Willard F. Hughes
2025 Chairman of the Board

May 12, 2025

Russell T. Vought, Director
Office of Management and Budget
Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, DC 20503

Dear Mr. Vought:

On behalf of the National Association of Home Builders (NAHB), I am pleased to submit the attached deregulatory recommendations pursuant to the Office of Management and Budget's (OMB) *Request for Information: Deregulation*, that was published in the Federal Register on April 11, 2025.

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 build 10 or fewer homes per year. As small business owners operating in a heavily regulated industry, our members know firsthand how difficult and often costly it can be to understand and comply with the many government regulations that apply to their day-to-day work. Given these burdens, we welcome President Trump's vision for regulatory reform and deregulation, and are hopeful that his efforts will yield measurable results for the home building industry.

Improving Housing Affordability by Empowering Builders

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.[1] Likewise, 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.[2]

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

[1] 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

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

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

Regulations Drive Up Housing Costs

Builders must comply with mandates that are imposed by federal, state and local governments, and cover issues ranging from labor and environmental regulations to building codes and standards to zoning and subdivision ordinances, and more. The time, effort and costs associated with meeting these requirements are significant. 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.[3] 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.[4] 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.[5] 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.[6]

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 ongoing and growing housing affordability crisis in this country. We are pleased that President Trump and this administration are looking for ways to eliminate excessive or

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[3] 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/

[4] 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

[5] 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-households-cannot-afford-a-median-priced-new-home-april-2024.pdf.

[6] Based on the 2018 median rent of $2,189, a $1,000 increase in the cost of building a new apartment unit would price out 19,617 renters.

unnecessary regulations so that more Americans can find an affordable home or rental of their choice in a location of their choice.

Reining In a Regulatory Machine Gone Awry

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.

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.' 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 — all of which have played a role in the current housing affordability crisis.

Importantly, the U.S. Supreme Court invalidated the deference historically given the agencies in June 2024 in *Loper Bright Enterprises v. Raimondo*[7], and we are hopeful that re-examining certain regulations in light of this ruling will bring some relief. Further, as part of both his regulatory reform and deregulatory agendas, President Trump has issued several executive orders directing the agencies to 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.

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." As outlined in the attached recommendations, while NAHB believes some regulations should be rescinded in their entirety, others simply need tweaks to make the rules more effective. Others need to better clarify who or what activities are covered and/or simplify the compliance requirements. Finally, others need to be reworked to reduce the burdens they place on small businesses as required by the Regulatory Flexibility Act.

Rules Ripe for Revision/Rescission

Reasonable regulations are essential to protecting the health and safety of workers, the environment, financial institutions, and other interests, yet they must strike a balance. Federal regulations must be carefully structured to achieve their intended benefits while minimizing the burdens on citizens — especially in light of the many oftentimes duplicative initiatives taken at the state and local levels. Likewise, they must be based on accurate, up-to-date information and

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

supported by sound, science-backed data so that both the regulators and the public have assurances that the rules will help meet the intended outcomes.

Unfortunately, the federal agencies often fail to adequately consider how their proposed regulations will be interpreted, how they will be implemented on the ground, if and how they are compatible with other existing rules, or how they will affect the regulated entities or their output. Likewise, although there are processes in place for how agencies are to scrutinize potential regulations, a recent report found that many agencies have failed to properly analyze a proposal's costs, impacts or reach.[8] Ultimately, the failure to provide regulatory certainty or properly and fully assess a rule's impacts and alternatives can have a significant effect on regulated industries and in our case, further exacerbate the ongoing housing affordability crisis.

There are countless federal rules, regulations and guidance documents that impact where and how new residential construction is allowed to occur and how new homes and apartments are financed. Some of these policies are regularly revised or reversed by incoming administrations, some are periodically reviewed and amended (or not) and some are relics that have not been revisited since they were first enacted. Many fail to accurately account for compliance costs, overstate benefits, and/or impose burdensome paperwork requirements that do little to advance the goals of their authorizing statutes. Still others were created by agency whims or ideologies and have little or no statutory basis. For these reasons, NAHB is pleased that this administration is taking a holistic approach to deregulation and is hopeful that this effort will deliver results.

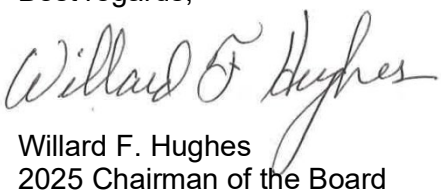
Given the short time in which the public was given to respond to this request for information (RFI), we have focused on the rules, regulations and guidance documents that our members most often encounter and/or find to be the most problematic. We have provided these recommendations in both a spreadsheet, which enables a quick scan, as well as a series of one- to two-page issue briefs on each regulation raised in the spreadsheet. In addition to identifying the target policies, we offer justification for the deregulatory action and practical solutions to clarify requirements, promote compliance, and reduce costs and administrative burdens while continuing to preserve the environment, provide employment opportunities, promote entrepreneurship, maintain reasonable financing options, and provide safe and affordable housing. In addition to the deregulatory actions, we have included a number of policies and programs that NAHB strongly urges the administration to continue to maintain and grow. While these may contain regulatory and/or nonregulatory elements, they are programs that are needed for compliance, are useful to home builders and home buyers, drive innovation, and/or are vital to growing markets.

NAHB appreciates the opportunity to submit these deregulatory recommendations and believes their implementation could make a real difference for home builders, home buyers, and renters. We will continue to review the history, reasoning and dockets for the various regulations impacting our industry and continue to identify rules that could benefit from revision or rescission.

[8] 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

As you consider next steps and priorities, we would be happy to meet with you and the OMB team. We have also separately requested meetings with several of the agency heads to discuss these recommendations, among other issues. If you would like to meet, have any questions about this submission, or require any additional information, please contact Ken Wingert, NAHB's Chief Advocacy Officer, at 202-266-8459 or kwingert@nahb.org.

Best regards,



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Department / Agency	Title & Brief Description	Federal Register Citation and CFR	Requested Deregulatory Action	Trump Administration Action, If Any
RECOMMENDATIONS FOR DEREGULATORY ACTIONS				
CFPB	**Ability-to-Repay and Qualified Mortgage Standards Under TILA - Final Rule.** The Dodd-Frank Act and the final ATR rule define a qualified mortgage as a loan for which, the total points and fees do not exceed three percent of the total loan amount. The CFPB's Final ATR Rule includes closing charges paid to affiliated settlement service providers in the three percent cap on points and fees while the points and fees charged by unaffiliated companies are not included.	78 Federal Register 35430 (June 12, 2013); 12 CFR 1026	Revise the Rule to exclude fees and points from affiliated firms in the three percent cap.	
USDA/RHS	**30-Day Notification of Nonpayment of Rent in Multi-Family Housing Direct Loan Programs.** USDA/RHS interprets Section 4024(c) of the Coronavirus Aid, Relief, and Economic Security Act, (CARES Act, P.L. 116-136) to require property owners whose mortgages are financed with its multifamily direct loan or grant programs to indefinitely provide written notification to tenants facing eviction for nonpayment of rent 30 days prior to filing a formal judicial eviction procedure.	89 Federal Register 20539 (March 25, 2024); 7 CFR Part 3560	Issue a legal opinion clarifying that the CARES Act 30-day notice requirement ended and enforcement actions should not be taken against covered properties. Also, rescind the final rule and defer to state and local landlord-tenant laws .	
DOD	**Agency-Specific Procedures for Complying with National Historic Preservation Act (NHPA) Section 106.** Appendix C of 33 CFR Part 325 is the U.S. Army Corps of Engineers (Corps) procedures for ensuring projects permitted under the Clean Water Act or Rivers and Harbors Act protect historic properties. A proposed rule was issued in 2024 to rescind Appendix C due to perceived differences between its compliance process and 36 CFR Part 800 (i.e., NHPA implementing regulations).	89 Federal Register 9079 (February 9, 2024)	Withdraw the rulemaking and retain Appendix C.	
DOE	**Technical Assistance for Latest and Zero Building Energy Code Adoption.** Section 50131 of the Inflation Reduction Act appropriated $1 billion to influence states and local jurisdictions into adopting unamended model building energy codes.	Public Law No. 117-169 (passed August 16, 2022)	Suspend further implementation of the funding programs appropriated by Section 50131.	
DOE	**Building Energy Code Cost-Effectiveness Methodology.** The U.S. Department of Energy (DOE) conducts and publishes cost-effectiveness analyses for a wide range of energy efficiency measures for buildings and appliances. The cost-effectiveness methodology used by DOE fails to accurately reflect the real market costs paid by the consumer and is not based on validated studies of the benefits for the consumer.	DOE Building Energy Code cost-effectiveness methodology (as of December 2024)	Revise the DOE processes for how it conducts cost-effectiveness and cost-benefit analyses following a notice and comment process. Re-evaluate agency practices for estimating market costs for energy efficiency measures paid by the consumer and for accurately evaluating the associated benefits.	
DOE	**Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces.** On December 18, 2023, the Department of Energy (DOE) issued a final rule updating the energy efficiency standards for residential furnaces.	88 Federal Register 87502 (December 18, 2023); 10 CF 429 - 430	Suspend implementation of this final rule or postpone its compliance date until appropriate re-evaluation occurs.	

DOE	**Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters.** On May 6, 2024, the Department of Energy (DOE) issued a final rule updating energy efficiency standards for residential consumer water heaters (including electric and gas-fired storage tank water heaters). Beginning in May 2029, this will effectively mandate that electric storage water heaters with capacities greater than 35 gallons use heat pump technology.	89 Federal Register 37778 (May 6, 2024); 10 CFR 430	Rescind the final rule.	
DHS/FEMA	**National Flood Insurance Program Technical Bulletins.** The National Flood Insurance Program's (NFIP) minimum construction standards require residential buildings within the 1%-annual-chance or 100-year flood zones to be elevated above the base flood elevations (BFE's) that are shown on Flood Insurance Rate Maps. Enclosed areas below BFE's can only be used for parking, storage or building access. The Federal Emergency Management Agency's Technical Bulletins that interpret the NFIP construction standards often exceed the actual requirements.	44 CFR 60.3 and NFIP Technical Bulletins	Revise the NFIP Technical Bulletins to remove guidance that exceeds the NFIP minimum construction standards. Revise 44 CFR 60.3 to allow lobbies and amenity spaces a multifamily buildings to be below BFE as long as the dwelling units are elevated. Develop additional guidance and/or Technical Bulletins that identify additional feasible, cost-effective flood mitigation practices.	
DHS/FEMA	**National Flood Insurance Program 50 Percent Rule.** When structures that are located within a Special Flood Hazard Area (SFHA) are damaged, local communities that participate in the National Flood Insurance Program (NFIP) are responsible for assessing impacts before repairs are made. If the costs of improvements or the cost to repair the damage exceed 50 percent of the market value of the building, the NFIP requires that structure to be brought up to current floodplain management standards.	44 CFR 59.1/44 CFR 60.3	Remove the interior finish and utility service equipment costs from FEMA's list of Substantial Improvement/ Damage structural cost factors; Exempt pre-mitigation resiliency upgrades ; and discourage local jurisdictions from counting multiple projects to trigger the 50 percent threshold.	
DHS/FEMA, DOC/NOAA, DOI/FWS	**Letters of Map Revision.** If a landowner believes a property is improperly depicted on a Flood Insurance Rate Map (FIRM) and/or opts to elevate a plot of land so that is above the base flood elevation and therefore out of the floodplain, the Federal Emergency Management Agency (FEMA) has established a process by which to do so via a Letter of Map Amendment (LOMA) or a Letter of Map Revision Based on Fill (LOMR-F). Claims that these revisions may negatively impact endangered species or their critical habiatat have caused FEMA to suspend issuance of these letters across a wide swathe of California until FEMA completes an Endangered Species Act consultation, which it estimates could take years.	44 CFR 65 and 72	Reinstate the processing of LOMA/LOMR -F requests in California while FEMA completes the ESA consultation.	
DOI/FWS	**Final Rule Resinding Rule TItled Endangered and Threatened Wildlife and Plants Regulations for the Designation of Critical Habitat.** Reinstated the U.S. Fish and Wildlife Service's (FWS's) 2020 critical habitat rules addressing how FWS is to conduct the required economic analysis of proposed critical habitat designations.	87 Federal Register 43433 (July 21, 2022); 50 CFR 17	Rescind the final rule.	

DOI/FWS	**Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants.** Reinstates FWS's 2019 "blanket 4(d) rule" that extends identical ESA protections to newly listed "threatened species" as the ESA does for "endangered species."	89 Federal Register 23919 (April 5, 2024); 50 CFR 17	Rescind the final rule. Restore reforms put in place during 1st Trump administration.	On February 3, 2025, the Secretary of the Interior signed Secretarial Order 3418, directing the FWS and NMFS to withdraw three ESA final rules put place during the Biden administration concerning the species listing process, designation of critical habitat, and 4(d) rules.
DOI/FWS & DOC/NOAA	**Endangered and Threatened Wildlife and Plant: Regulations for Interagency Cooperation.** Changed the ESA's Section 7 Consultation regulations to allow federal regulators to consider potential impacts to species or designated critical habitat presumably caused by climate change and require compensatory mitigation to offset impacts that cannot be avoided.	89 Federal Register 24268 (April 5, 2024); 50 CFR 402	Rescind the final rule. Restore reforms put in place during 1st Trump administration.	On February 3, 2025, the Secretary of the Interior signed Secretarial Order 3418, directing the FWS and NMFS to withdraw three ESA final rules put place during the Biden administration concerning the species listing process, designation of critical habitat, and 4(d) rules.
DOI/FWS & DOC/NOAA	**Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designation Critical Habitat.** Revised the regulations by removing the requirement for the U.S. Fish and Wildlife Service (FWS) or the National Oceanic and Atmospheric Administration (NOAA) to share the potential economic impact resulting from a species' listing or the designation of critical habitat, requiring consideration of long-term threats to species and their critical habitat such as climate change and expanding the ability to designate "unoccupied critical habitat".	89 Fed. Reg. 24300 (April 5, 2024) 50 CFR 424	Resind the final rule. Restore reforms put in place during 1st Trump administration.	On February 3, 2025, the Secretary of the Interior signed Secretarial Order 3418, directing the FWS and NMFS to withdraw three ESA final rules put place during the Biden administration concerning the species listing process, designation of critical habitat, and 4(d) rules.
DOI/FWS & DOC/NOAA	**Endangered and Threatened Wildlife and Plants: Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat.** Rescinded the December 2020 rule that defined "habitat" which required that places designated as habitat must actually be capable of supporting the species.	87 FR 37775 (June 24, 2022); 50 CFR Part 424	Rescind the 2022 final rule and restore the definition of “habitat” finalized in 2020.	
DOL/ETA	**Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations.** Revised the regulations under the National Apprenticeship Act (NAA) to address existing skills gaps by expanding the apprenticeship model to include new industries, yet excludedconstruction from the expansion.	85 Federal Register 14294 (March 11, 2020); 29 CFR 29	Withdraw the rule and repropose a rule with substantial modifications to remove the severe restrictions on the categories of acceptable registered apprenticeship programs, including those in nontraditional areas like residential construction.	
DOL/OSHA	**Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings.** The Occupational Safety and Health Administration (OSHA) issued a proposed standard that would require employers to create a plan to evaluate and control heat hazards in the workplace.	89 Federal Register 70698 (August 30, 2024)	Rewrite the rule to ensure it creates industry-specific standards, promotes themain tenets of "water, rest and shade" for any construction standard, and exempts construction operations that occur as part of disaster recovery efforts.	On April 16, the Occupational Safety and Health Administration (OSHA) announced it will host a virtual public hearing on its proposed rule on Heat Injury and Illness on June 16, 2025, at 9:30 AM Eastern.
DOL/OSHA	**Improve Tracking of Workplace Injuries and Illnesses.** Revised regulations to require certain employers to electronically submit information to OSHA.	88 Federal Register 47254 (July 21, 2023); 29 CFR 1904	Withdraw the July 23 rule and repropose one recordkeeping rule that streamlines the recordkeeping process.	
DOL/OSHA	**Worker Walkaround Representative Designation Process.** Clarifies that employees may designate a non-employee third-party as their representative during an OSHA inspection.	89 Federal Register 22558 (April 1, 2024); 29 CFR 1903.8(c)	Withdraw the existing regulation and return to the prior regulation that required the third-party representative to have expertise to better support the inspection, such as an industrial hygienist or engineer.	

DOL/WHD	**Employee or Independent Contractor Classification Under the Fair Labor Standards Act.** Modified the way the agency will determine independent contractor status by requiring the conderation of six unweighted factors.	89 Federal Register 1638 (January 10, 2024); 29 CFR 780, 788, and 795	Revert to the rule finalized on January 7, 2021 (86 Federal Register 1168).	
DOL/WHD	**Updating the Davis-Bacon and Related Acts Regulations.** Changed regulations regarding the calculation of prevailing wages in local areas. It reverted to the "three step method" to determine prevailing wages, expands the covered site of work, expands the types of workers covered under Davis Bacon, combines urban and rural areas to determine wage rates, and fails to include changes that would have helped multifamly housing providers who use HUD programs covered under DBRA.	88 Federal Register 57526 (August 23, 2023). 29 CFR Parts 1, 3, and 5	Rescind the final rule and work with stakeholders to modernize calculation of prevailing wages. DOL should also work with HUD to provide regulatory relief for multifamily housing providers who use HUD programs covered under DBRA. Relief would include designating all multifamily projects as "residential" construction with a single wage rate, ending split wage determinations, and locking in construction wage rates as those in effect on the date an FHA borrower submits an application for a firm commitment.	
DOL/WHD	**Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Computer and Outside Sales Employees.** Salaried workers classified as executive, administrative, professional, outside sales and computer employees are exempt from overtime pay requirements if a worker earns at or above a defined salary level called the “standard salary.” The salary level for determining the overtime exemption has been in flux over the past three administrations, as each attempted to redefine it. In April 2024, the DOL issued a rule to increase the salary level from $35,568 to $43,888, and then to $58,656 on Jan. 1, 2025, marking a nearly 65% increase from the salary threshold issued before this rule. From that point, the rule contemplates automatic updates every three years using that new methodology.	89 Federal Register 32842 (April 26, 2024); 29 CFR 541	As a result of the nationwide injunction, the salary level is currently set back to $35,568. DOL should withdraw its appeal to the Fifth Circuit Court of Appeals and withdraw the rule, and maintain enforcement of the regulation issued in September 2019.	
EPA/DOD	**Revised Definition of "Waters of the United States"; Conforming.** Changes the rule to conform the definition of "Waters of the United States" to the Supreme Court" 2023 *Sackett* decision.	88 Federal Register 61694 (September 8, 2023); 33 CFR Part 328	Revise the September 8 rule to define and implement the “relatively permanent” standard as the *Rapanos* plurality envisioned; eliminate the standalone interstate waters, impoundments, and intrastate lakes and ponds categories; and revise the list of exclusions to clearly state that features such as ephemeral channels and any artificial features constructed in non-jurisdictional waters are not WOTUS.	On March 24, 2025, the Agencies published a request for recommendations on key issues for a potential, new WOTUS rule. They are also hosting listening sessions in DC and across the country. After the comment period ends, they are expected to move quickly to propose a revised rule and undertake notice and comment.
EPA/DOD	**CWA Section 404 Jurisdictional Determinations.** The U.S. Army Corps of Engineers (Corps) is responsible for determining the presence or absence of waters of the U.S. on any given parcel. It does so through the issuance of Approved Jurisdictional Determinations (AJD's). Due to the number of jurisdictional requests it receives, the Corps prioritizes AJDs associated with permit actions over "stand-alone" AJDs that are important to the planning stages of a project.	USACE Regulatory Guidance Letter (RGL) No. 16-01 (October 2016)	Revise RGL No. 16-01 through a supersceding RGL that requires USACE to conduct JD requests in the order in which they are received.	

EPA/DOD	**CWA Section 404 Nationwide Permit Reauthorization.** 33 USC 1344(e) establishes a five-year term for "streamlined" Nationwide Permits (NWPs) authorizing impacts to federally-regulated waterbodies and wetlands. The current NWPs expire in March 2026.	88 Federal Register 73522 (December 27, 2021)	Reissue the NWPs to avoid any interruption in their availability. The priority should be to reissue the NWPs. However, the Agencies should also consider increasing the threshold limit subject to their use from the 1/2 acre, which is down from 10 acres in the 1980s and three acres in the mid-1990s.	On April 2, 2025, the Corps and EPA sent a pre-proposed rule reauthorizing the NWPs to the Office of Management and Budget (OMB) for the required interagency review.
FHFA	**30-Day Notification of Nonpayment of Rent**. The Federal Housing Finance Agency (FHFA) interprets the CARES Act (P.L. 116-136, Section 4024(c)) to indefinitely require that owners of properties covered by federally backed mortgages from Fannie Mae and Freddie Mac must provide tenants with written notification a minimum of 30 days prior to a lease termination or eviction action for nonpayment of rent.	2025 SCORECARD FOR FANNIE MAE, FREDDIE MAC, AND COMMON SECURITIZATION SOLUTIONS (page 4)	Issue a legal opinion clarifying that the CARES Act 30-day notice requirement ended and enforcement actions should not be taken against covered properties. Withdraw the CARES Act Notice Directive to the Enterprises arguing that multifamily borrowers have a strict obligation to adhere to the CARES Act 30-day notice requirement as part of the terms of their loan documents. Withdraw the 2025 Scorecard requirement to "[e]nhance resident-centered practices, such as tenant protections, at Enterprise-backed multifamily properties".	
HUD	**Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America (BABA) Provisions as Applied to Recipients of HUD Federal Financial Assistance**. Enacted as part of Pub. L. 117-58, BABA establishes a "Buy America Preference," (BAP) for the iron, steel, construction materials and manufactured products used for infrastructure projects that receive Federal Financial Assistance (FFA). The U.S. Department of Housing and Urban Development (HUD) adopted a phased implementation schedule for its BABA-covered programs. HUD Notice CPD-25-01, dated January 13, 2025 stated that the BAP does not apply to FFA used to construct single family housing, but it does apply to FFA for multifamily projects.	88 Federal Register 17001 (March 21, 2023) 2 CFR Parts 184 and 200	Issue a new directive that supercedes Notice CPD-25-01 and exempts both single family and multifamily housing projects with FFA from BABA. At a minimum, issue a 5-year BABA public interest general applicability waiver for FFA obligated through HUD's HOME program.	
HUD/CPD	**HOME Investment Partnerships Program: Program Updates and Streamlining**. On January 6, 2024, the U.S. Department of Housing and Urban Development (HUD) published a final rule to update, streamline, and authorize new flexibilities in the HOME Program regulations. It is intended to increase flexibility to support the production of affordable housing and lower housing costs while reducing regulatory burdens. It also expands tenant protections through a mandatory HOME lease addendum that imposes a set of uniform tenant protections for HOME-assisted rental housing tenants and HOME tenant-based rental assistance (TBRA) recipients.	89 Federal Register 746 (January 6, 2024); 24 CFR Parts 91, 92, 570, and 982	Propose a new rule to rescind the Tenant Protection and Selection provisons. Defer to state and local landlord-tenant laws.	HUD issued "HOME Investment Partnerships Program: Program Updates and Streamlining-Delay of Effective Date," 90 FR 8780 (February 3, 2025), which delayed the final rule's implementation date from February 5, 2025 until April 20, 2025. HUD later published, "HOME Investment Partnerships Program: Program Updates and Streamlining-Delay of Effective Date, Withdrawal, and Correction," 90 Fed. Reg. 16085 (April, 17, 2025), which delays the Tenant Protection and Selection provisions until October 30, 2025 and makes other changes.

HUD/FHA	**Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard.** On April 23, 2024, The U.S. Department of Housing and Urban Development (HUD) published a final rule to implement new floodplain and wetland management regulations. For single-family new construction where building permit applications are submitted on or after Jan. 1, 2025, if they are located within the 100-year floodplain, they must be elevated 2 feet above the base flood elevation to qualify for FHA mortgage insurance. FHA-insured and HUD-assisted multifamily properties were required to comply with the new Federal Flood Risk Management Standard (FFRMS) no later than Jan. 1, 2025. The FFRMS floodplain expands horizontally and vertically beyond the 100-year floodplain.	89 Federal Register 30850 (April 23, 2024); 24 CFR Parts 50, 55, 58, and 200	Rescind the final rule in its entirety. In the interim, expand the February 21 waiver to include multifamily housing.	HUD issued a temporary partial waiver on February 21, 2025 for single-family new construction in Special Flood Hazard Areas. 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. On Jan. 20, 2025 President Trump revoked EO 14030 (Climate-Related Financial Risk) which reinstated the Federal Flood Management Standard.
HUD/FHA	**30-Day Notification Requirement Prior To Termination of Lease for Nonpayment of Rent**. The U.S Department of Housing and Urban Development (HUD) interprets Section 4024(c) of the Coronavirus Aid, Relief, and Economic Security Act, (CARES Act, P.L. 116-136) to require owners of properties with federally-backed mortgages, public housing agencies and owners of properties receiving project-based rental assistance to indefinitely provide written notification to tenants facing eviction for nonpayment of rent 30 days prior to filing a formal judicial eviction procedure.	89 Federal Register 101270 (December 13, 2024); 24 CFR Parts 247, 880, 884, 886, 891, and 966	Issue a legal opinion clarifying that the CARES Act 30-day notice requirement ended and enforcement actions should not be taken against covered properties. Rescind the final rule and defer to state and local landlord-tenant laws.	
HUD/FHA	**Implementation of the National Environmental Policy Act (NEPA)**. The National Environmental Policy Act (NEPA) requires federal agencies to consider the environmental effects of proposed actions as part of their decisionmaking processes. The Council on Environmental Quality (CEQ) issued regulations outlining how to do so. Pursuant to President Trump's E.O. 14154, CEQ published an interim final rule on February 25, 2025 that eliminates its NEPA regulations and directs the federal agencies to use or amend the NEPA implementing procedures they relied upon prior to this rulemaking.	90 Federal Register 10610 (February 25, 2025); 24 CFR 50; 24 CFR 58	Propose a new rule that exempts FHA Multifamily Mortgage Insurance Programs from HUD's NEPA requirements at 24 CFR part 50. HUD should also consider providing an exemption from NEPA under 24 CFR 58 for its Home Investment Partnerships (HOME) Program.	CEQ Interim Final Rule, "CEQ Interim Final Rule, "Removal of National Environmental Policy Act Implementing Regulations," See 90 Fed. Reg. 10610 (Feb. 25, 2025) took effect April 11, 2025.
HUD/PD&R	**Changes to the Methodology Used for Calculating Section 8 Income Limits Under the United States Housing Act of 1937**. On January 10 2024, HUD published a notice that proposed setting an absolute cap of 10 percent on the maximum possible increase in income limits for FY 2024 and thereafter. HUD also announced this change took effect on April 1, 2024.	89 Federal Register 1583 (January 10, 2024); HUD NOTICE PDR-2024-02	Revoke the policy to cap the maximum annual income limit increases at 10 percent. Withdraw Notice PDR-2024-02, "Transmittal of Fiscal Year (FY) 2024 Income Limits for the Public Housing and Section 8 Programs," (April 24, 2024).	

HUD & USDA	**Final Determination: Adoption of Energy Efficiency Standards for the New Construction of HUD and U.S. Department of Agriculture (USDA) Financed Housing.** The Final Determination requires single-family new construction financed with HUD/FHA and USDA to be built to the 2021 International Energy Conservation Code (IECC) and multifamily properties financed with certain HUD programs be built to 2021 IECC or ASHRAE 90.1-2019.	89 Federal Register 33112 (April 26, 2024)	In litigation. Assuming that updates to the IECC are allowed, HUD and USDA should propose an affirmative process rule for the "availability and affordability test" required by Sec. 109, establishing that updates to the energy standards cannot risk decreasing availability or affordability of new construction.	HUD and USDA delayed the requirement for six months
OCC, FDIC, Fed.Reserve	**Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices: Interagency Guidance on CRE Concentration Risk Management**. The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Company issued joint guidance to reinforce sound risk management. The guidance established lending thresholds at banks stating that if loans for construction, land development, and other land were 100 percent or more of total capital, the institution would be considered to have a CRE concentration and should have heightened risk management practices. Secondly, if loans for construction, land development, and other land and loans secured by multifamily and nonfarm nonresidential property (excluding loans secured by owner-occupied properties) were 300 percent or more of total capital, the institution would also be considered to have a CRE concentration and should employ heightened risk management practices.	71 Federal Register 74580 (December 12, 2006)	Withdraw the guidance.	
OCC, FDIC, Fed.Reserve	**Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures.** The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation issued a final rule to revise the definition of "high volatility commercial real estate exposure." Under the final rule, a loan that finances land development but does not include the construction financing of one- to four-family residential structures will be categorized as an HVCRE exposure unless the exposure meets another exclusion from the definition.	84 Federal Register 68019 (December 13, 2019) 12 CFR Parts 3, 217 and 324	Revise the final rule to eliminate the requirement that a land development loan must have a capital risk weight of 150 percent unless it is combined with a construction loan for a one-to-four family residential structure.	

OCC, FDIC, Fed.Reserve	**Regulatory Capital Proposed Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity**. In 2023, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation issued the Basel III Endgame Proposal that would substantially revise the capital requirements applicable to large banking organizations and to banking organizations with significant trading activity. The proposed approach would, in part, change the risk weights on residential mortgage loans to require banks to hold more capital against mortgage loans in their portfolios. Certain provisions that apply currently only to banks with total assets greater than $250 billion would apply to banking organizations with total assets of $100 billion or more and their subsidiary depository institutions. By all accounts, it will significantly increase the capital levels required for banks with assets greater than $100 billion.	88 Federal Register 64028 (September 18, 2023)	Withdraw the proposed rule.	
RECOMMENDATIONS FOR PROGRAMS THAT SHOULD BE CONTINUED				
All Departments and Independent Agencies	**The Department of Government Efficiency.** The Department of Government Efficiency (DOGE) was created via Executive Order on January 20, 2025. It is charged with cutting waste, fraud and abuse within the federal government. Doge teams are to be deployed to each federal agency and their affiliates to identify opportunities to streamline operations, cut costs and improve efficiency.	90 Federal Register 8441 (January 20, 2025)	Ensure adequate staffing levels remain in place to support the availability and full functionality of various programs and authorizations so as to not delay or negatively impact new home construction.	
DOE	**BuildingsNEXT Student Design Competition.** The U.S. Department of Energy's (DOE) The BuildingsNEXT Student Design Competition (formerly the Solar Decathlon Design Challenge) is an annual collegiate competition where interdisciplinary teams design high-performance buildings that address real-world issues such as existing building retrofits, affordability, and resilience.	79 Federal Register 61622 (October 14, 2014)	Maintain and grow the yearly event and continue to advocate for a strong building workforce and workforce development opportunities.	
DOE	**Zero Energy Ready Home.** DOE's Zero Energy Ready Home program is a voluntary program to accelerate the adoption of techniques and technologies to create high-performance, energy efficient buildings. Structures that meet the stringent efficiency and performance criteria and are certified through a qualified third-party may receive a ZERH certificate.	DOE Zero Energy Ready Home (ZERH) Single Family Version 2	Preserve and expand DOE Zero Energy Ready Homes Revise the DOE Zero Energy Ready Homes program to: Improve design flexibility ;Remove the 2021 IECC insulation backstops in favor of the insulation levels of the 2024 IECC; Remove the prevailing wage requirements	
DHS/FEMA	**National Flood Insurance Program Map Modernization/Technical Mapping Advisory Council.** Current, accurate, and scientifically sound Flood Insurance Rate Maps (FIRMs) are essential to the National Flood Insrance Program. Although improvements have been made to make many of the maps more current, the Federal Emergency Management Agency (FEMA) must implement a consistent methodology and schedule to update the maps.	42 USC 50	Provide the funding and resources needed to develop and implement an ongoing map modernization strategy.	

EPA	**ENERGY STAR®.** ENERGY STAR is an above-code voluntary program administered by the U.S. Environmental Protection Agency (EPA) that has educated consumers and facilitated the use of cost-effective energy efficient appliances and technologies for over three decades. Since its inception, it is reported to have saved 5 trillion kilowatt-hours of electricity.	10 CFR 436.41	Preserve and expand ENERGY STAR. Revise the ENERGY STAR for Homes program to remove the 2021 IECC insulation backstops in favor of the insulation levels of the 2024 IECC	
EPA	**Indoor AirPlus.** Indoor AirPlus is a voluntary partnership and labeling program that helps new home builders improve Indoor Air Quality by implementing construction practices and product specifications that minimize exposure to airborne pollutants and contaminants.	89 Federal Register 9849 (February 12, 2024)	Preserve and expand Indoor AirPlus as a voluntary above-code program.	
EPA	**WaterSense**. The U.S. Environmental Protection Agency's (EPA) WaterSense is a voluntary program designed to create self sustaining markets for water-efficient products and services via a common label and home certification options.	90 Federal Register 14139 (March 28, 2025)	Preserve and expand WaterSense as a voluntary above-code program.	

CONSUMER FINANCIAL PROTECTION BUREAU

Amendments to the 2013 Mortgage Rules Under the Truth in Lending Act - Final Rule
81 Federal Register 72160 (October 19, 2016); 12 CFR 1024, 12 CFR 1026

The Dodd-Frank Act and the ability-to-repay (ATR) final rule define a qualified mortgage (QM) as a loan for which the total points and fees do not exceed three percent of the total loan amount. In 2016, the Consumer Financial Protection Bureau (CFPB) finalized amendments to certain mortgage rules issued in 2013. While the CFPB's changes do not impact the ATR Final Rule's calculation or cap on points and fees, the final ATR Rule includes closing charges paid to affiliated settlement service providers in the three percent cap on points and fees while the points and fees charged by unaffiliated companies are not included.

Reasons for Deregulation

- Points and fees from affiliated firms should be excluded from the three percent cap, thereby giving equal treatment to affiliated and non-affiliated settlement service providers as many home builders and lenders have established settlement service affiliates such as mortgage and title companies. Requiring affiliate fees and points to be included in the three percent cap creates disincentives to establish affiliated relationships that provide measurable benefits to consumers.

Solutions

- Revise the October 2016 rule to exclude fees and points from affiliated firms in the three percent cap.

U.S. DEPARTMENT OF AGRICULTURE/RURAL HOUSING SERVICE

30-Day Notification of Nonpayment of Rent in Multi-Family Housing Direct Loan Programs

89 Federal Register 20539 (March 25, 2024); 7 CFR Part 3560

In March 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). Among other provisions, the CARES Act required owners of federally-backed and federally-assisted housing to provide tenants with at least 30-days written notice prior to filing an eviction case in local courts for nonpayment of rent.

The CARES ACT mandatory "notice to vacate" was intended to be a temporary federal measure that extended states' eviction notice procedures. Nevertheless, the previous Administration actively sought to permanently extend many of the temporary pandemic-era tenant protections. The U.S. Department of Agriculture's Rural Housing Service (USDA-RHS) interpreted Section 4024(c) of the CARES Act to indefinitely require that owners of covered properties provide 30-days written notice to tenants facing eviction for nonpayment. Although the CARES Act's initial eviction moratorium expired on July 24, 2020, and the federal COVID-19 public health emergency declaration ended on May 11, 2023, the 30-day notice to vacate remains a regulatory requirement for owners of covered RHS properties.

Reasons for Deregulation

- The CARES Act 30-day notice to vacate was a response to the COVID-19 pandemic, which ended years ago. There is no longer a valid reason for USDA to preempt state and local eviction laws.
- Continued enforcement of the notice remains a contested issue that contributes to:
    - Backlogs in eviction courts;
    - More lost, potentially unrecoverable rent for housing providers; and
    - Mounting rent debt for tenants, which worsens their credit and long-term housing opportunities.

Solutions

- Issue a legal opinion clarifying that the CARES Act 30-day notice requirement ended, and enforcement actions should not be taken against owners of covered properties.
- Rescind the final USDA-RHS rule, "30-Day Notification Requirement Prior To Termination of Lease for Nonpayment of Rent."
- Defer to state and local landlord-tenant laws.

U.S. DEPARTMENT OF HOMELAND SECURITY/FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Program 50 Percent Rule
44 CFR 59.1/44 CFR 60.3

When structures that are located within a Special Flood Hazard Area (SFHA) are damaged, local communities that participate in the National Flood Insurance Program (NFIP) are responsible for assessing impacts before repairs are made. If the costs of improvements or the cost to repair the damage exceed 50 percent of the market value of the building, the NFIP requires that structure to be brought up to current floodplain management standards.

The 50 percent rule creates a disincentive to conduct voluntary mitigation, upgrades and regular maintenance. This is because the Federal Emergency Management Agency (FEMA) broadly defines "substantial improvement" to include building elements that have no bearing on the structural integrity of a building and allows the state and local officials, when determining if a project meets the substantial improvement threshold, to count multiple projects completed over a specified period of time. As a result, the cost of a modest renovation, repair or mitigation project can be deemed to exceed 50 percent of the home's market value for many homeowners, thereby triggering the need to elevate the home and creating a disincentive to conduct the work due to the added expenses of doing so.

Reason for Deregulation

- The broad inclusion of building elements that have no bearing on the structural integrity of a building, coupled with the ability to count multiple projects, can make the cost of a modest renovation or repair project exceed 50 percent of the home's market value for many homeowners, thereby triggering the need to elevate the home to, or above, the applicable Base Flood Elevation or Design Flood Elevation.
- The 50 percent rule's elevation requirements are inherently costly, inefficient, burdensome, and ill-suited to be applied to the aged housing stock, impeding necessary and desired renovations, repairs, and maintenance; relegating thousands of homes to disrepair and/or tear-down status; and subjecting low-moderate income earners, retirees, and the elderly to bear the brunt of the rule's rigid requirements.
- More realistically accounting for the costs associated with substantial improvement, can encourage and facilitate necessary repair, maintenance and renovation activities and ensure the existing housing stock remain appealing to and viable for the next generation of home buyers, thereby contributing to healthy home sales and commerce.

Solutions

- Remove the interior finish and utility service equipment costs from FEMA's list of Substantial Improvement/Damage structural cost factors and limit the calculation of project cost to only those elements necessary to the structural integrity of the building.
- Exempt pre-mitigation resiliency upgrades from the 50 percent calculation.
- Discourage local jurisdictions from counting multiple projects to trigger the 50 percent threshold or from reducing the threshold to a lower percentage.

U.S. DEPARTMENT OF HOMELAND SECURITY/FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Program Technical Bulletins
44 CFR 60.3 and NFIP TB-0 through TB-11

Pursuant to the National Flood Insurance Program (NFIP), the Federal Emergency Management Agency (FEMA) has established minimum construction standards for certain new buildings. One of the minimum standards requires buildings located within the 1%-annual-chance or 100-year flood zone to be elevated above the base flood elevations (BFE's) that are shown on Flood Insurance Rate Maps. For residential buildings or residential portions of mixed-use buildings, enclosed areas below the BFE can only be used for parking, storage or building access. Business and retail spaces in mixed-use buildings can be dry floodproofed as long as all portions considered residential are elevated above the BFE.

To assist architects, engineers and builders in designing and constructing buildings in compliance with the NFIP minimum standards and communities in enforcing those standards, FEMA has developed a series of Technical Bulletins and associated guidance documents that provide FEMA's interpretation of the NFIP construction standards.

Many of these documents have been prepared without input from the housing industry or engineers and architects with actual experience designing and constructing buildings. These documents often contain interpretations and recommended best practices which exceed what is necessary to comply with the minimum construction standards.

Reason for Deregulation

- Interpretations that exceed the minimum necessary for compliance with the minimum standards increase cost by requiring additional building height, larger structural elements, and use of more costly building materials and finishes.
- Elevation requirements coupled with limitations on use of space create inconsistencies with and difficulty complying with FHA accessibility guidelines, ADA requirements and the ICC A117.1 accessibility standard.
- Current FEMA guidance for multifamily buildings limits lobbies to just the minimum size needed to provide access to and from elevators and stairways and unnecessarily prohibits having a security desk or seating area unless the entire lobby is elevated.

Solutions

- Revise the NFIP Technical Bulletins and associated guidance documents to remove interpretations and recommendations that exceed the NFIP minimum construction standards.
- Develop additional guidance and/or Technical Bulletins that identify feasible, cost-effective flood mitigation practices, including how to feasibly meet accessibility requirements and allowing reasonable use of lobbies.

- Revise 44 CFR 60.3 to allow lobbies and amenity spaces in a multifamily building to be located below the BFE and utilize dry floodproofing long as the dwelling units and other essential spaces are elevated.
- Alternatively, develop reasonable and cost-effective guidance for multifamily and mixed-use buildings, specifically how to address common lobbies, common building access points, and common garages in such a way as to avoid unnecessary elevation requirements.

U.S. DEPARTMENT OF HOMELAND SECURITY/FEDERAL EMERGENCY MANAGEMENT AGENCY
U.S. DEPARTMENT OF COMMERCE/NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION/NATIONAL MARINE FISHERIES SERVICE
U.S. DEPARTMENT OF INTERIOR/U.S. FISH AND WILDLIFE SERVICE

Letters of Map Amendment/Letters of Map Revision
44 CFR 65 and 72

If a landowner believes a property is improperly depicted on a FIRM and/or opts to elevate a plot of land so that is above the base flood elevation and therefore out of the floodplain and not subject to the mandatory purchase requirement of the NFIP, the Federal Emergency Management Agency (FEMA) has established a process by which to do so via a Letter of Map Amendment (LOMA) or a Letter of Map Revision Based on Fill (LOMR-F).

On May 24, 2023, FEMA announced it would suspend issuance of LOMR-Fs across 38 counties in California, starting on July 1, 2023. This was because the agency entered into a confidential legal settlement with environmental advocates who claimed that revising floodplain maps would negatively impact federally protected species or their designated critical habitat under the Endangered Species Act (ESA). Even though FEMA already has nationwide policy that requires individuals seeking these revisions to provide documentation that their planned activities either have no impact or they have already met the necessary ESA requirements, FEMA apparently thought the suspension was necessary.

Even more troubling is that FEMA has publicly acknowledged that the suspension will last for several years while it consults with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Services (NFMS). A similar process in Washington State took over six years, while in neighboring Oregon, over a decade has passed since FEMA initiated ESA consultation. Importantly, unlike what is occurring in California, FEMA did *not* suspend the processing of requests in Oregon or Washington or make any changes to the NFIP while it was engaged in those consultations. Because there are federally recognized endangered species in every state, it is likely only a matter of time until other states (and landowners) will be similarly impacted.

Reasons for Deregulation

- The practice is inconsistent with the plain language of the NFIP, which provides that if [an entity] (e.g., landowners, states, local governments) i) requests a map change, ii) provides the required technical data and iii) agrees to fund the change, the Administrator (FEMA) "shall" revise and update the map. Thus, FEMA's interpretation is not the best interpretation of the statute as required by *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).
- Requiring landowners to bear the brunt of government inaction and misunderstanding is inappropriate and adds costs to proposed development projects.

- Requiring home buyers to purchase flood insurance for a home purposefully built out of the flood zone will have significant economic impacts and negatively impact housing affordability.

Solutions

- Reinstate the processing of LOMA/LOMR -F requests in California while FEMA completes the ESA consultation.
- Allow impacted landowners in California seeking LOMA-F's to utilize FEMA's *Guidance for Flood Risk Analysis and Mapping Documentation of Endangered Species Act Compliance for Conditional Letters of Map Change* (2nd edition May 1016) allowing projects that have undergone an ESA Section 7 consultation by another federal agency to be deemed in compliance with the ESA.

U.S. DEPARTMENT OF DEFENSE/U.S. ARMY CORPS OF ENGINEERS

Agency-Specific Procedures for Complying with National Historic Preservation Act
89 Federal Register 9079 (February 9, 2024); 33 CFR 325, 35 CFR 800

The U.S. Army Corps of Engineers' (Corps') must ensure all projects it permits under the Clean Water Act and Rivers and Harbors Act protect historic properties. Its regulatory procedures for complying with the National Historic Preservation Act (NHPA) and the implementing regulations promulgated by the Advisory Council on Historic Preservation (ACHP) within the U.S. Department of the Interior are commonly referred to as Appendix C. In 2024, the Corps issued a proposed rule to rescind Appendix C due to concerns and perceived differences between its compliance process and ACHP's regulations found at 35 CFR Part 800. A major argument for rescinding Appendix C is that it was not approved by ACHP, even though many stakeholders disagree over whether ACHP's approval is even necessary.

Reasons for Deregulation

- The Appendix C regulations include timeframes and scope of review parameters for performing required investigations of possible historic or cultural resources. Revoking Appendix C could add delays to the Clean Water Act Section 404 permitting process, and particularly to the Nationwide Permits, which reference Appendix C throughout their general conditions. In the construction industry, delays lead to increased costs.
- There is no reason to remove Appendix C, agency-specific procedures are encouraged by the NHPA, which states "[e]ach Federal agency shall establish ... a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties."
- Appendix C is consistent with the NHPA and 36 CFR Part 800.

Solutions

- Withdraw the rulemaking and retain Appendix C.
- To the extent that revisions are necessary, the Corps may propose revisions to Appendix C and make those revisions available for public review and comment.

U.S. DEPARTMENT OF ENERGY

Final Rule Updating Energy Conservation Standards for Residential Furnaces
88 Federal Register 87502 (December 18, 2023); 10 CFR 429; 10 CFR 430

The Energy Policy and Conservation Act directs the U.S. Department of Energy (DOE) to establish efficiency standards for many household appliances. It also directs DOE to regularly review and update those standards. On December 18, 2023, DOE issued a final rule updating energy efficiency standards for residential furnaces that will effectively ban residential non-condensing gas furnaces after December 2028 – forcing consumers to choose condensing models. These models are typically more expensive, require access to a water connection, and have different requirements for ventilation that may be effectively impossible to install in some existing homes including apartments and townhouses.

Reasons for Deregulation

- Condensing gas furnaces may not be cost-effective in all circumstances and can be particularly problematic as replacement units in existing buildings.
- This rule would impact over half of U.S. households overall and disproportionately impacts senior-only households, low-income households, and small business consumers.
- This policy will drive up costs, reduce choice, and diminish the quality of Americans' home appliances.
- EPCA explicitly forbids DOE from developing any new product standard that will likely result in a product type being unavailable in the United States if it possesses performance characteristics that are already on the market (i.e. products such as all non-condensing natural gas furnaces with a specific venting design feature).
- The DOE's reinterpretation of EPCA is not the best reading of the statute as required by *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

Solutions

- Suspend implementation of the December 18 final rule or postpone its compliance date until appropriate re-evaluation occurs.

U.S. DEPARTMENT OF ENERGY

Final Rule Updating Energy Conservation Standards for Consumer Water Heaters

88 Federal Register 37778 (May 6, 2024); 10 CFR 430

The Energy Policy and Conservation Act directs the U.S. Department of Energy (DOE) to establish efficiency standards for many household appliances. It also directs DOE to regularly review and update those standards. On May 6, 2024, DOE issued a final rule updating energy efficiency standards for residential consumer water heaters (including electric and gas-fired storage tank water heaters). Beginning in May 2029, this will effectively mandate that electric storage water heaters with capacities greater than 35 gallons use heat pump technology.

Reasons for Deregulation

- Manufacturers estimate the updated requirements will shift more than 50 percent of sales for new electric storage water heaters to heat pump models, which DOE estimates make up only about 3 percent of the current market. This will create supply chain issues and delay installations.
- Heat pump water heaters can be problematic and not cost-effective in some building types, certain climates, and as replacement in existing buildings.
- This policy will drive up costs, reduce choice, and diminish the quality of Americans' home appliances.

Solutions

- Rescind the May 2024 final rule.

U.S. DEPARTMENT OF ENERGY

Technical Assistance for Latest and Zero Building Energy Code Adoption
Inflation Reduction Act/Public Law No. 117-169, Section 50131

Building codes and standards are designed to set a baseline for construction to protect the health and safety of the building's occupants. They are typically developed at the national level by non-profit organizations and are often referred to as "model building codes," because they serve as the starting point for most of the codes adopted at the state and local levels. While their development at the national level implies they are intended for universal use, they are designed to be revised and adapted to fit local conditions such as geography, economy, climate or other factors.

Section 50131 of the Inflation Reduction Act (IRA) appropriated $1 billion to influence states and local jurisdictions into adopting unamended model building energy codes. An Administrative and Legal Requirements Document (ALRD) was issued in September 2023 as a first step in accepting applications for $400 million in formula funding. Separately, DOE issued a Funding Opportunity Announcement (FOA) in December 2023 for applications for $530 million in competitive funding.

Reasons for Deregulation

- The structure of this incentive funding – centered around requiring states and jurisdictions to adopt unamended model building energy codes – poses a direct conflict with the states' longstanding constitutional authority to adopt amended model codes to address specific cost, climatic, regional, market, and energy grid factors and to ensure compliance with the jurisdiction's regulations.
- Using the lure of federal dollars to pressure state and local governments into implementing unnecessary energy efficiency policies and regulations will unnecessarily drive-up housing prices across the country.
- Builders and homeowners will end up paying more for new homes.

Solutions

- Pause implementation of the 50131 program to re-evaluate several of the requirements in the ALRD and FOA, including the lack of flexibility for states and jurisdictions to propose equivalent, amended, and alternative approaches explicitly allowed in the statutory text.
- Withdraw the current guidance document and issue revised guidance through the ALRD and FOA processes to allow compliance paths that result in equivalent energy use.
- Reevaluate the PNNL methodology for establishing energy equivalency to move away from a "black box" market analysis approach to a more transparent code provision equivalency approach.

U.S. DEPARTMENT OF ENERGY/BUILDING TECHNOLOGIES OFFICE

Building Energy Code Cost-Effectiveness Methodology

42 USC 6833(a)(5)(A)

The Department of Energy (DOE) conducts and publishes cost-effectiveness analyses for a wide range of energy efficiency measures for buildings and appliances. In addition, DOE is statutorily required, through the Energy Conservation and Production Act, to evaluate whether updates to the International Energy Conservation Code (IECC) would result in increased energy savings as compared to the prior version.

To do so, DOE calculates the various energy and cost-effectiveness analyses using its "Methodology for Evaluating Residential Energy Code Updates". Originally published in August 2015, the methodology was updated in December 2024 to make a number of changes to the data, assumptions, and measurement strategies.

Reasons for Deregulation

- The cost-effectiveness methodology used by DOE to evaluate building energy codes fails to accurately reflect the real market costs paid by the consumer and is not based on validated field studies of energy saving and other benefits for the consumer.
- Overestimating benefits and underestimating costs harm the consumer who is forced to pay premium for features that may not provide the promised results. In certain cases, the added cost can price consumers out of purchasing a new home and limit their options to the older and significantly less energy efficient existing homes.

Solutions

- Reevaluate agency practices for estimating market costs for energy efficiency measures paid by the consumer and for accurately evaluating the associated benefits.
- Revise the DOE processes and methodology for how it conducts cost-effectiveness and cost-benefit analyses for codes, standards, and policies related to buildings and appliances, particularly model building energy codes following a notice and comment process.

U.S. DEPARTMENT OF COMMERCE/NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION/NATIONAL MARINE FISHERIES SERVICE
U.S. DEPARTMENT OF INTERIOR/U.S. FISH AND WILDLIFE SERVICE

Final Rule on Listing Endangered and Threatened Species and Designating Critical Habitat
89 Federal Register 24300 (April 5, 2024); 50 CFR Part 424

The Endangered Species Act (ESA) is designed to "protect[s] species and the ecosystems upon which they depend". Administered by the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (collectively referred to as the Services), the ESA sets out a number of different mechanisms for listing species, designating their critical habitat and permitting activities that may affect the species of their habitat.

On April 5, 2024, the Services finalized a rule that: removed the requirement to only consider designating unoccupied areas as "critical habitat" in instances where the designation of only occupied areas would be inadequate for the "conservation" of the species; removing the requirement to only designate "unoccupied critical habitat" when there is reasonable certainty the area will contribute to the conservation of the species and the area to be designated contains at least one or more "physical or biological features that are essential for the conservation of the species"; and removing the Service's ability to decline to designate critical habitat because the threats to the species or its critical habitat (e.g., impacts from Climate Change) cannot be addressed through mandatory habitat management actions prescribed during a subsequent Section 7 formal consultation.

On February 3, 2025, the Secretary of the U.S. Department of the Interior signed Secretarial Order 3418, "Declaring a National Energy Emergency" that directed FWS to develop plans to begin the administrative rulemaking process to rescind this final regulation.

Reasons for Deregulation

- Allowing the Service to designate areas as "unoccupied critical habitat" that are incapable of supporting the presence of the species in present condition undermines the goals of the ESA while imposing regulatory burden upon impacted landowners.
- Designation of "critical habitat" impacts developers and builders by effectively federalizing their land development or construction projects if their activities require a federal permit or receive federal funding. If so, they are then required to go through the lengthy, costly, burdensome, and uncertain consultation process that could result in more requirements or possibly project denial.
- Residential land development and construction activities are disproportionately impacted by ESA "critical habitat" designations when those designations occur around metropolitan areas and high-growth counties.

Solutions

- Rescind the April 5 rule and reinstate the rules that were finalized in August 2019.

U.S. DEPARTMENT OF THE INTERIOR/U.S. FISH AND WILDLIFE SERVICE

Final Rule Rescinding Rule Titled "Endangered and Threatened Wildlife and Plants; Regulations for the Designation Critical Habitat"

87 Federal Register 43433 (July 21, 2022); 50 CFR Part 17.90

The Endangered Species Act (ESA) is designed to "protect[s] species and the ecosystems upon which they depend". Administered by the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (collectively referred to as the Services), the ESA sets out a number of different mechanisms for listing species, designating their critical habitat and permitting activities that may affect the species of their habitat.

On July 21, 2022, the U.S. Fish and Wildlife Service (FWS) rescinded a rule finalized during the first Trump administration that modified the process FWS follows when considering the potential economic impact resulting from proposed critical habitat designations under the ESA. ESA Section 4(b)(2) requires the Service (i.e., FWS or NMFS) to perform an analysis on the potential economic impacts resulting from a proposed critical habitat designation. Based on the results of this analysis, the Service may exclude a particular area(s) from a final critical habitat designation if avoiding the potential economic costs outweighs the potential ecological benefits to the listed species.

The final rule issued on September 8, 2020, modified the Service's critical habitat regulations to require the agencies to consider any information submitted by permittees, landowners, or lessees of federal lands impacted by a proposed critical habitat designation during the public comment period. Moreover, the rule required the Service to exclude areas from a final critical habitat where the Service concluded the benefits of excluding an area from a final critical habitat designation outweighs the benefits to species, unless excluding such an area from the final critical habitat could result in the species' extinction.

Reasons for Deregulation

- The ESA's statutory requirement to perform economic analyses of proposed critical habitat (CH) designations is intended to allow the Service to exclude specific areas from "final" CH designations where the costs of designation outweighed the potential ecological benefits to the species. This rule fails to do so.
- Residential land development and construction activities are disproportionately impacted by CH designation that occur around metropolitan areas and high-growth counties.
- Nearly a third of California's landmass and nearly quarter of the State of Florida has already been designated by the Services as critical habitat – making development projects more costly and burdensome.

Solutions

- Repeal the Service's final rule for performing required economic analyses when designating critical habitat and repropose a rule that follows the intent of the ESA.

U.S. DEPARTMENT OF COMMERCE/NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION/NATIONAL MARINE FISHERIES SERVICE
U.S. DEPARTMENT OF INTERIOR/U.S. FISH AND WILDLIFE SERVICE

Final Rule: Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants
89 Federal Register 23919 (April 5, 2024); 50 CFR Part 17

The Endangered Species Act (ESA) is designed to "protect[s] species and the ecosystems upon which they depend". Administered by the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (collectively referred to as the Services), the ESA sets out a number of different mechanisms for listing species, designating their critical habitat and permitting activities that may affect the species of their habitat.

On April 5, 2024, FWS published a final rule that reinstated the default application of the "blanket 4(d) rule" for newly listed threatened species, which applies identical ESA Section 9 "take" prohibitions and protections to activities involving endangered *and* threatened species. However, the ESA, in Section 4(d), specifically allows the Service to apply different levels of federal protection to "threatened" species compared to "endangered" species. In addition, the statute authorizes the Service to establish species specific conservation measures and 4(d) rules that exempt individuals from the ESA's Section 9 strict "take" prohibition.

During the first Trump administration, the FWS finalized a rulemaking requiring FWS, when listing a species as "threatened," to simultaneously proposed a species specific 4(d) rule to facilitate exempting private landowners from the ESA's Section 9 "take" prohibitions for landowners who complied with the 4(d) rule's conservation measures.

On February 3, 2025, the Secretary of the U.S. Department of the Interior signed Secretarial Order 3418, "Declaring a National Energy Emergency" that directed FWS to develop plans to begin the administrative rulemaking process to rescind this final regulation.

Reasons for Deregulation

- Applying identical ESA "take" prohibitions to "threatened" and "endangered" species is inconsistent with Congress' intent under the ESA.
- Issuing species specific 4(d) rules for "threatened" species provides incentives to landowners to comply with the conservation measures established within a 4(d) rule so that they are exempt from the ESA's Section 9 "take" prohibition.
- Unlike FWS, the NMFS does issue species specific 4(d) rules for "threatened" species.

Solutions

- Repeal the April 5 blanket 4(d) rule.
- Reinstate the species-specific approach adopted by the prior Trump Administration for determining the application of ESA prohibitions to threatened species.

U.S. DEPARTMENT OF COMMERCE/NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION/NATIONAL MARINE FISHERIES SERVICE
U.S. DEPARTMENT OF INTERIOR/U.S. FISH AND WILDLIFE SERVICE

Final Rule: Endangered and Threatened Wildlife and Plants: Revisions of Regulations for Interagency Cooperation

89 Federal Register 24268 (April 5, 2024); 50 CFR Part 402

The Endangered Species Act (ESA) is designed to "protect[s] species and the ecosystems upon which they depend". Administered by the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (collectively referred to as the Services), the ESA sets out a number of different mechanisms for listing species, designating their critical habitat and permitting activities that may affect the species of their habitat.

On April 5, the Services issued a final rule that allows them to impose compensatory mitigation upon activities undergoing the ESA's Section 7 consultation process. It does so by changing the regulatory definition of *"reasonable and prudent measures"* and requiring the Service, when issuing an incidental take statement as part of a biological opinion during a Section 7 Consultation, to quantify the amount of allowable incidental take and require developers and builders to offset such impacts by purchasing compensatory mitigation credits for unavoidable impacts to species or critical habitat. The rule also allows the Service to require compensatory mitigation either inside or outside the area being impacted by the Section 7 Consultation. Finally, the final rule revised the definition of "effects of the action" to remove the provision that established whether an activity or consequence is "reasonably certain to occur" and therefore subject to the ESA's Section 7 Consultation process.

On February 3, 2025, the Secretary of the U.S. Department of the Interior signed Secretarial Order 3418, "Declaring a National Energy Emergency" that directed FWS to develop plans to begin the administrative rulemaking process to rescind this final regulation.

Reasons for Deregulation

- Allowing the Service to require compensatory mitigation for Section 7 consultations exceeds the agency's statutory authority, as only Section 10 Incidental Take Permits allow the Service to impose compensatory mitigation as part of the required Habitat Conservation Plan (HCP).
- The Service's final rule allowing federal regulators to impose compensatory mitigation as "reasonable and prudent measures" dramatically expands the scope of ESA Section 7 formal consultations, resulting in longer permitting times and higher costs.
- Removing the guardrails regarding what is "reasonably certain to occur" effectively expands the universe of possible outcomes beyond reason.

Solutions

- Rescind the April 5 final rule and clarify that the purpose of the ESA's Section 7 Consultation is to avoid and minimize impacts to species and designated critical habitat, not to mitigate any such impacts.
- Promulgate additional regulatory revisions to streamline the Section 7 Consultation process and ensure its consistent interpretation and application.
- Update the ESA Consultation Handbook to reflect more recent regulations and policies.

U.S. DEPARTMENT OF COMMERCE/NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION/NATIONAL MARINE FISHERIES SERVICE
U.S. DEPARTMENT OF INTERIOR/U.S. FISH AND WILDLIFE SERVICE

Final Rule: Endangered and Threatened Wildlife and Plants: Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat
87 Federal Register 37775 (June 24, 2022); 50 CFR Part 424

The Endangered Species Act (ESA) is designed to "protect[s] species and the ecosystems upon which they depend". Administered by the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (collectively referred to as the Services), the ESA sets out a number of different mechanisms for listing species, designating their critical habitat and permitting activities that may affect the species of their habitat.

On June 24, 2022, the Services rescinded a December 16, 2020, final rule defining the term "habitat" under the ESA. The 2020 rule was promulgated in response to a 2018 U.S. Supreme Court decision known as the *Weyerhaeuser* ruling. In *Weyerhaeuser*, plaintiffs challenged an "unoccupied" critical habitat designation by the FWS for the Dusky Gopher Frog that totaled approximately 1,500 acres of private land slated for residential development in St. Tammany Parish outside of New Orleans, LA. FWS designated the private property as critical habitat despite the fact that the property in its then current condition (a timber plantation) could not support the species nor had the frog been seen on the property nor within the entire State of Louisiana for over 50 years.

As the U.S. Supreme Court observed, "only areas that are 'habitat' of the endangered species [are] eligible for designation as critical habitat." Thus, the 2020 final rule's definition of "habitat" was meant to emphasize that places designated as habitat must be capable of supporting the species before the area could subsequently be considered for critical habitat designation.

Reasons for Deregulation

- Rescinding the regulatory definition of "habitat" exceeds the agencies' statutory authority, as it fails to acknowledge the U.S. Supreme Court's key findings under *Weyerhaeuser* that only areas capable of supporting a species presence can be considered "habitat".
- Allowing FWS to consider areas that are uninhabitable to a listed species as "habitat" emboldens federal regulators to subsequently designate similar areas as unoccupied critical habitat and subjecting property owners to costly and burdensome requirements and/or possible prohibitions on the use of their land.
- Residential construction activities are disproportionately impacted by critical habitat designations that occur around metropolitan areas and high-growth counties.

Solutions

- Rescind the 2022 final rule removing the regulatory definition of “habitat,” and restore the definition of “habitat” finalized in 2020.
- Ensure all areas subsequentially considered for critical habitat designation must first meet the definition of “habitat.

U.S. DEPARTMENT OF LABOR/EMPLOYMENT AND TRAINING ADMINISTRATION

Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations
85 Federal Register 14294 (March 11, 2020); 29 CFR 29

In response to several Executive Orders issued by President Trump during his first term, the Department of Labor (DOL) published a proposed rule to amend the regulations under the National Apprenticeship Act (NAA) to address existing skills gaps by expanding the apprenticeship model to include new industries. In that proposal, DOL excluded construction from the rulemaking because it was purportedly focusing on new programs in sectors that did not currently have significant registered apprenticeship opportunities.

The agency's justification for the exclusion was that construction and military programs already have well-established apprenticeship programs. Yet, contrary to that assertion, the residential construction industry has faced a significant labor shortage for years, and registered apprenticeship programs, offered primarily through union organizations, do not adequately address the need for residential construction workers. Despite repeatedly urging DOL to reconsider that exclusion, DOL published the final rule excluding construction from the ability to submit new programs under the NAA.

In January 2024, DOL issued a Notice of Proposed Rulemaking to relook at the registered apprenticeship program. The proposed rule removed existing flexibility to either use a time-based or competency-based approach to apprenticeship programs and created more confusion. In December 2024, DOL officially withdrew the proposal.

Reasons for Deregulation

- The majority of students completing union-based apprenticeship programs find work in commercial construction and do not enter the home building industry. Given the persistent labor shortages within residential construction, more efforts need to be taken to support and grow this needed labor force.
- The apprenticeship system provides an important pathway for tomorrow's tradespeople. As such, it needs to be updated to improve and expand the pathways available to train more skilled trades professionals for work in home building.
- The current program creates anti-competitive regulatory barriers, as it ignores the non-union construction industry.

Solutions

- Withdraw the rule and repropose a rule with substantial modifications to remove the severe restrictions on the categories of acceptable registered apprenticeship programs, including those in nontraditional areas like residential construction.
- Alternatively, create a residential construction-specific apprenticeship model to address the skilled trade needs and labor shortages within the industry.

U.S. DEPARTMENT OF LABOR/OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Notice of Proposed Rulemaking: Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings

89 Federal Register 70698 (August 30, 2024); 29 CFR 1910, 1915, 1917, 1918, 1926, and 1928

The Occupational Safety and Health Administration (OSHA) is proposing to issue a new standard targeting heat injury and illness prevention in outdoor and indoor work settings applicable to a number of disparate industries including all general industry, construction, maritime, and agriculture sectors. OSHA has described the proposed rule as a programmatic standard requiring employers to create heat injury and illness prevention plans, provide training to all workers, additional training to supervisors and heat safety coordinators, establish requirements for identifying heat hazards, implement engineering and work practice control measures at certain heat triggers (80 degrees Fahrenheit as an initial heat trigger and 90 degrees Fahrenheit as a high heat trigger), develop an acclimatization protocol for new or returning workers, implement an emergency response plan, and retaining records. It also mandates that employers identify a heat safety coordinator to monitor employees throughout the day for heat injury or illness and develop a written heat injury and illness prevention plan if the employer has 11 or more employees.

If finalized as proposed, the requirements would apply to all employers conducting outdoor and indoor work identified in the proposed rule, with some limited exceptions. OSHA estimates roughly 36 million workers, or one-third of the total full-time workers in the U.S. would be impacted. For the construction industry, the agency expects 725,200 total entities will be affected by the standard. Annualized costs for the construction industry alone 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.

Reasons for Deregulation

- The rule is too prescriptive, creates unnecessary burdens, and deviates away from OSHA's long-standing policy focusing on "Water. Rest. Shade."
- The rule as proposed is more of a recordkeeping rule, with many prescriptive requirements that takes it well outside a programmatic based approach.
- OSHA's one-size fits all approach does not properly address the impacts such an inflexible rule will have on all affected industries.
- 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.

- Courts may find this proposed rule dubious considering *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

Solutions

- Withdraw the rule as proposed and substantially revise it to:
    - Create industry-specific standards that promote flexibility and recognize the uniqueness, challenges and best practices of the different regulated industries;
    - Create a standard for construction that promotes the main tenets of "water, rest, shade" and establishes the same training for all employees, to ensure consistency regardless of job title;
    - Establish reasonable care for employees without overly prescriptive requirements and undue administrative and compliance burdens for employers;
    - Expand the exemptions to include construction operations as part of disaster recovery efforts in areas under disaster or emergency declarations; and
    - Simplify the requirements so employers and employees can easily understand their compliance obligations.

U.S. DEPARTMENT OF LABOR/OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Worker Walkaround Representative Designation Process

89 Federal Register 22558 (April 1, 2024); 29 CFR 1903.8(c)

On April 1, 2024, the Occupational Safety and Health Administration (OSHA) published a final rule clarifying that employees may designate a non-employee third-party as their representative during an OSHA inspection. Effective May 31, 2024, this final rule makes two changes. First, employees may either select another employee or a non-employee third party to serve as their representative during an inspection. Second, the regulation no longer suggests that non-employee third-party representatives should be limited to individuals with formal credentials, such as safety engineers or industrial hygienists. Instead, a Compliance Safety and Health Officer (CSHO) may permit a non-employee third-party representative to join the inspection if the third-party representative will aid the CSHO in conducting "an effective and thorough physical inspection of the workplace" by virtue of their knowledge, skills, or experience.

OSHA's final rule largely reinstates an OSHA policy from 2013 which stated that non-employees could represent employee interests in enforcement-related matters. This policy became known as the "Fairfax Memo." The Fairfax Memo further suggested that the OSH Act authorized a union or community organization representative to act on behalf of employees as a walkaround representative during a physical inspection so long as they had been authorized by the employees to serve as their representative. The 2013 policy was challenged in federal court. Before that lawsuit could be decided on its merits, the Trump administration formally rescinded the Fairfax Memo in 2017 and the lawsuit was withdrawn.

Subsequently, OSHA engaged in a new rulemaking to codify the policy outlined in the Fairfax Memo, and that regulation is now in effect, although once again it is subject to a federal court challenge.

Reasons for Deregulation

- The regulation is unnecessary because Section 8(e) of the OSH Act already allows a representative of the employer and a representative authorized by his employees the opportunity to accompany a CSHO during the inspection. It does not mean a third-party non-employee authorized by the Secretary's designee.
- OSHA's reading of the statute is not the best interpretation as required by *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).
- OSHA has overstepped its authority by inserting itself into determining employee representation as it relates to the National Labor Relations Act, despite having no legal authority to do so under the OSH Act. OSHA has codified the ability for union representatives to serve as employee representatives on non-union jobsites. This action falls squarely within the purview of the National Labor Relations Board and under the National Labor Relations Act.

- The regulation requires residential construction employers to provide personal protective equipment (PPE) to the third-party non-employees, which goes beyond the OSH Act and imposes additional, unwarranted costs on employers.

Solutions

- Withdraw the existing regulation and return to the prior regulation that required the third-party representative to have expertise to better support the inspection, such as an industrial hygienist or engineer.

U.S. DEPARTMENT OF LABOR / OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Improve Tracking of Workplace Injuries and Illnesses

88 Federal Register 47254 (July 21, 2023); 29 CFR 1904

Since 2016, OSHA has issued three separate rules changing the recordkeeping requirements. The most recent rule was published on July 21, 2023, and amended the occupational injury and illness recordkeeping regulation to require certain employers to electronically submit injury and illness information to OSHA that employers are already required to keep. The 2023 amendment requires establishments with 100 or more employees in certain designated industries to electronically submit information from their OSHA Forms 300 and 301 to OSHA once per year. The requirement for establishments with 20 to 249 employees in certain industries are still required to electronically submit this information to OSHA annually. It also maintains the requirement that establishments with 250 or more employees are required to keep records and continue to submit their Form 300A to OSHA on an annual basis.

Procedurally, this regulation has become a mess, as the multiple iterations and constant updates create confusion for employers. In 2016, OSHA issued a final rule amending the regulations to require employers to annually submit injury and illness information electronically to OSHA. In that rulemaking, OSHA required establishments with 250 or more employees to electronically submit information from their OSHA Forms 300, 300A, and 301; establishments with 20 – 249 employees in certain designated industries were required to electronically submit information from their OSHA annual summary (Form 300A). Also in this rule, OSHA authorized itself to use an "enhanced enforcement tool for ensuring the accuracy of work-related injury and illness records that is not dependent on employees filing complaints on their own behalf." This position is contrary to the explicit language in the OSH Act and contrary to Congress' explicit rejection of this approach when the final OSH Act was passed.

Then in 2019, OSHA issued *another* recordkeeping rule change, where that final rule amended the recordkeeping regulations to remove the requirement for establishments with 250 or more employees to electronically submit information from their OSHA Forms 300 and 301 to OSHA annually. Currently, these establishments are required to electronically submit only information from the OSHA 300A annual summary. The 2019 final rule also added a requirement for covered employers to submit their Employer Identification Number (EIN) electronically along with their injury and illness data submission.

Reasons for Deregulation

- Constant changes create uncertainty and confusion.
- The recordkeeping forms can be burdensome and contain confidential business information.

- OSHA's 2016 rulemaking violates the Administrative Procedures Act (APA) and is contrary to the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) by impermissibly expanding Section 11(c) of the OSH Act by delegating authority to itself (and its designees - compliance safety and health officers) to, on their own initiative, issue citations to employers for alleged retaliatory and discriminatory activities, circumventing the explicit statutory mechanism for employee redress through federal court.

Solutions

- Withdraw the July 23 rule and repropose one recordkeeping rule that streamlines the recordkeeping process and addresses employer concerns about the scope and extent of records required to be produced.
- Withdraw the provision in the 2016 final rule in which OSHA authorized itself to issue citations to employers for engaging in alleged retaliatory conduct against employees who report work-related injuries and illnesses.
    - This authority is without legal support because Congress contemplated ***and rejected*** making retaliation and discriminatory actions subject to a civil penalty through the issuance of a citation.
    - The OSH Act already provides a remedy for employees alleging retaliatory and discriminatory conduct through the federal court. Because there is no ambiguity in the statutory text, OSHA does not have the authority to give itself the authority to issue citations. The statute is clear, and this language alone warrants withdrawal.

U.S. DEPARTMENT OF LABOR/ WAGE AND HOUR DIVISION

Employee or Independent Contractor Classification Under the Fair Labor Standards Act
89 Federal Register 1683 (January 10, 2024); 29 CFR 780, 788, and 795

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.

The Department of Labor (DOL) issued an independent contractor rule in 2021 under the Fair Labor Standards Act (FLSA) that clarified the standards for determining contractor status and expanded the instances in which a worker could be deemed an independent contractor. When the administration changed in January 2021, however, DOL sought to delay the rule, then later seemed to withdraw it entirely. Business groups filed a legal challenge, and a federal court held that both the delay and the withdrawal violated the Administrative Procedure Act. The court vacated both and held the 2021 rule was still in effect.

In January 2024, DOL published a final rule that differed significantly from the 2021 rule and prior DOL guidance on independent contractor relationships. The 2024 rule adopted a six-factor test focused on the "economic reality" of the relationship between a potential employer and a worker. The test asks whether, as a matter of economic realities, the worker depends on the potential employer for continued employment or is operating an independent business.

In a Field Assistance Bulletin issued on May 1, 2025, DOL announced it will no longer enforce the 2024 final independent contractor rule under the FLSA. However, this announcement does not formally rescind the 2024 rule. Litigation is still pending on the 2021 rule and DOL has asked the court to place most of that litigation on hold.

Reasons for Deregulation

- Rather than retaining clarity, the 2024 rule needlessly complicated the determination of when someone is considered an independent contractor, creating inconsistency and confusion.
- Unclear definitions on how to classify independent contractors and joint employers have translated into regulatory burdens for businesses and higher costs for home buyers, while also jeopardizing home builders' operations.
- DOL's cost analysis may be inadequate under *Michigan v. EPA*, 576 U.S. 743 (2015).
- The final rule improperly narrowed the circumstances under which a worker could be an independent contractor.
- Given DOL's published position as outlined in the Field Assistance Bulletin, because DOL is now enforcing the FLSA based on the 2008 version of Fact Sheet #13, and as informed by reinstated Opinion Letter FLSA2019-6, the current rule is unnecessary.

Solutions

- Rescind the 2024 rule.
- Reinstate the rule finalized on January 7, 2021.
- Create clear and discernible guidelines for the use and classification of independent contractors, with the same rules applied throughout federal and state governments.

U.S. DEPARTMENT OF LABOR/WAGE AND HOUR DIVISION

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Computer and Outside Sales Employees

89 Federal Register 32842 (April 26, 2024); 29 CFR 541

Under the Fair Labor Standards Act (FLSA), salaried workers classified as executive, administrative, professional, outside sales and computer employees are exempt from overtime pay requirements if a worker earns at or above a defined salary level called the "standard salary." The salary level for determining the overtime exemption has been in flux over the past three administrations, as each attempted to redefine it.

In April 2024, the DOL issued a rule to increase the salary level from $35,568 to $43,888, and then to $58,656 on Jan. 1, 2025, marking a nearly 65% increase from the salary threshold issued before this rule. From that point, the rule contemplates automatic updates every three years using that new methodology. The new methodology puts the salary threshold at the 35th percentile of full-time non-hourly workers in the lowest-earning Census region (currently the South).

Litigation was filed challenging the rule in the U.S. District Court for the Eastern District of Texas; that court vacated and set aside DOL's final regulation on a nationwide basis. Although the rule did not go into effect, DOL has appealed the lower court's decision.

On April 29, 2025, the U.S. Court of Appeals for the Fifth Circuit granted DOL's unopposed motion to stay the appeal pending the DOL's reconsideration of the Biden-era white collar overtime rule. The case will be held in abeyance for 120 days with DOL required by the court to file status reports every 60 days.

Reasons for Deregulation

- DOL failed to sufficiently demonstrate the need to increase the salary threshold, and the methodology used to determine the new levels is problematic.
- DOL does not have the authority to implement automatic updates every three years. These automatic updates remove the ability of impacted stakeholders, both employers and employees, to comment on proposed changes, and completely ignore the protections afforded by the Administrative Procedure Act.
- DOL has not fully considered the impact on employers and employees, nor on the economy.
- The dramatic increase in the salary threshold is unlikely to result in an increase in workers' take-home pay. That is because it forces business owners to restructure their workforce to compensate by scaling back on pay and benefits, as well as taking other steps such as cutting workers' hours, to avoid the overtime requirements.
- DOL's actions create pressures on employees by reducing worker morale, recruitment and retention.

Solutions

- As a result of the nationwide injunction, the salary level is currently set back to $35,568. DOL should withdraw its appeal to the Fifth Circuit Court of Appeals and withdraw the rule and maintain enforcement of the regulation issued in September 2019.
- Any future rulemaking to revise the overtime pay requirements for the categories of salaried employees mentioned above should maintain the longstanding methodology from the 2004 rulemaking that is generally accepted by employers.
- DOL must refrain from implementing automatic updates and instead engage in the rulemaking process for any subsequent salary-level increase.

U.S. DEPARTMENT OF LABOR/WAGE AND HOUR DIVISION

Davis-Bacon and Related Acts Regulations

88 Federal Register 57526 (August 23, 2023); 29 CFR Parts 1, 3, and 5

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 its Related Acts (DBRA) primarily affect multifamily builders who participate in certain 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. This regulatory review was the first comprehensive review in nearly 40 years. DOL stated in the final rule that the "revisions to these regulations will promote compliance, provide appropriate and updated guidance, and enhance their usefulness in the modern economy."

DOL last engaged in a comprehensive revision of the DBRA regulations in a 1981–1982 rulemaking. Since that time, Congress has expanded the reach of the Davis-Bacon labor standards significantly, adding numerous Related Act statutes to which these regulations apply. The Davis-Bacon Act and now more than 70 active Related Acts collectively apply to an estimated $217 billion in federal and federally assisted construction spending per year and provide minimum wage rates for an estimated 1.2 million U.S. construction workers.

On June 24, 2024, the U.S. District Court for the Northern District of Texas issued a nationwide preliminary injunction impacting three provisions of the rule: (1) the distinction between material suppliers and contractors/subcontractors; (2) the requirement that contractors and subcontractors pay prevailing wages to delivery truck drivers they employ for onsite time that is more than de minimis; and (3) the application of DBRA via operation of law if a contracting agency erroneously omitted the provisions from covered contracts. The remainder of the Department's final rule remains in effect.

Reasons for Deregulation

- In the roughly 90 years since its implementation, the DBRA wage determination process has evolved into a scientifically unsound and fundamentally flawed methodology, resulting in prevailing wage rates that are misrepresentative of the real wages being paid in any given area.
- The administrative burden of the DBRA has grown, in some cases, to financially infeasible levels – to the point where builders and skilled tradesmen are deterred from participating in DBRA covered housing projects and creating an anti-competitive market.
- The final rule does not address these issues and DOL missed a significant opportunity to truly modernize this rule. Instead, it exacerbates the compliance obstacles faced by builders who produce the country's desperately needed affordable housing supply.

Solutions

- Withdraw the rule and repropose a rule with substantial modifications to alleviate the administrative burdens and eliminate unnecessary costs.
  - Revise the current DBRA policies to:
    - Develop and implement a new scientifically sound methodology for determining prevailing wages;
    - Keep in place the bar on cross-consideration of metropolitan and rural wage rates when determining prevailing wages;
    - Remove provisions expanding the definition of "site of the work;"
    - Provide additional clarification and guidance on "employed," "prime contractor," "public building," and other definitions;
    - Reduce administrative requirements that burden employers and deter small and minority firms from participating in DBRA-covered projects;
    - Lock in prevailing wages for covered residential projects that are effective on the date of the borrower's application; and
    - Rescind the DOL's split wage determination policy and assign the residential construction category for all construction activity performed on apartment projects covered under the DBRA.

U.S. ENVIRONMENTAL PROTECTION AGENCY/U.S. DEPARTMENT OF DEFENSE

Revised Definition of "Waters of the United States"; Conforming
88 Federal Register 61694 (Sept. 8, 2023); 33 CFR 328, 40 CFR 120

The definition of "waters of the United States" (WOTUS) defines the extent of waterbodies, including wetlands, that are subject to federal jurisdiction under the Clean Water Act (CWA). The WOTUS definition affects several CWA programs including Section 404 (dredge and fill permits), Section 402 (pollutant discharge permits), and Section 303 (Water Quality Standards and Total Maximum Daily Loads). For over 30 years, the definition of WOTUS has expanded and contracted due to federal agency regulations, guidance and numerous cases at the U.S. Supreme Court and lower federal courts.

On January 18, 2023, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) (the Agencies) finalized a rule entitled "*Revised Definition of "Waters of the United States*" that allowed the agencies to assert federal CWA jurisdiction over tributaries, adjacent wetlands, and other waters based upon two jurisdictional tests (i.e., "significant nexus test," "relatively permanent" flow and "continuous surface connection"). On May 25, 2023, United States Supreme Court issued a ruling in *Sackett v. EPA,* that dramatically narrowed the jurisdictional scope of the Agencies' authority. In turn, the Agencies issued a conforming WOTUS rule that removed the significant nexus test but failed to define "relatively permanent" flow or "continuous surface connection." On March 12, 2025, the Agencies released a joint memorandum that interpreted the phrases consistent with the *Sackett* ruling. The Agencies also announced their intention to undertake another WOTUS rulemaking.

Reasons for Deregulation

- The September 2023 Rule does not conform to Supreme Court's ruling in *Sackett v. EPA*.
- The rule exceeds statutory authority. The CWA's 'waters' encompasses "'only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic[al] features that are described in ordinary parlance as 'streams, oceans, rivers, and lakes.'" In addition, jurisdictional "adjacent wetlands" must "abut" and be "indistinguishable" from otherwise jurisdictional features.
- The rule fails to define key phrases such as "relatively permanent" and "continuous surface connection" and the rule's preamble exploits that ambiguity and interprets those phrases too broadly.

Solutions

- Revise the rule to clarify the meaning of "relatively permanent" and "continuous surface connection."
- Delete certain categories of waters from the definition (e.g., interstate waters) because they are either contrary to *Sackett* and/or needlessly redundant.
- Revise the exclusions to better clarify what water features are not WOTUS (e.g., ephemeral tributaries including ditches, wetlands that do not "abut" otherwise jurisdictional features, etc.).

U.S. ENVIRONMENTAL PROTECTION AGENCY/U.S. DEPARTMENT OF DEFENSE

Clean Water Act Section 404 Nationwide Permit Reauthorization
88 Federal Register 73522 (December 27, 2021); 33 CFR 330

Section 404(e) of the Clean Water Act (CWA) sets out a "streamlined" nationwide permit (NWP) process that allows EPA and the Corps to authorize impacts from activities that are similar in nature and will cause only minimal adverse impacts to waters of the United States. NWPs are classified as general permits that must be reauthorized by the Corps every five years. The current NWPs expire in March 2026 and must be reauthorized prior to their expiration so that prospective permittees meeting the criteria for streamlined NWPs are not forced into obtaining more complicated and costly individual permits. Each time the NWPs are reauthorized, there is an opportunity to review and revise the permits and their conditions to ensure their usefulness and the administrative efficiency of the 404 program.

On April 2, 2025, the Corps and EPA sent a pre-proposed rule reauthorizing the NWPs to the Office of Management and Budget (OMB) for the required interagency review.

Reasons for Deregulation

- If the Agencies fail to reauthorize the NWPs, prospective permittees will be required to obtain individual permits. This would add unacceptable administrative burdens, time delays and costs to the permitting process.
- The current maximum threshold for NWP coverage is ½ acre of impact. That is down from 3 acres in the mid-90s, and 10 acres in the 1980s. This unnecessarily limits the number and types of activities that can qualify for the streamlined permit.
- Because the 404 program often acts as a "nexus" for subjecting activities to other federal environmental statutes, NWP reauthorization provides opportunities to fix other inefficient administrative actions. For example, the Corps should focus on honoring the timelines for Corps' District Offices to notify the Marine Fisheries Service and Fish and Wildlife Service if an activity could affect a federally listed species or critical habitat.

Solutions

- Propose the NWPs as soon as possible, for public review and comment so they can be finalized before the existing NWPs expire in March 2026.
- Increase the acreage thresholds to make the NWPs more useful and meaningful to landowners.

FEDERAL HOUSING FINANCE AGENCY

30-Day Notification of Nonpayment of Rent

2025 SCORECARD FOR FANNIE MAE, FREDDIE MAC, AND COMMON SECURITIZATION SOLUTIONS (page 4)

In March 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). Among other provisions, the CARES Act required owners of federally-backed and federally-assisted housing to provide tenants with at least 30-days written notice prior to filing an eviction case in local courts for nonpayment of rent. Properties with Fannie Mae and Freddie Mac mortgages were considered federally-backed.

The CARES ACT mandatory "notice to vacate" was intended to be a temporary federal measure that extended states' eviction notice procedures. Nevertheless, the previous Administration actively sought to permanently extend many of the temporary pandemic-era tenant protections. Although the CARES Act's initial eviction moratorium expired on July 24, 2020, and the federal COVID-19 public health emergency declaration ended on May 11, 2023, the 30-day notice to vacate remains a requirement for apartment owners with mortgages backed by Fannie Mae or Freddie Mac.

Reasons for Deregulation

- The CARES Act 30-day notice to vacate was a response to the COVID-19 pandemic, which ended years ago. There is no longer a valid reason for FHFA, through Fannie Mae and Freddie Mac, to preempt state and local eviction laws.
- Continued enforcement of the notice remains a contested issue that contributes to:
    - Backlogs in eviction courts;
    - More lost, potentially unrecoverable rent for housing providers; and
    - Mounting rent debt for tenants, which worsens their credit and long-term housing opportunities.

Solutions

- Issue a legal opinion clarifying that the CARES Act 30-day notice requirement ended and enforcement actions should not be taken against owners of covered properties.
- Withdraw FHFA's CARES Act Notice Directive to Fannie Mae and Freddie Mac that argues multifamily borrowers have a strict obligation to adhere to the CARES Act 30-day notice requirement as part of the terms of their loan documents.
- Defer to state and local landlord-tenant laws.
- Withdraw FHFA's 2025 Scorecard requirement which directs the Enterprises to "[e]nhance resident-centered practices, such as tenant protections, at Enterprise-backed multifamily properties"

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance

88 Federal Register 17001 (March 21, 2023); 2 CFR 184; and 2 CFR 200

The Build America, Buy America Act (BABA) was enacted on Nov. 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA). It establishes a domestic content procurement preference for all federal financial assistance (FFA) used to finance infrastructure projects, including real estate. This requirement is referred to as the Buy America Preference (BAP) and is being implemented by the federal agencies responsible for providing financing for infrastructure projects. Materials that are required to comply with BABA standards include iron, steel, manufactured products, and construction materials, all of which must be produced in the United States. The primary agencies impacted by BABA for housing are the Departments of Housing and Urban Development (HUD) and Agriculture (USDA), although not all their programs are covered by the BAP.

HUD adopted a phased implementation schedule for its BABA-covered programs. HUD Notice CPD-25-01, dated January 13, 2025, stated that the BAP does not apply to FFA used to construct single family housing, but it does apply to FFA for multifamily projects. It also applies to the HUD Home Investment Partnership Program (HOME).

Reasons for Deregulation

- Applying BABA to HOME funds harms low-income renters and significantly exacerbates the housing affordability crisis. HUD's HOME program is most commonly used by NAHB members to provide additional financing for Low-Income Housing Tax Credit (LIHTC) projects.
- The cost and administrative burden of complying with BAP will discourage developers and builders from using federal financing and will negatively impact access to federal gap financing for LIHTC projects and other state and local affordable housing production programs.

Solutions

- Issue a new directive that supersedes Notice CPD-25-01 and exempts both single-family and multifamily housing projects with FFA from BABA.
- Issue a 5-year BABA public interest general applicability waiver for FFA obligated through HUD's HOME program.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOME Investment Partnerships Program: Program Updates and Streamlining

89 Federal Register 746 (January 6, 2024); 24 CFR 91; 24 CFR 92; 24 CFR 570 and 24 CFR 982

On January 6, 2024, the U.S. Department of Housing and Urban Development (HUD) published a final rule to update, streamline, and authorize new flexibilities in the Home Investment Partnerships Program (HOME) regulations. The changes were intended to increase flexibility for affordable housing production, lower housing costs and reduce regulatory burdens. They also expand tenant protections through a mandatory HOME lease addendum that imposes a set of uniform tenant protections for HOME-assisted rental housing tenants and HOME tenant-based rental assistance (TBRA) recipients. The implementation date for this rule was February 5, 2025.

On February 3, HUD issued a notice, "HOME Investment Partnerships Program: Program Updates and Streamlining-Delay of Effective Date," which delayed the rule's implementation date from February 5 until April 20, 2025. The Administration stated it would review the rule during this time to check for inconsistencies with President Trump's executive orders and policy priorities. Then on April 17, HUD later published, "HOME Investment Partnerships Program: Program Updates and Streamlining-Delay of Effective Date, Withdrawal, and Correction," which delays the Tenant Protection and Selection provisions until October 30, 2025, and makes other changes.

Reasons for Deregulation

- The rule's Tenant Protection and Selection provisions impose administrative and cost burdens on housing providers by mandating use of a new lease addendum.
- The Tenant Protection and Selection provisions also create inconsistencies with state and local landlord-tenant laws.

Solutions

- Propose a new rule to rescind the Tenant Protection and Selection provisions.
- Defer to state and local landlord-tenant laws.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard

89 Federal Register 30850 (April 23, 2024); 24 CFR 50; 24 CFR 55; 24 CFR 58; 24 CFR 200

On May 20, 2021, President Biden signed Executive Order 14030, "Climate-Related Financial Risk." Among other things, E.O. 14030 rescinded President Trump's 2017 Executive Order 13807, which withdrew the controversial Federal Flood Risk Management Standard (FFRMS). 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 January 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 (CISA). 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 to structures financed through HUD grants, subsidy programs and applicable multifamily programs.

HUD issued a temporary partial waiver on February 21, 2025, for single-family new construction in Special Flood Hazard Areas. 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. However, a similar waiver has not been issued for multifamily.

Reasons for Deregulation

- President Trump rescinded the Executive Order which required HUD to take this action. Therefore, HUD is no longer obligated to keep this requirement.
- 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 FEMA, 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.

- This rule establishes building requirements that are inconsistent with many state and local regulations.

Solutions

- Withdraw the FFRMS regulation.
- Expand the February 21, 2025 waiver to include multifamily housing until the FFRMS is withdrawn.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

30-Day Notification Requirement Prior To Termination of Lease for Nonpayment of Rent

89 Federal Register 101270 (December 13, 2024); 24 CFR 247; 24 CFR 880; 24 CFR 884; 24 CFR 886; 24 CFR 891; and 24 CFR 966

In March 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). Among other provisions, the CARES Act required owners of federally-backed and federally-assisted housing to provide tenants with at least 30-days written notice prior to filing an eviction case in local courts for nonpayment of rent.

The CARES ACT mandatory "notice to vacate" was intended to be a temporary federal measure that extended states' eviction notice procedures. Nevertheless, the previous Administration actively sought to permanently extend many of the temporary pandemic-era tenant protections. HUD interpreted Section 4024(c) of the CARES Act to indefinitely require that owners of covered properties provide 30-days written notice to tenants facing eviction for nonpayment. Although the CARES Act's initial eviction moratorium expired on July 24, 2020, and the federal COVID-19 public health emergency declaration ended on May 11, 2023, the 30-day notice to vacate remains a regulatory requirement for owners of covered HUD properties.

Reasons for Deregulation

- The CARES Act 30-day notice to vacate was a response to the COVID-19 pandemic, which ended years ago. There is no longer a valid reason for HUD to preempt state and local eviction laws.
- Continued enforcement of the notice remains a contested issue that contributes to:
    - Backlogs in eviction courts;
    - More lost, potentially unrecoverable rent for housing providers; and
    - Mounting rent debt for tenants, which worsens their credit and long-term housing opportunities.

Solutions

- Issue a legal opinion clarifying that the CARES Act 30-day notice requirement ended, and enforcement actions should not be taken against owners of covered properties.
- Rescind the final HUD rule, "30-Day Notification Requirement Prior To Termination of Lease for Nonpayment of Rent."
- Defer to state and local landlord-tenant laws.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities
90 Federal Register 10610 (Feb. 25, 2025); 24 CFR 50; and 24 CFR 58

The National Environmental Policy Act (NEPA) requires federal agencies to consider the environmental effects of proposed actions as part of their decision-making processes. The Council on Environmental Quality (CEQ) issued blanket regulations outlining how to do so but each agency was allowed to tailor their regulations to best fit their programs. Pursuant to President Trump's Executive Order 14154, CEQ published an interim final rule on February 25, 2025, that removes its NEPA implementing regulations from the Code of Federal Regulations and directs the federal agencies to use or amend the NEPA implementing procedures they relied upon prior to this rulemaking.

HUD requires certain FHA-insured multifamily and HUD-assisted projects to undergo an environmental review. The level of review varies based on project details and regulatory exemptions. Environmental Assessments (EAs) are typically required when a proposed project has activities such as new construction or a change in land use. EAs require analyses of current conditions, anticipated project impacts, potential alternatives, and options that could be incorporated to minimize adverse environmental impacts, among other requirements.

Reasons for Deregulation

- HUD's NEPA rules create significant construction delays, costs and administrative burdens for builders who are trying to help the agency meet its mission to increase the supply of apartment housing.

Solutions

- Revise HUD's NEPA Implementation Rule to specify that FHA Multifamily Mortgage Insurance Programs do not rise to the level of "major federal action," and therefore, NEPA is inapplicable.
- Exempt Home Investment Partnerships (HOME) projects from NEPA.
- Create a streamlined EA process.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Changes to the Methodology Used for Calculating Section 8 Income Limits Under the United States Housing Act of 1937

89 Federal Register 1583 (January 10, 2024); Notice PDR-2024-02, "Transmittal of Fiscal Year (FY) 2024 Income Limits for the Public Housing and Section 8 Programs," (April 24, 2024).

The United States Housing Act of 1937 provides for assisted housing for ''low-income families'' and ''very low-income families.'' These designations are defined as percentages of area median family income and are known as income limits. Section 3(b)(2) of the 1937 Act defines ''low-income families'' and ''very low-income families'' as families whose incomes are below 80 percent and 50 percent, respectively, of the area median family income, with adjustments for family size. These income limits are referred to as ''Section 8 income limits'' because of the historical and statutory links with that program, although the same income limits are also used as eligibility criteria for several other federal programs, such as the Low-Income Housing Tax Credit (LIHTC) Program. HUD updates area median family income estimates and Section 8 income limits annually.

Since Fiscal Year (FY) 2010, HUD has limited the amount that the income limit for an area could increase or decrease. HUD does not allow income limits to decrease by more than 5 percent from the prior year's level to help ensure the financial viability of affordable properties. At the same time, HUD capped annual year-to-year income limit increases at the higher of 5 percent or twice the change in the national median family income to protect tenants from substantially large rent increases.

On January 10, 2024 HUD proposed to limit the annual income limit increase for FY 2024 and thereafter to a maximum of ten percent. Through Notice PDR-2024-02, "Transmittal of Fiscal Year (FY) 2024 Income Limits for the Public Housing and Section 8 Programs," HUD formally announced that the so-called "cap-on-the-cap" was effective on April 1, 2024. Essentially, HUD placed an absolute 10 percent cap on the maximum possible income limit increases when twice the change in national family income would exceed 10 percent.

Reasons for Deregulation

- The 10 percent absolute cap is not required by statute.
- The absolute cap will result in lower rent for many properties and significantly fewer income-eligible households – a combination that discourages the production and preservation of affordable rental housing in many areas.

- The artificial and duplicative 10 percent cap jeopardizes the long-term viability of affordable properties. When property owners set rents, they consider impacts on the tenants, market conditions, financial obligations and physical needs of the property. Housing providers have fiduciary responsibilities to lenders and investors to charge rents that will ensure the long-term viability of the property - and that also ensure that there are sufficient funds available for the maintenance, upkeep and upgrades necessary for long-term preservation and stability of the property.
- LIHTC rents are set by statue, and they are directly tied to income limits. When income limits are stagnant, housing providers must maintain affordability for low-income and very-low-income tenants regardless of rising operating, maintenance and labor costs. Because of the direct relationship to income limits, LIHTC properties can go years without the ability to raise rents.
- Capped income limits will negatively impact new production of LIHTC properties. If the income limits exceed 10 percent, the absolute 10 percent cap will artificially lower the rent for a new property. The consequence of the 10 percent absolute cap can lead to less supportable debt, a harder time converting to permanent financing and states and local agencies having to allocate limited gap financing resources to properties.

Solutions

- Revoke the policy to cap the maximum annual increases in income limits at 10 percent.
- Withdraw Notice PDR-2024-02, “Transmittal of Fiscal Year (FY) 2024 Income Limits for the Public Housing and Section 8 Programs,” (April 24, 2024).

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT/U.S. DEPARTMENT OF AGRICULTURE

Final Determination: Adoption of Energy Efficiency Standards for the New Construction of U.S. Department of Housing and Urban Development and U.S. Department of Agriculture Financed Housing

89 Federal Register (April 26, 2024); 24 CFR 203, 24 CFR 200, 7 CFR part 3555, and others

The U.S. Department of Housing and Urban Development (HUD) and U.S. Department of Agriculture (USDA) have interpreted the Cranston-Gonzalez Act, as amended by the Energy Independence and Security Act of 2007 (EISA) to require that the agencies adopt periodic revisions to the International Energy Conservation Code (IECC) and ANSI/ASHRAE/IES Standard 90.1 for new construction of certain categories of housing (public and assisted housing and single family and multifamily residential housing (other than manufactured homes) subject to mortgages insured under the National Housing Act; 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 rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 1437v of this title) subject to a determination by the agencies that the revised codes do not negatively affect the availability and affordability of new construction of single-family and multifamily housing covered by EISA, and a determination by the Secretary of Energy that the revised codes would improve energy efficiency.

On April 26, 2024, HUD and USDA issued the *Final Determination: Adoption of Energy Efficiency Standards for the New Construction of U.S. Department of Housing and Urban Development (HUD) and U.S. Department of Agriculture (USDA) Financed Housing* requiring single-family new construction homes purchased by home buyers using HUD/Federal Housing Administration (FHA) or USDA financing to be built to the 2021 IECC and multifamily properties financed with certain HUD programs to be built to 2021 IECC or ASHRAE 90.1-2019.

This rule is currently in litigation. *See State of Utah v. Turner*, No. 6:25-cv-1 (E.D. Tex.).

Reasons for deregulation

- Research shows that building to the 2021 IECC increases the cost of new construction single-family housing by as much as $30,000 and that some of the provisions of the code have a payback period of almost a hundred years.
- This requirement conflicts with building codes in 42 states.
- Requiring home builders to build to an energy code that is not consistent to the state or local building code creates an administrative and cost burden that will disadvantage home buyers using FHA and USDA financing and multifamily property owners and developers using HUD programs.

- The authorizing statute requires that revised codes “do not negatively affect the availability or affordability of new construction.” 42 U.S.C. § 12709(d). That is an absolute standard.
- The agencies relied on speculation about unquantified benefits to overcome calculations showing negative impact to availability and affordability of new construction.
- The Agencies interpretation of the authorizing statute is not the best interpretation as required by *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

Solutions

- Assuming that updates to the IECC and ASHRAE 90.1 are allowed, HUD and USDA should propose an affirmative process rule for establishing how the Agencies will analyze "availability and affordability" under 42 U.S.C. § 12709(d). The analysis must clearly establish that (a) the Agencies will not adopt new energy standards if there is any risk that the standards will decrease the availability or affordability of new housing, and (b) that demonstrated negative impact cannot be overcome by speculation.

OFFICE OF THE COMPTROLLER OF THE CURRENCY, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, AND FEDERAL DEPOSIT INSURANCE COMPANY

Final Guidance: Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices

71 Federal Register 74580 (December 12, 2006)

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Company issued joint guidance to reinforce sound risk management. The guidance established lending thresholds for commercial banks that states if reported loans for construction, land development and other land loans represents 100 percent or more of the institution's total risk-based capital, the institution would be considered to have a commercial real estate (CRE) concentration and should have heightened risk management practices. Secondly, if loans for construction, land development, and other land and loans secured by multifamily and nonfarm nonresidential property (excluding loans secured by owner-occupied properties) represents 300 percent or more of total risk-based capital and the outstanding balance of the institution's commercial real estate loan portfolio has increased by 50 percent or more during the prior 36 months, the institution would also be considered to have a CRE concentration and should employ heightened risk management practices.

Reasons for Deregulation

- Exceeding the regulatory guidance thresholds may subject a bank to increased scrutiny from its regulator. The bank then may be required to take actions to reduce its concentration risk, such as limiting new AD&C financing, increasing its capital levels, or implementing more robust risk management practices.
- To avoid regulatory actions and additional administrative burdens, financial institutions are treating the guidance thresholds as hard caps on acquisition, development and construction (AD&C) financing. This is causing some banks to take a cautious approach and limit lending to home builders and developers as AD&C financing nears the thresholds. This impacts the ability of home builders to create new housing supply.
- The concentration guidelines are especially difficult for small community banks that are a critical source of funding for home builders and create administrative burdens that are difficult to overcome.

Solutions

- Withdraw the guidance.

OFFICE OF THE COMPTROLLER OF THE CURRENCY, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, AND FEDERAL DEPOSIT INSURANCE CORPORATION

Final Rule: Regulatory Capital Treatment for High Volatility Commercial Real Estate Exposures

84 Federal Register 68019 (December 13, 2019); 12 CFR Parts 3, 217 and 324

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation issued a final rule to revise the definition of "high volatility commercial real estate exposure" (HVCRE). Under the final rule, a loan that finances land development but does not include the construction financing of one- to four-family residential structures will be categorized as an HVCRE exposure unless the exposure meets another exclusion. While land developers may also build homes, they generally do not obtain the construction financing under the same entity with a combination land development/ construction loan. Industry practice has separate entities developing lots that are sold to either a related or unrelated home building entity that constructs the homes.

Reasons for Deregulation

- Under the terms of the rule, most land development loans would be classified as HVCRE and require banks to risk-weight the loans at 150 percent. Tying up capital is a disincentive to banks to making land development loans and holding them in their portfolios.
- Banks will charge more for these land development loans to cover the cost of holding excessive capital.

Solutions

- Revise the final rule to eliminate the requirement that a land development loan must have a capital risk weight of 150 percent unless it is combined with a construction loan for a one-to-four family residential structure.

OFFICE OF THE COMPTROLLER OF THE CURRENCY, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, AND FEDERAL DEPOSIT INSURANCE CORPORATION

Regulatory Capital Proposed Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity

88 Federal Register 64028 (September 18, 2023)

In July 2023, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation issued the Basel III Endgame Proposal that would substantially revise the capital requirements applicable to large banking organizations and to banking organizations with significant trading activity. The proposed approach would, in part, change the risk weights on residential mortgage loans to require banks to hold more capital against mortgage loans in their portfolios. Certain provisions that apply currently only to banks with total assets greater than $250 billion would apply to banking organizations with total assets of $100 billion or more and their subsidiary depository institutions. By all accounts, it will significantly increase the capital levels required for banks with assets greater than $100 billion.

Reasons for Deregulation

- According to NAHB's Survey on Acquisition, Development & Construction Financing, 75% of respondents listed commercial banks as a source of financing for single-family construction activities. Overly onerous capital requirements restrict the liquidity of banks and inhibit their ability and incentive to provide financing for acquisition, development, and construction activities for single-family and multifamily housing, as well as permanent financing for home buyers and rental property owners.
- Burdensome capital requirements will restrict an important source of financing for new housing supply and residential mortgages.

Solutions

- Withdraw the proposed rule.
- Revise and repropose a Basel III Endgame capital rule that does not limit the availability or increase the cost of residential mortgage credit.

ALL DEPARTMENTS AND INDEPENDENT AGENCIES

Department of Government Efficiency Task Force
90 Federal Register 8441 (January 20, 2025)

The Department of Government Efficiency (DOGE) was created via Executive Order on January 20, 2025. It is charged with cutting waste, fraud and abuse within the federal government. Doge teams are to be deployed to each federal agency and their affiliates to identify opportunities to streamline operations, cut costs and improve efficiency.

While we are heartened by the prospect of a leaner and more nimble federal government and the potential for reduced regulatory burdens, at the same time we remain focused on maintaining the programs that facilitate our work. America's home builders utilize and rely on several federal programs administered by federal agencies to obtain authorizations, financing, and/or otherwise help them supply new homes and apartments and build communities. While the following list is not all-inclusive, it represents the most widely used and influential permits and programs home builders use:

- Clean Water Act (CWA) Section 402 and 404 permits;
- Endangered Species Act (ESA) Section 7 and Section 10 consultations;
- National Flood Insurance Program (NFIP) Map Modernization;
- Tax programs, such as the Low Income Housing Tax Credit (LIHTC);
- FHA Mortgage Loan insurance for single-family and multifamily housing;
- HUD's HOME Investment Partnership (HOME) and Community Development Block Grant (CDBG) programs;
- HUD Rental Assistance, primarily Section 8 Project Based Rental Assistance (PBRA) and the Housing Choice Voucher (HCV) programs;
- USDA Rural Housing Service single-family and multifamily programs;
- Veterans Affairs (VA) Home Loan Program; and
- EPA and DOE voluntary energy and water efficiency programs.

Each of these programs serves an important purpose and constituency; they are not interchangeable but are complementary and/or necessary for compliance. Different strategies are needed to meet the housing needs of households with different income levels in different parts of the country. The array of federal government programs that have been developed over the years in response to identified needs are essential elements that must be retained to ensure that there are affordable options for providing housing across the country.

Reasons for Continuation

- Many of these programs drive technology and innovation, instill partnerships, and create the community needed to create strong and resilient neighborhoods.
- Home builders must receive federal authorization(s) for many of their projects. Absent sufficient staffing, timely response, and program resources, those projects will be delayed or worse, never built – adding to the nation's housing and affordability crises.

- Without the federal assistance that many of these programs provide, many projects cannot pencil out and will not be built. Fewer new homes exacerbate the housing shortage.
- Program uncertainty leads to business uncertainty and increases the risks builders face. Continuing to administer known and successful programs will invite business growth and investment.

Solutions

- Maintain these federal programs and improve their implementation and operation to make them more efficient and effective and to reduce regulatory burdens on housing providers.
- Ensure adequate staffing levels remain in place to support the availability and full functionality of resources and tools to ensure the timely processing of CWA and ESA authorizations and NFIP LOMR/LOMR-F requests.
- Ensure adequate staffing levels remain in place to support the availability and full functionality of Rural Housing's Section 502 Direct and Guaranteed Loan Programs, multifamily direct and guaranteed loan programs and FHA single-family and multifamily resources and tools such as FHA Connection to ensure the timely processing of FHA-insured mortgages, timely and accurate subsidy contract payments and other asset management functions.
- Provide full funding for all HUD and USDA rental assistance contracts.
- Provide robust funding for HUD’s HOME program.
- Provide strong budgets for the USDA homeownership direct loan programs and multifamily housing programs.
- Ensure borrowers continue to have access to FHA-insured single-family and multifamily loan programs.
- Continue to provide the resources for voluntary programs to spur technology, conserve resources and provide for future growth.

U.S. DEPARTMENT OF ENERGY

BuildingsNEXT Team Showcase

79 Federal Register 61622 (October 14, 2014)

The U.S. Department of Energy's (DOE) BuildingsNEXT Team Showcase (formerly known as the Solar Decathlon) is a competition for college and master's level students to designing resource-efficient, cost-effective, and attractive buildings powered by renewable energy. BuildingsNEXT provides participating students with hands-on experience and unique training that prepares them to enter the clean energy workforce. Since its inception in 2002, the competition has prepared over 25,000 students for opportunities in the residential construction field by promoting technical innovation, advancing building science, and providing real-world skills.

Reasons for Continuation

- The BuildingsNEXT Team Showcase has become an important tool for building interest in the construction field, developing the next generation of building professionals, and addressing the ongoing labor shortages within the construction industry.
- The competition promotes the innovation in residential design, high performance and housing affordability that today's homebuyers are looking for.
- The skills development and experiences beyond the engineering and design, including research, collaboration, and preparing and presenting their innovative building designs to an audience of their peers, professors, researchers, and industry professional challenges students to design high-performance buildings that improve our quality of life through greater affordability, resilience, and energy efficiency.

Solutions

- Maintain and grow the yearly event and continue to advocate for a strong building workforce and workforce development opportunities.
- Maintain adequate staffing to administer the DOE BuildingsNEXT program.
- Continue to budget appropriately and adequately for the program.

U.S. DEPARTMENT OF ENERGY

Zero Energy Ready Homes Program

DOE Zero Energy Ready Home Single Family Version 2; IRS Notice 2023-65 (September 27, 2023)

The U.S. Department of Energy's Zero Energy Ready Home (ZERH) program is housed in the Building Technologies Office (BTO) of the Office of Energy Efficiency and Renewable Energy. It is one of several efforts by BTO to accelerate the adoption of techniques and technologies to create high-performance, energy efficient buildings. The ZERH program, started in 2013, focuses on designing and building homes so that their renewable energy features offset most or all the building's annual energy use. Structures that meet the efficiency and performance criteria and are certified through a qualified third-party may receive a ZERH certificate.

There are separate ZERH program requirements for homes and multifamily buildings. In October 2022, DOE released revised national program requirements for single family homes (ZERH V2) to "help homebuilders keep pace with the growing demand for zero energy ready homes, the rapidly evolving homebuilding market, new technologies and construction processes that redefine continually what's possible, and the accelerating speed of climate change." Subsequent revisions were issued in October 2023 and October 2024. While periodic reviews of the program elements are necessary, several of the recent revisions reduced the design flexibility and may discourage participation.

Reasons for Continuation

- The BTO and ZERH program promote innovation
- Many builders and remodelers, especially high-performance builders, use the ZERH program or its components to meet market demand and/or set themselves and their products apart.
- Consumers are increasingly looking for the assurances provided by third party inspectors when making decisions about buying or renting a home or when considering remodeling.
- Section 1330 of the Inflation Reduction Act (IRA) expanded and extended the 45L tax credit for builders of energy efficient new homes that comply with the ZERH program. Continuing the program ensures a pathway for qualifying for this credit.

Solutions

- Preserve and expand the ZERH program.
- Maintain sufficient staffing levels within the BTO to administer the ZERH program.
- Continue to budget appropriately and adequately for the ZERH program
- Revise the DOE Zero Energy Ready Homes program to:
    - Improve design flexibility
    - Remove the 2021 IECC insulation backstops in favor of the insulation levels of the 2024 IECC

U.S. DEPARTMENT OF HOMELAND SECURITY/FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Program Map Modernization/Technical Mapping Advisory Council
42 USC 50

Current, accurate and scientifically sound Flood Insurance Rate Maps (FIRMs) are essential components of the National Flood Insurance Program (NFIP), as they are the backbone for depicting the location of the Special Flood Hazard Area (SFHA)/100-year floodplain and communicating one level of risk to homeowners and renters. The Federal Emergency Management Agency (FEMA) has spent countless hours and federal resources to develop and maintain its floodplain-mapping program over the last several decades yet continuing technical and funding challenges have stymied attempts to comprehensively digitize and modernize the national maps. As the maps and the mapping process slowly evolve, there remain ongoing concerns about how the maps are created, what information is used and depicted, and how requests for corrections are considered and made.

In considering what efforts to take to modernize the maps and ensure the maps are maintained and updated on a regular basis, in 2012, Congress passed the Biggerts-Waters Flood Insurance Reform Act, which among other things, created the Technical Mapping Advisory Council (TMAC). TMAC is responsible for reviewing and making recommendations to FEMA on matters related to the national flood mapping program.

Reasons for Continuation

- If the NFIP continues to rely on maps as the trigger to impose certain obligations (i.e., the mandatory purchase of flood insurance) those maps must be available, accurate and reliable.
- Absent maps that are readily available, understandable and at a scale that is meaningful, private entities are filling the void and making questionable information available to the public. While some of the data may be useful, some of the tools have serious flaws that could undermine their intent and lead to harmful results.
- Without reliable maps, consumers, landowners and communities are unable to make informed decisions, which could lead to increased damage from flooding events.

Solutions

- Provide adequate funding and oversight to ensure the regular updating of FIRMs.
- FIRMs must be updated to show and take into account all flood control features, including privately funded flood control structures and those not built by the U.S. Army Corps of Engineers, along with their impact on the extent of any potential flooding.
- Establish an appeals process whereby the maps can be challenged.

U.S. ENVIRONMENTAL PROTECTION AGENCY/U.S. DEPARTMENT OF ENERGY

ENERGY STAR

90 Federal Register 3209 (January 14, 2025); 10 CFR 436.41; 42 USC 6294a; IRS Notice 2023-65 (September 27, 2023)

ENERGY STAR is an above-code voluntary program that has educated consumers and facilitated the use of cost-effective energy efficient appliances and technologies for over three decades. Bipartisan laws enacted by Congress in 1990, 2005, and 2015 calling for non-regulatory, voluntary strategies for energy conservation and end-use efficiency have provided the foundation upon which the ENERGY STAR program is built and allows Environmental Protection Agency (EPA) to drive the agency's mission forward without heavy-handed federal regulations.

Home builders and consumers rely on the ENERGY STAR program to:

- Provide certification for buildings and homes that meet certain energy standards;
- Set energy efficiency standards for appliances, water heaters and lighting;
- Run the Portfolio Manager software; and
- Serve as the baseline for certain programs and tax incentives.

Collectively, ENERGY STAR promotes consumer choice and can help builders, property owners, and consumers save money on their energy bills.

Reasons for Continuation

- Over 78 percent of respondents to a recent "What Home Buyers Really Want" Survey identified ENERGY STAR rated windows, ENERGY STAR rated appliances and/or ENERGY STAR home certification as essential or desirable in their next new home.
- Electricity savings achieved by ENERGY STAR reduce reliance on the grid and free up power generation and supply to meet other growing energy needs.
- 42 USC 6294 (a) specifically calls for the program. It reads, "There is established within the Department of Energy and the Environmental Protection Agency a voluntary program to identify and promote energy-efficient products and buildings to reduce energy consumption, improve energy security, and reduce pollution through the voluntary labelling of, or other forms of communication about, products and buildings that meet the highest energy conservation standards."
- Section 13304 of the Inflation Reduction Act expanded and extended the 45L tax credit for builders of energy efficient new homes that comply with ENERGY STAR for Homes. Continuing the program ensures a pathway for qualifying for this credit.

Solutions

- Preserve and expand ENERGY STAR.
- Revise the ENERGY STAR for Homes program to:
    - Remove the 2021 IECC insulation backstops in favor of the insulation levels of the 2024 IECC
- Maintain adequate staffing and budget to administer all aspects of the ENERGY STAR program.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Indoor AirPlus

89 Federal Register 9849 (February 12, 2024)

Indoor AirPlus, a program of the U.S. Environmental Protection Agency (EPA), is a voluntary labeling and certification program that new home builders can use to minimize they home buyer's exposure to indoor air pollutants and contaminants. Addressing issues such as moisture control; heating, ventilating and air conditioning systems; and low emitting building materials, the program focuses on construction practices and product specifications to protect indoor air quality.

In response to stakeholder feedback, EPA released Indoor AirPlus Version 2 in July 2024 (IAP V2). Instead of a single certification pathway, IAP V2 includes a tiered set of certification requirements for two separate labels - Indoor AirPlus Certified and Indoor AirPlus Gold Certified. Other changes that were made include ENERGY STAR as a prerequisite for only Gold Certification, mandatory radon mitigation or awareness measures regardless of radon zone and mechanical ventilation must be installed in each dwelling unit.

Reasons for Continuation

- As a result of the COVID-19 pandemic, homeowners and renters are more cognizant of indoor air quality. A third-party certification program can provide assurances of a healthier home.

Solutions:

- Preserve and expand the Indoor AirPlus voluntary program.
- Maintain staffing levels of the Indoor AirPlus program.
- Continue to budget appropriately and adequately for the program.

U.S. ENVIRONMENTAL PROTECTION AGENCY

WaterSense

90 Federal Register 14139 (March 28, 2025); 42 USC 6294b

WaterSense for homes is a voluntary, above-code certification for water savings and performance. Run by the U.S. Environmental Protection Agency (EPA), it provides builders with third-party validation for their clients and helps consumers save water, energy, and money. WaterSense also certifies products that meet the criteria for WaterSense performance and water saving standards**.** These product labels can be found on residential toilets, showerheads, bathroom faucets, spray sprinkler bodies, and irrigation controllers used in home building and remodeling.

Started in 2006, WaterSense was loosely modeled after EPA's successful ENERGY STAR program and initially focused on labels to voluntarily be used by manufacturers on fixtures that used at least 20 percent less water than the federally mandated volume-based efficiency standards outlined in the Energy Policy and Conservation Act. Over time, the program expanded to include a building certificate program, as well as recognition for irrigation professionals. Estimates suggest that WaterSense, since its inception, has helped consumers and businesses save more than 7.5 trillion gallons of water by purchasing water-saving plumbing fixtures and irrigation products.

Reasons for Continuation

- Consumers are generally willing to pay more for certification that their home meets an above-code standard for water efficiency.
- The decreased water usage from the Watersense program reduces the strain on water systems and wastewater and stormwater infrastructure.
- Improved water efficiency provides additional flexibility for economic growth in arid areas.

Solutions

- Preserve and expand the WaterSense voluntary program.
- Maintain appropriate staffing levels to administer the WaterSense program.
- Continue to budget appropriately and adequately for the program