Federal Intrusion in Energy Codes Hurts Housing Affordability

Myth: The Portman-Shaheen amendment is not a mandate on states, local governments, or Indian tribes. There is a voluntary clause that says states do not have to update their building energy code.

Fact: While this amendment states that this process is voluntary, the code development provision is NOT voluntary. It requires the Department of Energy (DOE) to set aggressive energy targets. These targets will be interpreted as mandates by the codes and standards development organizations. DOE's "undue influence" combined with congressional backing will essentially make the agency developers of a national energy code.

Additionally, on Feb. 12, 2020, DOE Undersecretary Mark Menezes testified to the House Energy and Commerce Committee regarding H.R. 3962, The Energy Savings and Industrial Competitiveness Act, the House companion bill to S. 2137. In his remarks, Undersecretary Menezes indicates that while the "bill comes out by saying it is voluntary," as you go through the section, "there are a series of 'shalls' which are mandatory." Menezes continues to say, "it may be a voluntary program overall, but DOE will have obligations in a voluntary program; that seems to say that we will need to develop new standards... and we will have to grade these states, tribes, and others are either implementing or not."

Myth: The amendment creates a process for DOE to use a public and transparent process with stakeholders, including home builders, to set targets of aggregate energy savings for the model building code as it is updated every three years.

Fact: DOE already has an established process which it has used when developing proposals for the IECC (EERE-2015-BT-BC-0002-0001) and an established cost analysis methodology (EERE-2015-BT-BC-001). So, this section provides no new value. While the legislation creates a process that requires DOE to get input from a number of stakeholders in the establishment of the targets, the agency still has the ability to ignore suggested changes.

Myth: That process also requires DOE to take into consideration a number of economic factors, including a return on investment analysis, estimated costs and savings, and impacts on small businesses. These economic factors will ensure that the target is cost-effective.

Fact: The amendment states that DOE is required to take into account economic considerations. However, this legislation requires that the targets set by DOE promote maximum energy efficiency and life cycle cost effectiveness. DOE typically analyzes cost-effectiveness using a Present Value Life Cycle cost analysis over a 30-year period. NAHB recommends that language be added to the provision that enables consumers to deserve a reasonable return on investment. NAHB suggested adding language that has a
payback of 5-7 years. Unfortunately, the authors of this amendment do not believe there should be a cap on the payback.

**Myth:** The target is non-binding. Building energy code development will remain within the International Codes Council. This bill does not allow DOE to take over, or hijack, the building codes process.

**Fact:** In this amendment, the DOE role in the code development process is heavily expanded upon and it is required to set these aggressive targets. It is voluntary for states to choose whether they want to adopt the new code. However, if the code developers determine that they cannot meet the targets, then DOE will resubmit proposals for the code developers to reconsider to meet the DOE targets. These proposals would be submitted outside the consensus process.

**Myth:** Studies have indicated that home owners are willing to pay more upfront for energy-efficiency improvements in order to have lower monthly utility bills.

**Fact:** The study that is being referenced by the energy advocates indicates that consumers are willing to pay the upfront cost of a home only if they are receiving help through the SAVE Act. Under the SAVE Act, consumers would be qualified for a larger mortgage if they are purchasing a more energy efficient home. As builders, we work with consumers on a daily basis. Home buyers are not willing to pay that upfront cost in a home without seeing a return on investment. Studies indicate that for every $1,000 increase in the price of a home, roughly 158,000 American households would be "priced out" and no longer be able to afford it. Failure to consider the true economic costs of energy-use reductions and establish a reasonable payback period for these investments will result in fewer families being able to achieve the American Dream.

NAHB’s survey of What Home Buyers Really Want (2019) reveals that the typical home buyer, at all income levels, is only willing to have a 5-year payback. Using DOE’s, or ASHRAE 90.1’s cost effective methodology and economic parameters, the simple payback equivalent varies from 19 to 25 years. This can be detrimental to a potential home buyer's ability to purchase a home and even when taking into account the energy savings, will increase the cost of home ownership.

DOE’s undue influence in the code development process will essentially incorporate the target efficiency into the IECC/ASHRAE 90.1. The targets are developed with a series of economic variables and assumptions maximized over the life cycle. Since all the calculations are averages, even if all the assumptions are correct over the life span, the result will be that half of the home buyers will never recover their investment.

**Myth:** The amendment allows DOE to provide funding and technical assistance for states who choose to update their building energy codes.

**Fact:** NAHB supports DOE’s continued role as a technical advisor in the code development process. However, this amendment requires the agency to set aggressive
energy-savings targets and to submit proposals to meet these targets. NAHB believes that DOE should use funds to help states implement codes that best fit their jurisdiction.

**Myth:** Requiring certain payback periods doesn’t take into consideration how energy efficiency improvements are really financed, nor does it consider the actual life of the building.

**Fact:** On average, home owners stay in their homes for roughly 13 years. Technology is constantly advancing and what technologies are being included into homes now are not necessarily going to be the most efficient in 10 years. NAHB surveys consistently show that the typical home buyer wants to see a payback within five years. Home owners want to see a return on their investment. Therefore, it is essential for consumers to be able to see a payback within a reasonable time.

**Myth:** Home builders supported Portman-Shaheen in the past.

**Fact:** NAHB does not support the Portman-Shaheen Amendment or its predecessor, S. 2137. In 2011, after discussions with the bill’s sponsors, NAHB was neutral on the legislation and only supported specific elements of the legislation. In every communication to Capitol Hill on the Portman-Shaheen legislation, NAHB has expressed concerns with or opposition to the energy code section and its lack of an appropriate payback for home buyers.

**Myth:** The home builders have altered their position over time.

**Fact:** The Portman-Shaheen amendment is a federal mandate that will add to the cost of constructing a home. The Portman-Shaheen energy codes amendment is largely unchanged in the past nine years since it was drafted in 2011; the U.S. housing economy is drastically different. In 2011, the housing market was still in the grip of the Great Recession. Home prices and home production were near the bottom of the economic trough. The recovery has been a long, slow slog for Americans seeking the American Dream of homeownership, and home builders are not yet building enough homes to meet demand. Now, nine years later, housing affordability is a crisis across the country. Regulatory burdens, labor shortages, land prices and financing constraints have combined to dramatically increase construction costs for new homes. If Congress is going to mandate new energy codes that will increase the cost to construct a home, it is only right that home buyers be allowed to recoup those costs in a reasonable time frame.