



## **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

## **DEPARTMENT OF AGRICULTURE**

**[Docket No. FR-6271-N-05]**

### **Adoption of Energy Efficiency Standards for New Construction of HUD- and USDA-Financed Housing; Notice for Comment**

**AGENCY:** Department of Housing and Urban Development (HUD) and Department of Agriculture (USDA).

**ACTION:** Notice; request for comments.

**SUMMARY:** HUD and USDA (“the agencies”) published a Final Determination on April 26, 2024, adopting the 2021 IECC and ASHRAE 90.1-2019 energy codes as minimum requirements for programs covered under the Energy Independence and Security Act of 2007 (EISA). The Final Determination found that adoption of the energy codes would have no negative impact on the affordability and availability of EISA-covered housing. The agencies plan to review the analysis contained in the Final Determination and are seeking public comments to inform the review.

**DATES:** Comment due date: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule.

Communications must refer to the above docket number and title. There are two (2) methods for submitting public comments. All submissions must refer to the above docket number and title.

*1. Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

HUD: Scott Knittle, Principal Deputy General Counsel, Department of Housing and Urban Development, 451 7<sup>th</sup> Street SW, Room 10180, Washington, DC 20410; telephone number 202-708-2244 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit:

<https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

USDA: Robert Bogan, Administrative Management Specialist, Program Support Services, Rural Housing Service; Department of Agriculture, 1400 Independence Avenue SW, Room 6900-S, Washington, DC 20250; telephone number 202-557-1000 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**Statutory requirements**

Section 481 of the Energy Independence and Security Act of 2007 (“EISA,” Pub. L. 110-140) amended section 109 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Cranston-Gonzalez) (42 U.S.C. 12709), which establishes procedures for setting minimum energy standards for certain categories of newly constructed housing financed by HUD and USDA. In addition to these EISA-specified categories, EISA also applies to new construction projects in the HOME Investment Partnerships Program (HOME) and the Housing Trust Fund program through their program statutes or regulations. Table 1 provides HUD and USDA programs covered by EISA:

HUD Programs	Legal Authority	Regulations or Notices
Public Housing (Capital Fund)	Section 9(d) and Section 30 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g(d) and 1437z-2)	24 CFR part 905
Capital Fund Financing	Section 9(d) and Section 30 of the	24 CFR part 905 subpart E

<b>HUD Programs</b>	<b>Legal Authority</b>	<b>Regulations or Notices</b>
Program	U.S. Housing Act of 1937 (42 U.S.C. 1437g(d) and 1437z-2).	
*HOPE VI Revitalization of Severely Distressed Public Housing	Section 24 of the U.S. Housing Act of 1937 (42 U.S.C. 1437v)	FR-5415-N-07
Choice Neighborhoods Implementation Grants	Section 24 of the U.S. Housing Act of 1937 (42 U.S.C. 1437v)	Implementation Grants notice of Funding Opportunity (NOFO)
Project-Based Voucher Program	Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f)	24 CFR part 983
Section 202 Supportive Housing for the Elderly	Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended.	24 CFR part 891
Section 811 Supportive Housing for Persons with Disabilities	Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013) as amended.	24 CFR part 891
Rental Assistance Demonstration (RAD)	Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55), as amended by Consolidated Appropriations Act, 2014 (Public Law 113-76) and subsequent HUD Appropriations Acts.	RAD notice Revision 4 (H 2019-09 PIH 2019-23), as amended by RAD Supplemental Notices 4B (H2023-08 PIH 2023-19 (HA)) and 4C (H2025-01 PIH 2025-03 (HA))
FHA Single Family Mortgage Insurance Programs	National Housing Act, Sections 203(b) (12 U.S.C. 1709(b)), Section 251 (12 U.S.C. 1715z-16), Section 247 (12 U.S.C. 1715z-12), Section 203(h) (12 U.S.C. 1709(h)), Housing and Economic Recovery Act of 2008 (Public Law 110-289), Section 248 of the National Housing Act (12 U.S.C. 1715z-13)	24 CFR part 203, subpart A; 203.18(i); 203.43i; 203.49; 203.43h.
FHA Multifamily Mortgage Insurance Programs	Sections 213, 220, 221, 231, and 232 of the National Housing Act (12 U.S.C.1715e, 12 U.S.C.1715v, 12 U.S.C.1715k, 12 U.S.C.1715l, 12 U.S.C.1715w).	24 CFR parts 200, subpart A; 213; 220; 221, subparts C and D; 231; and 232
HOME Investment Partnerships (HOME) [By regulation]	Cranston-Gonzalez sections 215(b)(4) and 215(a)(1)(F) (42 U.S.C. 12745(b)(4) and 42 U.S.C. 12745(a)(1)(F)) require HOME units to meet minimum energy efficiency standards promulgated by the Secretary in accordance with Cranston-Gonzalez section 109 (42 U.S.C. 12745).	Final HOME Rule at <a href="http://www.onecpd.info/home/home-final-rule/">www.onecpd.info/home/home-final-rule/</a> reserves the energy standard for a separate rulemaking at 24 CFR 92.251.

<b>HUD Programs</b>	<b>Legal Authority</b>	<b>Regulations or Notices</b>
Housing Trust Fund [By regulation]	Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289, 12 U.S.C. 4568.)	24 CFR 93.301(a)(2)(ii), Property Standards, requires compliance with Cranston Gonzalez section 109 (42 U.S.C. 12709).
<b>USDA Programs</b>	<b>Legal Authority</b>	<b>Regulations</b>
Section 502 Guaranteed Housing Loans	Section 502 of Housing Act of 1949 (42 U.S.C. 1472)	7 CFR part 3555
Section 502 Rural Housing Direct Loans	Section 502 of Housing Act of 1949 (42 U.S.C. 1472)	7 CFR part 3550
Section 523 Mutual Self Help Technical Assistance Grants, homeowner participants	Section 523 of Housing Act of 1949 (42 U.S.C. 1490c)	7 CFR part 1944 subpart I

\* Program no longer funded or no longer funds new construction.

EISA references two standards: the International Energy Conservation Code (IECC) and American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers/Illuminating Electrical Society Standard 90.1 (ASHRAE 90.1). The IECC standard applies to single family homes and multifamily low-rise buildings (up to 3 stories), while the ASHRAE 90.1 standard applies to multifamily residential buildings with 4 or more stories. For both agencies, applicability is limited to newly constructed housing and does not include the purchase or repair of existing housing.

The IECC and ASHRAE 90.1 are industry-based consensus codes that are typically updated on three-year cycles. Following each update, HUD and USDA are required to adopt the new versions of the IECC and ASHRAE 90.1 within one year. If the agencies are unable to do so, the agencies must “make a determination that the revised codes do not negatively affect the availability or affordability” of the covered housing, and the Secretary of Energy must determine “that the revised code or standard would improve energy efficiency” in order for the agencies to consider adopting the updated versions of the IECC and ASHRAE 90.1.

### **Preliminary and Final Determination**

On May 18, 2023, HUD and USDA published a Preliminary Determination (88 FR 31773) that the 2021 IECC and ASHRAE 90.1-2019 did not negatively affect the affordability and availability of EISA-covered housing. After receiving feedback during the public comment period, the agencies published the Final Determination on April 26, 2024 (89 FR 33112) with an updated economic analysis and found that adoption of the standards would not negatively impact the affordability and availability of EISA-covered housing.

As outlined in Section I. F. of the Final Determination, changes to the Preliminary Determination based on public comments included updated economic factors to reflect changes to the economic landscape due to the COVID-19 pandemic and global supply chain issues, adjustments to cash flow and financing factors to reflect typical financing factors for HUD and USDA borrowers, updates to the energy codes adopted at the state-level, more information on alternative compliance paths, and adjusted implementation and compliance timelines.

The most significant update to the affordability analysis was the application of a supply chain cost increase factor of 37 percent and an energy price increase factor of 32 percent to reflect changes in costs following the underlying cost-effectiveness analysis published by the U.S. Department of Energy (DOE) in 2021. The supply chain cost increase factor was determined using the Bureau of Labor Statistics' Producer Price Index for inputs to residential construction less energy, as reported by the National Association of Home Builders (NAHB). The energy price increase factor was developed using data collected by the U.S. Energy Information Administration. More detail on these factors can be found in Sections I. F. and II. C. 4. of the Final Determination. Other updated economic factors included the energy price escalator, mortgage interest rate, and discount rate. Adjustments to cash flow and financing factors included revisions to the down payment rate, mortgage insurance premium, and home size.

#### **Affordability and Availability Analysis**

HUD and USDA's affordability analysis considered several metrics of cost effectiveness, including life-cycle cost (LCC) savings, incremental cost, years to positive cashflow, and simple payback period, which combined to holistically assess affordability. More information on each of these metrics is available in the Final Determination. In the Final Determination, the affordability analysis is primarily presented through the various scenarios in tables 9 through 20 for the 2021 IECC (89 FR 33137 – 33161) and tables 21 through 29 for ASHRAE 90.1-2019 (89 FR 33164 – 33175). For the 2021 IECC, the analysis considers impacts at the national, climate zone, and state levels; a high-interest rate scenario; and different housing types. It also considers State adoption of energy codes. As of December 2023, 41 states and the District of Columbia (D.C.) had adopted a version of the IECC that was equivalent to or higher than the prior HUD and USDA standard of the 2009 IECC. The remaining 9 states had either adopted standards that pre-date the 2009 IECC (1 state) or had no state-wide codes (8 states). See Table 11 of the Final Determination (89 FR 33147) for more information. As of December 2023, 33 states and D.C. had adopted an ASHRAE 90.1 standard that was above the prior HUD and USDA standard, while 17 states had adopted codes that were equivalent to or below the prior HUD and USDA standard or had no statewide codes. See Table 23 of the Final Determination (89 FR 33166) for more information.

Tables 13 (89 FR 33153) and 19 (89 FR 33158-33159) in the Final Determination summarize the affordability analysis for adopting the 2021 IECC in single family dwelling units, breaking down incremental costs by climate zone and by State. The agencies found the incremental cost of adoption to be \$7,229, with incremental costs ranging from \$3,662 to \$8,845. Incremental costs for adoption of the 2021 IECC in those states currently at the 2009 IECC or its equivalent range from a low of \$3,046 (Hawaii) to a high of \$11,523 (Alaska), with most states typically in the \$6,000 range.

Additionally, Table 14 in the Final Determination (89 FR 33155) summarizes the affordability analysis for adopting the 2021 IECC in low-rise multifamily housing. The agencies

found that the incremental costs for this housing type, as well as associated savings, are generally lower than for single family homes, as a result of both differences in unit size and building type. Incremental costs average \$3,002/unit nationally.

HUD and USDA also analyzed the cost effectiveness of adopting ASHRAE 90.1-2019 for mid- and high-rise buildings using methodology adopted by DOE. Tables 26 (89 FR 33171) and 27 (89 FR 33172) in the Final Determination provide incremental costs for a mid-rise multifamily prototype building in various climate zones and for each State. The agencies found that the national average additional construction cost of adopting the ASHRAE 90.1-2019 is \$574 per building or \$18 per unit. In some areas, construction costs were estimated to decrease because the updated code allows for smaller and fewer fixtures and appliances. Overall, given LCC savings and potential decreases in construction costs, the agencies determined that the adoption of ASHRAE 90.1-2019 would not negatively impact the affordability of the multifamily housing.

The agencies also determined that adoption of the 2021 IECC and ASHRAE 90.1-2019 would not negatively impact the availability of covered housing. Availability of housing is a measure associated with whether builders will make such housing available to consumers at the higher code level; *i.e.*, whether the higher cost per unit as a result of complying with the revised code will impact whether that unit is likely to be built or not. The Final Determination, along with the accompanying Regulatory Impact Analysis (RIA), looked at various availability scenarios and determined that availability would not be negatively affected.

### **Delayed Compliance Dates**

On March 10, 2025, HUD published a notice delaying outstanding compliance dates by six months for HUD programs (90 FR 11622). On April 4, 2025, USDA similarly published a notice delaying compliance dates for USDA programs by six months (90 FR 14775). The extension was intended to provide additional time for HUD and USDA to review questions of fact, law, and policy supporting the Final Determination and determine the need for HUD to

develop further technical assistance. For compliance dates that had already gone into effect, such as the HOME Investment Partnerships program and Housing Trust Fund program, HUD encouraged entities struggling to meet the requirement to contact HUD.

To allow for more flexible compliance with the 2021 IECC and ASHRAE 90.1-2019 requirements, HUD and USDA adopted a list of acceptable alternative compliance paths for certifications that meet or exceed the energy efficiency of the adopted standards. These alternative compliance path options include specific versions of the Environmental Protection Agency's ENERGY STAR program and DOE's Zero Energy Ready Homes program; third-party high performance building standards including Enterprise Green Communities, LEED, National Green Building Standard, Phius, Passive House Institute, Earth Advantage, Earthcraft, Living Building Challenge, Pearl Certification, Green Globes, BREEAM, and GreenPoint Rated; and the 2024 IECC and ASHRAE 90.1-2022. The agencies received multiple public comments from various stakeholders that specifically requested the 2024 IECC be accepted as an alternative compliance path. The full list of alternative compliance paths is available by request at [energyaction@hud.gov](mailto:energyaction@hud.gov).

## **II. This Notice**

HUD and USDA are considering reexamining the analysis in the Final Determination and are seeking public comment to inform a potential review, consistent with the Executive Action, "Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis." The public has had time to begin planning and implementing the Final Determination's requirements. With that perspective, HUD and USDA would like to better understand how the adoption of the updated codes is working in practice. The agencies welcome comments on any aspect of the Final Determination and also specifically seek comments on the following matters.

1. In the Final Determination, HUD and USDA updated several economic and cash flow factors. The affordability analysis included in the Final Determination reflected the economic landscape around the time of publication. Have any of these factors changed since the



publication of the Final Determination? If so, which specific economic factors should be reconsidered and how are they different from the analysis included in the Final Determination?

2. As of April 17, 2025, nine states have adopted the 2021 IECC and 15 states have adopted ASHRAE 90.1-2019 based on DOE's State Energy Code Adoption map. For builders and developers operating in States that have already adopted the 2021 IECC or ASHRAE 90.1-2019, are you facing any challenges to implementing these building codes?

3. The agencies are interested in feedback from builders who are already building to higher energy performance standards listed on the alternative compliance paths list. What advantages or disadvantages have you seen in the construction of higher performance homes? Please be specific as to the type of housing - owner-occupied single family or entity-owned multifamily rental housing.

4. The agencies seek to provide builders with the most flexibility in meeting current baseline energy performance measures. This includes the list of alternative compliance paths, which responds to the public comments of industry that the IECC 2024 is a preferred code for builders and it meets or exceeds IECC 2021. The agencies seek to keep this list of alternative compliance paths updated as industry evolves. What other codes or standards are builders and industry aware of beyond the list of proposed alternative compliance paths that meet or exceed the baseline of IECC 2021 that are active in markets and ready for inclusion in the list of alternatives?

### **III. Electronic Access and Filing**

Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

All comments and communications properly submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the

public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as from individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

**David C. Woll Jr.,**

*Principal Deputy Assistant Secretary for Community Planning and Development, U.S.  
Department of Housing and Urban Development.*

**Todd Lindsey,**

*Deputy Under Secretary, Rural Development, U.S. Department of Agriculture.*

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