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ICC Comments on FHA Risk Management Initiatives: Manual Underwriting Requirements

**COMMENTS OF:
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The International Code Council (ICC) offers the following comments on the FHA Risk Management Initiatives: Manual Underwriting Requirements.

The International Code Council (ICC) is a membership association dedicated to building safety, fire prevention, and energy efficiency. The International Codes, or I-Codes, published by ICC, provide minimum safeguards for people at home, at school and in the workplace. Building codes benefit public safety and support the industry's need for one set of codes without regional limitations. Among the codes published by ICC is the *International Energy Conservation Code*® (IECC), which is referenced in the Energy Policy Act of 1992 (Public Law 102-486), and the Energy Independence and Security Act (EISA) of 2007, and is a national requirement in the American Recovery and Reinvestment Act of 2009. ICC also publishes the *International Green Construction Code* © (IgCC), which contains energy efficiency, water efficiency, air quality, siting and location considerations and sustainability provisions.

Fifty states and the District of Columbia have adopted the I-Codes at the state or jurisdictional level. Federal agencies including the Architect of the Capitol, General Services Administration, National Park Service, Department of State, U.S. Forest Service and the Veterans Administration also enforce the I-Codes for the facilities that they own or manage. The Department of Defense references the International Building Code for constructing military facilities, including those that house U.S. troops, domestically and abroad.

ICC was established in 1994 as a non-profit organization dedicated to developing a single set of comprehensive and coordinated national model construction codes. The founders of the ICC are Building Officials and Code Administrators International, Inc. (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress International, Inc. (SBCCI). Since the early part of the last century, these non-profit organizations developed three separate sets of model codes used throughout the United States. Although regional code development was effective and responsive to our country's needs, the time came for a single set of codes. The nation's three model code groups responded by creating the International Code Council and by developing codes without regional limitations; the International Codes.

The International Code Council is the legal successor to the Council of American Building Officials (CABO), that published the first *Model Energy Code* in 1992, which is referenced in the Energy Policy Act (Public Law 102-486). The *Model Energy Code* was renamed the *International Energy Conservation Code*® when it was republished by ICC in 2000, and has been re-published every three years since that time, with the current edition being the 2012 edition.

The International Code Council (ICC) appreciates the work that FHA has done in revising the manual underwriting requirements to balance concerns about credit quality with the flexibility to allow emerging risk factors to be included in the calculations that determine what income level is necessary to assure that borrows can successfully repay a federally insured mortgage. One of those risk factors, which is reflected in Section IV of the proposed final rule in the discussion of public comments on the manual underwriting requirements, is the reduced risk when borrowers use FHA energy efficient mortgage insurance. ICC agrees that borrowers purchasing energy efficient homes should have stretch ratios applied if the home meets the current *International Energy Conservation Code*® (IECC) that is developed and published by ICC.

The discussion, however, refers to “the applicable International Energy Conservation Code” which does not provide sufficient guidance on what requirements will need to be met in the home being insured, either for the borrower, or for FHA officials charged with underwriting analysis.

The IECC, like all ICC codes, is reviewed, revised, and re-published on a three year schedule. Since the first edition in 2000, (replacing the CABO Model Energy Code) three newer versions have been published. The IECC has been requiring increasingly more energy efficiency in new and renovated homes over the last three code cycles, and so it becomes critical to specify which edition of the IECC the FHA will reference for energy efficient mortgages, and which version of the IECC new homes will be required to meet. To emphasize the importance of the designation of a particular edition of the IECC, the U.S. Department of Energy has calculated that homes built to meet the 2009 IECC will be, on average, approximately 16% more energy efficient than those meeting the 2006 IECC, and that homes built to meet the 2012 IECC will be, on average, approximately 31% more efficient than those built to meet the 2006 IECC. It should be obvious from this rapid increase in efficiency, which could result in monthly electricity and fuel bills being more than 30% less for homes built to meet the 2012 IECC than those built to meet the 2006 IECC. A 30% difference in monthly utility bills will make a significant difference in the calculation of affordability that is at the heart of the manual underwriting requirements. It is not at all clear whether the FHA means to suggest that the word “applicable” refers to which version of the IECC is adopted within the jurisdiction where the home is being constructed, but if that is the intention, it would result in the FHA allowing stretch ratios for homes with widely varying levels of energy efficiency. That would not be sound public policy, and so cannot be the intention of the FHA’s proposed risk management initiatives. The lack of specificity in the proposed final rule is made more serious by the wide variety of adoption methods and schedules for code adoption in the various states, and many times within each state. Some states automatically adopt new versions of the code, but many more states have a deliberative process to evaluate new editions, and add amendments or modifications before adoption, which can stretch out the time required for adoption for several years. Some states also permit local jurisdictions to modify the code, or adopt different versions of the energy code. What all this means is that the same house, built in two adjacent jurisdictions within the same state, might be subject to different editions of the IECC, depending on which version of the IECC the specific jurisdictions had adopted. For this reason, it is critical for FHA to specify the version of the IECC that it is selecting as the benchmark, and not use the phrase “the applicable International Energy Conservation Code” which does not give guidance as to what requirements must be met.

Therefore, it is critical for the FHA, if it is applying stretch ratios to homes based on whether the home meets the IECC, to specify the most energy efficient version of the IECC, which will be the most recently published version of the IECC. We would encourage the FHA to specify that a home must be built to the 2012 IECC, in order to be eligible for the stretch ratios discussed in this rulemaking. By specifying the 2012 IECC, the FHA will also be acting in coordination with the policies of the U.S. Department of Energy, which is mandated to encourage the adoption by state and local governments of the most recent edition, and most energy efficient version, of the IECC.

RECOMMENDED CLARIFICATION:

Wherever the term “applicable IECC” occurs within the Manual Underwriting requirements, delete the word “applicable” and insert “2012” in lieu thereof.

Because the new rule allows HUD to issue a Mortgagee Letter to establish additional compensating factors, or to reflect changes in market conditions, the Mortgagee Letter could also be used to clarify the requirement established in this rulemaking setting the 2012 IECC as the benchmark for energy efficient mortgages. Such a revision may also be necessary following the issuance of new versions of the IECC. The next version of the IECC (the 2015 edition) is scheduled to be published in mid-2014, and the U.S. Department of Energy already is required by law (Energy Policy Act of 1992 [PL 102-486] as amended) to analyze within two years of publication any new editions to determine whether they achieve greater energy efficiency in residential dwellings than the previous edition. FHA could certainly determine whether its benchmark should be updated based on the DOE “determination” mandated by the Energy Policy Act of 1992, as amended.

Background on the I-Codes and the Code Development Process

Municipalities and states across America adopt and implement, and countries around the world adapt and use the International Codes® (I-Codes®). The I-Codes are the first and only set of coordinated, consistent, and comprehensive construction, fire, and energy codes.

Developed by the International Code Council® (ICC®) through the governmental consensus process, this single set of codes offers substantial advantages to all building professionals and the public.

Code officials, architects, engineers, designers, and contractors can work with a consistent set of requirements throughout the United States. Manufacturers can put their efforts into research and development rather than designing to different sets of standards and can focus on being more competitive in worldwide markets. Uniform education and certification programs can be used internationally. The code development process is key in gaining the trust and confidence of the global building and construction industry. This consensus process through which ICC develops and maintains the comprehensive and balanced codes is designed to protect the health, safety, and welfare of people around the world as well as protect our planet by encouraging sustainability, water, and energy conservation. Finally, the ICC process allows all jurisdictions, regardless of size, to benefit from the expertise of thousands of professionals in the development of the model codes, available for local adoption. The cost to include this expertise and manage this process would be prohibitive for any single jurisdiction.

Similar to the development of laws, the ICC code development follows a governmental consensus process that includes open forums of debate and refinement. It is an open, inclusive, and balanced consensus process with built-in safeguards designed to prevent domination by a single vested interest. The system ensures fairness in the process, controls against conflicts of interest, and prevents vested economic interests from determining the

outcome of code change proposals. This system of code development has provided the citizens of the U.S. the highest level of building safety in the world for more than 80 years. The ICC governmental consensus process meets the principles defined by the U.S. Standards Strategy of 2005 and 2010; the OMB Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (1998), as codified by Public Law 104-113, National Technology Transfer and Advancement Act of 1995.