

**Building Owners and Managers Association (BOMA) International
International Council of Shopping Centers
National Association of Home Builders
National Association of Real Estate Investment Trusts
National Association of REALTORS®
National Multi Housing Council
National Apartment Association
The Real Estate Roundtable**

August 16, 2011

VIA EMAIL (AssetRatingRFI-2011-NOA-0049@ee.doe.gov)

Ms. Brenda Edwards
U.S. Department of Energy
Building Technologies Program
Mailstop EE-2J
Revisions to Energy Efficiency Enforcement Regulations
EERE-2011-BT-NOA-0049
1000 Independence Avenue, SW
Washington, DC 20585-0121

Re: **Docket Number EERE-2011-BT-NOA-0049**
*Requests to Release Asset Rating “Program Design” as Basis for Public
Comment, and Extension to Comment Period*

Dear Ms. Edwards:

Our organizations’ members build, own, manage, and finance commercial and large multifamily buildings (the “Organizations”). We represent those companies and firms whose buildings will be the very object of the Asset Rating Program for Commercial Buildings (“AR Program”), the subject of a request for information published by the Department of Energy (“DOE”) at 76 Fed. Reg. 48,152 (Aug. 8, 2011) (the “Notice”).

We are concerned with the timing and deadlines announced in the Notice. We share DOE’s objective to ensure that stakeholders have a full and fair opportunity to comment on a voluntary, new federal commercial buildings AR Program before it is introduced to the marketplace. However, to avoid the appearance that the scope and content of the rating are not *faits accomplis* and that the program can still be meaningfully shaped with input from our industry, we respectfully make three recommendations:

(1) DOE needs at least three months to fully consider comments and meet with stakeholders, before it rushes a new Asset Rating Program to market.

Written comments are requested by September 22, 2011 (Notice, p. 48,153, column 1.) Meanwhile, DOE “plans to have an initial program design available by the end of September 2011” (48,154/1). Eight days (with an intervening weekend) does not strike our Organizations as enough time for DOE to adequately consider comments on the program’s design before it becomes available to our industry. Moreover, DOE should engage in greater outreach to our Organizations and members to better acquaint us with the AR Program. We suggest that at least three months should elapse after the close of the comment period, to allow educational and informational meetings between DOE and real estate industry stakeholders, before the AR Program hits the market.

(2) Stakeholders should be afforded the opportunity to comment on an actual program design, not a vague Federal Register notice.

It cannot be the case that DOE will develop the AR Program from the ground up in the eight days that will elapse between September 22 and “the end of September.” The Department must have a fairly well-developed sense now of what the “initial program design” will look like. From our perspective, it is crucial that our organizations and other stakeholders be given the opportunity to gear comments to the actual program design, not a vague Federal Register notice. For example, the Notice states that “the AR Program is intended to complement and coordinate with ... ENERGY STAR Portfolio Manager” (48,154/2). It is hard to understand what this means, precisely, without giving our members context of the actual design. How, if at all, will the new AR Program maximize the capability of the Portfolio Manager tool? Will the new AR Program instead frustrate and complicate the benchmarking process under Portfolio Manager, or “complement and coordinate” with the EPA tool as the Notice promises? The Notice also states that the new AR Program will include a Web application and “online software tool to maintain building data entered by building owners or operators ... This tool would ... enable owners and operators to benchmark their building efficiency” (48,154/1-2). At least on paper, the AR Program’s Web-based tool sounds just like the existing Portfolio Manager benchmarking tool. A prototype of the AR Program’s Web application can better inform comments to DOE if it is made available for the industry’s review, as opposed to the abstract description provided in the Notice.

In short, DOE should make the AR Program’s “initial design” available to stakeholders for comment, before it is made available to the real estate community for building ratings and other uses.

(3) Remove Page Limitation on Comments.

The RFI directs that comments “should be limited to 3 pages.” (48,153/1). The Notice itself is six pages. And, DOE specifically “welcomes” stakeholder input on at least nine complicated issues, as follows:

- “guiding principles as the framework for the development of” the AR Program (48,154/3);
- source or site “energy metric[s] for Asset Rating” (48,155/2);
- use of cost and greenhouse gas metrics in developing the new building rating (48,155/3);
- rating calculation methods (48,156/2);
- pros and cons of various “rating scales” based on physical units of energy consumption *per se*, physical units converted into a score system, and physical units as assigned into “bins” (48,157/2);
- “the best way to assess opportunities for energy efficiency improvement” (48,157/2);
- “structure and use of the Asset Rating database” (48,157/3);
- quality assurance methods (48,158/1); and
- “other relevant issues that the Department may have overlooked in this design process” (48,158/1).

The Building Organizations have no intent or interest to submit unnecessarily long comments. Yet, the Notice itself covers a lot of complicated ground. A 3-page restriction on submissions would allow only cursory and anemic treatment on the queue of issues where DOE specifically “welcome[d]” comment.

DOE should remove the 3-page limitation, as necessary to encourage open and robust airing of the myriad topics inherent to a new federal Asset Rating Program. While we are sympathetic to the Department's workload and staff resources, we respectfully suggest that more emphasis should be placed on the quality and substance of comment letters as opposed to their length as the agency develops a new rating system that could have a profound effect on real estate markets.

To conclude, our Organizations look forward to providing comments regarding the AR Program on the real estate industry's behalf. To ensure meaningful consideration and capture of the information submitted to DOE, we recommend that the agency should:

- (1) Take at least 3 months to consider stakeholder comments, before rushing the new AR Program to market;
- (2) Provide stakeholders better context for the AR Program, by allowing us to comment on the "initial program design" and its associated Web-based tool; and
- (3) Remove the arbitrary 3-page limit on comment letters.

Sincerely,

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