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September 22, 2011

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, S.W.
Washington, DC 20585-0121

Re: **Docket # EERE-2011-BT-NOA-0049; Comments of the Asset Rating Program Request for Information**

Dear Ms. Edwards:

On behalf of the millions of members of the National Association of REALTORS® (NAR), the CCIM Institute, the Institute of Real Estate Management (IREM), and the Society of Industrial and Office REALTORS® (SIOR), I am writing in response to the recent Request for Information, published at 76 Fed. Reg. 48, 152 (August 8, 2011) (the "RFI") regarding the Asset Rating Program for Commercial Buildings ("AR Program"). These members are involved in all aspects of the real estate industry, including buying, selling and managing commercial and residential real property. Our members have an interest in the proposed AR program because many of the buildings that would be targeted by the program will be the subject of real estate transactions in the future.

NAR supports providing building owners with the education, incentives and resources they need to voluntarily improve their buildings and save energy. NAR appreciates the emphasis on the voluntary nature of the program and that the Department of Energy (DOE) is issuing this request for information on the various aspects of a program at an early stage in its development process. However, the Federal Register notice description of the program was often vague and confusing. It was difficult to provide fully informed feedback when critical details are omitted and the comment period is so short. NAR is concerned that this proposal intends to use the real estate transaction to incorporate energy assessments and labeling of buildings. NAR opposes the concept of a point-of-sale trigger for this information, even a voluntary one. The most effective way to enhance energy efficiency in buildings is to provide the financial resources and market incentives that educate all building owners—not just those in the process of purchasing properties—about the benefits of making needed energy improvements.

Utilizing building energy rating systems will not lead to reductions in energy use. These kinds of systems only serve to send conflicting market signals—without any assurances that needed energy improvements will be made.

Attached are additional comments and perspectives on the Request for Information regarding the proposed Asset Rating Program for Commercial Buildings. If you have questions regarding these comments, please contact Russell W. Riggs, Senior Regulatory Representative, 202-383-1259 or via e-mail at rriggs@realtors.org.

Sincerely,

Ron Phipps, ABR, CRS, GRI, GREEN, e-PRO, SFR
2011 President, National Association of REALTORS®

NAR COMMENTS ON THE ASSET RATING PROGRAM FOR COMMERCIAL BUILDINGS

NAR Supports the General Goals of the Asset Rating Program for Commercial Buildings

As described in the *Federal Register* RFI, the primary goal of the AR Program is to assess energy usage and spur energy efficiency improvements in commercial buildings. NAR supports providing building owners, managers and tenants with meaningful information about building energy efficiency if they are interested in the information and it will help them to improve the energy efficiency of the property.

While NAR supports reasonable approaches and incentives to advance information about reducing their energy use, our members who are engaged in the commercial real estate industry disagree that the information DOE is proposing to provide would help the energy efficiency of real estate. This information has the potential to fundamentally change real estate transactions. However, any information provided must be meaningful, reliable and not convey a false sense of precision about something as complicated, diverse and variable as the energy use of commercial property. If the information is not accurate, reliable or characterized appropriately, it could be misused in the real estate transaction which would be contrary to the stated goals of this program.

The RFI poses questions to obtain information on how the AR Program should be implemented. However, NAR believes that, at this early point in the development of the program, DOE should better explain the market and policy case for the AR Program and further explain why it believes that the industry's current needs are not being met through several already existing and widely accepted rating programs. Only then will a request for information be productive.

DOE Needs to Conduct Market Research

NAR would recommend that, before the DOE develops and implements an AR Program that will impact hundreds of thousands of buildings, owners and tenants, credible market research should be conducted to determine if there is a need for this kind of program in the marketplace and whether it will add value over and above the rating systems that are already available. It is not an effective use of federal government resources if time and federal funds are utilized to develop an AR Program that no one uses because there is no need for it.

DOE Needs to Identify the Statutory Authority for Developing the AR Program

Statutory authority has been demonstrated to exist for other DOE programs related to energy efficiency in the built environment, such as encouraging commercial and multifamily building retrofits, "green' appraisal standards, and a loan guarantee pilot program for building retrofits. NAR requests that DOE identify the relevant statutory authority under which they are authorized to develop the AR Program.

DOE Needs to Explain How the AR Program Differs from *ENERGY STAR*®

According to the RFI, the AR Program "would identify opportunities for energy efficiency improvements and estimate their likely savings." The Program "would develop an easy-to-use tool to help building owners and stakeholders identify opportunities for improvement." This is precisely the function of the existing Portfolio Manager tool available to users of the existing ENERGY STAR® program. EPA's website states:

- *"Whether you own, manage or hold properties for investment, Portfolio Manager can* ***help you set investment priorities, identify under-performing buildings, verify efficiency improvements****, and receive EPA recognition for superior energy performance." (emphasis added)*

- *"Any building can efficiently track and manage resources through Portfolio Manager. The tool allows you to streamline your portfolio's energy and water data,* ***and track key consumption, performance and cost information*** *portfolio-wide." (emphasis added)*

Clearly, the tools available at ENERGY STAR® are designed to conduct similar assessments and achieve similar goals as the proposed AR Program, and would appear to duplicative of each other. NAR requests a fuller explanation of how this program will differ from each other and how the AR Program will add value to what the tools of ENERGY STAR® already provides.

DOE Needs to Further Explain the Basic Performance Metric

DOE is proposing to provide a basic measurement to describe a building's energy performance, such as an energy metric, a cost metric or a greenhouse gas metric.

For the general public, as well as building owners, managers, tenants and investors, the discussion in this section is particularly vague and difficult to follow. It is not clear exactly what metric the DOE envisions using. The distinction between "source" and "site" energy is confusing and one lost on many. When focusing on a building's energy profile, stakeholders are not thinking about the total energy it takes "upstream" for all the different energy providers to supply the building; they are interested in energy use on-site.

While the DOE implies that measuring energy consumption could be a more accurate metric, this is a more difficult unit of measurement to understand. Cost estimates, by comparison, would be easier to grasp, although we do appreciate the complexities and difficulties in adjusting for a range of real-world factors. We agree that greenhouse gas information should not be the primary program metric, because it may not provide the best way to encourage energy efficiency improvements.

DOE Needs to Elaborate on the Rating Methods for the AR Program

According to the DOE, the specification of the rating method is critical for an effective commercial building AR Program. NAR's experience with residential rating systems should inform DOE's proposal for commercial buildings.

Past experience with other energy rating systems for homes has demonstrated real concerns about the expense, efficacy and reliability of these systems. For example, according the EPA's ENERGY STAR® program, the cost of the rating to the homeowner can range from $200 to $800 per home just for new construction, depending on the region, the type and size of the home, and individual market dynamics. The cost for existing home ratings can be significantly higher.

Recently, Earth Advantage evaluated the residential Energy Performance Score asset rating and found that the most accurate predictions were still off by 25 MBtu (or 25% of the average of 101 MBtu). And half the homes sampled had a prediction off by more than 25 MBtu. ("Energy Performance Score Report," prepared for the Energy Trust of Oregon by the Earth Advantage Institute and Conservation Services Group, August 2009). In the same report, Earth Advantage cited a 2002 study by S. Pigg of the ENERGY STAR® Homes

Program that found similar absolute errors associated with the Home Energy Rating System (HERS) software.

In addition, existing home energy ratings rely on unregulated third-party training, administration and oversight. This has already caused problems in Austin, TX, which recently mandated energy efficiency audits before a home over 10 years old can be sold, and in California, where some municipalities require home energy audits prior to sale. In Toronto, Canada, home energy audits mandates were considered and rejected after news reports described situations where different auditing firms arrived at wide ranging energy ratings scores and recommended very different, but all very pricey, efficiency retrofits. Often the home energy rater is also the one making the home improvements, which raises significant questions about conflicts of interest.

If DOE moves forward with an AR program, the Department must be able to account for, and correct, these reliability, cost and effectiveness issues that have plagued residential energy rating systems.

Recommendations for Energy Efficiency Improvements

According to DOE, the AR Program would identify potential opportunities for energy efficiency upgrades that could cost-effectively improve a building's asset rating. The Program would develop a standardized, consistent system to estimate potential energy savings from building improvements and a list of recommendations.

NAR believes this is redundant due to the fact that there are numerous options in the private sector for owners to obtain this information. Building owners are already aware of the most cost-effective ways to save on energy bills. However, to the extent that some would be interested in having annual savings estimates associated with such improvements to a typical building, we support providing that information in lieu of providing numerical ratings and comparisons of one building to another, which will only stigmatize older buildings without assuring energy improvements.

National Building Asset Rating Database

The DOE intends to establish a voluntary national building Asset Rating database to track asset ratings and ensure the legitimacy of the ratings. According to the DOE, the information collected and analyzed for this registry would be kept confidential due to privacy concerns.

A national building Asset Rating database poses great concerns to NAR because of the privacy concerns that could arise. How will DOE ensure that any information that is collected on the energy performance of individual buildings will be kept confidential? DOE must recognize that commercial buildings are significant financial investments and any information related to the performance of that property could have negative impacts on the value of the building. If the data indicates that the building is performing poorly on energy use metrics, whether or not this data is accurate, this could harm the value of the property. NAR would recommend that this registry idea be dropped from the program.

Conclusion

NAR applauds the DOE for publishing a request for information on the program at an early stage. However, NAR is concerned that this proposal could be used as a vehicle to mandate energy use labeling of buildings. NAR strongly opposes energy use labels and believes that the most effective way to achieve energy efficient buildings is to provide financial resources and incentives that educate property owners about the benefits of energy improvements. Labels drive down property values, may impose unintended costs for owners, and stigmatize older properties—all without any assurances that needed energy improvements will be made.

While NAR appreciates that the AR Program is voluntary, we feel that time and money is better spent on improving existing programs that have already received some level of acceptance in the marketplace, like ENERGY STAR®.