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June 7, 2011

The Honorable Jeff Bingaman
Chairman, Committee on Energy and
Natural Resources
United States Senate
703 Hart Senate Office Building
Washington, DC 20510

The Honorable Lisa Murkowski
Ranking Member, Committee on
Energy and Natural Resources
United States Senate
709 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Bingaman and Ranking Member Murkowski:

Thank you for holding this important hearing on S. 1000, the Energy Savings and Industrial Competitiveness Act. Included in the legislation introduced by Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH) is authority to implement the “Rural Star” energy savings program. While the 1.1 million members of the National Association of REALTORS® (NAR) strongly support a voluntary, incentive-based approach to building efficiency, NAR is concerned that this authority could be used to implement a mandatory real estate energy labeling program across rural America. We are also concerned with provisions to clarify priority lien status for purposes of federal retrofit financing and to provide for an increased federal role in the development of state building energy codes, and would support amendments to address the following issues.

Rural Star Energy Labels

Many property owners would like to make energy improvements, but simply do not have the financial resources to undertake the project. The Rural Star provisions would change this by providing direct loans and incentives to make improvements, which would not only benefit our environment, but also create jobs and cut energy bills for the rural owners. While these owners would like to take advantage of the incentives, many would be discouraged from doing so if the program requires an energy label as a condition for the incentives. As currently drafted, the bill provides no apparent limit on the new authority from imposing such a condition. Labeling could stigmatize the older properties which would most benefit from a Rural Star program. A disproportionate share of these older properties are owned or occupied by populations living on modest or fixed incomes according to the American Housing Survey.

Priority Lien Status

The bill would also direct the U.S. Department of Energy to develop guidelines for federal retrofit financing, including “any lien priority requirements that the Secretary determines to be necessary.” However, this provision could cause unintended consequences if the Department requires this financing to have superior status to existing mortgages. Rules governing “mortgage superiority” are written into deeds of trust and mortgage documents including Fannie Mae’s uniform security instruments. Allowing an intervening lien could violate the borrower’s contract with current lenders. For future loans, there is a serious



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question whether a bank will make a loan (or Fannie/Freddie will purchase the loan) unless the loan documents provide a first lien for the mortgage (ahead of subsequent loans) so the lender will receive payments outstanding on the underlying mortgage before sums are paid on loans with a subordinate interest in the event of a foreclosure. Many rural owners would not be able to make improvements without financing and these owners are less likely to obtain the requisite financing given these concerns.

Federal Building Codes

While we appreciate the revisions and improvements over prior legislation, we continue to question the need, achievability and affordability of the federal energy code provisions—especially the “net zero energy building” standard—for recovering real estate markets. Introducing federal bureaucracy and red tape into a consensus-driven model code development process by IECC and ASHRAE will only slow the energy improvements the bill is intended to achieve. Rural Star, by itself however, would offer significantly more incentive for the rural property owners to take advantage of and speed the voluntary building energy improvements.

Thank you again for your extensive and on-going efforts toward a voluntary, incentive-based approach to making properties more energy efficient. We would welcome the opportunity to work with you and the bill’s authors in clarifying the above provisions to ensure the bill’s voluntary energy efficiency incentives are available to more Americans. We look forward to continuing to work with the Committee and other members of Congress as the legislative process continues.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Phipps". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ron Phipps, ABR, CRS, GRI, GREEN, e-PRO, SFR
2011 President, National Association of REALTORS®

cc: Members, Senate Committee on Energy and Natural Resources