



March 4, 2021

Attention: Building Performance and Enforcement Branch
Department of Energy & Environment
Government of the District of Columbia
1200 First Street, N.E., 5th Floor
Washington, DC 20002
Via Electronic Mail: info.BEPS@dc.gov

Re: National Housing Trust Comments on the Notice of Proposed Rulemaking, Application of the Building Energy Performance Standards (BEPS) for Privately-Owned Buildings

The following comments are provided on behalf of [The Housing Association of Nonprofit Developers \(HAND\)](#) in regards to the potential impact of Building Energy Performance Standards (BEPS) on affordable housing owners and residents. As a “change” association working across the private, public and nonprofit sectors, HAND is committed to leveraging the power of our diverse collective comprised of nonprofit and for-profit developers, financial institutions, property managers, service providers, government agencies, architects, syndicators, law firms, foundations, universities, and others, to address our region’s affordable housing challenge. Our 450+ members are united around a shared goal of creating thriving communities through the vehicle of affordable housing.

Our organization is missioned to build the capacity of our members, and for nearly two years, we have worked closely with the Department of Energy and Environment (DOEE) and the National Housing Trust (NHT) to ensure that our members are aware of BEPS and the impacts on their properties. HAND appreciates the considerations DOEE has already taken into account so that BEPS can accommodate the challenges unique to affordable housing owners seeking energy-efficient upgrades for their buildings. HAND also recommends further flexibility than what is currently proposed in the rules in light of barriers that often impact affordable housing building owners: tight property cash flow and margins, a lack of upfront capital, limited access to financing to pay for energy efficiency upgrades, and multiple lenders and investors.

Specifically, HAND recommends adding the following updates to the proposed rules:

1. **Expand the criteria for granting compliance delays to affordable housing owners;** and
2. **Exempt affordable housing owners from paying the alternative compliance penalty if they can demonstrate a good faith effort to achieve 20 percent energy savings but fall short.**

Additionally, HAND urges DOEE to publish the supplemental BEPS Compliance Guidebook as soon as possible (to bring certainty to building owners about how BEPS will be implemented), and provide an opportunity for the public to comment on the Guidebook.

Background

It is no secret that the District is facing a growing housing affordability challenge. Rising rents combined with stagnant wages and the impacts of COVID-19 have created extremely difficult circumstances for many of our neighbors just trying to make ends meet. Any climate policy we consider must be implemented equitably to lighten the load for our communities with limited resources, while still fostering a clean and safe environment.

The District's Climate and Energy Action Plan ("Clean Energy DC") highlights the importance of equity in climate policies. The plan includes a number of potential risks to equity if strategies are not carefully executed: increasing financial burdens carried by low- to-moderate income residents and reinforcing structural inequality by increasing social equity gaps in the District. In an effort to avoid these risks, Clean Energy DC recommends that the District specifically support at-risk communities, including low-to-middle income populations and populations of color, when developing and implementing climate and energy policies. We also know that owners of affordable housing will be faced with considerable costs to comply with BEPS. In fact, a preliminary analysis conducted by NHT found that among affordable multifamily buildings with 2019 ENERGY STAR scores below the multifamily BEPS, approximately 20,000 affordable rental units in 108 properties will require energy efficiency upgrades in the first BEPS compliance cycle. Further, the cost of upgrading all of these buildings could amount to nearly \$200 million – much more than current funding available to support affordable

building owners making energy efficiency upgrades to their buildings. **We recommend that DOEE provide affordable housing owners flexible approaches to comply with BEPS to minimize any harm that could potentially stem from these costs.**

There are also several obstacles that limit affordable housing owners in taking on additional debt to pay for building upgrades, including:

- Insufficient net operating income to sustain additional debt due to the property's limited revenue and the typical operating costs; and
- Taking on additional debt would also require approval from existing lenders and limited partners, which tends to be a drawn-out, prolonged process.

As an alternative, affordable housing owners can more easily finance energy efficiency upgrades when they are refinancing their debt and can fold in the cost of energy efficiency improvements into new first mortgages. However, there are limited funding sources available to affordable multifamily building owners to recapitalize and rehabilitate a property, and even the two leading sources accessible to affordable housing owners (the Low Income Housing Tax Credit program and the District's Housing Production Trust Fund) are extremely competitive. If owners are unable to navigate these challenges and as a result fail to comply with BEPS, it's most likely the compliance penalty would also be a prohibitive cost.

Recommendations on the Proposed BEPS Rules

1. Expand the criteria for granting compliance delays to affordable housing owners.

The proposed rules (Section 3520.6) outline reasons for DOEE to grant a building owner a delay in compliance, including financial distress. DOEE should broaden its financial distress requirements and grant affordable housing owners an extended delay in compliance beyond three years if they can demonstrate difficulties associated with complying due to the items referenced above. Building owners should be required to provide evidence of a good faith effort to identify potential funding sources to qualify for the extended compliance delay.

DOEE should also consider granting an extended compliance delay if the building owner has a plan to recapitalize the property to finance the cost of energy efficiency improvements, but is unable to do so for one to three compliance cycles (depending on the requirements of the building's existing financing partners and the availability of the financial resources needed to recapitalize and rehabilitate the property adequately). DOEE should also consider providing additional flexibility to building owners who are pursuing a recapitalization but are not successful in securing new financing due to the limited availability and competitiveness of funding sources.

2. Exempt affordable housing owners from paying the alternative compliance penalty if they can demonstrate a good faith effort to achieve 20 percent energy savings.

The proposed rules (Section 3521) state that building owners could face an alternative compliance penalty even if they implement energy efficiency building upgrades, but fall short of reducing energy usage by 20 percent. There are a multitude of reasons why energy efficiency upgrades don't result in the expected energy savings, from the difficulty of predicting savings from an energy efficiency measure, to unexpected changes in tenant behavior. DOEE should provide additional flexibility when assessing penalties to reflect these circumstances, so that building owners are not penalized for not meeting the 20 percent requirement for reasons outside of their control. For example, if the owner of a building between 50,000-100,000 square feet chose to follow the performance pathway and achieved a 15 percent reduction in energy usage, instead of a 20 percent reduction, under the proposed rules, the owner would be subject to a \$250,000 penalty – costs that could be truly damaging for an affordable housing property already under several financial constraints. DOEE should consider exempting affordable housing from penalties if the owner makes a good faith effort to implement an energy efficiency plan modeled to achieve a 20 or more percent reduction in energy use but does not achieve the required threshold.

In closing, HAND thanks you for your consideration of our comments. We look forward to continuing to work with DOEE on this important work of meeting the District's energy and climate goals, and ensuring the creation of equitable, inclusive communities.

Sincerely,



Heather Raspberry
Executive Director, Housing Association of Nonprofit Developers (HAND)