California Energy Commission
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July 12, 2013

Commissioner Andrew McAllister
The California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Subject: Comments on AB 758 Draft Action Plan

Dear Commissioner McAllister,

We, the undersigned, represent various groups committed to making energy efficiency improvements to the affordable multifamily rental housing sector[i], and respectfully submit the below comments on the Comprehensive Energy Efficiency Program for Existing Buildings Draft Action Plan.

While affordable multifamily rental buildings are not a major focus of the draft action plan, however targeting this constituency for energy upgrades will be crucial if the state is serious about achieving its energy efficiency savings. Lower income households have been shown to use 28 percent more energy per square foot compared to market rate buildings due to their age and condition.[ii] Renters represent forty-five percent of California households,[iii] and approximately one-third – 4 million – of these households qualify for low-income energy efficiency programs.[iv] However, unless the program created under this law recognizes the unique needs and barriers of retrofitting multi-family buildings in low- income areas, we will not meet our full energy efficiency potential.

There is also a moral responsibility to ensure that these programs work for low- income communities in both multifamily and single family homes, as low-income people are more likely to be exposed to the negative effects of climate change, such as poor air quality, increased asthma and heat waves[v], and are least able to afford the investment required increase efficiencies on their own.

Additionally, much of the CEC's Draft Action Plan relies on working with the CPUC on the IOU's existing efforts. The IOU's strict definition of cost-effectiveness will limit the way in which energy efficiency can be addressed in affordable multifamily housing and could hamper this sector from achieving true energy efficiency improvements. The IOU's cost-effectiveness guidelines rely on estimates that often ignore project specific considerations such as an immediate need for replacement and user behavior, and do not include savings from water measures, renewable energy (including Solar Domestic Hot Water), and non-energy benefits. These formulae also tend to favor measures that prioritize higher ratios of cost-effectiveness over higher levels of energy savings. In addition, different programs use varying cost-effectiveness standards, and building owners face significant challenges in leveraging capital between these different programs. The Final Action Plan should support programs outside of the IOU's efforts, especially where meeting the IOU's cost-effectiveness guidelines would be overly burdensome, for example funding data collection, audits, or whole building audits.

Program Goals
The Draft Action Plan states, "The ultimate goal of the Comprehensive Energy Efficiency Program for Existing Buildings is to achieve meaningful energy savings in all building end uses." We object to the reliance on the term "meaningful" because it is open to wide interpretation. Goals should be quantitative, include timelines for completion, and directly link to other statewide policy. The CEC should propose creating a joint CPUC/CEC rulemaking proceeding around AB 758, which would help solidify the scope and goals of the program.

Recommendations: While we appreciate the close coordination between the CEC and CPUC, other entities need to be brought in as well. The CEC should coordinate with state and federal housing agencies, including the California Tax Credit Allocation Committee, the California Department of Housing and Community Development, and the U.S. Department of Housing and Urban Development. These agencies are currently incorporating energy efficiency and greenbuilding requirements into their affordable multifamily housing programs, and energy efficiency incentives developed by the CEC and CPUC should be coordinated and leveraged through these agencies to help lower costs for owners pursuing energy efficiency measures at the time of major retrofits and/or refinancings.

No Regrets Strategies: Data Collection
The Draft Action Plan correctly identifies the lack of access to energy usage data as a barrier to increasing widespread energy efficiency. We strongly agree that data is key for program evaluation, financing, and to support informed decision-making. Data gives lenders and borrowers confidence that they will see a return on their energy efficiency investment, and allows building owners to catch energy-draining maintenance issues that could go overlooked.

We also agree that data privacy is "a perennial concern and merits serious attention and controls."[vi] However, privacy concerns have prevented multifamily property owners from accessing energy usage data and from being able to fully benchmarking and understanding the best ways of improving their properties in their portfolio. In the current CPUC Energy Savings Assistance Program (ESAP) proceeding, the IOUs have been reluctant to provide any energy usage data, even aggregated and anonymized information, expressing an abundance of concern for California law governing "customer confidentiality." We therefore urge the CEC to work closely with the CPUC in requiring the IOUs to provide this critical data.

Currently, many energy efficiency programs require building owners to collect energy usage data from individual tenants, an extremely time consuming and inefficient process that ironically raises significant privacy issues because it must be collected at an individual level and generally requires tenants to 1) create on-line accounts and 2) hand over their passwords to management, two steps that owners are often not comfortable taking.

Recommendation: As the CEC collects and anonymizes energy usage data for the purposes of program evaluation, the CEC should make it a top priority to help the CPUC to develop regulations that allow utilities to provide aggregated, anonymized building level energy use data to multifamily property owners for the purpose of energy efficiency decision making, such as portfolio analysis. Such a requirement would obviate the need to obtain waivers from all tenants while preserving the privacy rights of individual tenants. For property owners able to obtain permission from customers to collect and analyze energy usage data, there must be a clear path to obtaining the data from the IOUs and uploading it in a usable format.

The CEC also suggests having public and private owners of large buildings use U.S. EPA's Portfolio Manager. Unfortunately, we have gathered significant anecdotal evidence that Portfolio Manager does not currently work well for the multifamily housing sector, and possibly for other types of buildings as well. The reason energy usage data is difficult to gather in California is that there is no requirement for the utilities to maintain energy consumption data for multifamily properties in a format compatible with Energy Star Portfolio Manager. This is different from how California utilities treat other commercial properties.

Recommendation: Before imposing any requirements to use Portfolio Manager, the CEC should work with other stakeholders to make improvements in Portfolio Manager with the goal of creating a system that allows public agencies (e.g. HUD) and multifamily property owners to request past and future consumption data across their portfolio of properties. Data should be automatically benchmarked, aggregated and anonymized on a regular basis. Because data for the affordable multifamily housing sector is more complicated than for other sectors, we recommend that the CEC create a separate section of the Final Action Plan to discuss how data will be dealt with in this sector.

No Regrets: Foundational Marketing, Education and Outreach (ME&O) Resources

The Draft Action Plan notes that ME&O will play a vital role in transforming the energy efficiency market, however this will *only* happen if it is done correctly. We understand the important role that early adopters play; however this program must ultimately work for everyone, and marketing needs to be developed for all sectors of the population, not just those most likely to take action.

Recommendation: Reaching lower income households living in both multifamily and single family homes, requires a different marketing approach than market rate housing; the CEC should adopt an approach that acknowledges the essential role that building owners and managers play in helping to reach low income tenants. Affordable housing owners and residents are more receptive to peer-to-peer marketing and education, rather than a traditional media approach. They are wary of third party contractors and outside groups, and are more likely to listen to a trusted community based organization. Affordable multifamily nonprofit owners also recognize regional and statewide housing nonprofits as a trusted resource. They also respond to different marketing messages, for example they are most likely to take action when the problem is messaged around health concerns. This type of targeted marketing is not currently a priority under the Energy Upgrade California program, and the CEC should include it as part of the larger AB 758 marketing strategy.

Voluntary Pathways: Promoting a broad array of pathways to achieve energy upgrades for each building sector

We agree there are multiple pathways to residential energy efficiency upgrades, and numerous occasions, such as refinancing, when upgrades make sense. While the AB 758 program should recognize that there's not one solution that will meet the needs of all business owners, there must be alignment and consistency within the various options. Multiple uncoordinated offerings are simply overwhelming, particularly for cash-strapped, staff-lean affordable housing owners and managers.

Recommendation: More than just "harmonizing offerings" the CEC should advocate for state and local agencies to work to create a single point of contact with access to information about all energy efficiency programs, with staff trained to serve specific customer segments, including affordable multifamily housing. This concept was adopted in the August 2012 ESAP decision, and CEC's efforts should build off of that first step. Ideally, multiple pathways would be designed as a "one-stop shop" with a single point of contact.

Standardizing criteria among programs should go beyond just financing. Currently, multifamily rental building owners have to navigate myriad programs (e.g. California's Department of Community Services and Development's Weatherization Assistance Program, CPUC's ESAP, rebates, etc.), many with differing requirements and standards. Not only do these differences create confusion, varying standards also hamper workforce development by narrowing the pool of professionals who are considered qualified to work on a particular project.

Recommendation: The CEC should push for the development and implementation of consistent accreditation standards for building professionals across all programs, common eligibility standards (such as income eligibility standards for income-qualified programs), and consistent audit protocols.

Voluntary Pathway: Audit Based Approaches

We agree that targeting prospective high savings buildings is key to the success of AB 758, as it is the easiest way to make the investments in energy audits cost effective. Given the diverse range of buildings in the multifamily sector and the substantial energy savings potential outside the individual dwelling units, whole building, performance based audits that can help identify the a scope of energy savings measures most appropriate to the property are critical to using scare resources effectively.

Recommendation: The CEC should provide direction about how audit costs will be covered, such as a co-pay between the government program and the building owner.

Voluntary Pathways: Innovative Financing

This chapter presents a broad overview of financing arrangements without any analysis. It points to the successes of programs such as PACE and the Bay Area Multifamily Fund (BAMF) without considering the problems affordable multifamily housing have encountered with these programs.

PACE is not the answer. The lenders and investors involved in multifamily rental properties (Fannie Mae and Freddie Mac among them) will not accept the additional costs that PACE adds to the property tax since these costs are senior to their own liens. We are not alone in this assessment that PACE will not become a viable financing tool for multifamily rental housing; the national advisory board for the MacArthur Foundation and the Center for American Progress (CAP) Energy Efficiency Retrofit Finance Research Project has also reached this conclusion.

BAMF is not the answer. There have been several attempts to finance energy efficiency retrofits using traditional property secured loans. The most recent and comprehensive of these was the State Energy Program funded BAMF undertaken by Enterprise Community Partners and the Low Income Investment Fund in conjunction with several Bay Area local governments. Initially, there was strong interest among owners in participating in BAMF with more than fifty agreeing to conduct energy audits of their properties. In the end, however, only three (3) owners and six (6) properties agreed to participate. The main reasons for the low participation rate were: 1) owners could not justify spending the time of negotiating the permissions required from existing lien holders to add a relatively small amount of financing; and 2) owners were not willing to take on the risk of energy savings not materializing and being responsible for payments that would further strain their limited financial resources.

OBR has potential to work. While neither PACE nor traditional property secured loans are the right energy efficiency finance tool for multifamily housing there is another promising solution in development that merits state investment: On Bill Repayment (OBR) financing. OBR allows the cost of the energy retrofit to be repaid through a tariff placed on utility payments without any need for a lien on the property itself. Since OBR payments can be limited to an amount that is less than the estimated amount of energy savings (bill neutrality), the properties can use the savings to finance the retrofit work. Two major advantages of OBR are: 1) no deed of trust is required, obviating the need to negotiate with senior lienholders as long as bill neutrality is observed; 2) private capital can be leveraged, stretching rate-payer and state funding. However, legislation is needed to make OBR a viable financing tool for tenant metered properties and in so doing to solve the split incentive challenge that holds the promise of unlocking hundreds of millions of dollars in new savings. The Environmental Defense Fund sponsored such a bill through Senator DeLeon's office this year. Unfortunately, the bill died in committee for lack of support.

The Draft Action Plan refers to the current budget of $214 million for financing pilot programs awaiting approval by the CPUC.[vii] Of this amount, the Proposed Decision published June 25, 2013 recommends allocating $2.9 million for a master metered multifamily OBR pilot of 25 properties. However, approval for this small pilot has experienced significant delays and as of today approval is now expected no earlier than September 2013 with implementation potentially delayed beyond that date. Also, once approved this 25-property pilot program will only be able to serve master-metered properties, leaving most of the multifamily sector still untouched.

The current challenges facing the successful implementation of the OBR pilot include the need for 1) a loss reserve to provide assurance to private lenders that there is minimal risk to their capital in the absence of comprehensive performance data on retrofit savings; 2) matching low cost funds to bring down the cost of OBR financing from the current estimated 7% interest to below 5% where it will be attractive to multifamily owners; and 3) assistance in paying for the comprehensive energy audits needed to estimate savings accurately and reliably.

Recommendations: The Final Action Plan should acknowledge the difficulties the affordable multifamily sector encounters in accessing energy efficiency financing and that none of the existing tools currently works. We request that the CEC actively support the launch of the master-metered multifamily OBR pilot financially as well as politically with whatever resources and influence it has available including supporting legislation to address the need to make OBR available for tenant meters.

Coordination & Oversight

The CEC envisions creation of an oversight group that includes key policy makers and stakeholders representing a wide array of industries and interested parties. In the three workshops that were held on the Draft Action Plan, the CEC noted that affordable housing and multifamily housing were two "gaps" in the Draft Action Plan, and that more thought was needed. We wholeheartedly agree that affordable multifamily housing was largely absent from the plan, and this must be remedied in the Final Action Plan. Achieving energy efficiency upgrades in affordable multifamily housing involves layers of complication that other sectors do not face. Building owners have to navigate a myriad of programs with differing requirements and standards; coordinate multiple financing sources; overcome a split incentive between the tenant and the building owner; and much more.

Recommendation: The most direct way to ensure that these concerns are addressed is to involve the affordable multifamily housing constituency in the design of this program, and we again urge the Commission to include representatives from this community in a robust oversight committee that meets more than twice a year and is tasked with specific goals and deliverables. We also recommend that the committee have subgroups for each sector and that multifamily be its own committee. We look forward to continued work with the CEC on the design and implementation of AB 758.

Sincerely,

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[i] Affordable multifamily housing refers throughout this document to housing that has received assistance though one or
[ii] Income, Energy Efficiency and Emissions: The Critical Relationship," Energy Programs Consortium (Feb. 26, 2008), pg. iii;
http://www.energyprograms.org/wp-content/uploads/2011/10/02_2008_080226.pdf.
[iii] U.S. Census Bureau, 2011 American Community Survey, Selected Housing Characteristics
[iv] CPUC, CA Energy Efficiency Strategic Plan January 2011 Update Section 2, Page 9
[v] CDPH, ASTHO Climate Change Population Vulnerability Screening Tool, accessed July 8 2013,
http://www.ehib.org/projects/ehss01/Climate%20change%20vulnerability%20report_ASTHO.pdf
[vi] Draft Action Plan, pgs. 17-22
[vii] Draft Action Plan, pg. 63