

Statement of Bob Hanbury on behalf of the

National Association of Home Builders

“Home Star Act of 2010”

Senate Committee on Energy and Natural Resources

March 11, 2010

Chairman Bingaman, Ranking Member Murkowski, and members of the Committee, my name is Bob Hanbury. I am President of House of Hanbury, a third generation contractor based company in Newington, Connecticut. I have over 34 years experience specializing in design-build remodeling and I am a board member of the National Association of Home Builders (NAHB). I am pleased to have the opportunity to testify today, on behalf of the 175,000 members of NAHB in regards to the Home Star Act of 2010 and to express our support for incentives to retrofit older homes and buildings to improve energy efficiency and performance. Through my experience in the housing industry, I am intimately familiar with the struggles facing residential construction and I am eager to have meaningful job creation take place in our industry. NAHB members, like me, are already experts on the type of jobs that the Home Star proposal seeks to promote. I believe we can be both assets and allies for creating a robust national retrofit program like the one envisioned in the draft Home Star legislation.

In addition to the great promise I see in the Home Star proposal, I also see potential barriers to its success. For example, there are potential conflicts between Home Star and an environmental rule – e.g., the EPA’s Lead: Renovation, Repair and Painting Rule (LRRP) – that may create a serious compliance problem whereby it becomes illegal to work on any pre-1978 without certification by EPA in Lead Safe Work Practices (LSWP) as of April 22, 2010. Further, precluding access to the program by qualified contractors that receive appropriate job skills training via “other” workforce training programs is problematic. Similarly, requiring all contractors after the initial implementation period to be on a restrictive “pre-qualification” list will also limit the impact of the program.

This statement details our concerns about the implementation of the EPA’s LRRP that I believe will cripple the success of a Home Star retrofit program before it really has a chance to begin. Additionally, I have provided specific comments on the draft Home Star legislation outlining areas of concern and recommendations for improving the proposal. In both areas, NAHB looks forward to working with you to create a successful retrofit program that provides equal access for all qualified and properly-trained contractors and a true incentive to renovate the oldest, least-efficient housing stock.

Support for Retrofit Incentives and Project Reenergize

NAHB has consistently supported incentives for improving the energy efficiency of existing homes as part of a balanced energy efficiency policy for the building sector. In collaboration with several environmental and efficiency leaders, NAHB jointly advocated for the extension and expansion of tax credits under Section 25C and Section 25D of the Internal Revenue Code that support both efficiency upgrades and the installation of advanced renewable energy systems in homes. These two incentives were used by more than 4 million taxpayers in 2007 alone. Incentives for efficiency upgrades in existing homes are particularly meaningful because those projects are not normally as visually appealing as a state-of-the-art-kitchen.

Remodelers and renovators have been undertaking retrofit projects for years and have established networks to deliver large-scale projects, like Home Star, already in place. Despite the dramatic downturn in housing, our industry is poised to implement a retrofit program that employs the skills and expertise already mastered by builders and remodelers who rely upon the delivery system and supply-chain that runs between renovation contractors and product manufacturers. NAHB members have a proven track record of success in programs like this, primarily because we have been doing this work for years.

An example of a retrofit success that is particularly relevant to the draft Home Star legislation is Project Reenergize – www.projectreenergize.org. This successful retrofit program was administered and managed by the Builders Association of Minnesota (BAM) under a grant from the American Reinvestment and Recovery Act (ARRA). This program leveraged just \$3 million dollars of ARRA funding into a consumer rebate retrofit program that not only provided high-quality efficiency upgrades to consumers in Minnesota, but also delivered additional remodeling work to contractors that exceeded the promotional items as well. In a few short months at the end 2009, Project Reenergize completed 800 retrofit projects on over 1,400 homes with an average rebate to the consumer of \$2,300.

The success of Project Reenergize is not only that it moved rapidly with remarkable results, but also that it was managed efficiently and did not suffer the same bureaucratic issues that plagued other ARRA weatherization-type projects. First, as a consumer rebate program, Project Reenergize was not subject to Davis-Bacon wage requirements, as every other weatherization project faced, because it was awarded an exemption by the Department of Labor. Secondly, because the State of Minnesota did not have the network available to deliver the funding quickly, it allowed the BAM to administer the rebate program, similar to the proposed Rebate Aggregator role in the draft Home Star legislation. BAM verified that the contractors were appropriately trained and qualified to do the work, as well as reviewed all quality control paperwork and any field inspections prior to issuing the rebates. BAM was uniquely positioned to be the link between the manufacturers, distributors, retailers, contractors, and trainers in this regard. Thus, NAHB believes that the success of Project Reenergize should be a model for how

a larger, national rebate program should function and that there is a key role for the other 800+ state and local home builder associations across the U.S.

Implementation of the EPA's Lead: Renovation, Repair and Painting Rule

I am concerned with the implementation of the EPA's Lead: Renovation, Repair and Painting Rule (LRRP) and the potential conflict with the roll out of a multi-billion dollar retrofit program like Home Star. As a professional remodeler and an EPA "certified renovator" in Lead Safe Work Practices (LSWP), I am trained and ready to continue working in pre-1978 homes, in compliance with the LRRP rule, after April 22, 2010. Despite attempts to get EPA to act quickly and train enough professionals in time to meet the deadline, I believe thousands of contractors may be accused of doing illegal work on older homes as they assist homeowners in taking advantage of retrofit incentives, or that the LRRP rule, and the liability that accompanies it, will deter work in pre-1978 homes after April 22, 2010.

EPA finalized the LRRP rule in August 2008 covering all renovation work in homes built before 1978 to "minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in all housing and other buildings frequented by children under age 6." NAHB, along with several others, participated as a stakeholder in the development of the LRRP rule and supported its intent, as originally proposed. NAHB believes in the benefits of training contractors in LSWP. Therefore, NAHB has been consistently disappointed with the amount of time it has taken EPA to begin training, approve and accredit training programs and training providers, and approve online training courses for the portion of the certification protocol that does not require "hands-on" observation. This lack of attention has led to serious deficits in providing enough "certified renovators" to meet the compliance demands of the LRRP rule, and worse yet, it could now derail the success of a retrofit program to create jobs, like Home Star.

Obviously, the homes in the most desperate need of retrofit are those built prior to the introduction of energy codes in the late 1970s. This substantial segment of the housing stock – about 68% of all existing homes – numbers roughly 79 million. In order to address these millions of older homes, EPA estimated that it would need 212,000 certified firms and 236,000 certified contractors prior to the April 22, 2010¹. Additionally, EPA proposed adding an amendment to the LRRP rule in October 2009, which substantially increases the number of homes subject to the rule, thereby increasing the need for additional trained firms and contractors by 110,000 and 115,000, respectively, all prior to the April 22, 2010 deadline². As of February 19, 2010, EPA reported that it has certified 13,669 renovators in LSWP [See Appendix I].

¹ U.S. Environmental Protection Agency, *Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities*, (March 2008). table ES-4.

² U.S. EPA, *Economic Analysis for the TSCA Lead, Renovation, Repair, and Painting Program Opt-Out and Recordkeeping Proposed Rule for Target Housing and Child-Occupied Facilities*, ES-2 (October 2009).

Furthermore, EPA reports that some States still do not have any accredited training providers to offer the EPA training, including the States of Arizona, Louisiana, Oklahoma, Rhode Island, South Dakota, West Virginia, and Wyoming³.

EPA has not given contractors the adequate means to comply with the LRRP rule, a problem which will be magnified if the Home Star program is enacted into law. EPA did not begin accrediting training providers until July 2009 and since that time has only accredited approximately 135 firms and 13,669 individuals, far below the 236,000 threshold it set for itself in March 2008. Additionally, EPA has generally been deficient in its efforts to inform the regulated community about the LRRP rule, only starting its advertising campaign for compliance at the end of February 2010. Thankfully, NAHB and the remodeler members of our state and local home builder associations began working to try to have as many contractors as possible trained prior to EPA's ad campaign and have already held 231 training courses with another 500 planned.

With little effort to effectively train and inform the regulated community, EPA has done virtually nothing to inform the public about the LRRP rule. Consumer awareness of this regulation is negligible, at best, and with the heavy media campaign that will undoubtedly accompany Home Star, homeowners will rush to call contractors to perform efficiency upgrades in older housing, not realizing that many of those contractors could be doing the work illegally if they are not EPA certified. While the consumer would not bear the liability for violations, contractors that violate the statute are subject to fines and civil penalties (under Toxic Substances Control Act, \$37,500 per violation, per day⁴), which will provide a disincentive for working on pre-1978 homes.

Regardless of the certification, pre-qualification and training requirements as prescribed for contractors working on Home Star projects, all contractors must comply with the LRRP rule. In order to comply, contractors must belong to a "certified firm," which requires paying a fee to EPA or delegated State program, and "certified firms" must have at least one trained "certified renovator" that must be present at the outset and completion of renovation work in housing subject to the rule⁵. Since EPA has publicized a plan showing that it expects only a portion of the regulated community to be able to comply with the LRRP rule by the effective date under normal market conditions, NAHB doubts that it could accommodate the influx of new renovation contractors in the context of a multi-billion retrofit program that is specifically designed to create jobs working on the same housing stock covered by the LRRP rule.

³ U.S. EPA, <http://www.epa.gov/lead/pubs/trainingproviders.htm> [accessed 9 March 2010].

⁴ 40 C.F.R. §745.220(b)

⁵ 40 C.F.R. §745.85

NAHB believes that intervention to delay the effective date of the implementation of the LRRP is warranted and justified, especially in the context of promoting a retrofit program. Not only has EPA demonstrated a lack of capacity to provide adequate compliance pathways, but there are liabilities that accompany this program that could stymie the success of a planned retrofit program. Because of the implications of the compliance problems and potential liabilities, both in federal fines and lawsuits, NAHB believes the Committee should weigh in with the administration and the Office of Information and Regulatory Affairs at OMB to request a delay in the effective date of the LRRP rule.

A delay in the effective date of the LRRP rule is also critical because the statute under which the rule is promulgated allows for citizens to sue a regulated contractor after providing notice to EPA if the EPA declines to pursue an enforcement action or civil action against that contractor. Thus, even if EPA exercised its discretion and chose not to actively pursue enforcement actions against remodelers and other contractors alleged to be in violation of any part of the LRRP rule, an individual could file a lawsuit against the contractor. For example, if a contractor were unable to attend certified renovator training by April 22, on April 23, anyone meeting the Toxic Substances Control Act's specifications can file notice of their intent to initiate a lawsuit to "restrain a violation," which would likely prohibit the contractor from working on any home built before 1978⁶.

NAHB believes that delaying the effective date of the LRRP rule is appropriate and that there is sufficient precedent for taking such action. In 2000, the Department of Housing and Urban Development (HUD) faced a similar problem implementing a lead rule that covered federally-owned housing due to lack of trained (certified) personnel. The rule was finalized on September 11, 2000, but due to the lack of certified professionals to implement it, an extension, of sorts, was granted whereby program participants that had properties built after 1960 were granted a "transition assistance period" and could file a "statement of inadequate capacity" that essentially indicated their intent to comply with the rule once enough certified professional were available to do the work. As the need dictated, these transitional periods continued to be available until January 10, 2002, when it was determined that there was finally enough capacity to comply with the rule. If this process was appropriate to establish compliance for federally-

⁶ The Toxic Substances Control Act (TSCA) allows citizens satisfying Constitutional article III requirements to pursue civil actions against persons alleged to be in violation of the act or a regulation or order promulgated pursuant to the act. TSCA § 20; 15 U.S.C. § 2619(a). Section 20 provides that "any person may commence a civil action (1) against any person...who is alleged to be in violation of this chapter or any rule promulgated under...subchapter...IV [Lead Exposure Reduction] of this chapter to restrain such violation." See *id.* In order to pursue litigation against an alleged violator, the citizen plaintiff must first notify both EPA and the alleged violator 60 days before filing a complaint. TSCA § 20(b)(1)(A); 15 U.S.C. § 2619(b)(1)(A). If EPA has already commenced "and is diligently prosecuting" an enforcement or civil action against the alleged violator, then the citizen plaintiff cannot bring suit. TSCA § 20(b)(1)(B); 15 U.S.C. § 2619(b)(1)(B). If EPA initiates action after receiving notice of the citizen plaintiff's intent to sue, then the plaintiff may intervene in the proceeding.

owned housing stock, it seems justifiable for use in this case where substantially more homes are affected.

Comments on Draft Home Star Legislation

NAHB fully supports retrofit efforts like Home Star and has experience successfully implementing federally-funded retrofit projects, but we believe the current draft Home Star legislation may not provide equal access to all trained contractors and could potentially limit the eligible labor pool. As drafted, only certain organizations qualify by name under the workforce development training section of the draft legislation. Furthermore, by 2011, no contractors working on any “federally assisted residential retrofit work” will be authorized to participate unless those contractors are pre-qualified and the pre-qualification minimums are needlessly exclusionary. In order to be truly successful, both in the number of jobs that can be created, as well as the amount of energy that can be saved, the Home Star program should be accessible to every contractor that has been trained in a legitimate workforce training program, or that has the appropriate job skills to perform the work. Whether or not he or she is affiliated with a specific credentialed organization, as listed in the draft, should be irrelevant.

Home Builders Institute (HBI)

One specific omission in the draft Home Star legislation is the exclusion of the Home Builders Institute (HBI) from the definition of a “certified workforce” in Section 2(4). HBI is the largest Job Corps partner with the U.S. Department of Labor and is currently structured to serve workers from youth to adults; providing a career path for the residential construction (and home weatherization) industry. Because HBI is already a recognized partner with the federal government, it is a legitimate workforce program that provides the same skills training and job preparation that the draft Home Star legislation seeks to promote.

Beginning in 2001, HBI developed a craft trade specific training program focusing exclusively on the residential construction industry. The Residential Construction Academy Series published by Delmar Learning, a leading trade textbook publisher, features textbooks and electronic teaching materials in the subjects of Carpentry, House Wiring, Plumbing, HVAC, Masonry and Facilities Maintenance. “Basic Principles for Construction” serves as an introduction to the curriculum. Weatherization and retrofit strategies and practices are imbedded throughout the RCA Series' trade titles, many of which are in their 2nd editions. The training is based on national skill standards identified by residential builders, remodelers and educators. RCA Series materials are used in high schools, two-year colleges and workforce preparedness programs, including Job Corps, throughout the U.S. - (www.residentialacademy.com)

HBI provides certification for both instructors and students who utilize its materials through the National Occupational Competency Testing Institute (NOCTI). NOCTI is a leading provider of high-quality occupational competency assessment products and services to secondary

and post-secondary educational institutions in the U.S. and worldwide. In 2009, HBI correlated all of its training materials used in Job Corps training, as well as its Pre-Apprenticeship Certificate Training (PACT) used to train disadvantaged audiences, to the ANSI approved ICC-700-2008 National Green Building Standard™. These materials present entry-level, pre-apprenticeship training on craft trades involved in the weatherization of existing homes. Furthermore, HBI also created a 40-hour training certification on weatherization and retrofitting for industry practitioners, which includes classroom and hands-on training and an associated certification. This training can be administered through home builder associations or community colleges throughout the U.S. In the last 28 years, HBI has trained well over 150,000 professionals – youth to adults – in the residential construction industry.

NAHB recommends including the Home Builders Institute (HBI) workforce development training program in addition to Building Performance Institute (BPI), North American Technician Excellence, and Laborers International Union of North America, as a qualifying program for a “certified workforce.” This is particularly important, as the ongoing Quality Assurance Framework, under Section 8 of the draft Home Star legislation, demands the use of a “certified workforce” as a minimum component of pre-qualification. NAHB does not believe that relegating the inclusion of HBI to a decision by the Secretary to use “other standards” is sufficient to guarantee meaningful consideration because of the length of time that a deliberative agency consultation and/or rulemaking process might take. NAHB respectfully requests that HBI be listed by name along with the other named training programs under Section 2(4)(A).

Certified Workforce

In addition to limitations on the types of workforce training that could be considered qualified under a “certified workforce,” NAHB notes that there are limitations on the types of contractors that can be used in any longer-term retrofit projects under Section 8. This provision requires that by January 1, 2011, all States must submit plans to implement a “Quality Assurance Framework” for any “federally assisted residential retrofit work” – both Silver Star and Gold Star – that is “administered, supervised, or sponsored by [the] State.” This mandatory requirement establishes pre-qualification minimums for all contractors and are exclusionary and restrictive.

Under Section 8(3) of the draft legislation, minimum pre-qualification requirements for authorized contractors include “accreditation” and “proper employee classification,” among others. NAHB believes that the accreditation requirement, as defined under Section 2(1)(B) of the draft, limits consideration to those that are accredited by “BPI” or “other.” NAHB has concerns that restricting access to only “BPI” contractors could limit the program reach, as there may be instances where BPI-accredited contractors are not serving every residential retrofit market in the U.S.

More importantly, NAHB is extremely concerned with language in Section (8)(3)(C) that mandates “proper classification of employees.” Despite repeated attempts to clarify the intent of this language, NAHB has not been able to determine the objective of mandating a “proper” way to classify an employee’s status for participation in this program. Unless an objective reason for including this language exists, it should be removed so that the intent is clear and that every properly-trained and qualified contractor can participate, despite classification status, as should be the parameters of a program like Home Star. Included with this Written Statement is a compilation of NAHB’s specific comments on the legislation and the corresponding sections with recommendations for changes [See Appendix II].

Conclusion

NAHB fully supports the approach that the Committee is considering with providing incentives for consumers in older, existing homes to be able to improve energy efficiency and performance. NAHB has consistently advocated for these types of incentives and will continue to push for expansions and extensions of such incentives. By far, the housing and residential construction industry has experienced the worst of the economic downturn and job creation is critical for professionals, like me, who have worked for years to retrofit and remodel homes. We look forward to working with the Committee, Congress, and the administration as they put the finishing touches on a retrofit program.

Furthermore, in order to ensure that the Home Star program does not magnify the compliance issues that renovators are already facing with the EPA’s LRRP rule, NAHB respectfully requests that the Committee and Congress ask for a delay in the effective date of the LRRP rule – currently April 22, 2010. NAHB supports the use of contractors trained in LSWP and similarly supports retrofitting existing homes for improved energy efficiency, however, without intervention and a delay, these two initiatives may cripple one another. NAHB believes that without a delay, compliance with the LRRP rule will effectively limit the reach and potential success of Home Star, or rather Home Star will create incentives for contractors to perform illegal work on older housing by not receiving appropriate certification from EPA in time.

NAHB believes that crafting a retrofit program, modeled after the success of the Builder Association of Minnesota’s Project Reenergize program, is the right way to include equal access to highly-qualified, trained contractors and builders. Limiting the program to certain groups of people with explicit certifications, employment status, or specific credentials is short-sighted and would reduce the impact on jobs and energy savings. We look forward to working with the Committee and Congress on this issue. Thank you.

Appendix I

EPA Lead: Renovation, Repair and Painting (LRRP) Rule Stats, as of 2/19/10
(Data from U.S. EPA)

State	Certified Renovators	Courses by State
AK	97	10
AL	163	10
AR	40	2
AZ	55	3
CA	742	60
CO	378	41
CT	239	22
DC	35	2
DE	56	12
FL	468	48
GA	289	16
HI	21	3
IA	75	1
ID	204	20
IL	356	27
IN	343	28
KS	62	4
KY	149	9
LA	103	7
MA	389	39
MD	461	39
ME	188	11
MI	588	57
MN	569	42
MO	187	12
MS	76	6
MT	6	0
NC	542	45
ND	70	5
NE	515	37
NH	124	7
NJ	259	21
NM	91	6
NV	17	2
NY	976	84
OH	1004	71

OK	119	2
OR	289	26
PA	407	32
RI	12	0
SC	166	19
SD	147	7
TN	94	13
TX	670	61
UT	6	0
VA	323	23
VT	44	4
WA	245	27
WI	1170	59
WV	21	1
WY	6	0
Canada	1	0
Null	12	4
TOTAL	13669	1087

2/19/2010

Appendix II

NAHB Comments on *The Home Star Act of 2010*

General Comments

- NAHB supports making program rebates non-taxable income to consumers and also supports allowing consumers to continue to utilize credits under Section 25C of the IRS Code of 1986, supplementary to the rebate program.
- NAHB also supports efforts to increase the universe of Quality Assurance Providers (QAPs), but shares concerns related to the interplay between QAPs, Rebate Aggregators, and Contractors, as defined in the draft.
- NAHB insists that the Home Builders Institute (HBI) should qualify by name under the definition of a “Certified Workforce” in Section 2(4)(A) of the draft, as it is an existing workforce development and training partner with the U.S. Department of Labor and has an existing weatherization and retrofit curriculum.
- NAHB asserts that the mandatory minimum requirements for prequalification of contractors under Section 8(c)(3) for use in any State “*administered, supervised, or sponsored*” quality assurance programs covering “*all federally assisted residential retrofit work*” (both Silver Star and Gold Star) prohibitively limits the labor pool and precludes equal participation by qualified and highly-trained contractors.

Section 2. Definitions

- Subsection (4)(A) – page 2, lines 19-25. The definition of a “certified workforce” rests upon certification in job skills training that is offered by three named programs – (BPI, NATE, and LiUNA) – and relegates all other legitimate programs to an “other” category under 4(B). The process by which DOE and DOL would have to consult and approve “another standard” would be lengthy and likely fall outside of the design of the program for quick implementation. NAHB insists that in cases where the DOL or DOE have already partnered with, and work with, a legitimate workforce development program (training and job skills program; retrofitting/weatherization), that those programs also be listed by name in order to speed the implementation and availability of additional trained contractors for eligibility under the certification program requirements. In this regard, **NAHB requests the addition of “(iv) the Home Builders Institute” after line 25, page 2 of this subsection.**
- Subsection (10) – page 3, line 10- page 4, line 2. NAHB believes the definition of “home” in this subsection is very broad and in order to focus the government’s limited resources on the least-efficient stock, there could be an additional qualification that limits eligibility to older housing stock. As drafted, any home built before the enactment of the bill – including green homes and advanced energy-code compliant homes, would qualify. This is not a major sticking point, but it should be noted that other successful home retrofit programs have successfully limited participation by house size and/or year of construction to older stock as a means of delivering a larger return on investment in terms of energy savings. **NAHB suggests additional qualification requirements to target resources to the older, least-efficient housing stock by deleting the words “the date of enactment of this Act” on page 4, line 2 and inserting a year of construction that predates enactment by at least five or ten years.**

Section 5. Silver Star Home Energy Retrofit Program

- Subsection (b)(6) – page 16, lines 4-12. It should be noted that the window and skylight specifications for qualification under this subsection are both inconsistent with existing federal incentive programs and geographically inappropriate for some climate zones. For example, the specifications require compliance with criteria in Section 25C of the IRS Code and skylights do not qualify at all under Section 25C, therefore it is impossible to qualify skylights under this subsection. Furthermore, Section 25C criteria requires windows with a 0.30 U-factor and a 0.30 solar heat gain coefficient. Unfortunately, these window specifications are generally too dark for northern climate zones where radiant heating in the winter is both warranted and beneficial. In order to improve access for consumers to affordable and available products, while still retaining the inclusion of a bona fide energy-efficient upgrade, **NAHB requests a deletion of lines 8-12 on page 16 and insertion of the following: “(A) meets the criteria for such components established by the 2010 Energy Star Program Requirements for Residential Windows, Doors, and Skylights, Version 5.0 (or any subsequent version of such requirements which is in effect after January 4, 2010).”**

Section 8. Quality Assurance Framework

- Subsection (a) – page-35, lines 17-20. This provision establishes an ongoing requirement that *all* State participation in any “federally assisted residential efficiency retrofit work” is incumbent upon States’ submission of a list of pre-qualified contractors as part of a quality assurance program. Within 6 months, States must submit a plan for implementation by January 1, 2011 – under subsection (b)(2). Because this provision says “all” work (page 71, line 6) and does not differentiate between Silver Star or Gold Star, it becomes a mandatory requirement for participation in any program that is “administered, supervised, or sponsored” by a State. **NAHB requests clarification that any and all retrofit work that utilizes money from Home Star must comply with the framework and mandatory minimums for pre-qualification of contractors under this subsection as implied.**
- Subsection (b) – page 35, lines 21 – page 36, line 4. This subsection mandates States comply with the implementation of an ongoing program via the word “shall” – page 35, line 21 – by January 1, 2011. NAHB questions how quickly and effectively a State can elicit the required consultation for a mandatory program with the many stakeholder groups specified on pages 55-56, and still meet this deadline. **NAHB requests removal of the January 1, 2011 deadline in order to give States additional time to consult the various stakeholders, including those not directly specified in this subsection – e.g., remodelers.**
- Subsection (c)(3) – page 36, lines 13 – 20. The list of “minimum standards” to be a pre-qualified contractor is problematic. Because these are mandatory minimums – per the word “shall” on page 36, line 6 – the type of contractor that can be prequalified becomes extremely important. Subsection (c)(3) lists those minimums as: “(A) accreditation; (B) legal compliance procedures; (C) proper classification of employees;...” NAHB believes that items (A) and (C) are exclusionary to the universe of contractors, possibly independent contractors, who perhaps are not “properly classified employees,” as well as those not accredited by BPI (per Section 2(1)(B)). If the intent of Subsection (c)(3)(C)

“proper employee classification” is to provide reporting information about a contractor’s status, NAHB suggests including that item as a reportable instance under Section 9. Otherwise, including this language implies that there is an “improper” way to be classified that could exclude access or participation in the program. **NAHB requests deleting Subsection (c)(3)(A) “accreditation” and Subsection (c)(3)(C) “proper employee classification”– page 36, lines 15-17 – in order to prohibit any exclusions of qualified contractors who are “improperly” classified as a circumstance of status (e.g., independent contractors) and to prevent limiting the available contractor pool to only BPI-accredited contractors, which may not be sufficient to serve the capacity of demand.**