# Housing Policy Priorities

*Prepared for the transition team of*
*President-elect Donald J. Trump and Vice President-elect J.D. Vance.*

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# How to Make Housing Affordable Again: Build More Homes

Housing is by far the largest single expense for most households and Americans are reeling from the worst affordability crisis in decades. 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.

And the latest housing affordability index released by the National Association of Home Builders (NAHB) shows that in the third quarter of 2024, 38% of a typical family's income was needed to make a mortgage payment on a median priced new single-family home in the United States. Keep in mind that if an owner or renter is paying more than 30% of their gross income on housing, they are cost burdened, and if they are paying more than 50%, they are severely cost burdened.

A mix of regulatory barriers, inefficient zoning rules, permitting roadblocks, ill-conceived public policy, and higher development fees are among several factors that have sent home prices soaring and put upward pressure on rents.

Over the past year, shelter inflation, which includes rent and homeownership costs, has been rising near a 5% rate – well above the overall inflation rate. With a nationwide shortage of roughly 1.5 million housing units, the only way to effectively tame shelter inflation and rein in housing costs is to build more attainable, affordable housing.

NAHB looks forward to working with President-elect Trump and the new administration to enact policies that will enable builders to increase the supply of single-family and multifamily for-sale and for-rent housing, bring down rising housing costs, and meet the needs of the American people.

With the lack of housing surpassing an inflection point, the policy recommendations in this document outline practical solutions to key issues affecting the housing industry that are acting as headwinds to increasing the nation's housing supply, including the need to:

- Extend and improve the Tax Cuts and Jobs Act;
- Fix material supply chains;
- Address the labor shortage; and
- Reform the rulemaking process and eliminate excessive regulations.

# The Lack of Housing is Rooted in 5 Key Supply-Side Headwinds

The lack of skilled labor, local land use policies that restrict home and apartment construction, lumber price volatility and elevated building material prices, high lending costs for builders, and high regulatory burdens are the main drivers of low housing supply and high home prices. Implementing policies to alleviate these supply-side bottlenecks would increase home construction output and lower inflation. If action on these issues is delayed, housing costs, which are more than one-half of the Consumer Price Index, will continue to be persistent drivers of inflation due to a lack of attainable housing supply.

## Labor

Residential construction faces a persistent labor shortage, which has resulted in higher costs and longer construction times. In any given month, there is a shortage of roughly 200,000 to 400,000 construction workers and home builders will need to add 2.2 million new workers over the next three years just to keep up with demand. Policymakers can help by supporting funding for building and construction trades education and providing more placement services to job seekers. Adopting sensible immigration policies that preserve and expand existing temporary work visa programs while also creating new market-based visa programs to accurately match demand with available labor is also necessary to ease the ongoing labor shortage in home building.

## Land

Low lot supplies are due to a reduced number of land development companies, as well as tighter rules regarding land use and zoning for housing and land development. This is particularly true as housing demand shifts further to the suburbs and less densely populated areas as telecommuting increases. Localities need to rework their zoning plans to increase density and allow more flexibility for developers, such as reducing minimum lot sizes, allowing more accessory dwelling units, minimizing parking requirements and promoting missing middle housing (townhomes and duplexes). Opening areas where residential development has not been previously allowed, prioritizing development around existing or planned transit stations and incentivizing mixed-use development will also serve to increase supply and lower overall housing costs.

## Lumber and Materials

Lumber price volatility and access to and cost of other building materials have also acted as a headwind for home construction. For example, lumber prices peaked in May 2021 at over $1,500 per thousand board feet, adding tens of thousands of dollars to the cost of a typical newly built home. Historically, lumber prices have averaged in the $350-$450 range per thousand board feet. Part of the reason for large lumber price volatility stems from tariffs on Canadian lumber, which distorts market prices, and the fact that the U.S. only produces roughly two-thirds of the lumber needed to meet domestic demand.

In the four years between October 2020 and October 2024, building material prices have jumped 33%, more than 50% higher than the overall inflation rate. Of particular note, the price of distribution transformers has soared 73%, and with wait time for transformers taking up to two years. Providing resources and placing a priority on the production of transformers and other needed building products could help reduce costs and increase the construction of new homes. Policymakers must also be aware that tariffs on Canadian lumber and other building materials act as a tax on American builders, home buyers and renters.

## Lending

Access to builder and developer financing is also a key ingredient for boosting housing supply. Discussions of housing and lending are often exclusively focused on mortgage financing, but a buyer cannot buy a home if financing for its construction is not secured. Typically, small and regional builders rely on debt financing from banks. Such acquisition, development and construction (AD&C) lending remains tight. Fannie Mae, Freddie Mac and the Federal Home Loan Banks should be encouraged to support a secondary market for AD&C financing that would expand financing options so that builders can increase the housing supply.

## Laws and Regulations

NAHB analysis finds that nearly 25% of the price of a typical newly-built single-family home is due to regulatory burdens imposed by state, local and federal governments and that these regulatory burdens account for more than 40% of the cost of a typical multifamily development. To rein in excessive regulatory costs, Congress must reassert its oversight authority over the agencies' rulemaking agendas and any efforts to further regulate the housing industry must be subject to greater public scrutiny, based on sound data, and consider the true cost to the industry and the consumer.

Policymakers seeking to improve supply and reduce affordability challenges must work to reduce regulatory and other supply-side costs that ultimately price out thousands of households from homeownership and rental housing. Moreover, government officials should seek to avoid adding new cost burdens to a market that is already undersupplied.

# Extend and Improve the Tax Cuts and Jobs Act

## Issue Overview

The enactment of the Tax Cuts and Jobs Act (TCJA) has been transformative for the residential housing industry. Key changes include a lower rate structure; improved incentives for business investments; near-elimination of the individual alternative minimum tax; establishment of the 199A Qualified Business Income Deduction; reduced tax burdens from the estate tax; retention of the Low-Income Housing Tax Credit and private activity bonds; and other changes that improved the tax code for small businesses.

NAHB believes there are opportunities to build on the initial success of TCJA to improve the tax code for middle-class Americans and small businesses. We have included specific proposals to modernize the homeownership tax incentives, provide more resources for affordable rental housing and update older tax provisions.

## Solutions

- Extend TCJA Provisions that Spur Economic Growth
  - Section 199A Qualified Business Income Deduction for Pass-Through Entities;
  - Individual marginal tax rates;
  - Capital gains rates;
  - Estate tax rates and exemptions;
  - Alternative minimum tax exemptions and phase-out; and,
  - Maintain the real estate exemption to the Section 163(j) limits on business interest deductibility, as small home builders rely on debt to finance their entire operation.
- Preserve Tax Provisions that Recognize the Unique Challenges of Residential Development
  - Section 460 Completed Contract Rules, which clarifies that new homes sales are taxed when completed and sold;
  - Section 1061 Carried Interest, which increases investment demand for multifamily real estate development projects;
  - Section 1031 Like Kind Exchanges, which allows property owners to balance their portfolios and incentivizes reinvestment into new real estate projects, increasing economic growth;
  - Section 179 Multifamily Rental Depreciation; and
  - Section 1411 Net Investment Income Tax, which is targeted to passive investors; NAHB opposes any expansion to include active investors.

- Make Improvements to the TCJA that Promote Homeownership
  - Adjust the state and local tax (SALT) limit for inflation and eliminate the marriage penalty;
  - Adjust the $750,000 limit for inflation for acquisition debt under the mortgage interest deduction; and
  - Increase and adjust the Section 121 capital gains exclusion thresholds, which excludes up to $250,000 per person from the gain of selling a primary residence, to reflect inflation (More Homes on the Market Act).
- Expand Housing Affordability Relief and Supply-Side Incentives
  - Convert the mortgage interest deduction into an ongoing homeownership tax credit that can be broadly claimed by middle-class households;
  - Provide additional resources for the Low-Income Housing Tax Credit (Affordable Housing Credit Improvement Act) to meet the demand for affordable rental housing;
  - Establish a tax credit to help finance the construction and preservation of rental housing affordable to middle-income families (Workforce Housing Tax Credit); and
  - Enact tax incentives for builders to produce affordable entry-level homes.
- Encourage Energy-Efficient New Homes
  - The Section 45L tax credit incentivizes technological advancements in home building, but changes made in the Inflation Reduction Act (IRA), including inserting prevailing wage requirements, undermined its purpose. The IRA changes should be rolled back to re-focus 45L on its intended purpose of encouraging energy-efficient new homes.

# Fix Material Supply Chains

## Building Materials, Trade and Tariffs

### Issue Overview

Scarcity and an acute, sustained rise in building material costs – from softwood lumber to distribution transformers – are driving up the cost to construct homes and harming housing affordability. There are several factors driving this trend, notably inflationary pressures and global factors including trade uncertainty.

NAHB estimates that $184 billion worth of goods were used in the construction of both new multifamily and single-family housing in 2023. $13 billon of those goods were imported from outside the U.S., meaning approximately 7% of all goods used in new residential construction originate from a foreign nation.

Two essential materials used in new home construction, softwood lumber and gypsum (used for drywall) are largely sourced from Canada and Mexico, respectively. Additionally, numerous raw materials and components, ranging from steel and aluminum to home appliances, are sourced from China and are already subject to existing 301 and 232 tariffs, which add increased costs to construction that are ultimately passed on to consumers in the price of a home.

Proposed new tariffs on China, Canada and Mexico are projected to raise the cost of imported construction materials by $3 billion-$4 billion, depending on the specific rates. For some materials, where imports are critical to supply, prices could see dramatic increases, adding layered costs that could substantially impact builders' ability to deliver new projects.

### Solutions

- Carefully consider the potential effects of placing additional tariffs on building materials. Doing so could add tens of thousands of dollars to the cost of a home and price families out of the American dream of homeownership. If the decision is made to pursue additional tariffs, the impact on housing supply should be considered and exemptions granted for essential materials such as Canadian softwood lumber.
- Support efforts to boost domestic production of key construction inputs with an insufficient domestic supply, most notably softwood lumber.

# Address the Labor Shortage

## Workforce Development

### Issue Overview

The residential construction industry experiences a shortage of between 200,000 and 400,000 workers each month. Even as the industry invests in job training programs, the U.S. workforce pipeline is not robust enough to meet demand. This acute labor shortage has an adverse impact on the supply of new housing and further limits affordability for home buyers and renters. Further developing America's construction workforce will require deeper investment in the national workforce development infrastructure and ambitious new solutions for encouraging participation in the trades.

### Solutions

- Preserve and expand the Job Corps training program to strengthen America's workforce pipeline. Job Corps plays a vital role in training workers for the nation's most in-demand industries, including those supporting residential construction, and has trained and placed more than 3 million at-risk youth into promising careers in the last 60 years.
- Pass the bipartisan and bicameral CONSTRUCTS Act to give the nation's community colleges and trade schools the funding needed to train students in trades that support the residential construction industry. This funding also will prioritize recipients who are serving the most vulnerable populations in rural and underserved communities, giving Americans an alternative to most traditional academic pathways.

## Comprehensive Immigration Reform

### Issue Overview

Nearly a third of the U.S. construction trades workforce is comprised of immigrant workers. While the need for safe and secure borders is paramount, any activity in pursuit of that goal must carefully consider and mitigate the distress it would cause both to the construction industry's workforce and the overall national workforce. Any shock to the labor force would have an adverse impact on housing costs and supply as the country does not currently have a domestic workforce ready to fill the gap.

### Solutions

- Continue to support the legal pathways that allow immigrant populations to enter and work in the United States. The H-2B temporary guest worker program is a necessary and valued tool for accessing immigrant labor for roles in construction when there is no available domestic talent. Preservation of the program, along with the prospect of additional visa cap relief throughout the year, gives businesses an important lifeline when labor strains threaten operations.

- Consider new and innovative approaches to supplementing U.S. businesses with critical labor. There are several legislative solutions in circulation that promote a more market-based approach to the visa system whereby market conditions determine the cap on visas to unlock greater benefits.
- Create new pathways to permanent residency or citizenship for those workers who are already in the U.S. and contributing key benefits to the economy. The home building industry risks an exacerbated skills gap if long-term workers with unique technical expertise – including workforce-dreamers, temporary protected status holders and H-2B visa recipients – aren't given the opportunity to continue providing vital contributions to America's housing supply.
- Any immigration reforms must balance the needs of securing our nation with the regulatory impact that might be felt by the business community. For example, it must be reinforced that employers are only required to conduct identity and work authorization checks on their direct employees – not those of their subcontractors.

# The Rulemaking Process

## Issue Overview

The federal rulemaking process is governed by several laws and executive orders. In developing, proposing and finalizing a new rule (or amending or repealing an existing rule), agencies must follow the procedures set out within these laws, 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.' In turn, agencies have regularly misused this 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 agencies also often rely on guidance documents or other interpretations that may not be consistent with the underlying statutes, yet must be followed by impacted parties. The resulting overregulation and abuse of discretionary authority has resulted in confusion, additional permitting requirements, project delays and increased construction costs.

The U.S. Supreme Court invalidated the deference historically given the agencies in June 2024 in *Loper Bright Enterprises v. Raimondo,* 144 S.Ct. 2244 (2024). While it is not certain what this decision means for the future, the reduced deference given to the agencies will likely make it more difficult for them to reinterpret statutes and increase or reduce regulatory burdens.

## Solutions

- Support legislative efforts, e.g., the REINS Act, to fix the broken regulatory rulemaking process.
- Initiate a new regulatory review and public comment process through the Office of Management and Budget (OMB) to rescind and replace the Nov. 9, 2023 revision OMB Circular No. A-94 "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs". Alternatively, develop legislation that establishes discount rates for use in cost-benefit analysis of federal regulations.
- Repeal the November 2023 revisions that were made to Executive Order 12866's definition of "*significant regulatory action,"* which raised the economic threshold from $100 million to $200 million and narrowed the scope of regulatory actions that undergo OMB's centralized review due to raising "*novel legal or policy issues."*
- Reissue Executive Order 13891 "Promoting the Rule of Law Through Improved Agency Guidance Documents" to ensure significant guidance documents, many of which are treated as regulations, undergo public notice and comment before being finalized.
- Review the basis of rules that agencies developed based on the 'reasonable' interpretation of statutes to determine if those are the best interpretation of statutes.

# Building Code Requirements

## Issue Overview

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.

Although referencing building codes in federal legislation and regulatory programs is not new, there has been growing concern over the breadth of programs and issues for which building codes, and in many cases more stringent building codes for new homes are purported to be the answer. This approach unfairly burdens new construction and often does little to meet the intended goals. For example, requiring new homes to meet stringent energy-efficiency goals can price many potential home buyers out of the market and compel them to stay in older, less efficient homes. At a minimum, federal policies and programs need to provide sufficient flexibility and incentives so the intended results can be met with minimal negative impacts.

To provide such flexibility, legislation was passed in 2017 to clarify that any reference to "the latest published code" should be interpreted to mean either of the two most recent editions, plus allow for state and local amendments. Unfortunately, that language expired in 2022. Equally problematic, more recent legislation uses the lure of federal dollars to pressure state and local governments into implementing unnecessary energy efficiency policies and regulations, which will drive up housing prices across the country. Together, this wave of federal initiatives and the growing stringency of building codes is making it harder to provide affordable housing.

## Solutions

- Repeal Section 50131 of the Inflation Reduction Act, Assistance for Latest and Zero Building Energy Code Adoption. Alternatively, the Department of Energy (DOE) should pause implementation of the 50131 program to re-evaluate several of its current requirements, including the lack of flexibility for states and jurisdictions to propose equivalent, amended, and alternative approaches explicitly allowed in the statutory text. DOE should consider issuing new guidance through the Administrative and Legal Requirements Document (ALRD) and Funding Opportunity Announcement (FOA) processes.
- Pass the Promoting Resilient Buildings Act, which permanently codifies the definition of "latest published editions" for FEMA's Building Resilient Infrastructure and Communities (BRIC) program. This allows state and local governments to adopt appropriate, cost-effective building codes, including the latest two editions, without being pressured to adopt only the most recent version.
- Authorize and promote the use of equivalent or amended building codes and standards and alternative compliance paths in all federal programs and policies related to codes.

# HUD/USDA Energy Code Requirements

## Issue Overview

In April 2024, the U.S. Departments of Housing and Urban Development (HUD) and Agriculture (USDA) issued a Final Determination that will require new single-family homes financed by these agencies to comply with the 2021 International Energy Conservation Code (IECC) beginning in November 2025. HUD-financed multifamily housing must comply with the 2021 IECC or ASHRAE 90.1-2019, effective May 2025. The Veterans Affairs (VA) Home Loan Program is also required to align with HUD/USDA, although the timing to do so is uncertain. The Federal Housing Finance Agency (FHFA) is considering applying these same standards for new homes and apartments financed by Fannie Mae and Freddie Mac.

Requiring the 2021 IECC and ASHRAE 90.1-2019 codes on virtually all new construction supported by HUD and USDA undoubtedly will have adverse consequences on the affordability and availability of new construction of single- and multifamily housing. Further, this policy conflicts with energy codes in 42 states, which will lead to construction delays and implementation challenges, including uncertainty about compliance, a lack of qualified inspectors, inconsistent appraisals and confusion about mortgage products. This mandate is unnecessary, raises housing costs, limits access to mortgage financing and hurts vulnerable home buyers and renters.

## Solutions

- Rescind the 2024 Final Determination. Immediately delay implementation dates to allow for the rulemaking process.
- Prohibit FHFA from aligning with HUD/USDA on this requirement.
- Support legislation comparable to the HOUSE Act (H.R. 8624/S. 4958), which would require HUD and USDA to rescind the Final Determination and amend EISA to ensure that at least 50% of states have adopted an energy code before it could be applied by HUD and USDA. Also prohibit the VA from adopting the 2021 IECC and prevent FHFA from establishing a minimum energy standard for new construction homes financed through Fannie Mae and Freddie Mac.

# Energy Efficiency Standards

## Issue Overview

Homes built following modern building energy codes are already energy efficient yet one of the more recent building energy codes (2021 IECC) contains requirements that have payback periods measuring in decades and in some cases over 100 years. As a result, mandating adherence to overly burdensome energy conservation requirements – particularly for new construction – adversely impacts housing affordability and disadvantages new homes. Likewise, it may not yield the intended results because most of the residential energy use is tied to the existing housing stock. Further, as prices rise and new homes become unattainable, potential home owners remain in older, less energy-efficient homes, which results in higher energy usage, higher emissions, increased likelihood of damage and lower standards of living.

For those consumers and builders who are interested in homes that offer features beyond the stringent recent code requirements, there are many government-administered and recognized above-code programs that encourage high-performance construction practices. These voluntary programs, which embrace consumer choice and provide market flexibility, have proven to be very successful in promoting and achieving improved efficiency and performance of the nation's homes.

## Solutions

- Support the ability of local jurisdictions to amend model building energy codes so they can address their specific geographic, economic and climactic needs, and to ensure compliance with the jurisdiction's regulations.
- Repeal existing laws that either require or allow agencies to put programs in place that limit states' options to amend and adopt codes.
- Revise the EPA ENERGY STAR for Homes program to remove the 2021 IECC insulation backstops in favor of the insulation levels of the 2024 IECC, remove the prevailing wage requirements, and add the National Green Building Standard as a compliance option for qualifying for the 45L tax credit.
- 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, and remove the prevailing wage requirements.
- Provide incentives such as tax credits, grants, insurance discounts, interest rate reductions, and increased property valuations to encourage more home owners to invest in energy efficiency.
- Preserve and expand DOE and EPA voluntary sustainability programs, such as ENERGY STAR, WaterSense, and Indoor AirPlus.

# Greenhouse Gas Emissions

## Issue Overview

Concerns about the impacts of climate change have compelled policymakers to seek ways to cut greenhouse gas (GHG) emissions across all sectors of the U.S. economy. Although reducing emissions from transportation and electricity generation and upgrading the existing housing stock will yield higher reductions, several recently targeted efforts are aimed at buildings and the building industry. If implemented, they will add another layer of uncertainty and cost, impact home design choices and further undermine the ability of home builders to add to the nation's housing deficit.

For example, GHG emissions reporting, gas bans and electrification, calculating the social costs of carbon (SCC), and transitioning the types of refrigerants used in cooling equipment could all have significant impacts, yet yield minimal reductions.

## Solutions

- Rescind the Securities and Exchange Commission's March 2024 GHG reporting rules.
- Enact legislation to preserve consumer energy choice by disallowing any prohibition on natural gas or any other fuel source.
- Initiate a new DOE rulemaking process to rescind the December 2023 DOE final rule (Docket No. EERE-2014-BT-STD-0031) updating energy efficiency standards for residential gas furnaces.. Consider modifying the underlying statute to separate requirements for new and existing buildings and potentially by climate zone.
- Initiate a new DOE rulemaking process to rescind the April 2024 DOE final rule (Docket No. EERE-2017-BT-STD-0019) updating energy efficiency standards for residential consumer water heaters (including electric and gas-fired storage tank water heaters) and the December 2024 final rule concerning tankless hot water heaters..
- Suspend actions by EPA and DOE requiring the transition to A3 refrigerants.
- Pass legislation that prohibits the use of SCC in regulations.
- Rescind/revise regulations and guidance issued by the White House, EPA, DOE and others on the use of SCC in cost-benefit analyses, including removing SCC from EPA and DOE methodologies for analyzing individual products or systems used in construction.
- Work with the Office of Information and Regulatory Affairs (OIRA) to establish guidelines for cost-benefit analysis that limit the use of SCC to situations where it does not limit market choice in achieving emission reduction goals.

# Climate Risk and Resiliency

## Resilience and Building Codes

### Issue Overview

Natural disasters disrupt hundreds of thousands of lives per year and have lasting effects on people and property. To reduce the impacts associated with these events, policymakers at the federal, state, and local levels have, or are considering, adopting policies and programs to increase community resilience and reduce property damage, costs of reconstruction, and insurance claim and disaster assistance payouts. To date, these actions have included ordinances that disallow new construction in certain areas, laws establishing mandatory hazard mitigation requirements, and more stringent building codes, among others.

But in many cases, such efforts are not needed. Post-disaster assessments from FEMA, the National Institute of Standards and Technology and the structural engineering community consistently demonstrate newer homes built to modern building codes fare well in extreme events, and the bulk of observed damage is to the existing, older building stock. Solutions that recognize voluntary, above code construction and/or incentivize cost-effective, feasible retrofits for existing buildings will result in a more resilient built environment.

### Solutions

- Revise the scoring criteria for the FEMA Building Resilient Infrastructure and Communities (BRIC) program to better balance allocations to under-resourced, under-served states and communities vs . those that regularly update their hazard-resistant codes.
- Reform HUD's CDBG Disaster Recovery (CDBG-DR) and Mitigation (CDBG-MIT) programs to remove unnecessary encouragement for grantees to include resilient building code adoption and implementation in their required spending "Action Plans."
- Pass the Promoting Resilient Buildings Act, which includes a grant and retrofit pilot program to address resiliency in the existing housing stock.
- Direct FEMA to revise or rescind policy memos, NFIP Technical Bulletins and Building Science Branch guidance documents that exceed the 44 CFR 60.3 minimum construction standards.
- Direct FEMA to work with the codes and standards development community and industry to ensure its guidance documents promote feasible, cost-effective solutions for disaster mitigation.
- Direct FEMA to revise the criteria for the Building Code Adoption Tracker to recognize a broader array of "hazard-resistant building codes."
- Rescind funding for the U.S. Fire Administration (USFA) to promote the mandatory installation of residential fire sprinklers. Alternatively, require USFA to provide accurate, up-to-date information regarding the initial cost of installation including permit and tap fees, design costs, and tank/pump costs for those on well water.

# Climate Risk and Resiliency

## HUD's Federal Flood Risk Management Standard

### Issue Overview

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 Jan. 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.

Unfortunately, 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.

### Solutions

- Withdraw the FFRMS regulations.
- Rescind Executive Order 14030, "Climate-Related Financial Risk."

# Climate Risk and Resiliency

## National Flood Insurance Program

### Issue Overview

The National Flood Insurance Program (NFIP) was created to ensure flood insurance would be available on reasonable terms and conditions for homes and commercial structures exposed to flood risks. In addition to providing insurance, the NFIP sets up a multi-faceted, multiple objective program that directs the development of maps to identify and assess flood risks, local ordinances to govern land use and construction practices to reduce flood losses over time, and planning and mitigation measures to avoid future damage. As a result of this arrangement, the NFIP and related federal programs that provide pre- and post-disaster assistance have played critical roles in determining the use and development flood-prone areas and reducing and managing the risk of flooding for residential properties and others since their inception.

While a strong NFIP helps ensure that the housing industry can provide safe, decent and affordable housing to consumers, ongoing concerns about its financial stability, insufficient mapping, and increasingly stringent building, reconstruction and mitigation requirements are making it more and more difficult for many American families to live in a home of their choice in a location of their choice, especially when the home lies in or near a floodplain.

### Solutions

- Support reauthorization of the NFIP and do not allow the program to lapse.
- Ensure that flood insurance is available and affordable to all properties in participating communities and that the rate structure is predictable, consistent, and tied to a set of factors readily understandable by all stakeholders.
- Maintain the 100-year floodplain as the foundation for the NFIP's programmatic requirements and ensure the availability of current and reliable Flood Insurance Rate Maps.
- Clarify that numerous nondiscretionary FEMA actions are exempt from the Endangered Species Act (ESA).
- Support a legislative stop-gap measure to allow developers and builders seeking certain flood map revisions to use the Scientific Resolution Panel (SPRs) process to obtain the requested changes while FEMA conducts its ESA consultation on the floodplain mapping program within the State of California.

# Climate Risk and Resiliency

## Property Insurance

### Issue Overview

The country is experiencing record-setting wildfires, floods, earthquakes, heat and other natural disasters that are expected to continue for decades to come. As risks grow and more acres, homes and communities are subject to losses from these destructive events, many private insurance companies are denying the sale of new property and casualty insurance policies, declining to renew existing coverages, and/or drastically raising policy rates in certain states. To make matters worse, reinsurance companies are rapidly increasing the costs of insurance for insurance companies on all lines of coverage due to recent national and global disasters, burgeoning bureaucratic expenses and to make up for reduced participation. Taken together, it is becoming increasingly more difficult for both existing and potential new home owners to secure available and affordable insurance, which is impacting the ability of home builders to sell their homes.

Certain borrowers are required to obtain and maintain home owners' insurance as a condition of their mortgages. The inability to purchase or maintain policies because of unaffordable rate hikes or insurance companies declining to renew policies is becoming a growing issue that is impacting housing affordability and the ability of many to become home owners. Although insurance is regulated at the state level, the federal government has an obligation to ensure insurance is available and affordable in all areas of the country.

### Solutions

- Direct the Federal Insurance Office (FIO) within the U.S. Department of the Treasury to monitor all aspects of the insurance sector, including the extent to which underserved communities have access to affordable insurance products.
- Direct the FIO to analyze and identify the challenges associated with providing affordable insurance to property owners and recommend improvements to the state insurance commissioners.

# Land Use and Zoning Rules

## Issue Overview

Policies such as single-family zoning, minimum lot size requirements, density caps, and burdensome design mandates have effectively restricted the types of housing that can be built across vast swaths of the country. These approaches not only limit housing supply but also drives up land and construction costs, exacerbating affordability challenges. Furthermore, these regulations often exclude smaller, more attainable housing types, such as duplexes, triplexes, and accessory dwelling units, from being built in areas close to jobs, transit, and amenities. The cumulative effect has been a housing landscape that is inefficient, inequitable, and unable to meet the diverse needs of today's population.

## Solutions

- Expand the availability and use of federally owned lands. The federal government owns approximately 28% of the land in the United States, with significant portions located in areas where housing demand is high. By repurposing underutilized federal land for residential use, policymakers can create affordable and market-rate housing while reducing development costs associated with land acquisition.
- Improve coordination between federal, state, and local governments to support housing supply.
  - Condition federal funding on local governments implementing pro-housing zoning and permitting reforms that allow higher-density and by-right housing approvals, streamlined permitting processes and reduced subjectivity.
  - Authorize and expand programs like the PRO Housing Program to provide funding for cities and towns that are removing barriers to housing production.
  - Pass and expand competitive grant programs like the Yes In My Backyard (YIMBY) Initiative to reward communities that promote market-rate and workforce housing production.
- Incentivize entry-level home construction.
  - Expand funding programs that focus on workforce, entry-level and affordable housing.
  - Offer expanded federal tax credits or grants for builders constructing homes below a specified price threshold.
  - Provide subsidies for small-scale housing projects, such as single-family starter homes or small multifamily buildings, to encourage diversity in housing stock.

# Permitting Reform and Environmental Review

## Endangered Species Act

### Issue Overview

In many areas of the country, land development and construction activities are impacted by the Endangered Species Act (ESA) due to their potential to affect federally listed species or their designated critical habitat. As the list of protected species grows, more private land is being designated as critical habitat and more housing projects trigger the ESA's cumbersome federal permitting processes.

Obtaining required ESA authorizations is neither easy nor fast, as it typically entails conducting species surveys, preparing biological assessments or habitat conservation plans, modifying planned projects to comply with species conservation measures, and providing compensatory habitat mitigation – each of which can result in significant delays and cost increases for project proponents. Furthermore, the innate uncertainty associated with many aspects of the ESA, coupled with the increasing number of other authorizations needed to construct new housing create additional challenges, delays and compliance costs that are difficult to recoup. Land owners are increasingly finding that the ESA permitting process is too expensive and difficult to navigate to provide needed affordable housing, which invariably translates into fewer projects being built and higher home prices.

### Solutions

- Restore the regulatory reforms put in place during the first Trump administration, including finalizing a regulatory definition for the term "habitat," restoring the 4(d) rule to authorize unavoidable impacts to "threatened" species, requiring full consideration of potential economic impacts from proposed critical habitat designations, and streamlining the ESA's interagency Section 7 Consultation process.
- Rescind the U.S. Fish and Wildlife Service's Mitigation Policy and Endangered Species Compensatory Mitigation Policy.
- Support language in H.R. 9533, the ESA Amendments Act of 2024, that amends the ESA's Section 7 consultation provisions to clarify the purpose of formal consultations is minimization of potential impacts to species or habitat, and not mitigation for unavoidable impacts.

# Permitting Reform and Environmental Review

## Waters of the United States (WOTUS)

### Issue Overview

The regulatory phrase "waters of the United States" (WOTUS) determines the extent of federal jurisdiction under the Clean Water Act (CWA). This regulation directly impacts builders and developers who must obtain CWA permits for their land development or construction activities if those activities result in either a discharge of pollutants or the placement of dredged or fill material into CWA jurisdictional waters or wetlands.

Unfortunately, the WOTUS definition has changed numerous times over the past two decades due to Supreme Court cases and executive branch interpretations and it is now nearly impossible for land owners to know for certain if their properties contain WOTUS.  Even the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) – the agencies responsible for overseeing the CWA permitting process – are unclear as to the scope of their jurisdiction. If jurisdiction is found, builders and developers are subjected to an onerous and uncertain permitting process that can take years and cost hundreds of thousands of dollars.

### Solutions

- End the EPA/Corps' current interagency approved jurisdictional determination (AJD) elevation review process that results in the issuance of non-regulatory coordination memorandums.
- Direct EPA and the Corps to implement the revised WOTUS rule consistent with the Supreme Court's *Sackett* ruling and cease relying upon non-CWA jurisdictional features (i.e., ephemeral streams, man-made drainage ditches, pipes, and culverts) to provide a "continuous surface water connection" between an adjacent wetland and a downgradient jurisdictional waterbody.
- Undertake a federal rulemaking to amend the definition of WOTUS and provide needed regulatory guidance to clarify how the agencies are interpreting the concepts of "relatively permanent flow" and "continuous surface water connection" to establish federal CWA jurisdiction over certain wetlands and landscape features.
- Streamline the CWA jurisdictional determination and permitting processes to speed up development.

# Labor and Employment Policies

## Davis-Bacon and Related Acts

### Issue Overview

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. Unfortunately, rather than making any needed improvements, the rule requires the payment of wages that are unrepresentative of the actual wages paid in a given market and fails to acknowledge the fact that wage rates can change between a contractor submitting an application for funding assistance on a project and the start of the project. As a result, the rule is overly burdensome.

### Solutions

- Revise the current DBRA policies to:
  - Develop and implement a new scientifically sound methodology for determining prevailing wages;
  - Remove provisions expanding the definition of "site of the work;"
  - Reduce administrative requirements that burden employers and deter them 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 properties covered under the DBRA.

# Labor and Employment Policies

## Heat Injury and Illness Prevention Standard

### Issue Overview

In August 2024, the Occupational Safety and Health Administration (OSHA) published a proposed rule to establish a federal standard for preventing heat-related injuries and illnesses for indoor and outdoor work settings. Notably, the standard would enforce certain year-round requirements regarding heat-specific safety plans and recordkeeping obligations, as well as two levels of requirements for jobsites that reach a certain heat index or temperature threshold. If finalized, the same requirements would apply to all employers conducting outdoor and indoor work in all general industry, construction, maritime and agriculture sectors, with some limited exceptions.

OSHA estimates the standard would impact roughly 36 million workers, or one-third of the total full-time workers in the U.S. For the construction industry, the agency expects 725,200 total entities to be affected by the standard. Annualized costs for the industry 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.

### Solutions

- Abandon the current federal rulemaking.
- If OSHA continues with the rulemaking, ensure the rule:
  - Creates industry-specific standards that promote flexibility and recognize the uniqueness, challenges and best practices of the different regulated industries;
  - Creates a standard for construction that promotes the main tenets of “water, rest, shade” and establishes reasonable care for employees without overly prescriptive requirements and undue administrative and compliance burdens for employers; and
  - Expands the exemptions to include construction operations as part of disaster recovery efforts in areas under disaster or emergency declarations.

# Labor and Employment Policies

## Independent Contractor and Joint Employer Status

### Issue Overview

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 keeping costs low. Unclear definitions on how to classify independent contractors and joint employers, however, have translated into regulatory burdens for businesses and higher costs for home buyers, while also jeopardizing home builders' operations.

In January 2024, the DOL issued a final rule to change the way it determines independent contractor status under the Fair Labor Standards Act (FLSA). While the rule issued under the first Trump administration focused on two of the five factors used to determine worker status, the latest rulemaking considers six unweighted factors. This policy introduces more subjectivity on the part of the investigating entity to determine worker status, adds undue confusion for employers trying to comply with the more complicated system and threatens to impact many industries that rely on the subcontractor business model.

Similarly, recent policies from the National Labor Relations Board (NLRB) determining joint employment status could have the same costly impact on builders who hire various self-employed specialty tradespeople for providing several services throughout the lifetime of a project. Restrictive policies, such as the NLRB's 2023 rulemaking, further complicate the regulatory landscape that employers must navigate due to its vague requirements and consideration of indirect control over a worker as evidence of joint employment. Although the NLRB rule was struck down nationwide in March 2024, any future policies must recognize the ubiquity of the contractor-subcontractor relationship in residential construction.

### Solutions

- Revert to the policies established by the first Trump administration for determining employee or independent contractor status under the January 2021 "Independent Contractor Status Under the Fair Labor Standards Act" rulemaking.
- Create clear and discernible guidelines for the use and classification of independent contractors, with the same rules applied throughout federal and state governments.
- Oppose any legislative or regulatory effort that would restrict the ability of subcontractors to qualify as independent contractors, including efforts to repeal Sec. 530 of the Revenue Act of 1978, which provides relief to employers who utilize independent contractors.
- Adopt joint employment policies under the DOL, NLRB and other agencies that provide a clear, reasonable employment status determination process for employers to follow.

# Labor and Employment Policies

## Overtime Rules

### Issue Overview

Under the 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. A coalition of business groups challenged those changes and in November, the Eastern District of Texas issued a nationwide injunction to block the current and future requirements from being in effect. However, the DOL has appealed the judgment.

### Solutions

- As a result of the nationwide injunction, the salary level is currently set back to $35,568. The DOL should abandon attempts to appeal the court decision 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 should also refrain from implementing automatic updates and instead engage in the rulemaking process for any subsequent salary-level increase.

# Housing Finance

## Fannie Mae and Freddie Mac

### Issue Overview

Fannie Mae and Freddie Mac (the Enterprises) have been in conservatorship since 2008. As calls for Congress to restructure the housing finance system have subsided, the focus is now concentrated on the future of the Enterprises. Whether the conservatorships are sustainable in perpetuity, what are the benefits and downsides of releasing the Enterprises from conservatorship, with and without Congress acting, and how important is an explicit federal government guarantee to investors are just a few of the questions that must be considered. One of the central questions of releasing the Enterprises from conservatorship is whether they exit with an explicit federal government guarantee and how this will impact the pricing of mortgages post-conservatorship. It is unclear how quickly any release could happen because the Enterprises currently are very undercapitalized, but estimates suggest that between two and five more years are needed to raise the capital necessary to succeed as private companies.

In conservatorship, the FHFA director has much greater latitude to direct the activities of the Enterprises than they would have solely as regulator. As conservator, Director Thompson has worked to implement policies that reflect the Biden administration's concerns with racial equity and higher pricing for loans it does not see as meeting the core mission of the Enterprises, (i.e., cash-out refinances, jumbo conforming, second homes).

The Enterprises are a critical source of financing for single-family and multifamily housing. Any disruption to the availability and cost of mortgage credit to shrink the footprint of the Enterprises or end conservatorship would be detrimental to the housing market.

### Solutions

- Continue to allow Fannie Mae and Freddie Mac to build capital and ensure they maintain their vital role of providing liquidity to the mortgage market.
- Abandon all efforts to have FHFA follow HUD's and USDA's lead in requiring new construction of single-family homes and rental units to be built to the 2021 IECC or ANSI/ASHRAE/IES Standard 90.1-2019.
- Encourage a reduction in loan level price adjustments for cash-out refinances, second homes and investor properties.
- Allow Fannie Mae to consider ways to support acquisition, development and construction financing for single-family and multifamily home builders.
- If a plan to end the conservatorships of Fannie Mae and Freddie Mac is considered, FHFA should ensure adequate capital for exit, ensure maintenance of an explicit federal government guarantee of the Enterprises' mortgage-backed securities (MBS), and ensure the exit will not disrupt the functioning of the primary and secondary mortgage markets.

# Housing Finance

## Basel III Endgame Proposed Bank Capital Requirements

### Issue Overview

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Federal Reserve), and the Federal Deposit Insurance Corporation (FDIC) – collectively, the federal banking regulators – have proposed to revise substantially the capital requirements applicable to large banking organizations and to banking organizations with significant trading activity. These proposed reforms would finalize the Basel III capital framework adopted by the federal banking regulators for the U.S. banking system in July 2013. The proposed revisions are being referred to as the "Basel III Endgame."

The proposed approach would be more risk-sensitive than the current U.S. standardized approach; in part, changing 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 will 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.

The current housing affordability crisis is a direct result of a lack of an adequate housing supply. Banks play a key role financing new residential housing production, including affordable housing. 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. This would limit the supply of new housing and increase the cost of mortgage financing, thus exacerbating the nation's affordable housing crisis.

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. Burdensome capital requirements will restrict an important source of financing for new housing supply.

### Solutions

- Federal banking agencies should work with housing finance industry stakeholders to revise and repropose a Basel III Endgame capital rule that does not limit the availability or increase the cost of residential mortgage credit.

# Housing Finance

## Federal Tenant Protection Initiatives

### Issue Overview

The federal response to the COVID-19 epidemic included new measures to protect tenants who were unable to pay their rents. For example, the CARES Act required landlords with federally assisted properties or federally backed mortgages (including Fannie Mae and Freddie Mac) to provide a 30-day notice prior to eviction. As the pandemic wound down, the Biden administration sought opportunities to permanently extend and expand on the tenant protections.

As part of the 2023 Scorecard for Fannie Mae, Freddie Mac and Common Securitization Solutions, the FHFA instructed Fannie Mae and Freddie Mac (the Enterprises) to explore the feasibility of expanding multifamily tenant protections. On July 12, 2024, FHFA announced three new tenant protections, applicable to all multifamily properties financed with mortgages backed by the Enterprises. Under the new policy, which will be effective Feb. 28, 2025, affected multifamily housing providers must provide tenants: 1) a 30-day notice of a rent increase; 2) a 30-day notice of a lease term's expiration; and 3) a minimum five-day grace period for late rent payments.

Tenant protection policies make Enterprise-backed loans less attractive to multifamily borrowers because of the increased compliance costs and administrative burdens and alternative sources of financing may not be available on terms that would allow the borrower to serve low- to moderate-income residents, may not be available in all markets and may not be available during economic contractions. The likely outcome of making rent-restrictions, lease requirements, eviction restrictions or other new tenant protections conditions of Enterprise-backed multifamily mortgage loans will be a reduced supply of housing available to the low- to moderate-income renters who are targeted to be served under the Enterprises' missions.

Multifamily apartment owners and managers generally operate small businesses and they are already subject to myriad tenant protection and fair housing statues, regulations, administrative policies and case laws from all levels of government. Any attempt to federally supersede these state and local landlord-tenant laws and their many decades of legal precedent will only create confusion, litigation, and thus more costs and headaches to property owners and managers.

### Solutions

- Direct federal agencies to defer to state and local landlord-tenant laws.
- Direct Fannie Mae and Freddie Mac to permanently refrain from implementing requirements for multifamily borrowers to provide tenants a 30-day notice of a rent increase, a 30-day notice of a lease term's expiration and a minimum five-day grace period for late rent payments.
- Withdraw all federal policies requiring landlords to provide tenants with a 30-day notice of eviction for nonpayment of rent.
- Support legislation clarifying that the CARES Act requirement to provide tenants a 30-day notice of eviction for nonpayment has expired.

# Housing Finance

## Federal Housing Programs

### Issue Overview

America's home builders utilize and rely on several federal programs administered by federal agencies to 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 programs for NAHB members and the modest-income Americans they serve:

- 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; and
- Veterans Affairs (VA) Home Loan Program.

Each of these programs serves an important purpose and constituency; they are not interchangeable but are complementary. Different strategies are necessary 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 in ensuring that there are affordable options for providing housing across the country.

### Solutions

- Improve the implementation and operation of these federal programs to make them more efficient and effective and to reduce regulatory burdens on housing providers.
- 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.
- Provide additional resources for LIHTCs.
- Ensure borrowers continue to have access to FHA-insured single-family and multifamily loans and VA homeownership programs.

# Business Operations

## Build America, Buy America

### Issue Overview

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 HUD and USDA, although only some of their programs are covered by the BAP. The agencies continue to work with the Office of Management and Budget (OMB) and the Made in America Office (MIAO) to develop more detailed guidance on the products and materials that need to comply with BAP and how to demonstrate compliance in a timely and cost-efficient manner. NAHB has also called on the affected federal agencies to urge OMB and MIAO to exempt housing from the BAP requirements.

Applying BABA to HOME funds would harm low-income renters and significantly exacerbate 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. If the BAP discourages developers and builders from using federal financing, it may negatively impact access to federal gap financing for LIHTC projects and other state and local affordable housing production programs.

### Solutions

- Exempt single-family and multifamily housing projects receiving FFA from the BAP.
- Reinstitute a waiver for BAP compliance for FFA recipients until additional compliance resources are provided for grantees.
- Standardize, streamline, and consolidate HUD, USDA and OMB training and compliance resources to allow real estate projects receiving FFA covered by the BAP to comply with BABA while remaining within their current timelines and budgets.

# Business Operations

## FinCEN Beneficial Ownership Information Reporting Requirements

### Issue Overview

The National Defense Authorization Act for fiscal year 2021 enacted the Corporate Transparency Act (CTA) to require America's small and independent businesses to file beneficial ownership information (BOI) with U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) . The CTA is designed to help the U.S. government identify money laundering, corruption, tax evasion, drug trafficking, fraud and other financial crimes. Congress passed the CTA to make it harder for these illegal activities and their perpetrators to hide from law enforcement officials.

As of Jan. 1, 2025, approximately 32 million business entities were required to file BOI reports with FinCEN, identifying those individuals who directly or indirectly own or control reporting companies. The BIO reporting requirements, however, have been subject to legal challenge. On Dec. 3, 2024, in *Texas Top Cop Shop v. Garland*, the U.S. District Court for the Eastern District of Texas held "the CTA is likely unconstitutional as outside of Congress's power" and ordered a nationwide injunction preventing the government from enforcing the CTA and its corresponding reporting rule. On appeal, a Motions Panel of the Fifth Circuit granted a stay (suspension) of the injunction. Three days later, on December 26, 2024, a Merits Panel of the Fifth Circuit reinstated the nationwide injunction. Not to be undone, on New Years Eve, the Department of Justice asked the U.S. Supreme Court to weigh in. Until further order from the courts, all business filing deadlines under the CTA are suspended.

Many of the nation's home builders are small business entities and are subject to the CTA's reporting requirement. In addition, home builders often use limited liability corporations or other such entities to set up joint ventures, develop land, build subdivisions, develop multifamily housing and other related activities. The reporting requirements add an administrative burden and potentially exposes legally operating companies to excessive penalties due to paperwork errors. FinCEN has estimated that the total cost of BOI reporting will be $22.7 billion in 2025 alone. The dizzying back-and-forth in *Texas Top Cop Shop*, together with related litigation in the Fourth, Ninth, and Eleventh Circuits has created uncertainty and create confusion for small business owners that must navigate the reporting regime and risk significant civil and criminal penalties for failing to comply.

### Solutions

- Extend the compliance deadline for at least one year.
- Issue guidance to clarify FinCEN's interpretation of the court rulings and confirm its expectations regarding the year-end reporting deadline.

# Additional Resources

## NAHB's 10-Point Housing Plan

To help policymakers understand and address the nation's housing affordability crisis, NAHB developed a plan that outlines initiatives that can be taken at the local, state and federal levels to address the root of the problem — the impediments to increasing the nation's housing supply. View the plan at nahb.org/plan.

## Economic Data

NAHB's team of economists discuss the latest housing data and policy on the Eye on Housing blog. Access the latest housing economic data at eyeonhousing.org.

## Housing News and Policy

NAHBNow publishes the latest housing industry news and policy developments at nahb.org/blog.

## About NAHB

NAHB strives to protect the American Dream of housing opportunities for all, while working to achieve professional success for its members who build communities, create jobs and strengthen our economy.

A federation of 700 state and local builders associations, NAHB represents more than 140,000 members who work to provide homeownership and rental housing opportunities for all Americans in every congressional district across the nation.

Each year, NAHB's members construct about 80% of the new homes built in the United States, both single-family and multifamily.

December 2024