

April 12, 2017

VIA ELECTRONIC SUBMISSION

Secretary Benjamin Carson
Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410-0500

Re: Withdraw Proposed Information Collection on Energy Benchmarking for HUD Multifamily

Ladies and Gentlemen:

HUD published its proposed information collection requirement¹ for public comment on October 4, 2016, under President Obama's 2013 Climate Action Plan.² Since that time, President Trump has rescinded the Climate Action Plan in his Executive Order on Promoting Energy Independence and Economic Growth (March 28, 2017), and the President also issued Executive Orders reflecting policies favoring regulatory relief. Through the Notice, HUD's Office of Housing requested comments on its proposed reporting requirements for energy/utility benchmarking for HUD-insured and HUD-assisted multifamily properties. Reporting would be through EPA's Portfolio Manager System and would apply to properties with more than 20 units and would require at least 12 months of utility data. *In light of the Executive Orders and the challenges of the reporting requirements, the undersigned organizations collectively ask HUD to publish a withdrawal of its proposed utility/energy benchmarking data collection*

The undersigned organizations represent numerous facets of the real estate finance industry, including lenders, for-profit and nonprofit multifamily apartment owners, developers and managers, and seniors housing owners and operators. Our member companies are key participants in the multifamily rental housing market, which provides rental housing to more than 18 million US households. We recognize that affordable housing is a critical issue in America today and that FHA multifamily financing plays a critical role by providing market support where it is most needed.

Our organizations collectively ask HUD to withdraw the requirement described in the proposal because the requirements would otherwise add significant cost and delays to the FHA multifamily finance process for owners, managers and lenders. Likewise, the requirement will be costly and administratively burdensome for the covered properties within the Office of Housing's assisted housing portfolio. From collective industry and HUD experience, we know utility companies are reluctant, unwilling or simply do not have the technical capability to provide resident energy consumption data for a whole building. Some utilities require 100 percent tenant consent before providing whole building data. If tenants refuse to provide their data, it is unclear that the owner or manager can require the disclosure, particularly for market rate tenants in an unsubsidized FHA insured property. Further, because apartment utilities on many properties are sub-metered (by individual unit), borrowers preparing a report would need to separately request and acquire the required data from tenants. That process would take considerably

¹ 60-Day Notice of Proposed Information Collection: Energy Benchmarking, 81 FR 68446 (Oct. 4, 2016 ("Notice")).

² At the time of publication, HUD was seeking Office of Management and Budget (OMB) approval of these proposed information collection requirements, under the Paperwork Reduction Act. Publishing the proposal for 60 days of public comment is a mandatory step of that approval process. See Notice, 81 FR at 68446.

more than the estimate of 30 minutes of regulatory burden that HUD relied upon to develop its proposal.³ The requirement, if not rescinded, would create an uneven playing field, where different property owners are compelled to comply with onerous requirements, depending on the local utility. Alternatively, owners or agents might need to contract with third parties to collect required unit-by-unit energy and water consumption for properties not master-metered, which would impose a direct monetary burden

With regard to regulatory burden, we note that, on March 30, 2017, HUD announced a series of webinars on the utility/energy benchmarking guidance. Significantly, the announcement encouraged participants to join all six webinars. While we appreciate HUD's intended outreach and training efforts, we believe that HUD's recommendation that stakeholders take all six webinars is further evidence of the high level of regulatory burden the complicated guidance and reporting utility/energy benchmarking process would impose on affected prospective borrowers, owners and managers.

In addition to concerns about regulatory burden, we also are concerned that the proposal could also have an adverse impact when borrowers acquire existing properties. That is, existing multifamily apartments may have older appliances or structures that could score poorly with Energy Star. As a result, energy benchmarking could undermine the value of FHA programs for important preservation and capital investment in older housing stock.

In light of changes in policy, the regulatory burden and other considerations above, we urge HUD to withdraw the mandatory energy benchmarking information collection and publish confirmation of this action to inform the multifamily industry. In requesting this actions, we note that HUD previously has been successful using less prescriptive approaches to achieve energy objectives, such as incentivizing energy efficiency in projects, and many multifamily borrowers and lenders already pursue energy efficiency independently without government incentives or reporting requirements.

In summary, our organizations ask HUD to decide rapidly on our request to withdraw the reporting requirement before it becomes effective.

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Thank you for your consideration of our request. We look forward to engaging in further discussions on this important matter. If you have any questions, please contact Eileen Grey at egrey@mba.org, Michelle Kitchen at mkitchen@nahb.org or Dave Borsos at dborsos@nmhc.org.

Sincerely,

Council for Affordable and Rural Housing
Leading Age
Mortgage Bankers Association
National Affordable Housing Management Association
National Apartment Association

National Association of Home Builders
National Association of Housing Cooperatives
National Leased Housing Association
National Multifamily Housing Council

cc: Sheila Greenwood, HUD
Robert Iber, HUD

³ Notice, 81 FR at 68450.