

**Statement of Jerry Howard, on behalf of the
National Association of Home Builders (NAHB)**

“H.R. 2336 – GREEN Act of 2009”

**Subcommittee on Housing and Community Opportunity
House Committee on Financial Services**

June 11, 2009

Madame Chair, Ranking Member Capito, and distinguished members of the Subcommittee, I want to thank you for the opportunity to present testimony today on behalf of the National Association of Home Builders (NAHB). My name is Jerry Howard, and I am the President and Chief Executive Officer of NAHB representing 200,000 members that, in turn, employ millions of individuals in the home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing, and light commercial construction industries. The housing industry has made tremendous strides in promoting sustainability and energy efficiency, recently completing work on the *only* green building standard in the nation to receive approval from the American National Standards Institute (ANSI) – the *ICC-700 National Green Building Standard*TM. My goal today is to offer additional input on how the government can more effectively and affordably incorporate energy efficiency and green building into the nation’s housing stock, including through the use of national housing programs.

I. Introduction

Over the last fifteen months, the housing industry has successfully implemented one of the most robust efforts to promote sustainability and building efficiency nationwide. NAHB and the NAHB Research Center (NAHBRC) have implemented a national green building program (www.nahbgreen.org), completed work on the *only* national green building standard to receive approval from ANSI – *ICC-700 National Green Building Standard*TM, trained over 3,300 home building professionals in the practice of green building design and construction, and certified two entire housing developments to the *National Green Building Standard*TM. Our commitment to promoting green building, sustainability, and energy efficiency is rivaled only by our commitment to ensuring that the government housing programs and financing for housing are functional, effective, and quickly restored to help aid in the quick recovery our nation’s housing economy.

Facing the brunt of the economic downturn and the worst housing market since the Great Depression, our industry has experienced devastating losses and historic declines. Falling from a height of two million new homes constructed in 2006 to less than 500,000 projected for 2009, the housing industry has suffered overwhelming setbacks that continue to force small businesses (80% of NAHB members) out of business. Because NAHB members build about 80% of all the new homes in the United States, we have a major role to play in the manner in which energy efficiency and sustainable technologies are introduced into the housing stock. Despite the downturn, NAHB has not wavered in its commitment to promoting green building and energy efficiency in a manner that is affordable, effective, and legitimately improves energy efficiency for the next generation of housing. Thus, we look forward to providing additional input on this legislation to make it a part of an effective approach towards improving the efficiency of our nation’s housing programs.

II. H.R. 2336 - The GREEN Act of 2009; Comments and Recommendations

NAHB has been actively engaged in providing substantive input on various drafts of H.R. 2336 (the GREEN Act) and participated in planning sessions throughout the early development of this legislation. NAHB is pleased to see the incorporation of many of our ideas, suggestions, and feedback into the final product. NAHB still believes that there are areas that would benefit from additional clarification, as outlined below, but that the legislation generally promotes green building and sustainability for HUD-assisted properties in a manner that is reasonable and appears to be largely voluntary. The scope of the GREEN Act and the new programs that it creates are ambitious, but the intent is thoughtful and NAHB hopes that the resources will ultimately be available to develop the programs into effective tools to promote sustainable principles. An outline of our comments and recommendations to the GREEN Act is below:

Section 2 – Definitions.

- NAHB notes that in Section 2 (3), the definition of “HUD Assistance” includes not only those programs directly subsidized by HUD, but also “provided by HUD through loan insurance or guarantee.” This definition would include Federal Housing Administration (FHA)-insured single family and multifamily loans. FHA single family loans presently comprise 28% percent of the mortgage market. **NAHB recommends additional clarification on which requirements will apply to FHA versus the requirements for direct subsidy programs or competitive grants.**

Section 4 – Basic HUD Energy Efficiency Standards and Standards for Additional Credit.

- In Section 4 (a)(1)(B), the basic HUD standard for single family new construction is listed as the 2009 International Energy Conservation Code (IECC). The wording “complies with the applicable provisions” preceding the code reference provides little, if any, flexibility for States or local governments that are using energy codes that may be comparable, or in some cases using a code that exceeds 2009 IECC – e.g., California’s Title 24. Additionally, energy codes themselves are limited because they do not cover equipment efficiency (e.g., heating ventilation and air-conditioning (HVAC)) as part of the comprehensive efficiency target. As heating and/or cooling comprises roughly 30% of the energy consumed in a home, it would be prudent to include language that recognizes equipment efficiency as part of the overall efficiency performance of the structure. It is also important to provide necessary flexibility to cover States or local areas that have energy codes that “meet or exceed” the code reference targets even if the exact code itself is not adopted. **NAHB recommends adding clarifying language to allow for compliance with energy codes of comparable efficiency to the 2009 IECC, even if the exact code is not adopted. NAHB further recommends including language to provide for equipment efficiency as part of an integrated approach to building efficiency, as this is not covered by the energy code, yet is a major factor in overall energy performance.**
- In Section 4(a)(1)(C), the basic HUD standards for existing structures to comply with the energy efficiency standards is proof of a 20% reduction in energy consumption, verified by energy audits performed both before and after rehabilitation or improvements. In this section, “existing structure” and “rehabilitation or improvement” are left undefined. This is important when making determinations about what qualifies as an existing structure. For example, if a homeowner purchases a new home built in 2009 and shortly thereafter has to sell it, does it now qualify as an “existing structure” under this section? Also, what accommodations are made for

historical structures, which may have strict requirements against certain changes under State or local laws? Does “rehabilitation” mean only major rehabilitation, or any general improvements made for efficiency? It is difficult to determine how, and in what manner, the basic standards apply. **NAHB believes clarifying definitions for both “existing structure and “rehabilitation or improvement” may be helpful in this section.**

- In Section 4(b)(4)(E), NAHB applauds the addition of the “National Green Building Standard” as one of the options for additional credit. For consistency and to conform with other code and standard references in the legislation, NAHB suggests a specific reference to the official title of the standard, as approved by ANSI, as “ICC-700 2008 National Green Building Standard” in every place that it appears in the legislation. **NAHB recommends referencing the national green building standard by its official ANSI-approved title – “ICC-700 2008 National Green Building Standard” to be consistent with other code and standard references in the GREEN Act.**
- Section 4(c) establishes authority for the HUD Secretary to apply energy efficiency and green building standards to “any covered federally assisted” under this subsection. This section states that “covered federally assisted housing” (Section 4(c)(3)(A)) is “any residential or nonresidential structure for which any HUD assistance is provided.” Referring back to the general definitions under Section 2 of the bill, this would include FHA-insured loans. NAHB understands that the HUD Secretary ultimately would decide which requirements should apply to FHA-insured loans, but as FHA single family loans currently represent nearly one-third of the market, and the share of FHA-insured multifamily loans is also increasing, it will be extremely important to understand which energy requirements will be applicable for FHA well in advance. **NAHB cautions against erecting potential impediments to the use of the FHA program during the critical housing recovery period.**

Section 13 – Energy-Efficient Certifications for Manufactured Housing with Mortgages.

- This section seeks to amend Section 526 of the National Housing Act (12 U.S.C. 1735f-4(a)). In amending the statute, Section 13 removes the exemption for manufactured housing, but also inserts a new provision that will “require” energy ratings for “single- or multi-family residential housing subject to a mortgage insured under this [National Housing] Act.” NAHB is concerned again about the potential application of mandatory energy ratings for FHA-insured mortgages and that it could be an impediment to the use of the program slowing the housing recovery. It is difficult to determine the applicability (or lack thereof), per this section, to FHA mortgage insurance. If this is indeed a prerequisite for FH-insured mortgages, it would difficult to implement on a broad scale due to a lack of available professionals to perform such ratings and this requirement could be incredibly problematic if mandatory for the entire FHA mortgage market. **NAHB recommends clarification on which insured mortgages are subject to the energy rating mandates set forth in this new provision and further cautions against imposing such requirements for the FHA program.**

Section 19 – HOPE VI Green Developments Requirement.

- NAHB notes that the mandatory requirements for HOPE VI residential developments are inconsistent with the mandatory requirements for HOPE VI non-residential developments in this

section. Under residential, the mandate requires compliance with the Green Communities Criteria Checklist, a private green rating tool that is not approved by an unaffiliated third-party standards developing organization (SDO). Meanwhile, the requirements for non-residential development are unspecified, allowing the HUD Secretary to make a determination based on benchmarks. It is inconsistent to mandate a private rating tool for one type of HOPE VI development, but to allow HUD to consider benchmarking and other green rating systems for other types of HOPE VI development. **NAHB recommends allowing the mandatory requirements for HOPE VI residential development to mirror the mandatory requirements for HOPE VI non-residential development. NAHB further recommends against mandating private green rating systems that are not approved by unaffiliated standards developing organizations (SDOs), as this conflicts with federal law regarding use of voluntary consensus standards – see 1996 National Technology Transfer Act (P.L. 104-113).**

III. Specific Subcommittee Issues or Questions – GREEN Act of 2009

In response to the specific issues and questions posed for consideration at today’s hearing, NAHB submits the following:

- ***How will the GREEN Act improve the energy efficiency of single- and multi-family housing units?***

The underlying variable that exists when trying to estimate energy performance results of efficiency requirements for any building type is ultimately the successful enforcement and implementation of such requirements. Many state and local jurisdictions are resource-deficient in providing the support and training necessary to enforce upgraded code requirements on a broad scale. This impairs the successful implementation of such requirements, and can be an obstacle for any code-based program. The GREEN Act may face some of the limitations of this code-based problem, as it does create basic code minimums. However, the challenge is not about simply increasing minimum thresholds, but rather how to increase implementation to produce meaningful results.

Furthermore, the GREEN Act sets new energy code minimums and promotes green building, but ultimately resident behavior and other non-code related consumption will have to be addressed to achieve the best results. The DOE’s Energy Information Administration reported that in 2007, over 48% of the energy consumed in a home is the result of laundering, cooking, refrigerating, and other electronics use, or “plug-connected” energy consumption. Even the greenest home can perform poorly if residents are offsetting efficiency gains in builder-placed features with excessive appliance or electronics use and improper maintenance. The best way to deliver greater efficiency is to provide incentives for higher-efficiency appliances, to develop educational materials and communicate best practices to residents on how to operate a home more efficiently, and to provide resources for better state and local code enforcement on the ground.

The GREEN Act will likely have the most impact with respect to promoting green building, as the bill offers many different voluntary approaches to compliance. The bill will likely also further promote advanced renewable energy systems, as it provides grants and programs to

implement such systems. Overall, the GREEN Act will like affect energy efficiency in the components of the bill that promote voluntary compliance with additional benchmarks or grants to install advanced systems. The GREEN Act will not likely advance as much efficiency with code-based minimum thresholds or with requirements for energy ratings, which ultimately only measure, not improve energy performance, and have real costs associated with them.

- ***In what ways will the GREEN Act encourage the use of energy and location efficient mortgages?***

Some lenders and Fannie Mae have promoted the availability of Energy efficient mortgages (EEMs) and location-efficient mortgages (LEMs) from time to time, however, very few loans have actually been produced as a result of these efforts. One reason for the apparent lack of home buyer enthusiasm for EEMs and LEMs is that purchasers typically do not receive a meaningful benefit, such as a reduced interest rate or reduced closing costs as an incentive to choose these products over other types of loans. Another significant barrier to wider use of these mortgage products is the general failure by the appraisal system to recognize the value that energy- and location-efficient features add to these homes. NAHB is working with the Appraisal Institute and others to educate appraisers in this regard.

It is difficult to determine if a specific number of EEMs and LEMs must be insured by a certain date will automatically translate into greater use of the mortgage products. One challenge of LEMs specifically is that it becomes difficult to mandate consumer behavior in a mortgage document. For example, because a resident's home is near a public transportation outlet does not necessarily translate into greater use of public transit or lesser use of personal automobiles. NAHB has no objection to EEMs or LEMs, but it is incredibly difficult to determine if the GREEN Act will encourage greater use of the products, as they have been available, but underutilized, for many years.

- ***What are the benefits of energy efficient improvements on low-income housing developments and low-income residents?***

With respect to low-income housing development and low-income residents, there are a number of items to consider when assessing the benefits of energy efficient improvements. For example, is the reduction in utility bills, as a result of efficiency upgrades, accurately specified for an increased mortgage payment for the lower-income family attempting to buy the more efficient home? Also, does the reduction in utility bills also cover additional ongoing costs of mortgage insurance, property insurance, and property taxes? Furthermore, do the increased up-front costs of efficiency investments tip the low-income family over one of the thresholds where a mortgage does not become available or becomes available only at a higher rate, requires mortgage insurance, increases the rate or initial fees on the mortgage insurance, or triggers additional points or origination fees paid up front? When all these factors are considered for low-income families, regardless of projected energy savings, it may be the case that the lower-income family may not be able to afford specific efficiency features of a newer home. Nevertheless, NAHB supports providing the most cost-effective efficiency increases in homes that still accommodate the most buyers, particularly those that are the most price-sensitive, i.e., the low-income families.

IV. H.R. 2454 – American Clean Energy Security Act of 2009 and H.R. 2336 – GREEN Act of 2009; Conflicts and Barriers to Successful Implementation

The challenge of climate change affects everyone, including the residential construction industry. NAHB has already responded in many ways through investment and support of green building, as well as promoting energy efficiency in both new and existing housing via numerous national programs. These include NAHB’s partnership with the EPA’s Energy Star for Homes program, Department of Energy (DOE)’s Building America Program, HUD’s Partnership for Advancing Technology in Housing (PATH) program, and consistent support for incentivizing super-efficient housing stock, offered through the Internal Revenue Code Sections 25C, 25D, 45L, and 179D for building and home efficiency. NAHB has been committed to improving energy efficiency in housing, and the result has been dramatically more efficient new homes.

The DOE’s Energy Information Administration (EIA) reports that newer homes, i.e., homes built after 1991 – represent the smallest fraction, 2.5%, of all annual national energy consumption in 2001:

Energy Consumption in 2001 in Trillions of Btu

Total	96,498	100.00%
Residential Sector	20,228	20.96%
Manufactured Housing	1,301	1.35%
Fossil Fuel Used to Generate Electricity	815	0.84%
Consumed by Residence	486	0.50%
Single Family and Multifamily Built before 1991	16,498	17.10%
Fossil Fuel Used to Generate Electricity	8,743	9.06%
Consumed by Residence	7,755	8.04%
Single Family and Multifamily Built 1991-2001	2,429	2.52%
Fossil Fuel Used to Generate Electricity	1,386	1.44%
Consumed by Residence	1,043	1.08%

Sources: Annual Energy Review by the Energy Information Administration; the 2001 Residential Energy Consumption Survey, EIA.

This is extremely important, as it shows that even if all new homes built between 1991 and 2001 consumed zero energy, it would have saved only 2.5% of the total energy consumed in the U.S. for that entire decade. Because building codes and construction practices have consistently, and in some cases rapidly, improved over time, newer homes are dramatically more energy efficient today. The efficiency gains that have already been made in new housing are remarkable, and they will continue to grow as green building becomes more mainstream and a more thoughtful and integrated approach to building efficiency is developed.

One of the most important aspects of delivering more energy efficient housing is the impact on affordability. NAHB believes that the GREEN Act attempts to develop incentives and programs to help encourage greater amounts of efficiency for the nation’s housing stock without damaging affordability and to return energy savings to consumers – or to the government – within a reasonable time frame. This “payback” period – i.e., the time it takes to recoup upfront costs in energy savings for an efficiency feature or energy code requirement – is important to everyone. However, it is even more important for lower and moderate income families that are the most price-sensitive, that share the largest burden of rising energy costs as a percentage of income, and that have the least amount of upfront cash to invest in

housing. NAHB believes that it is not unreasonable for consumers to expect to realize energy savings paybacks from efficiency features within the first 10-12 years that they occupy a dwelling. This is why the industry is committed to ensuring that efficiency is delivered in a manner that is appropriate and affordable so that the most efficient housing available – i.e., newer homes and buildings – is not out of reach for families that have the most difficulty qualifying for and affording homes that will ultimately cost more.

Unfortunately, a provision included in H.R. 2454 – *The American Clean Energy Security Act of 2009*, also referred to as the “cap-and-trade bill,” recently passed by the House Energy and Commerce Committee, has the potential to derail the success of the GREEN Act. In Section 201 of H.R. 2454, new energy code requirements are created for all buildings and homes that far exceed the green building and efficiency programs set forth in the GREEN Act. The new building requirements in H.R. 2454 begin at date of enactment requiring compliance at least 30% above 2006 IECC or ASHRAE 90.1-2004 (“baseline codes”) and jump to 50% above baseline codes by January 1, 2014. The new federal code targets then increase by 5% every 3 years until 2029 when the target reaches a 75% above baseline code benchmark. States, and in some cases local governments, are given one year to certify to the DOE that they have adopted the new federal targets, or the DOE will automatically apply the new code federally and collect enforcement fees to implement the code as a federal program. Additionally, for buildings and homes that do not meet the federal code requirements – or an equally stringent State or local requirement – it will become “unlawful” to occupy the home or building. Violations and federal civil penalties will be assessed daily against builders, building owners, and those selling non-compliant homes and buildings.

As the green building and efficiency incentives set forth in the GREEN Act are well below the new energy code requirements passed in H.R. 2454, it is doubtful that the building efficiency programs envisioned for the GREEN Act will ever be realized due to conflicting compliance frameworks. NAHB argued during consideration of H.R. 2454 that green building and sustainability are not adequately accommodated by aggressive energy code increases because the framework for sustainability is much broader than energy efficiency alone. NAHB also pointed out that nearly every national green standard and rating system available today (*National Green Building Standard*[™], LEED, Green Globes, and Green Communities Criteria Checklist) does not achieve the highest energy code levels specified in H.R. 2454 despite the fact that such standards and systems deliver more environmentally-sound buildings. Finally, NAHB argued that abrogating States’ rights to determine appropriate building efficiency benchmarks for structures within their jurisdiction is unconstitutional and will likely result in inefficient application of efficiency standards to address varying climate zones and specific needs. For example, energy efficiency in California is entirely different than energy efficiency in West Virginia and the climate-specific variability, which is embodied in many green programs, is lost if an energy code is federalized.

Despite the dramatic downturn and the virtual halt of new construction in the U.S., NAHB believes in preserving affordability for the new, and more energy efficient, homes that must be built once the market recovers. The mandatory federal energy code requirements in H.R. 2454 will not only undo the efforts of the GREEN Act, but will also inflict serious harm on marginal first-time homebuyers and lower-income families attempting to move into more efficient dwellings. Mandated energy code criteria that increase upfront costs in exchange for a future payback that may take decades or longer may work better at the top of the market, or even in the average case, yet have the effect of penalizing consumers at the lower end of the market.

Although HUD assisted properties may legitimately deserve different consideration, it is apparent that H.R. 2454 requires all homes and buildings, whether constructed with HUD funding, guaranteed by HUD insurance, or are in the private market, to be subject to the same energy code requirements nationally. Because the green building incentives and efficiency programs envisioned in the GREEN Act fall short of the federal targets in H.R. 2454, the efficiency programs for homes and buildings that would be incentivized under the GREEN Act would be irrelevant and non-compliant. Finally, because of conflicting compliance regimes and inconsistent building standards created by both pieces of legislation, it is possible that the attempt to deliver a workable solution for improving efficiency in government housing programs and the affordable housing market will be negated with expensive energy code requirements that apply civil penalties and violations for non-compliance.

Incorporating energy efficiency and sustainability within our nation's affordable housing programs is a goal that NAHB collectively shares with the Subcommittee. NAHB has been a pioneer in establishing a robust and rigorous green building program and a national standard for residential construction that delivers sustainability affordably to our nation's housing stock. NAHB's support for increased energy code compliance through the national model code development process and our partnership with several federal agencies to promote energy efficiency has delivered millions of new energy efficient homes that use the least amount of energy out of every building sector nationally. Therefore, it is extremely disappointing that the underlying conflicts with H.R. 2454, to which the GREEN Act is intended to be included, diminishes the incentives and thoughtful programs supporting green building for government housing programs that benefit everyone.

V. Conclusion

NAHB believes that the approach and intent of the GREEN Act is a good first step to encourage additional energy efficiency in the government housing program structure. While the legislation would benefit from additional clarification in some sections, NAHB applauds the efforts to preserve flexibility in acknowledging green building compliance and to promote supplementary efficiency programs, administered through HUD, that cover everything from appraisals to advanced renewable energy systems. NAHB looks forward to continuing to work with the Subcommittee on the GREEN Act and in providing additional feedback on delivering sustainability to the nation's housing stock in a manner that is effective and affordable.

NAHB's commitment to green building and to developing the *only* national green building standard to receive approval from ANSI is evidence of our hope that sustainability and energy efficiency will continue to flourish on a broad scale. NAHB is dismayed at the approach taken in H.R. 2454 with respect to aggressive federal energy code mandates that neither accommodate green building, nor provide any preservation for reasonable housing affordability for the next generation of housing. Greater energy efficiency in housing is critical, but it cannot be achieved through unrealistic energy code requirements that do not consider paybacks to consumers, or that prices-out the families that have the most to gain from energy efficiency savings, i.e., low- and moderate-income households.

NAHB urges the Subcommittee to support a removal of Section 201 of H.R. 2454 so that the approach taken in the GREEN Act has a chance to succeed. The collaboration of many groups and individuals, including NAHB, on the GREEN Act, and its incentive-based approach to efficiency provides a chance to maintain housing affordability and keep newer, more energy efficient homes

available so that everyone, at all price points, can enjoy a green and energy-efficient home. During this time when we are facing unprecedented economic challenges, as well as environmental concerns, we urge Congress to ensure that the ability of the government housing programs to serve lower and moderate income families is maintained while simultaneously increasing energy efficiency standards. As always, NAHB stands ready to work with you to achieve that goal.