housing; (d) Conspicuously display the Fair Housing Poster in all Sales Offices, include the Equal Housing Opportunity logo, slogan and statement in all printed material used in connection with sales, and post in a prominent position at the project site a sign which displays the Equal Opportunity logo, slogan or statement, as listed in 24 CFR 200.620 and appendix M to part 200. I understand that I am obliged to develop and maintain records on these activities, and to make them available to HUD upon request.

Builder: I hereby certify that the site analysis information is true and accurate to the best of my knowledge and belief. On all properties eligible for maximum LTV financing, I further certify that the plans and specifications submitted herewith have been reviewed by the individual signing above and that the individual has the knowledge and experience necessary to determine whether such plans and specifications comply with the HUD/FHA requirements set forth at 24 CFR 200.926d and with other applicable HUD requirements as determined in accordance with 24 CFR 200.926(d)(1) and (2). Any subsequent changes to these plans and specifications shall comply with the aforementioned requirements. Upon sale or conveyance of the property, the undersigned will promptly furnish to lender a Warranty of Completion of Construction, form HUD-92544 on all properties eligible for maximum LTV financing.

12 a. Name of Builder's Company (type or print)	13 a. Name & Title of Builder (type or print)
b. Street Address	b. Signature of Builder Date (mm/dd/yyyy)
c. City, State, & Zip Code	c. Telephone Number (include area code)

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1001.1; 31 U.S.C. 3729, 3802).

This form must be complete and legible and must be reproduced to include both sides of the document.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Executive Order 11988 and HUD environmental regulations (24 CFR Part 51) require builders who build newly constructed properties to ensure that the property is not affected by: flood hazards, noise, runway clear zones, explosive/flammable materials storage hazards, toxic waste hazards, and other foreseeable hazards that may affect the site. HUD requires this information to determine whether the site/location factors would adversely affect the dwelling or homeowner. A response is required whenever a builder builds new properties. Confidentiality is not applicable.

Instructions for Builder's Certification, form HUD-92541

To obtain maximum loan to value financing (high ratio loan) for a new property, a builder must:

- a. Become a certified builder in accordance with HUD requirements and certify that the plans and specifications for the home meet HUD requirements prior to the beginning of construction; or
- b. Have the plans and specifications for the home approved by HUD prior to the start of construction; or
- c. Provide a HUD accepted ten year protection (warranty) plan.

If the property is eligible for maximum loan to value financing on the basis of a, b, or c above, then the builder must complete Items 1 - 12 on this form. The builder or its agent may complete Items 9 and 10.

If the builder does not meet the criteria listed above for maximum loan to value financing, then the loan to value financing will be limited to 90 percent (low ratio loan). For these cases, the builder must complete Items 1, 9 and 10 on this form. The builder, not the builder's agent, must complete Items 9 and 10.

Item 1. Site Analysis: All builders must answer all the questions in this item even when the improved area procedure is required. An addendum may be added, if necessary, to provide a full explanation about any of the site conditions listed.

- a. **Flood Hazards:** HUD prohibits new construction in Special Flood Hazard Areas unless there is a Letter of Map Amendment (LOMA), a Letter of Map Revision (LOMR), or an Elevation Certificate in accordance with 24 CFR 200.926d(c)(4) provided to the lender.
- b. **Noise:** Self-explanatory.
- c. **Runway Clear Zones/Clear Zones:** If the property is located in a Runway Clear Zone / Clear Zone, the lender must require, as a condition of borrower approval, that the borrower will sign a statement acknowledging receipt of the notification required by 24 CFR 51.303(a)(3).
- d. **Explosive/Flammable Materials Storage Hazard:** Self-explanatory.
- e. **Toxic Waste Hazards:** Self-explanatory.
- f. **Foreseeable Hazards or Adverse Conditions:** Self-explanatory.

Items 2 - 8: If the lender desires the property to be eligible for maximum financing (a high-ratio loan), the certified builder/certified builder's agent **must** complete these items as follows:

- 2. & 3.** Place an "X" in the box in Items 2 and 3. The certified builder must complete Items 4 thru 8 as follows:
 - 4.** The local/State code in Item 4 is the HUD accepted code for a locality as identified by a mortgagee from a list provided by HUD.
 - a. A "fully accepted code" is indicated by placing a "X" in the first space, identifying the code in the second space and placing the word "All" after "Applicable Provisions."
 - b. A "partially acceptable code" is indicated by naming the unacceptable portion as shown in the example: "All except materials standards."

The additional requirements needed from the Table in 24 CFR 200.926c, to supplement a partially acceptable local code, must be shown in Item 4.

If a local code has been changed since last accepted by HUD, a builder is required to submit for HUD review, a copy of such changes to the Code. Include all applicable service codes, appendices, and a copy of the statute, ordinance, regulation or ordinance making such changes.

- 5.** When the whole CABO Code is used as the HUD referenced code in jurisdictions with "no code" or an "unacceptable code," place an "X" in the box in Item 5 and place the word "All" in the space.

6. Place an "X" in the box on line 6, because builders must comply with this energy code.

7. Place an "X" in the box on line 7, because the Electrical Code for One and Two Family Dwellings, NFPA 70A/1984 is required in conjunction with the CABO Code.

8. If the dwelling is a manufactured (mobile) home, place an "X" in the box in Item 8. Properly complete lines 4 through 7 for all "foundation and site work."

Items 9 & 10. The builder or the builder's agent must complete and sign these items. If the builder's agent completes and signs these items the builder's agent is certifying that builder's agent has the knowledge and experience to determine whether the plans and specifications comply with HUD/FHA requirements set forth in 24 CFR 200.926d and with other applicable HUD requirements in 24 CFR 200.926(d)(1) and (2). The builder's agent is further certifying that the information about the site is accurate to builder's agent's best knowledge and belief.

Item 11. If a builder has sold or intends to sell five (5) or more newly constructed properties within a twelve (12) month period, the builder is required to have one of the following:

- a. Be in good standing to a Voluntary Affirmative Marketing Agreement (VAMA); or
- b. Have a HUD approved Affirmative Fair Housing Marketing Plan (AFHMP); or
- c. Have a contract with a Marketing Agent to implement its approved AFHMP; or a contract with a Marketing Agent with signatory to a National Association of Realtors VAMA; or
- d. Certify to the requirements which are hereby listed, taken from 24 CFR 200.620.

Items 12 & 13. The builder must complete and sign Items 12 and 13. The certification is self-explanatory. All changes to the original form must be initialed and dated by the builder.

Appraiser / Direct Endorsement Lender's Responsibility

Fee Appraiser / Direct Endorsement Staff Appraiser. The fee appraiser / DE staff appraiser must receive a fully executed form HUD-92541 before performing the appraisal on proposed or under construction properties or properties less than one year old.

The appraiser must review Item 1 and note in the Appraisal Report any discrepancies between the information in Item 1 and the actual conditions observed on site. The appraiser must take into consideration the effects of any site conditions on the value of the property.

Direct Endorsement Underwriter. The DE Underwriter must review the Appraisal Report and the Builder Certification as part of the underwriting process, taking into consideration the effect of any site conditions on the value of the property. Page 1 of this form must be complete and legible. Only the builder or the builder's agent is authorized to complete or change this form. The DE Underwriter cannot change and/or modify this certification form.

MCRV/CRV Submissions

Form HUD-92541 is required on all newly constructed properties and must be in the HUD Case Binder on all conversions from VA.



**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

April 21, 2011

Shaun Donovan, Secretary
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

**RE: Request for HUD to Comply With Requirement that All Houses
Securing Loans Insured by the Federal Housing Administration Must Meet
the 2006 International Energy Conservation Code Standards**

Dear Secretary Donovan:

We are writing on behalf of the Natural Resources Defense Council (“NRDC”) and its 1.3 million members and activists to respectfully request that the U.S. Department of Housing and Urban Development (“HUD”) fulfill its statutory obligations relating to the energy code compliance of homes secured by loans insured by the Federal Housing Administration (“FHA”). The Cranston-Gonzalez National Affordable Housing Act¹ (“Cranston-Gonzalez”), as amended, requires, among other things, that all new homes subject to mortgages insured under the National Housing Act and Title V of the Housing Act of 1949, and new or rehabilitated homes funded by HOPE VI revitalization grants, must meet the 2006 International Energy Conservation Code (“IECC”) energy code.

In this letter, we focus on the urgent need for HUD to come into compliance with Cranston-Gonzalez’s energy efficiency standards for new single-family residential houses. Although the Act also establishes energy efficiency requirements for multifamily housing, public housing, or other buildings subject to financing using HUD authority, we do not address these requirements in the present letter.

¹ Cranston-Gonzalez National Affordable Housing Act (“Cranston-Gonzalez”), Pub. L. No. 101-625, 104 Stat. 4079 (Nov. 28, 1990).

Energy codes ensure that homes are built with materials and methods that produce cost-effective energy savings. When a home is completed, these materials and methods are often hidden from the home buyer and difficult to verify, making it difficult for a homebuyer to account in the home purchase transaction for lower or higher expected energy expenses. FHA borrowers who buy homes not in compliance with energy codes end up paying higher energy bills every month, and therefore have less income for the loan payment or other essentials. In addition, the 2006 IECC code requires, among other things, that the builder to include a written description of certain building attributes such as insulation levels for future home inspectors or energy raters.

Moreover, when new homes are not built to code, our nation misses out on a low-cost and important opportunity to save energy and thereby protect our energy security and our environment.

NRDC recognizes that HUD has taken important steps toward incorporating greater energy efficiency into many of HUD's existing programs. We especially applaud HUD for seizing opportunities to improve efficiency through the Green Retrofit Program. For these reasons, we are confident that you will recognize the importance of ensuring that new homes subject to FHA mortgage insurance meet model energy codes. Indeed, President Obama has repeatedly recognized the importance of improving residential energy efficiency, most recently in his March 30, 2011 speech on energy security.²

In this letter, we first discuss the substantial benefits that compliance with the above mandates will provide for the environment, the economy, and the homeowner. Second, we outline the legal framework governing energy efficiency standards for new homes that receive FHA mortgage insurance. Third, we discuss the specific ways that HUD is currently violating the law. Finally, we outline the actions HUD must take to comply.

I. The Benefits of Energy Efficiency Rules

Transitioning to energy efficient homes offers a path toward protecting our environment, increasing our economic vitality, and reducing energy costs for American homeowners. In the United States, energy consumption by buildings accounts for about 40% of our energy use and CO₂ output.³ Better building methods can produce energy savings between 20% and 50% through the use of techniques such as proper building orientation, insulated walls, foundations, and roofs, better daylighting, and the use of efficient lighting, heating, cooling, hot-water,

² <http://www.whitehouse.gov/the-press-office/2011/03/30/remarks-president-americas-energy-security>.

³ Greg Kats, *Greening Our Built World: Costs, Benefits, and Strategies* 189 (2009).

and ventilation systems.⁴ Building energy costs are substantial, totaling 170 billion dollars per year.⁵ Thus, widespread adoption of basic energy efficiency standards in construction could, conservatively, achieve a 20% reduction in energy costs, resulting in savings of approximately 34 billion dollars for businesses and homeowners and giving the U.S. economy a substantial boost.

Unfortunately, the needed improvement in the energy efficiency of new homes is not occurring on its own. This is due to multiple reasons and market failures, including the fact that the energy usage attributes of a house, derived from both builder methods and equipment used, are often hidden from homebuyers, and it can be difficult to obtain reliable information about expected energy usage. Moreover, home buyers with lower monthly energy expenses can be expected to be better borrowers in this federally insured loan program.

At the same time that increased energy efficiency saves homeowners money and improves the loan quality of federally insured loans, it will reduce our emissions of pollution – a critical national goal. Indeed, the Intergovernmental Panel on Climate Change (“IPCC”) found energy efficiency in buildings to be the most cost-effective strategy for reducing greenhouse gas emissions.⁶ According to IPCC data, energy efficiency in residential and commercial buildings could reduce projected baseline global emissions by 29% in 2020.⁷ This represents one of the most substantial reductions in greenhouse gas emissions possible without a sudden massive switch from worldwide fossil fuel consumption. And making our housing stock more efficient will allow our national resources to be used for more productive purposes.

For these reasons, it is critical to implement the energy efficiency standards required by Congress.

II. Statutory Requirements

Starting with the 1990 Cranston-Gonzalez National Affordable Housing Act, Congress established a series of deadlines and requirements for the Secretary of Housing and Urban Development relating to the energy efficiency of buildings. Congress passed amendments updating and expanding the original requirements of

⁴ *Id.*

⁵ U.S. Congress, Office of Technology Assessment, *Building Energy Efficiency*, OTA-E-518, 3 (Washington, D.C.: U.S. Government Printing Office, May 1992).

⁶ Levin, M. *et al.* 2007., “Chapter 6: Residential and Commercial Buildings,” In *Climate Change 2007: Mitigation*, Contribution to the Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate [B. Metz, O.R. Davidson, P.R. Bosch, R. Dave, L.A. Meyer (eds)], Cambridge University Press: Cambridge, United Kingdom and New York, NY, USA.

⁷ *Id.* at 6.5.1.

Cranston-Gonzalez in the Energy Policy Act of 1992,⁸ the Energy Policy Act of 2005,⁹ and the Energy Independence and Security Act of 2007.¹⁰ The current law, codified at 42 U.S.C. § 12709, requires the following.

First, Congress required that, by September 30, 2006, the Secretaries of HUD and Agriculture shall jointly establish energy efficiency standards for “(A) new construction of public and assisted housing and single family and multifamily residential housing (other than manufactured homes) subject to mortgages insured under the National Housing Act; (B) new construction of single family housing (other than manufactured homes) subject to mortgages insured, guaranteed, or made by the Secretary of Agriculture under title V of the Housing Act of 1949; and (C) rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 1437v of [Title 42].” 42 U.S.C. § 12709(a)(1). Congress further required that the standards must “meet or exceed the requirements” of the 2006 IECC. 42 U.S.C. § 12709(a)(2).

Second, Congress provided a default standard if the Secretaries failed to act. Specifically, if the Secretaries fail to establish standards by September 30, 2006, then “all new construction and rehabilitation of housing specified in [subsection (a)(1)] shall meet the requirements of the 2006 IECC, or, in the case of multifamily high rises, the requirements of ASHRAE Standard 90.1-2004.” 42 U.S.C. § 12709(b).

Third, Congress required that if either the 2006 IECC or the ASHRAE Standard 90.1-2004 is revised, the “Secretaries shall, not later than 1 year after such revision, amend the [energy efficiency] standards . . . to meet or exceed the requirements of such revised code,” unless the Secretary determines that compliance with the revised code “would not result in a significant increase in energy efficiency or would not be technologically feasible or economically justified.” 42 U.S.C. § 12709(c).

⁸ The Energy Policy Act of 1992 expanded Cranston-Gonzalez § 109 to require that efficiency standards must be met by any “new construction of single family housing (other than manufactured homes) subject to mortgages insured, guaranteed, or made . . . under title V of the Housing Act of 1949.” Energy Policy Act of 1992, Pub. L. No. 102-486 §§ 109(a)(1)(B), 109(g), 106 Stat. 2776 (Oct. 24, 1992). The Act also required the Secretary, in consultation with the Secretary of Agriculture, to develop energy standards within one year, and provided that if the Secretary failed to do so, new single family homes must meet “CABO Model Efficiency Code, 1992, or, in the case of multifamily high rises, the requirements of ASHRAE Standard 90.1-1989.” *Id.* at 109(g).

⁹ The Energy Policy Act of 2005 further expanded the classes of homes that must meet efficiency standards to include “rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants.” Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (Aug. 8, 2005). Congress again mandated that the Secretary, in consultation with the Secretary of Agriculture, develop energy efficiency standards within a year. *Id.*

¹⁰ Energy Policy and Security Act of 2007 (“EISA”), Pub. L. No. 110-140 § 481, 121 Stat. 1648 § 481 (Dec. 19, 2007).

Finally, the statute again provides a default standard if the Secretaries fail to amend the energy efficiency standards within one year of an IECC or ASHRAE revision. 42 U.S.C. § 12709(d). In this case, the revised standard would automatically go into effect once two findings are made: a) either the Secretary of HUD or the Secretary of Agriculture must find that the revised standard would not “negatively affect the availability or affordability of new construction of” housing “subject to mortgages insured” by HUD or the Secretary of Agriculture; and (b) the Secretary of Energy must determine, under [42 U.S.C. § 6833] that the revised code or standard would improve energy efficiency.” *Id.*

III. Statutory Violations

The Secretary and HUD are in violation of all three of the key statutory obligations contained in 42 U.S.C. § 12709 and described above. First, the Secretary failed to comply with the statutory mandate to develop energy efficiency standards for new homes subject to mortgages insured under the National Housing Act and Title V of the Housing Act of 1949, and new or rehabilitated homes funded by HOPE VI revitalization grants by September 30, 2006. 42 U.S.C. § 12709(a).

Second, the Secretary and HUD are in violation of section 12709(b) because HUD has failed to require all new single family construction seeking FHA mortgage insurance to meet or exceed the 2006 IECC energy code. HUD’s current practice is defective in three ways.

(1) The principal document through which a prospective borrower demonstrates that a home is eligible for HUD’s mortgage insurance program is the “Builder’s Certification of Plans, Specifications, & Site Form” (See Attachment 1). This form, however, continues to refer to the “CABO 1992 Model Energy Code,” rather than the 2006 IECC energy code.

(2) The Builder’s Certification Form fails to indicate that compliance with the out-of-date CABO model energy code is mandatory for all homes subject to all types of FHA loans. The CABO model energy code appears under a portion of the form that is to be completed “when seeking eligibility for Maximum Loan-to-Value Financing.” Moreover, it is not listed as a mandatory element of such eligibility. The CABO 1992 model energy code is box 6 and the form states that only “[i]tems 2 and 3 must be checked.”

(3) FHA and HUD have no quality assurance method or mechanism in place to verify that the system of builder certifications actually ensures that homes do, in fact, comply with the energy code required by statute. There is ample evidence that energy codes are not enforced in many states and localities. In light of this evidence of non-enforcement, we believe that the Builder Certification must be supported by

some additional quality assurance system that will attempt to assure that the homes for which FHA provides mortgage guarantees meet the statutorily-required model energy code.

Third, HUD is also out of compliance with the requirement that the Secretaries revise the energy efficiency standards for homes qualifying for FHA mortgage insurance within one year after the 2006 IECC has been revised, unless the Secretary makes certain determinations regarding the revised code. The 2006 IECC was updated in January of 2009, yet the Secretary has failed to revise HUD's standards or take any action to evaluate the new 2009 IECC energy code.

IV. Required Actions

HUD must take several actions immediately in order to come into compliance with federal law. The recommendations detailed below, if fulfilled, would represent significant steps towards compliance with congressional commands, would likely improve FHA loan quality by saving borrowers money on utility bills, and are critical to enabling America to achieve its energy policy objectives.

First, HUD must immediately inform FHA-approved lenders and the builder community that FHA may only insure mortgages on homes that meet or exceed the 2006 IECC energy code. HUD's actions must include updating the text for item No. 6 on the Builder's Certification of Plans, Specifications, & Site Form from "CABO 1992 Model Energy Code" to "2006 International Energy Conservation Code."

Second, HUD must revise the Builder's Certification of Plans, Specifications, & Site Form so it is made unmistakably clear that the builder must affirm that the home meets the 2006 IECC model energy code in order to secure any loan insured by FHA under the National Housing Act, regardless of whether the loan is for "Maximum Loan-to-Value Financing." As noted, the header above item No. 2 currently reads "Complete this section when seeking eligibility for Maximum Loan-to-Value Financing." This is incorrect and could lead a builder to assume that the current form only requires energy code compliance if the home seeks FHA Maximum Loan-to-Value Financing. This confusion must be remedied immediately—every lender and builder should understand upon reading the form that any new construction of single family homes must meet 2006 IECC standards to qualify for any FHA mortgage insurance arrangement. The form could significantly impact compliance as it is the only current method HUD has to determine whether new construction complies with energy efficiency requirements.

Third, HUD must start work immediately to adopt the 2009 IECC. We are eager to work with HUD to evaluate the most appropriate approach to analyzing and adopting the 2009 IECC and intend to provide comments to HUD on this topic in

the near term. Likewise, HUD should start the process of developing a system to ensure that the homes whose mortgages it ensures actually meet the required model energy code.

V. Conclusion

NRDC strongly believes that making sure that new homes are constructed to the appropriate IECC energy code standard will deliver substantial value to homeowners in the form of lower energy bills, to HUD in the form of better loan quality, and to the country in the form of increased economic vitality, greater energy security, and reduced pollution. We are eager to help HUD ensure immediate compliance with the requirements of the law. HUD's current non-compliance is not acceptable and if HUD is unwilling to develop a plan for swift compliance with section 12709, NRDC will evaluate its options, including potential legal remedies.

We respectfully request that HUD immediately develop a plan to update and correct the Builder Certification form and inform the builder community and FHA-approved lenders that FHA is only permitted to insure mortgages on homes that meet or exceed the 2006 IECC energy code. This plan should be established within 45 days. We also request a meeting as soon as possible with the appropriate HUD and FHA officials to discuss HUD's plan to implement these legal requirements. We appreciate your thoughtful consideration of this matter and look forward to hearing your reply.

Sincerely,



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Enclosures