June 5, 2023

Secretary Serena McIlwain
Maryland Department of the Environment
Montgomery Park Business Center
1800 Washington Blvd.
Baltimore, MD 21230

Dear Secretary McIlwain:

Thank you for the opportunity to provide comments on the draft BEPS regulations. The following comments relate to the need for flexibility in the BEPS regulations to support affordable housing providers in complying with the requirements.

National Housing Trust (NHT) is a non-profit that creates and preserves affordable homes to provide opportunity, advance racial equity, reduce economic disparities, and strengthen community resilience through practice and policy. NHT has preserved 450 affordable housing units in Maryland as an affordable housing provider.

BEPS is an important policy tool for accelerating decarbonization and delivering health and economic benefits to residents. However, affordable housing owners face several obstacles to decarbonizing their properties. Barriers include limited access to funding to undertake building upgrades, difficulty accessing debt, and nascent technologies for electrifying central heating systems. Compliance flexibility is necessary to accommodate these challenges and ensure housing providers can maintain affordability while meeting BEPS requirements.

The draft BEPS regulations do not incorporate sufficient flexibility to support affordable housing.

There are as many as 97,000 publicly supported and rent-restricted affordable apartments in Maryland across nearly 800 properties that BEPS may cover.[1] As demonstrated in

[1] This is an estimate of the maximum number of units that may be covered by BEPS. The count includes only properties with more than 35 units to approximate the number of properties that likely meet the 35,000 square-foot threshold. The number of buildings at each property and metering configuration are unknown. Source: National Housing Preservation Database, https://preservationdatabase.org/
This count does not include unsubsidized affordable housing that rents at affordable levels but does not rent

Appendix A, these properties are in every Maryland county. Maryland lacks more than 125,000 rental homes that are affordable and available for extremely low-income renters.[2]

Affordable housing providers face unique financial challenges, such as an inability to take on new debt between recapitalizations, limited cash flow due to restricted rents, and restrictions on using reserves for building improvements in regulated housing. As a result, the most suitable time to finance significant building upgrades in affordable housing, such as electrification, is at refinancing. At that point in the building lifecycle, the property owner is developing a comprehensive scope of the work that includes significant capital upgrades and is pursuing new financing sources, such as Low Income Housing Tax Credits and new first mortgage debt.

MDE should incorporate flexibility in the regulations to allow affordable housing providers to request alternative compliance pathways or compliance extensions.

The Maryland General Assembly directed MDE to develop regulations that "provide the maximum flexibility to the owners of covered buildings to comply with building energy performance standards."[3] Affordable housing provides a public good and warrants flexibility. Several situations will require flexibility for affordable housing:

- If the cost of compliance is significant, and financial incentives are not available to defray the costs;
- If the compliance timeline does not align with the refinancing cycle/timing of the property and the building owner lacks sufficient cash flow and/or the ability to take on new debt to pay for building upgrades;
- If additional time is needed because technological solutions are not available or are cost-prohibitive to electrify all building systems.[4]

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[2] National Low Income Housing Coalition, 2022 Maryland Housing Profile

[3] Md. Code, Envir. § 2-1602(c)(2)(IV)

[4] Electrifying central space and water heating systems in multifamily buildings is particularly challenging, given current technology and conversion costs. According to ACEEE, electrifying apartments in buildings served by central boilers is expensive, and it can be challenging to recoup the costs. “The economics of electric heat pumps in multifamily buildings would improve if the installed costs of mini-split heat pumps in multifamily buildings were reduced to the costs that now apply in single-family homes… Achieving single-family costs in multifamily buildings will be challenging, but it could be possible with large-scale installations and improved approaches to installing outdoor units on the exterior of multistory buildings.” Source: Nadel, S., and L. Fadali. 2022. Analysis of Electric and Gas Decarbonization Options for Homes and Apartments. Washington, DC: ACEEE. www.aceee.org/research-report/b2205.

In another study, ACEEE concluded that while “the HPWH market is evolving quickly, and recent and soon-to-be-released products could help expedite the market transformation process and improve cost-effectiveness… the economics of retrofitting multifamily fossil fuel water heating systems with HPWHs are currently very challenging. A combination of policies and regulatory levers will be necessary to help make HPWHs more economically attractive for multifamily retrofit projects. Without significant interventions, multifamily HPWH installations will likely remain limited. Further research and design could help improve HPWH performance (e.g., in cold climates)

Other jurisdictions that have adopted or are planning to adopt BEPS policies have recognized the importance of flexibility for affordable housing. A common practice is to offer building owners the opportunity to apply for an extended compliance timeline.

- Seattle is considering adopting a GHG intensity emissions target. Seattle's proposed BEPS policy provides multifamily buildings with a longer runway to comply with the standards than non-residential buildings, allowing greater flexibility and time for developing technical assistance and financial incentives. Under the proposed policy, affordable multifamily housing would be exempt from meeting the first two BEPS interim targets while still requiring affordable housing to meet the final net-zero standard by the same date as required for all building types. [5] This approach gives affordable housing owners an additional ten years to meet the first interim standard compared to non-residential buildings.

- Colorado is also considering an emissions-based BEPS. The state established a task force to develop policy recommendations for the Colorado Energy Office (CEO). The recommendations included incorporating compliance adjustment options in the final rules. The options would consist of allowing building owners to apply for an adjusted timeline to achieve compliance with the standard. The task force identified several examples for which this flexibility is essential, including affordable housing that needs to align work with recapitalization or refinancing timelines, building owners undergoing a significant renovation that does not align with the target standard dates, and allowing building owners to replace systems at the end of life. An owner seeking an adjustment option would apply and provide documentation detailing why an adjustment is needed and a plan showing how the building owner will meet the adjusted compliance option.[6]

- Washington, D.C.'s BEPS regulations allow building owners to request a delay in compliance if the owner can demonstrate good cause. All building owners are eligible for a delay in compliance of up to three years. In addition, affordable multifamily housing providers can apply for a delay longer than three years.[7] DC DOEE has also developed financial distress criteria specific to affordable housing that providers can use to justify the need for a compliance delay:

  > "In reference to BEPS, financial distress means a building owner cannot honor financial obligations, including payment of ordinary and necessary

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and develop systems for specific applications (e.g., space-constrained low-income multifamily)." Source: Perry, C., A. Khanolkar, and H. Bastian. 2021. Increasing Sustainability of Multifamily Buildings with Heat Pump Water Heaters. Washington, DC: American Council for an Energy-Efficient Economy. aceee.org/research-report/b2101.

[5] Seattle Office of Sustainability and Environment, "Seattle Building Emissions Performance Standard: Guide to the Proposed Policy (1/17/23 Draft)

[6] Colorado's Building Performance Standards Task Force Recommendations, October 1, 2022.

[7] Chapter 35, GREEN BUILDING REQUIREMENTS, of Title 20 DCMR, ENVIRONMENT Sections 3520.5-3520.6

> business and/or living expenses, that would prevent timely compliance with energy performance requirements. When claiming financial distress, the building owner should demonstrate that it has made good faith efforts to pursue available financial support mechanisms. **For qualifying affordable housing, this circumstance can also be demonstrated if a building can document cash flow constraints, restrictions on the usage of its net cash flow, or prohibition from utilizing a portion of existing cash reserves for EEMs.**"[8] [emphasis added]

Thank you for considering these comments. I am happy to discuss these comments in detail or provide additional information to support MDE in incorporating flexibility in the BEPS regulations for affordable housing.

Sincerely,

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[8] D.C. Department of Energy and Environment, Building Energy Performance Standards Compliance and Enforcement Guidebook for Compliance Cycle 1, § 5.2.1.

Appendix A: Number of publicly supported and rent-restricted affordable apartments and properties that BEPS may cover by county.

	# of Units	# of Properties
Allegany	1,374	16
Anne Arundel	5,229	38
Baltimore	8,061	70
Baltimore City	27,983	200
Calvert	720	9
Caroline	430	7
Carroll	642	10
Cecil	2,117	30
Charles	1,432	14
Dorchester	1,195	13
Frederick	2,450	22
Garrett	408	8
Harford	2,730	24
Howard	3,097	25
Kent	465	6
Montgomery	18,376	120
Prince Georges	13,325	91
Queen Annes	370	6
Saint Marys	1,366	17
Somerset	613	9
Talbot	759	10
Washington	2,114	20
Wicomico	2,076	25
Worcester	473	8
Total:	**97,805**	**798**

This is an estimate of the maximum number of units that BEPS may cover. The count includes only properties with more than 35 units to approximate the number of properties that likely meet the 35,000 square-foot threshold. The number of buildings at each property and metering configuration is unknown. Source: National Housing Preservation Database, https://preservationdatabase.org/