**Building Energy Performance Standards**

**Compliance and Enforcement Guidebook**

**for Compliance Cycle 1**

**Draft**

*Version 1.0*

*Nothing in this Guidebook shall supersede any District of Columbia (DC) law or regulation, including the following:*

* *CleanEnergy DC Omnibus Amendment Act of 2018 (CEDC Act), as amended by the CEDC Technical Omnibus Amendment of 2020, codified at DC Code* § *8-1772.22 (establishment of the BEPS Program);*
  + *BEPS Compliance Regulations to be found at Title 20, Chapter 35, of the District of Columbia Municipal Regulations (DCMR), (which are available for public comment at the same time as this draft); and*
  + *2021 BEPS Establishment Regulations found at 20 DCMR 3520*

*Links to these documents can be found on page 6. Throughout the Guidebook, there are citations to DCMR provisions. These citations refer to the place in the DCMR where the regulations are or will be located after publication of a final rulemaking in the DC Register.*

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\*links updated as of 5/20/2021

|  |  |  |
| --- | --- | --- |
| CleanEnergy DC Omnibus Amendment Act of 2018 as amended by the CEDC Technical Omnibus Amendment of 2020 | | [Code link](https://code.dccouncil.us/dc/council/laws/22-257.html) |
| Benchmarking Regulations | 20 DCMR 3513 - 3516 | [DC Register Link](https://www.dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N100435) / DCMR Link |
| BEPS Compliance Regulations | 20 DCMR 3517 - 3521 | [DC Register Link](https://www.dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N100436) / DCMR Link |
| 2021 BEPS Establishment Regulations | 20 DCMR 3530 | [DC Register Link](https://www.dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N107118) / DCMR Link |

# List of Acronyms

ACP – Alternative Compliance Pathway

AEE – Association of Energy Engineers

AMI – area median income

ASHRAE – American Society of Heating, Refrigerating and Air-Conditioning Engineers

ASR – Accelerated Savings Recognition

BEAP – Building Energy Assessment Professional

BEPS – Building Energy Performance Standards

CEA – Certified Energy Auditor

CEDC Act – Clean Energy DC Omnibus Amendment Act of 2018

CEM – Certified Energy Manager

COVID-19 – coronavirus disease 2019

CY – calendar year

DC – District of Columbia

DCMR – District of Columbia Municipal Regulations

DCP – Delay of Compliance Performance

DCRA – Department of Consumer and Regulatory Affairs

DCSEU – DC Sustainable Energy Utility

DOEE – Department of Energy and Environment

EDER – Extended Deep Energy Retrofit

EEM – energy efficiency measure

EOM – Executive Office of the Mayor

E-ROI – effective return on investment

E-SIR – effective savings to investment ratio

EPA – United States Environmental Protection Agency

EUI – energy use intensity

GFA – gross floor area

GHG – greenhouse gas

GWP – global warming potential

HPBD – High-Performance Building Design Professional

kBtu – kilo British thermal unit

LEC – limited equity co-operative

MEP – mechanical, electrical, and plumbing

MFBA – Multifamily Building Analyst

NREL – National Renewable Energy Laboratory

NOI – notice of infraction

NOV – notice of violation

O&M – operations and maintenance

OTR – DC Office of Tax & Revenue

PHE – public health emergency

RCx – Retro-commissioning

ROI – simple return on investment

RPS – Renewable Portfolio Standard

SIR – simple savings to investment ratio

WBDG – Whole Building Design Guide

# Chapter 1 – Introduction

Title III of the [CleanEnergy DC Omnibus Amendment Act of 2018](https://code.dccouncil.us/dc/council/laws/22-257.html) (CEDC Act)[[1]](#footnote-2) created the Building Energy Performance Standards (BEPS or Standard/s) Program. The CEDC Act requires that Standards be established for various property types to set a minimum threshold of energy performance that will be no lower than the District median score by property type (or equivalent metric). The purpose of the BEPS Program is to drive energy performance in existing buildings to help meet the energy and climate goals of the [Sustainable DC](http://www.sustainabledc.org/about/) plan — to reduce greenhouse gas emissions and energy consumption by 50% by 2032.

This BEPS Compliance and Enforcement Guidebook (Guidebook) assumes the readers are familiar with the Department of Energy and Environment (DOEE) benchmarking program and their building’s benchmarking data and property type as defined by the United States Environmental Protection Agency (EPA) ENERGY STAR Portfolio Manager.[[2]](#footnote-3) For assistance with benchmarking and Portfolio Manager, visit DOEE’s [Benchmarking website](https://doee.dc.gov/node/17362).

This Guidebook also assumes that the building owner has already determined that their building did not meet the Standard for its property type and must complete the requirements of a Compliance Pathway, described in this Guidebook. DOEE is required to establish Standards every six (6) years, starting on January 1, 2021, so the 2021 BEPS Establishment Regulations for BEPS Period 1 (2021 BEPS) can be found in Title 20, Chapter 35 of the District of Columbia Municipal Regulations at 20 DCMR 3530. For information on how to determine if a building meets the Standard for BEPS Period 1, go to the [Guide to the 2021 Building Energy Performance Standards](https://doee.dc.gov/publication/2021-standards-beps-period-1).

DOEE produced this Guidebook to assist building owners in understanding the requirements, compliance methods, and enforcement of the BEPS Program. DOEE has included appendices and technical information to assist in understanding procedural requirements, and forms and templates are available on the Online BEPS Portal (Portal). All policies, procedures, and examples are intended as a plain text explanation of the CEDC Act and the rulemaking implementing the BEPS Program at 20 DCMR 3517 through 3521 (BEPS Compliance Regulations). Nothing in this Guidebook shall supersede any District of Columbia (DC) law or regulation, including the CEDC Act, the BEPS Compliance Regulations, or the 2021 BEPS Establishment Regulations.

This Guidebook covers the following topics:

* Chapter 2 – Compliance process and change of ownership requirements
* Chapter 3 – Principal Compliance Pathways
* Chapter 4 – Alternative Compliance Pathway options
* Chapter 5 – Delay of compliance process
* Chapter 6 – Enforcement process

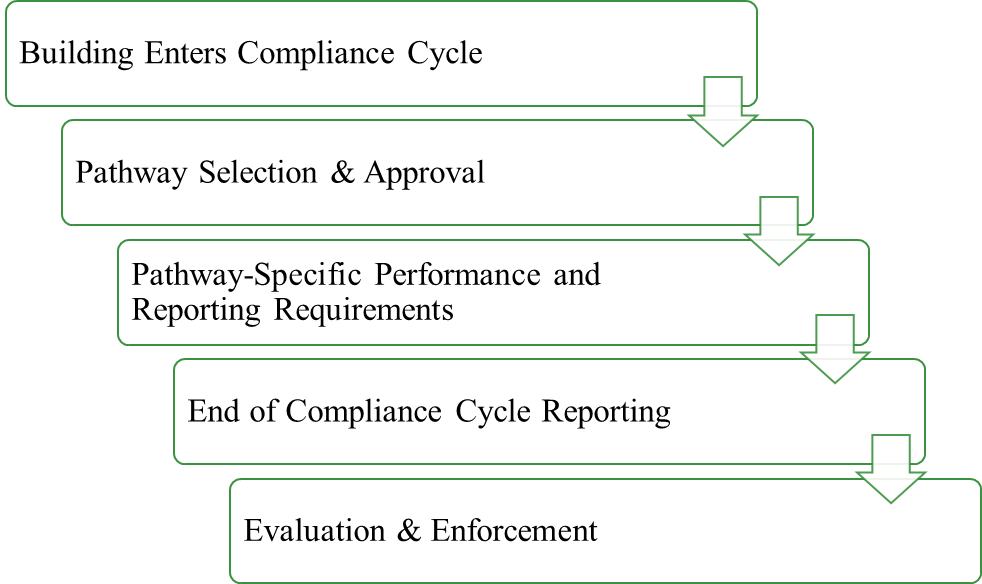
Much of the guidance in this document was made with input from the BEPS Task Force. To see a list of Task Force recommendations through September 2020, please go to the [BEPS Task Force Recommendations for Rulemaking](https://doee.dc.gov/publication/beps-task-force-report) report. The National Housing Trust and Housing Association of Nonprofit Developers also submitted recommendations for the affordable housing industry in the [Recommendations for Implementing the District’s Building Energy Performance Standard in Affordable Multifamily Housing](https://www.nationalhousingtrust.org/sites/default/files/news_file_attachments/BEPS%20Recommendations%20FINAL.pdf) report.

# Chapter 2 – Compliance Cycle Process

If a building fails to meet the Standard for its property type at the beginning of the BEPS Period, the building enters a Compliance Cycle, where the building owner must select and complete the requirements of a Compliance Pathway by the end of the Cycle. The CEDC Act and DOEE established multiple Pathways for a building owner to choose from based on that building’s unique circumstances.[[3]](#footnote-4)

The general process of compliance, outlined in Figure 1, is the same no matter which Pathway a building owner chooses. Early in the Cycle, an owner is required to select a Pathway. During the Cycle, the building owner implements projects and makes operational changes to satisfy the specific energy performance and reporting/verification requirements of the approved Pathway. By the end of the Cycle, the building owner must meet the energy performance requirements and demonstrate successful implementation of the approved Pathway. DOEE evaluates the building against the Pathway’s requirements to determine if compliance was achieved. If compliance was not achieved, the building will be subject to a penalty and DOEE may pursue enforcement against the building owner. A more detailed flow chart of the Compliance Cycle process is available in Appendix A.

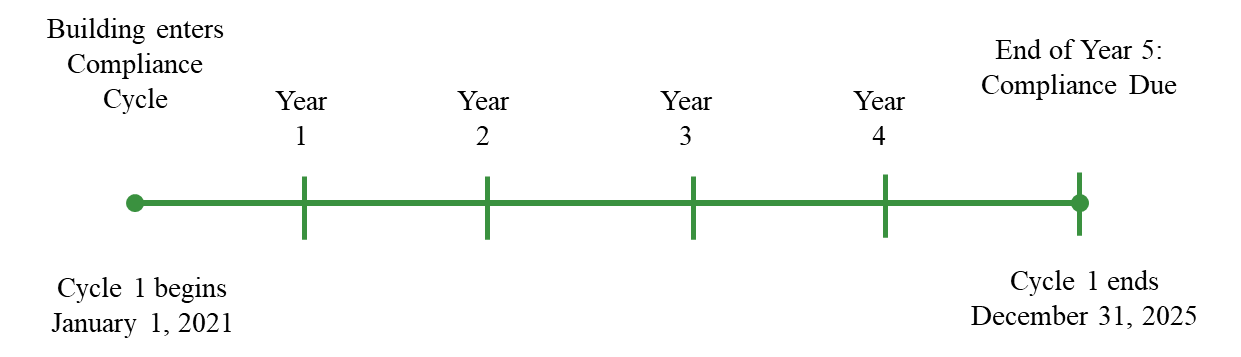
##### *Figure 1 – Compliance Cycle Process*



## 2.1 – Pathway Timelines

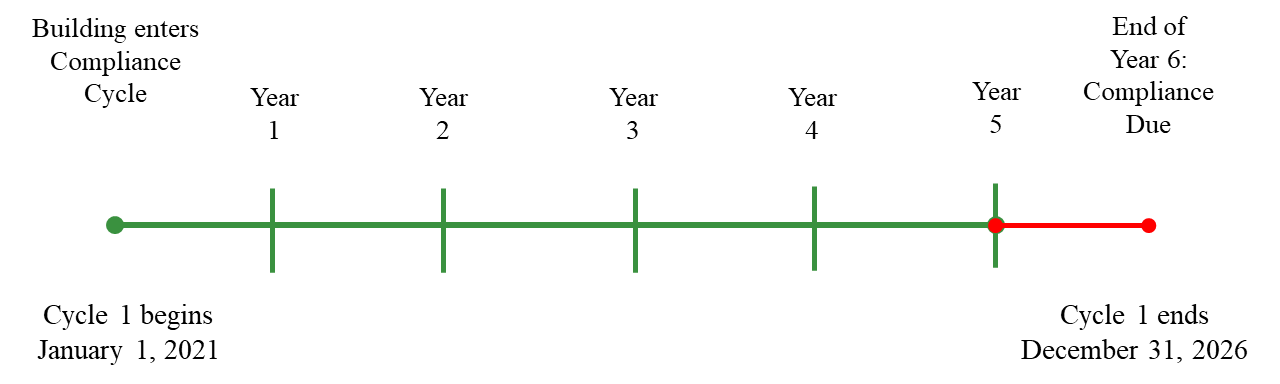
The CEDC Act states that a building that does not meet the Standard for its property type shall have five (5) years from the date the Standards are established to meet the building energy performance requirements established by DOEE.[[4]](#footnote-5) The five-year time period is called a Compliance Cycle, illustrated in Figure 2. Compliance Cycle 1 begins January 1, 2021 and ends December 31, 2025.

##### *Figure 2 – Compliance Cycle Timeline*



Due to the prolonged public emergency and public health emergency (PHE) relating to the coronavirus (COVID-19), declared on March 11, 2020 by Mayor’s Orders 2020-045 and 2020-046, and extended numerous times thereafter, buildings shall receive a one-year delay of compliance for the Compliance Cycle that begins January 1, 2021 upon DOEE receipt of the building’s 2020 District Benchmark Results and Compliance Report (Figure 3).[[5]](#footnote-6) For buildings using the one-year delay, Cycle 1 begins January 1, 2021 and ends December 31, 2026. The one-year COVID-19 PHE delay is only available during Cycle 1.

*Figure 3 – 2021 COVID-19 PHE Delay of Compliance Timeline*



Buildings that receive the one-year COVID-19 PHE delay will be eligible to apply for up to two years of additional delay at the end of the Compliance Cycle if eligible circumstances apply (Section 5.2) Any building owner wishing to opt out of the COVID-19 PHE delay should contact DOEE. The reporting deadlines with and without the COVID-19 PHE delay are provided in a reporting requirements table for each Pathway.

## 2.2 – Compliance Requirements

Compliance with a Pathway means meeting two types of requirements:1) energy performance requirements and 2) reporting/verification requirements. Energy performance requirements entail reaching a particular energy savings target or undertaking specific steps by the end of the Cycle. Reporting/verification requirements are when the building owner has to submit a particular document, complete a form, or make another demonstration to DOEE by a specified deadline. For buildings using the COVID-19 PHE delay described in Section 2.1, reporting deadlines have been extended one year and are listed in more detail under each Compliance Pathway description in Chapter 3. Successful completion of those requirements is how a building that did not meet the Standard at the beginning of a BEPS Period complies with the CEDC Act. Additionally, improvements in energy performance during a Cycle will help a building meet or move closer to meeting its Standard in the next BEPS Period.

There are two primary types of Compliance Pathways: 1) performance-based, and 2) action-based. Buildings on a performance-based Pathway must meet a numerical energy performance improvement target by the end of the Compliance Cycle. These buildings use their annual District Benchmark Results and Compliance Report[[6]](#footnote-7) to demonstrate that the Pathway’s requirements are met. As DOEE uses benchmarking data to assess compliance with BEPS energy performance requirements, a building owner that fails to submit a complete and accurate District Benchmark Results and Compliance Report could face fines under the Benchmarking Regulations, as well as an alternative compliance penalty under the BEPS Compliance Regulations (Chapter 6).

Buildings on an action-based Pathway must take specific actions that will improve the building’s energy performance, rather than meet a numerical target. During the Compliance Cycle, the building owner must submit various plans and reports that document what actions are planned and taken to meet Pathway requirements. DOEE reviews these submissions to evaluate compliance. The building owner must still benchmark, and could face fines for failure to submit a complete and accurate District Benchmark Results and Compliance Report, but BEPS fines and penalty (Chapter 6) would be based on failure to meet the action-based Pathway requirements, not data from a Benchmark Report.

Building owners that encounter unforeseen difficulties in completing performance-based or action-based Pathway requirements by the deadlines listed in this Guidebook and in the BEPS Compliance Regulations may have two types of postponements available to them: 1) an extension of a deadline, or 2) a delay of compliance. Extensions are available in cases where a building owner cannot meet an interim reporting/verification requirement by the deadline laid out by the BEPS Compliance Regulations, but will be able to comply with all requirements by the end of the Cycle. Generally, extensions are for cases where the completion of the requirement may not happen in the short-term (up to 6 months). To request an extension, building owners should reach out to DOEE in advance of the deadline to receive the extension.

A delay of compliance may be available when a building cannot complete its Pathway requirements by end of the Cycle. Scenarios that necessitate a delay of compliance are more serious and require a substantially higher level of documentation before DOEE will approve the delay. Details on the delay of compliance process can be found in Chapter 5.

## 2.3 – Health and Safety

Within the BEPS Compliance Regulations, DOEE clarified that it is not acceptable for a building owner to implement energy efficiency measures that reduce indoor environmental quality or that pose a threat to the health and safety of a building occupant or user.[[7]](#footnote-8) Any renovations or upgrades to a building to meet the BEPS Program requirements remain subject to the DC Construction Codes (DC Municipal Regulations, Title 12), enforced by the Department of Consumer and Regulatory Affairs (DCRA), including complying with the DC Property Maintenance Codes (DCMR 12-G). These codes establish minimum requirements for safety, public health, and general welfare to occupants and other users of these buildings. Any owners found in violation of these codes will be liable for any fines, penalty, or other enforcement actions taken by DCRA.

If DOEE becomes aware that a building owner has taken actions that violate the requirements of the DC Construction Codes, the case will be referred to DCRA for inspection and enforcement, and the building owner may be subject to the maximum alternative compliance penalty amount under the BEPS Program.[[8]](#footnote-9)

## 2.4 – Performance Evaluation

Buildings following a performance-based Pathway must be evaluated to confirm that the building meets the energy performance requirements at the end of the Cycle. This evaluation will be based on the building’s reported energy data from the baseline year(s) compared to evaluation year(s). For example, the CEDC Act states that the energy performance requirements for the Performance Pathway will be evaluated by comparing Site energy use intensity (EUI) averaged from the two years preceding the Compliance Cycle (baseline years) to the average of the last two years of the Cycle (evaluation years).[[9]](#footnote-10) For several Pathways established by DOEE, the baseline and evaluation years could be shortened to a single year. The baseline and evaluation year options available will be stated in each Pathway’s description.

For buildings using the COVID-19 PHE delay, DOEE has changed the baseline and evaluation years through the 2021 Option[[10]](#footnote-11) for the Compliance Cycle that began January 1, 2021. For Cycle 1 only, the baseline years are shifted one year earlier, and the evaluation years are shifted one year later and based only on the last year of the Cycle’s calendar year (CY) benchmarking data. This concept is illustrated in Figure 4.

*Figure 4 – Evaluation Year(s) Options*

A picture containing timeline

Description automatically generated

As explained in Section 2.1, by submitting a 2020 District Benchmark Results and Compliance Report, buildings will default to the COVID-19 PHE delay with the adjusted evaluation years. Building owners may opt out of the delay and use the original evaluation years and reporting deadlines by contacting DOEE and providing a reason for opting out. Because DOEE expects most building owners to use the delay, the Pathway requirements in this Guidebook focus on the delayed timeline.

Buildings are required to follow all benchmarking and EPA guidance when reporting their gross floor area, energy consumption, and property use details throughout the Compliance Cycle.[[11]](#footnote-12) Buildings must benchmark consistently as they did in the baseline years to ensure that the performance evaluation is fair and consistent. There may be instances where a building has space that meets the exclusionary criteria under [EPA guidance](https://energystar-mesa.force.com/PortfolioManager/s/article/What-can-I-exclude-from-my-property-1600088547997) or where a building’s gross floor area or property use details may change due to an addition, demolition, or change in property use. In these cases the building owner should first consult EPA guidance to ensure they are following all requirements of the ENERGY STAR program, then consult with the Benchmarking team to ensure they meet current District benchmarking requirements and then finally consult with the BEPS team to ensure the changes are accurately accounted for in performance evaluation. In some of these cases it might be necessary for the building to utilize a baseline adjustment as described in Section 4.4.

## 2.5 – Pathway Selection

The first requirement for buildings entering a Compliance Cycle is to select a Compliance Pathway and use the Pathway Selection Form to submit the selection to DOEE for approval.[[12]](#footnote-13)  Building owners have the flexibility to choose the Pathway that works best for their building, and DOEE encourages building owners to select a Pathway as early as possible in the Cycle to provide ample time to meet the requirements within the allotted timeframe. This also allows DOEE the opportunity to provide feedback and connect buildings to assistance and incentives early.

Pathway selection is normally due to DOEE by April 1, one year from the start of the Compliance Cycle. As explained in Section 2.1, for the Compliance Cycle beginning January 1, 2021 buildings using the COVID-19 PHE delay, the deadline for Pathway selection has been extended to April 1, 2023.[[13]](#footnote-14) For those building owners that choose to opt out of the delay, the deadline for Pathway selection is April 1, 2022.

The Pathway Selection Form is available on and submitted through the Portal. In addition to identifying a building owner’s desired Pathway, the Pathway Selection Form gathers basic contact information about the building owner, building manager or representative (if applicable), and any parties relevant to the compliance process. For buildings claiming status as a type of affordable housing, building owners must identify the basis for the affordability status (tax credit, public, naturally occurring, etc.). Several Pathways require additional information to be submitted with the Pathway Selection Form.

Following submission of a complete Pathway Selection Form and any supporting documentation through the Portal, DOEE will review and send notice of approval, a request for more information, or an alternative selection. Approval will not be given for a Pathway until all supporting documents required by that Pathway are received, such as the Prescriptive Pathway’s Energy Audit or the Extended Deep Energy Retrofit Milestone Plan. If DOEE requests more information before making the determination, the building owner must provide a response within the specified time or DOEE will place the building on a Pathway of its choosing. DOEE may select a different Pathway if the building owner fails to submit necessary information or if the Pathway is not available to that property type.

A building’s Pathway has a status of “selected” until the selection is reviewed and approved by DOEE, after which the Pathway becomes “approved” and all requirements of the Pathway become applicable and enforceable. The approved Pathway will determine how the building’s energy performance requirements and achievements are evaluated at the end of the Compliance Cycle. If a building owner does not select a Pathway by the reporting deadline, DOEE will assign a Pathway for the building and the owner may be subject to fines for missing the reporting deadline, as described in Section 6.2.

## 2.6 – Pathway Selection Changes

DOEE recognizes circumstances may arise during a Compliance Cycle where a building owner may need to change Pathways. At any time during the Compliance Cycle, a building owner may apply to DOEE to change the Pathway by submitting a Pathway Selection Change Form through the Portal.[[14]](#footnote-15) The application should include an explanation of why the building owner is seeking a change. Buildings under a DOEE-assigned Pathway may also apply for a Pathway change. DOEE will not approve a Pathway change that allows a building owner to avoid energy performance or reporting/verification requirements under an approved Pathway.

A Pathway Selection Change Form must include the current Pathway, the proposed new Pathway, and any documentation that is required for selection of the new Pathway. Building owners may only change to a Pathway for which the building’s property type is eligible. DOEE will evaluate the application and notify the building owner of the change approval, request more information, or inform that request is denied. The building will remain on its originally approved Pathway until DOEE has approved a change or if a change is denied.

DOEE may change a building’s approved Pathway during the Cycle if a building owner submits an incomplete or inaccurate plan or report or does not complete a Pathway requirement.[[15]](#footnote-16) DOEE will notify the builder owner if a building’s Pathway is changed.

## 2.7 – Newly Constructed Buildings and Demolished Buildings

DOEE has created considerations for specific circumstances for newly constructed buildings that would not have submitted benchmarking data at the time of BEPS establishment and for buildings demolished during the Compliance Cycle that no longer consume energy. Under the 2021 BEPS Establishment Regulations, the 2021 BEPS apply to buildings that that existed at the time of the establishment of the BEPS on January 1, 2021 and meet the square foot thresholds in 20 DCMR 3530.1. Buildings that were issued a New Building Core and Shell Certificate of Occupancy from DCRA *before the beginning of the BEPS Period* (2019-2020) either were not required to or did not submit a 2019 District Benchmark Report. Under the 2021 BEPS Establishment Regulations, these buildings are assumed to not meet the BEPS and will enter a Compliance Cycle.[[16]](#footnote-17) These buildings are eligible to select the New Construction/Change of Property Type ACP option for Cycle 1, where the building must meet or exceed the Standard for the Property Type by the end of the Cycle, described in Section 4.3.

If a College/University Campus or Hospital Campus constructs a new building that is not included in the 2019 District Benchmark Report and the Campus meets the Standard for BEPS Period 1, the building will be evaluated as part of the Campus in the next BEPS Period. If the campus building is constructed on a Campus that has entered a Compliance Cycle and the building is *not separately metered*, the building will be included in the evaluation of compliance at the end of Cycle 1 but may be eligible to request a baseline adjustment described in Section 4.4.

All buildings that are issued a New Building Core and Shell Certificate of Occupancy from DCRA *after the beginning of the BEPS Period* (between January 2, 2021 and December 31, 2026) are not subject to the 2021 BEPS. These buildings will be evaluated for the first time at the beginning of the next BEPS Period.

There is one exemption from compliance with BEPS requirements. Buildings that are completely demolished immediately before the beginning of or during a Compliance Cycle are not subject to BEPS after they are demolished as their energy performance is irrelevant.[[17]](#footnote-18)

When a building is demolished, the building owner must request that the building be exempt from BEPS by submitting the Demolition Exemption Request. This request must be accompanied by evidence that the building has been completely demolished (photos of the site, official notices from other DC agencies acknowledging the demolition, etc.). DOEE will review the demolition notification and either approve the exemption from BEPS, request more information, or reject the request. When a new building is constructed in the same location, the building will be evaluated for the appropriate BEPS Period in accordance with Section 4.3.1.

Buildings that undergo major renovations will not be exempted, but may receive baseline adjustments per Section 4.4 or a delay of compliance per Chapter 5.

## 2.8 – Historic Buildings or Districts

For the vast majority of cases, a building’s historic status does not interfere with its ability to meet the energy performance requirements of BEPS. The District’s Office of Planning released the [Sustainability Guide for Existing and Historic Properties](https://planning.dc.gov/publication/sustainability-guide-existing-and-historic-properties) that demonstrates how most historic buildings can comply with the energy performance requirements and realize substantial energy savings. Some challenges may remain though, such as limitations on the type of energy efficiency measures (EEMs) allowed or receiving approval from the Historical Preservation Review Board in a timely manner, DOEE may approve a baseline adjustment (Section 4.4) or a delay (Chapter 5) for these buildings.

## 2.9 – Change of Ownership

A building’s change of ownership does not exempt the building from compliance with the energy performance or reporting/verification requirements of a Compliance Cycle. If a building changes hands, the building owner at the time a compliance step must be taken is responsible for taking that step (ex. Pathway Selection). At the end of the Compliance Cycle, the building owner is responsible for the final energy performance and reporting/verification requirements and if not met, may result in a possible alternative compliance penalty discussed in Chapter 6.

The BEPS Compliance Regulations require that when a building is sold at any time during the Cycle, the seller must provide the buyer with information related to the building’s BEPS compliance status prior to the transfer or sale. Under the BEPS Compliance Regulations, the seller must give the buyer the following information:

* any information, plans, or reports submitted to DOEE as required by the building’s approved Pathway,
* the most recent complete and accurate District Benchmark Results and Compliance Report for the building, and
* information describing any progress toward meeting the energy performance requirements.[[18]](#footnote-19)

Sellers that fail to complete this requirement are subject to civil infractions.

Although this transfer of information is the seller’s obligation, some of the information will be publicly available. A public BEPS registry will contain information on whether a building meets the Standard in the current BEPS Period, which approved Pathway the building owner chose for the current Cycle, and other pertinent information that can be publicly disclosed. Any member of the public will be able to download this information in the form of a BEPS Compliance Status Report.

For more detailed information, the buyer may request a Sale of Property Disclosure Report through the Portal that indicates whether the building meets the Standard for the current BEPS Period, the building’s approved Compliance Pathway, progress reported to DOEE towards the approved Pathway’s energy performance requirements, and submittal/approval date of any required information, plans, or reports required by the building’s approved Pathway. DOEE suggests that this report is the method of disclosure if the building was on the Prescriptive Pathway or any of the alternative Pathways. The BEPS Compliance Status Report is sufficient if the building was on the Performance or Standard Target Pathways.

When building ownership is changing, DOEE must be notified.[[19]](#footnote-20) DOEE requires that both the buyer and the seller sign a Change of Ownership Disclosure Acknowledgement Letter available on the Portal. The letter will verify that all requirements of the seller have been met. The buyer should provide a copy of the signed letter to DOEE through the Portal within sixty (60) days of the closing of sale. Failure to notify DOEE may result in civil infractions or affect the new owner’s ability to request Pathway selection changes or a delay of compliance.

Once ownership of the building is transferred, the new owner may submit a request to switch Pathways as described in Section 2.6 and/or request a delay of compliance, if needed[[20]](#footnote-21) (Chapter 5). Otherwise, the new owner must meet the requirements of the previously approved Compliance Pathway by the end of the Compliance Cycle, without exception.

# Chapter 3 – Principal Compliance Pathways

The CEDC Act required DOEE to establish Compliance Pathways for buildings that do not meet the Standards at the beginning of a BEPS Period to come into compliance with the District’s energy performance requirements.[[21]](#footnote-22) The CEDC Act required the creation of a Performance Pathway, where a building is to demonstrate a decrease in normalized site energy use intensity, and a Prescriptive Pathway, where buildings achieve compliance by implementing cost-effective energy efficiency measures with savings comparable to the Performance Pathway. The CEDC Act also allows DOEE to establish additional Compliance Pathways. The BEPS Compliance Regulations list the available Compliance Pathways.[[22]](#footnote-23)

There are three Principal Compliance Pathways for the BEPS Program. In addition to the Performance and Prescriptive Pathways, DOEE established a Standard Target Pathway for property types where the Standards are above the national median. DOEE also created an Alternative Compliance Pathway (ACP) for unique situations or ambitious goals , which are discussed in Chapter 4. This chapter provides guidance and further explanation of the Principal Pathways.

The three Pathways provide different methods for buildings to meet the energy performance requirements, shown in Table 1.

##### *Table 1 – Principal Compliance Pathways*

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Performance Pathway** | **Standard Target Pathway** | **Prescriptive Pathway** |
| Eligibility | All property types | Only property types with Standards more efficient than the national median | All property types |
| Evaluation | Performance-based | Performance-based | Action-based |
| Target | Reduce Site EUI 20% | Reach the Standard for the building’s property type | Implement measures and complete reporting |
| Guidebook  Section | Section 3.1 | Section 3.2 | Section 3.3 |

Building owners planning deep energy retrofits targeting Site EUI savings higher than 36% in Cycle 1 have an opportunity to secure savings recognition for future Compliance Cycles. This opportunity applies to any building following one of the Principal Pathways. In the Accelerated Savings Recognition option, a type of ACP described in Section 4.2.1, building owners meet higher energy performance targets by the end of Cycle 1 in exchange for compliance recognition in future Cycles.

## 3.1 – Performance Pathway

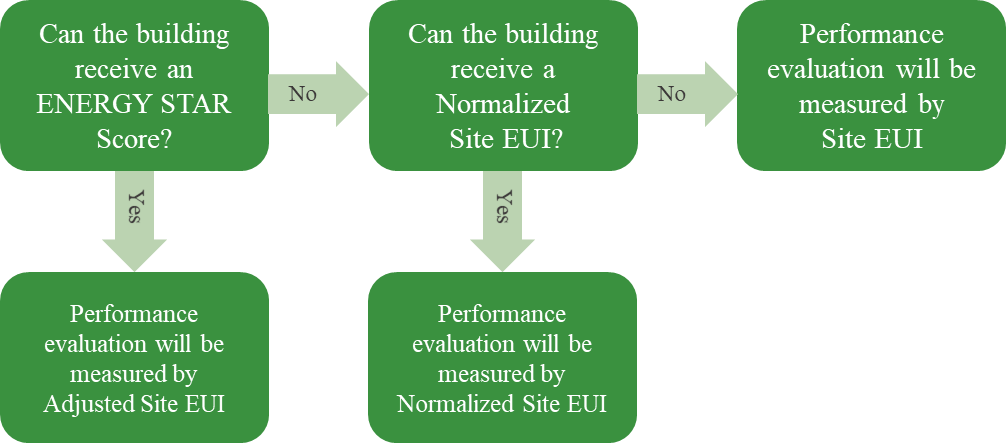
The Performance Pathway gives building owners the flexibility to determine for themselves how to meet the energy performance requirements. Building owners following this Pathway have the ability to implement energy efficiency measures of their choosing to reduce energy consumption in the building. Successful compliance under a Performance Pathway is met by achieving a 20% reduction in Site EUI, demonstrated by a decrease in energy use from the beginning of a Compliance Cycle (established through the baseline years) to the end of the Compliance Cycle (measured through the evaluation years).[[23]](#footnote-24) The Performance Pathway is open to all property types.

### 3.1.1 – Performance Pathway Metrics and Evaluation

The CEDC Act specifies the use of “normalized Site EUI” as the metric for measuring compliance under a Performance Pathway.[[24]](#footnote-25) This term has two meanings depending on the building’s property type. If the property type can receive an ENERGY STAR® Score (go to [Guide to the 2021 BEPS](https://doee.dc.gov/node/1507996)), the performance metric is Site Energy Use Intensity Adjusted to Current Year (Adjusted Site EUI) as defined by Portfolio Manager®.[[25]](#footnote-26)This metric utilizes the same operational normalization procedure as the ENERGY STAR Score (including property use detail, weather, and climate normalization). If the property type cannot receive an ENERGY STAR Score, and is using the equivalent metric for Standard establishment, then the performance metric is Weather Normalized Site EUI (Normalized Site EUI).[[26]](#footnote-27)This metric normalizes a building’s consumption using 30-year average weather conditions.

More than 95% of buildings subject to benchmarking can receive either the Adjusted Site EUI or Normalized Site EUI in Portfolio Manager. For those few buildings cannot receive either metric due to unique situations, the performance metric is Site Energy Use Intensity which is the building’s annual Site Energy Consumption divided by Gross Floor Area (GFA). The decision tree for determining the building’s metric for performance evaluation is shown in Figure 5 (all EUI values are measured in kBtu/ft2).

*Figure 5 – Performance Pathway* *Metrics*



As described in Section 2.4, the COVID-19 PHE delay provides additional time for building owners to achieve the energy performance requirements.[[27]](#footnote-28) Applying the delay to the Performance Pathway, successful compliance requires demonstration of a greater than 20% decrease in site energy use in CY2026, as compared to the site energy use intensity averaged over CY2018-2019 (Table 2).

#### *Table 2 – Performance Pathway Evaluation Year(s) Options*

|  |  |  |
| --- | --- | --- |
|  | **COVID-19 PHE Delay** | **Original Compliance Cycle  and Evaluation Years (no delay)** |
| Compliance Cycle | January 1, 2021 to  December 31, 2026 | January 1, 2021 to  December 31, 2025 |
| Baseline Years | CY2018-2019 | CY2019-2020 |
| Evaluation Years | CY2026 | CY2024-2025 |

All Reported and Evaluated Site EUI information will be taken from the building’s applicable District Benchmark Results and Compliance Report. Table 3 provides an example of a building under the Performance Pathway using the COVID-19 PHE delay that meets the energy performance requirements of the Performance Pathway. In this example, Building A has a baseline Evaluated Site EUI of 105 kBtu/ft2, which is the average of the building’s CY2018 and CY2019 energy use data. Over the course of the Compliance Cycle, Building A implements a combination of capital projects and operational improvements, reducing its CY2026 evaluation Reported Site EUI to 82.5 kBtu/ft2. Therefore, Building A demonstrated a 21% reduction in Site EUI , so long as it met all reporting/verification requirements, Building A would be considered in compliance under the Performance Pathway.

#### *Table 3 – Performance Pathway Compliant Example, Building A*

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Baseline Years** | | **Evaluation Year** |
| COVID-19 PHE delay | CY2018 | CY2019 | CY2026 |
| Reported Site EUI | 100 | 110 | 82.5 |
| Evaluated Site EUI | 1051 | | 82.5 |
| Demonstrated Site EUI Savings | | | -21%2 |

\*All EUI values are kBtu/ft2

1 Average of CY2018 and CY2019 Reported Site EUI

2 Percent difference between Baseline Site EUI and Evaluated Site EUI

Table 4 provides an example of a building under the Performance Pathway and using the COVID-19 PHE delay that does not meet the energy performance requirements. In this example, Building B has a baseline Evaluated Site EUI of 100 kBtu/ft2. Over the course of the Compliance Cycle, Building B reduces its Site EUI to 85 kBtu/ft2 through the installation of a lighting upgrade. However, poor operational practices and deferred maintenance resulted in Building B not achieving the full savings required under the Performance Pathway. Building B only demonstrated a reduction of 15% in its Site EUI and therefore, Building B would not be compliant under the Performance Pathway and would be assessed an alternative compliance penalty (Chapter 6).

#### *Table 4 – Performance Pathway Non-Compliant Example, Building B*

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Baseline Years** | | **Evaluation Year** |
| COVID-19 PHE delay | CY2018 | CY2019 | CY2026 |
| Reported Site EUI | 90 | 110 | 85 |
| Evaluated Site EUI | 100 | | 85 |
| Demonstrated Site EUI Savings | | | -15% |

\*All EUI values are kBtu/ft2

### 3.1.2 – Performance Pathway Reporting Requirements

Buildings following the Performance Pathway must complete reporting/verification requirements by the deadlines in Table 5. As explained in Section 2.1, a building that uses the COVID-19 PHE delay has its documentation deadlines extended one year[[28]](#footnote-29) and Table 5 reflects the adjusted dates.

#### *Table 5*  *Performance Pathway Reporting Requirements*

|  |  |  |
| --- | --- | --- |
| **Documentation** | **COVID-19 PHE Delay Deadlines** | **Original Compliance Cycle  Deadlines (no delay)** |
| Pathway Selection Form | April 1, 2023 | April 1, 2022 |
| Completed Actions Report | April 1, 2027 | April 1, 2026 |
| District Benchmarking Report (third-party verified complete and accurate) | CY2026 due April 1, 2027 | CY2024 and CY2025 due April 1, 2025 and April 1, 2026 |

DOEE requires all buildings under a Performance Pathway to submit a Completed Actions Report through the Portal. This Report includes a short survey of the energy efficiency measures the building owner implemented to meet the energy performance requirements. This report must be filed regardless of whether a building meets required 20% reduction in site energy use and will be used by DOEE to improve future iterations of the BEPS Program.

As mentioned in Section 3.1.1, a building’s energy use is demonstrated to DOEE through the building’s complete and accurate District Benchmarking Report for the relevant calendar years.[[29]](#footnote-30) Building owners must complete all of the District’s benchmarking requirements, including third-party data verification requirements, prior to a report being considered for BEPS performance evaluation.

## 3.2 – Standard Target Pathway

The Standard Target Pathway is a performance-based compliance method designed for buildings in a high-performing property type group with a Site EUI is less than 20% away from the Standard.[[30]](#footnote-31) In the Compliance Cycle for a building on the Standard Target Pathway, the building would meet or exceed the Standard for its property type in the evaluation year(s). Similar to the Performance Pathway, the Standard Target Pathway is designed to give buildings flexibility in how they meet the energy performance requirement, meaning building owners can choose the measures they think are best for reducing energy consumption in their building. This Pathway was developed to address the concern that at higher levels of performance, there is less opportunity for cost-effective measures and that buildings may require a higher level of investment to achieve significant energy savings.

### 3.2.1 – Standard Target Pathway Eligibility

A building must be of a “high-performing” property type to be eligible for the Standard Target Pathway. A high-performing property type includes those property types where the Standards are more stringent (more efficient) than the national median. The national median is an ENERGY STAR Score of 50, or for property types that cannot receive a Score, the national median Source EUI. Many buildings in the District subject to BEPS belong to a “higher-performing” property type and will be eligible to select the Standard Target Pathway. For the Compliance Cycle that begins January 1, 2021, the property types that can use the Standard Target Pathway are listed in Table 6.

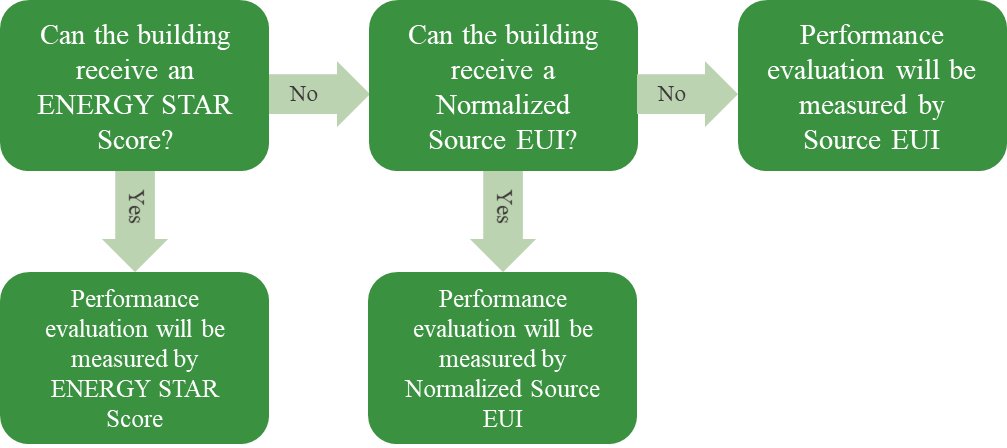
##### *Table 6  Property Types Eligible to use the Standard Target Pathway in Cycle 1*

|  |  |
| --- | --- |
| Adult Education | Other - Entertainment/Public Assembly |
| Courthouse | Other - Mall |
| Drinking Water Treatment & Distribution | Performing Arts |
| Enclosed Mall | Prison/Incarceration |
| Financial Office | Repair Services (Vehicle, Shoe, Locksmith, etc.) |
| Food Sales | Residence Hall/Dormitory |
| Hotel | Restaurant |
| Hospital | Retail Store |
| Laboratory | Stadium (Open) |
| Medical Office | Self-Storage Facility |
| Movie Theater | Senior Care Community |
| Multifamily Housing | Strip Mall |
| Museum | Supermarket/Grocery Store |
| Office | Wastewater Treatment Plant |
| Other - Education | Wholesale Club/Super Center |

### 3.2.2 – Standard Target Pathway Metrics and Evaluation

A building on the Standard Target Pathway is evaluated using the same metric as the Standard for its property type (Figure 6).[[31]](#footnote-32) Building owners should refer to the 2021 Building Energy Performance Standards (Title 20 of the DCMR, Chapter 3530) to identify the metric used for their property type (all EUI values are measured in kBtu/ft2). More than 90% of buildings in the District will use the ENERGY STAR Score metric.

*Figure 6 – Standard Target Pathway Metrics*



Examples of energy performance evaluations under the Standard Target Pathway are listed below:

* A building that has its Standard measured in an ENERGY STAR Score must increase its ENERGY STAR Score to be equal to or higher than the Standard for that property type. For example, if the Standard for an Office building is 72, a building following the Standard Target Pathway with an ENERGY STAR Score of 68 at the beginning of the Compliance Cycle must raise its Score to at least a 72 by the end of the Cycle to comply.
* A building that has its Standard measured in Normalized Source EUI must lower its Normalized Source EUI, so it is equal to or lower than the Standard for the property type. For example, an “Other - Public Services” building with a Normalized Source EUI of 100 kBtu/ft2 at the beginning of a Compliance Cycle must lower its Normalized Source EUI to at least 87 kBtu/ft2 to comply.
* A building that has its Standard measured in unadjusted Source EUI must lower its Source EUI, so it is equal to or lower than the Standard for the property type.

As described in Section 2.4, the COVID-19 PHE delay provides additional time for building owners to achieve the energy performance requirements.[[32]](#footnote-33) Applying the delay to the Standard Target Pathway, successful compliance requires meeting or exceeding the building’s Standard in CY2026, as shown in Table 7.

#### *Table 7 – Standard Target Pathway Evaluation Year Options*

|  |  |  |
| --- | --- | --- |
|  | **COVID-19 PHE Delay** | **Original Compliance Cycle  and Evaluation Years (no delay)** |
| Compliance Cycle | January 1, 2021 to  December 31, 2026 | January 1, 2021 to  December 31, 2025 |
| Evaluation year | CY2026 | CY2025 |

### 3.2.3 – Standard Target Pathway Reporting Requirements

As explained in Section 2.1, a building that uses the COVID-19 PHE delay has its reporting/verification deadlines extended by one year. Buildings with this delay following the Standard Target Pathway must complete the reporting/verification requirements by the deadlines in Table 8.[[33]](#footnote-34)

#### *Table 8  Standard Target Pathway Reporting Requirements*

|  |  |  |
| --- | --- | --- |
| **Documentation** | **COVID-19 PHE Delay Deadlines** | **Original Compliance Cycle Deadlines (no delay)** |
| Pathway Selection Form | April 1, 2023 | April 1, 2022 |
| Completed Actions Report | April 1, 2027 | April 1, 2026 |
| District Benchmarking Report (third-party verified complete and accurate) | CY2026 due April 1, 2027 | CY2025 due April 1, 2026 |

As mentioned in Section 3.1.2, the building owner demonstrate the building’s energy use through a complete and accurate District Benchmarking Report for the relevant calendar years.[[34]](#footnote-35) Building owners must complete all of the District’s benchmarking requirements, including third-party data verification requirements, for BEPS performance evaluation.

Additionally, DOEE requires all buildings under a Standard Target Pathway to submit a Completed Actions Report through the Portal. This Report includes a short survey of the energy efficiency measures the building owner implemented to meet the energy performance requirements. This report must be filed regardless of whether a building meets the property type’s Standard and will be used by DOEE to improve future iterations of the BEPS Program.

### 3.2.4 – Contingency if EPA Changes ENERGY STAR Models

ENERGY STAR Scores are established and modeled by the EPA and it is not uncommon for EPA to update these models. These changes result in overwriting previous Scores—as was the case in 2018 when EPA released updated ENERGY STAR Score models and new source-site factors through Portfolio Manager. As a result, some buildings saw major changes in their Score (e.g., Office Scores fell an average of 10 points). EPA has indicated that it plans to implement updated scoring models and new source-site factors sometime in the next five years.

Changes to ENERGY STAR Score models mid-Compliance Cycle would create a challenge for building owners and DOEE in measuring, determining, and implementing the BEPS Program. For example, while a building may meet the Standard under the current ENERGY STAR metrics, it may not meet the requirements if the building’s ENERGY STAR Score is calculated using a different metric.

DOEE cannot predict the specific effect until EPA releases updated ENERGY STAR Score models, but has developed steps to mitigate uncertainty. For those buildings on any Standard Target Pathway, DOEE will calculate the Source EUI reduction required for them to meet a specific ENERGY STAR Score (e.g., for all Offices, the Source EUI reduction required to go from an ENERGY STAR Score of a 30 to a 50 is -23%). Using this calculation, DOEE can track a building’s progress towards a specific target, regardless of the metric change. DOEE can also recalculate a building’s Source EUI to match past or current source-site factors. In the case of a metric change during the Compliance Cycle beginning in 2021, DOEE will use the average of CY2018 and 2019 as a baseline for the building and CY2026 as the evaluation years.

Additionally, DOEE will not reassess Pathways available to a given property type as the result of a Score change during a Compliance Cycle. For example, if the Standard of a property type drops below the national median—which would mean that property type is not eligible to use the Standard Target Pathway—DOEE will continue to allow buildings belonging to that property type to follow the Standard Target Pathway. In the opposite scenario, if a property type’s Standard is below the national median—and therefore is ineligible for the Standard Target Pathway—but then rises above the national median as the result of the metric update, DOEE will not allow buildings in that property type to change to the Standard Target Pathway mid-cycle. DOEE will provide additional information when EPA announces a future model update.

## 3.3 – Prescriptive Pathway

The Prescriptive Pathway is an action-based compliance method that includes reporting milestones and implementing one or more recommended EEMs designed to achieve energy savings comparable to the Performance Pathway. Compliance under a Prescriptive Pathway is met by successfully completing specific actions and meeting reporting/verification requirements as defined by DOEE and outlined in this section.

This Pathway is designed to help building owners mitigate risk for a Compliance Cycle—so long as they successfully implement the specific approved measures and meet all reporting/verification requirements, the building will comply, regardless of its energy performance. The Prescriptive Pathway is broken down into a phased approach with integrated design principles to assist building owners in achieving the requirements. Because the Prescriptive Pathway is action-based and does not rely on a performance evaluation at the end of the Cycle, the selection of evaluation year(s) does not apply to this Pathway. For buildings using the COVID-19 PHE delay, the reporting deadlines have been extended as described in 20 DCMR 3519.1. As noted in Section 2.1, buildings will be defaulted to the delayed timeline unless the building owner has opted out. Deadlines for the delay and the original timeline are listed in the reporting requirements table in the following Phase sections.

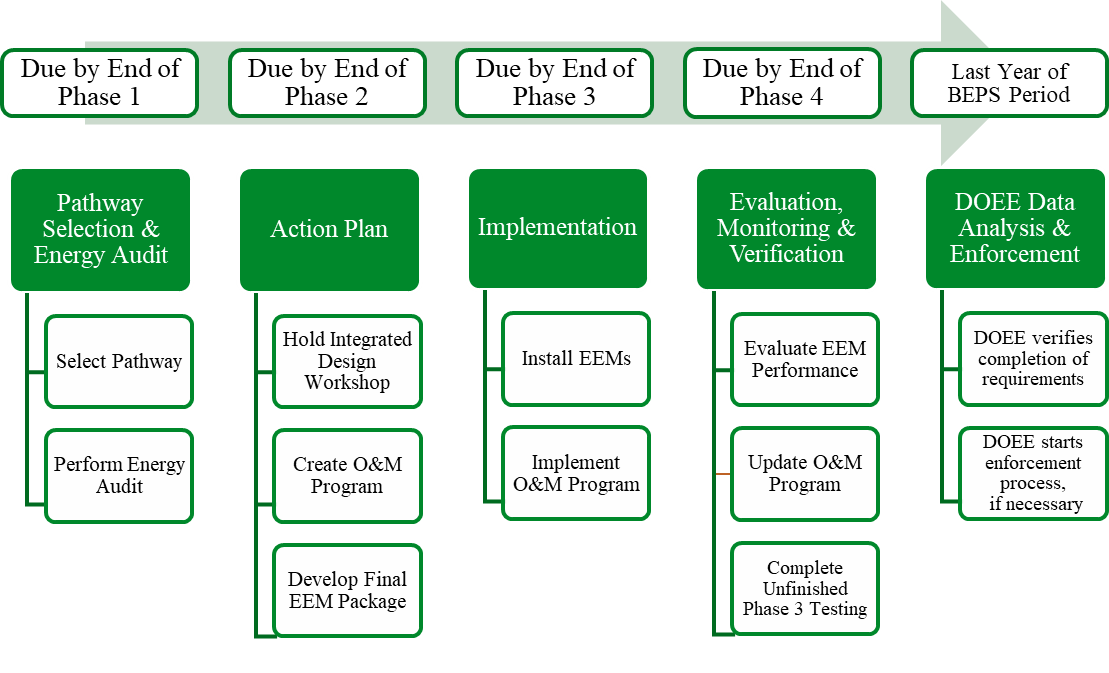
While the Prescriptive Pathway is distinct from the Performance or Standard Target Pathway in that it is action-based rather than performance-based, building owners under any Compliance Pathway may look to the processes outlined under the Prescriptive Pathway as the best practices for risk mitigation, profit, energy saving maximization to appropriately plan capital investments for meeting the energy performance requirements of the BEPS Program.

### 3.3.1 – Prescriptive Pathway Phases

The Prescriptive Pathway is separated into four Phases, each with specific actions and reporting/verification requirements. The phased approach is designed to keep buildings on track to achieve compliance and follows an industry best practice integrated design approach. Building owners will develop a list of EEMs by the end of Phase 2 that best fit their building and submit them to DOEE for approval. DOEE will assign point values to the proposed EEMs to properly weight the importance of each EEM’s estimated energy savings in determining liability.

An overview of the Phases is shown in Figure 7. Building owners will demonstrate completion of each Phase through complete and accurate submission of the reporting/verification requirements to DOEE through the Portal.

##### *Figure 7 – Prescriptive Pathway Actions by Phase*



The Prescriptive Pathway includes requirements that improve the operation of existing systems over multiple Phases, such as the creation and implementation of an Operations and Maintenance (O&M) program or retro-commissioning existing equipment. These multi-phase requirements are essential for the achievement of energy savings and sets up the building for long-term compliance with BEPS.

Collaboration with DOEE during each Phase will help building owners achieve compliance. Project teams are encouraged to reach out to DOEE for guidance with any specific questions throughout the Prescriptive Pathway process to foster the best outcome for building owners and occupants. To avoid unexpected delays and allow time for any necessary corrections before the deadlines, building owners are strongly encouraged to complete the required action and submit documentation well ahead of the Phase deadline.

Building owners must submit complete and accurate reports by the last day of each Phase to meet the reporting/verification requirements of the Prescriptive Pathway, listed in Table 9.[[35]](#footnote-36) The original deadlines from the BEPS Compliance Regulations and the deadlines with the COVID-19 PHE delay are also listed.[[36]](#footnote-37) If a building owner fails to complete actions or meet reporting deadlines specified as part of a building’s approved Prescriptive Pathway, DOEE may switch the building from the Prescriptive Pathway to the Performance Pathway or Standard Target Pathway at any time during the Compliance Cycle.[[37]](#footnote-38)

*Table 9 – Prescriptive Pathway Reporting Requirements by Phase*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Phase** | **Report** | **Required Documentation** | **COVID-19 PHE Delay Deadline** | **Original Compliance Cycle Deadline (no delay)** |
| 1 | Pathway Selection & Energy Audit | Pathway Selection | April 1, 2023 | April 1, 2022 |
| Energy Audit |
| 2 | Action Plan | Integrated Design Workshop Summary | April 1, 2024 | April 1, 2023 |
| O&M Program |
| Final EEM Package |
| 3 | Implementation Report | Implementation Verification with Supporting Documentation | April 1, 2026 | April 1, 2025 |
| O&M Program Implementation Attestation |
| 4 | Evaluation, Monitoring, and Verification Report | Post-implementation Analysis | April 1, 2027 | April 1, 2026 |
| Unfinished Phase 3 Verification |
| O&M Program Final Update and Attestation |

Any supporting documentation required by DOEE shall be identified in each Phase. Throughout the Compliance Cycle, DOEE may request information or documentation, such as from or interviews with designers, building staff, commissioning agents, contractors; invoices/work orders; or site visits which may be necessary to verify proper implementation of the selected EEMs or completeness of compliance with the Prescriptive Pathway requirements.

### 3.3.2 – Project Team Requirements and Recommendations

Some actions within the Prescriptive Pathway require a project team, including one or more participants with specific professional credentials.[[38]](#footnote-39) DOEE suggests following the Whole Building Design Guide’s (WBDG) [Project Delivery Teams](https://www.wbdg.org/project-management/project-delivery-teams) guidance in building a project team that is appropriate for the scope of the building’s work. Building owners will be asked to submit information regarding each professional (names, contact information, credential or certification number, etc.) as part of the relevant reporting/verification requirement of each Phase.

Table 10 is a list of minimum qualifications for licensing, certification, or credentialing for project team members if the building’s scope of work requires that particular role. If DCRA requires a license, credential, or certification for any of these roles as part of the permitting or construction project process, DCRA requirements take precedence.

*Table 10* – *Project Team Member Minimum Qualifications*

|  |  |
| --- | --- |
| **Professional Title** | **Credentials** |
| Energy auditor[[39]](#footnote-40) | One of the following:   * Certified Energy Auditor (CEA) * Certified Energy Manager (CEM) * Building Energy Assessment Professional (BEAP) * High-Performance Building Design Professional (HPBD) * Multifamily Building Analyst (MFBA) |
| Architect | Licensed in DC |
| Mechanical, Electrical, Plumbing (MEP) engineer | Licensed in DC |
| General contractor | Licensed in DC |
| Commissioning agent | [Minimum Qualifications to be an Approved Commissioning Agent](https://dcra.dc.gov/page/green-building-compliance) through DCRA |
| Retro-commissioning professional | One of the following:   * MEP Engineer – Any State Licensing Department * Building Operator Certification (BOC) Level II * CEM * [Minimum Qualifications to be an Approved Commissioning Agent](https://dcra.dc.gov/page/green-building-compliance) through DCRA |

### 3.3.3 – Retro-commissioning

Retro-commissioning (RCx) is the process by which a building owner identifies sub-optimal operating conditions within existing building systems and makes corrections to optimize the performance of the building. RCx is not typically covered in the scope of an American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Level 2 audit, but has been found to result in a wide variety of energy savings (studies show from 5-30% Site EUI reductions are possible). As this process provides a cost-effective and logical activity for saving energy in buildings, DOEE includes RCx as an EEM for the Prescriptive Pathway as outlined in this section. Building owners that could realize greater savings through RCx than what DOEE provides credit for in the Prescriptive Pathway process are encouraged to switch to another Pathway.

To receive credit for RCx activities on the Prescriptive Pathway, the building owner will need to work with a RCx professional to conduct an assessment, report the results of the assessment to DOEE, complete corrective actions identified by the assessment, and then report the end state of the building’s system to DOEE. Depending on the type of RCx assessments performed and required actions completed, the building owner could receive 5 to 8 points for the Prescriptive Pathway. Building owners must use a RCx professional that meets minimum qualifications for a Commissioning Authority through DCRA or any other license or training program recognized by DOEE and posted to its website.[[40]](#footnote-41)

Two types of RCx assessments can receive credit on the Prescriptive Pathway as an EEM: on-site assessments and trend assessments. On-site assessments require physical inspection of the building’s existing systems and building automation system through a site walkthrough. A trend assessment requires an analysis of building system activity over a 4- to 6-month period. Both assessments must examine at the building systems listed below (if present in the building) and sample the system elements to identify sub-optimal performance and recommend corrective actions with estimated energy and cost savings.

* Lighting
* Domestic water
* Envelope
* Commercial kitchens
* Building management system/Building automation system

The Preliminary Retro-commissioning Report template on the Portal outlines sampling methods and describes building system element optimal performance for credentialed professionals to use in the assessment. Once the assessment(s) is completed, the building owner will submit a Preliminary Retro-commissioning Report as part of the EEM Final Package Submission at the end of Phase 2.

The building owner must complete a subset of corrective actions identified in the report that:

1. Have a payback period of less than 3 years, or
2. Have estimated savings adding up to 5% total building site energy consumption.

Additionally, the building owner must implement all indoor environmental quality-related corrective actions identified in the report.

All implemented corrective actions must be completed and verified by the RCx professional by the end of Phase 4 so that the building owner may submit the completed actions and verification in the Final Retro-commissioning Report available on the Portal as part of the Post-implementation Report. If the RCx requirements are completed and verified as described, DOEE will approve a credit of:

* 5 points for the completion of one of the assessments and corrective actions, or
* 8 points if the owner completes both types of assessments and all necessary corrective actions from both assessments (corrective actions may overlap between assessments).

### 3.3.4 – Phase 1 – Pathway Selection and Energy Audit

The Pathway Selection and Energy Audit are the first milestone requirements of the Prescriptive Pathway.[[41]](#footnote-42) Unlike the Performance or Standard Target Pathway, building owners seeking to follow the Prescriptive Pathway must submit an Energy Audit at the same time as the Pathway Selection. DOEE will not approve the selection of the Prescriptive Pathway unless the building owner has a submitted the Energy Audit. These two requirements make up Phase 1 of the Prescriptive Pathway’s reporting/verification requirements.

The Energy Audit is designed to provide a building owner with a thorough assessment of the existing conditions of the building and identification of potentially advantageous EEMs. This is accomplished through an energy audit of the building’s existing systems and operations, in accordance to ASHRAE Standard 211. Because the work completed for Phase 1 is designed to assist with meeting the decision-making needs of all Pathways, the information gleaned from the assessment will assist the building owner and project team in choosing the right compliance method to pursue.

If the building owner is planning on pursuing RCx as an EEM, DOEE highly recommends that building owners consider completing the RCx assessment at the same time as the Energy Audit. There are natural synergies about assessing both the potential upgrades identified by the audit at the same time as assessing the operating efficiency of current systems via RCx.

#### 3.3.4.1 – Energy Audit Requirements & EEM Recommendations

A Level 2 energy audit in accordance with ASHRAE Standard 211 must be completed by an energy auditor with the qualifications described in Section 3.3.2, following the DOEE Energy Audit Template. This audit will yield results required for the building owner to meet the energy performance and reporting/verification requirements of the Prescriptive Pathway.

To ensure that buildings consider long-term plans for compliance with future BEPS Periods, DOEE is requiring that the energy audit identify more EEMs than necessary to meet the energy performance requirements. The results of the energy audit will be used in the Integrated Design Workshop in Phase 2 where the EEMs will be narrowed to target 25% in Site EUI savings to make up the final EEM package (see “4. Minimum savings identified” in the list of requirements below).

Energy Audit Minimum Requirements:

1. The energy auditor must hold one of the following credentials or certifications:[[42]](#footnote-43)
   1. CEA from Association of Energy Engineers (AEE)
   2. CEM from AEE
   3. BEAP from ASHRAE
   4. HBDP from ASHRAE
   5. MFBA from Building Performance Institute – for multifamily property types only
2. Timeframe of audit:
   1. The audit must have been completed between the years 2021 – 2023.
   2. If the audit was completed between the years 2018 – 2020, the building energy use information and associated savings calculations must be updated to accurately reflect building energy use at the time the plan is submitted to DOEE.[[43]](#footnote-44)
   3. Building owners may request through the Portal for approval to use audits from before 2018.
3. Baseline identification for energy audit purposes:
   1. The audit’s baseline used to measure energy efficiency gains should be an average of Calendar Year 2018-2019 or either of those years by itself.
   2. The baseline should be measured in Weather-Normalized Site EUI (or Site EUI if the building cannot receive a Weather-Normalized Site EUI) as per the building’s District Benchmarking Reports.
4. Minimum savings identified:
   1. If the baseline Site EUI is above the [EPA national median](https://portfoliomanager.energystar.gov/pdf/reference/US%20National%20Median%20Table.pdf) Site EUI for that building’s property type, the energy audit must identify EEMs that total at least 40% savings from the baseline Site EUI.
   2. For all other buildings, the energy audit must identify EEMS that total at least 30% savings from the baseline Site EUI.
   3. If the auditor cannot identify EEMs to satisfy the required minimum percentage, the auditor must include an explanation in the energy audit submission.
   4. Note: The project team must create a final package of EEMs in Phase 2 that achieve at least 25% savings from baseline Site EUI.
5. Investment analysis:
   1. Calculate the following metrics and enter them into the Audit Template:
      1. Measure cost
      2. Total cost savings
      3. Simple savings to investment ratio (SIR)
      4. Simple return on investment (ROI)
      5. Effective savings to investment ratio (E-SIR) - marginal SIR of proposed EEM over replacement level equipment
      6. Effective return on investment (E-ROI) - marginal ROI of proposed EEM over replacement level equipment
6. Fossil Fuel Burning Equipment:
   1. Replacing an existing fossil fuel burning system can be included in the energy audit. However, only replacement of components of an existing fossil fuel burning system may be included as part of the final EEM package in Phase 2 (see Section 3.3.5.3 for more information).

#### 3.3.4.2 – Phase 1 Reporting Requirements

Table 11 provides the report sections of the Energy Audit for Phase 1 of the Prescriptive Pathway. The submission deadline for buildings using the COVID-19 PHE delay is April 1, 2023.[[44]](#footnote-45)

##### *Table 11 – Phase 1 Reporting Requirements*

|  |  |  |  |
| --- | --- | --- | --- |
| **Report** | **Required Documentation** | **COVID-19 PHE Delay Deadline** | **Original Compliance Cycle Deadline  (no delay)** |
| Pathway Selection & Energy Audit | Pathway Selection | April 1, 2023 | April 1, 2022 |
| Energy Audit |

### 3.3.5 –Phase 2 – Action Plan

The Action Plan is the second Phase of the Prescriptive Pathway. During this Phase, the project team will hold an integrated design workshop that will guide them to an achievable and cost-effective implementation plan, and develop an O&M program to address existing operations and maintenance in the building, and create and submit a final EEM package.[[45]](#footnote-46)

#### 3.3.5.1 – Integrated Design Workshop Requirements and Recommendations

An essential part of an integrated design process is one or more workshops, which serve to include stakeholders in the initial stages of the design and set the stage for the improvement work to be done in the building. The intent of a workshop is to build consensus, formalize the project vision, streamline the design process, and by setting specific goals, set the team up for success. They are most effective when they happen early in the schematic design stage. This allows key stakeholders like owners, facility managers, and building occupants to share their perspectives at a time when the input can still be easily incorporated into the design. A workshop also provides design team members an opportunity to share early design ideas and experiences on other projects.

Although completing an Integrated Design Workshop and submitting a summary of the activity is a requirement of the Prescriptive Pathway, DOEE does not impose a specific format or process for the workshop. DOEE encourages the project team to use the integrated design charrette guides listed below in the planning of the workshop, while recognizing that the charrette guides are likely more detailed and require components that are not necessary for energy efficiency retrofits in existing buildings. Project teams should adapt and modify the following guides to fit the needs of the workshop:

* DOEE [Integrated Design Charrette Toolkit](https://doee.dc.gov/sites/default/files/dc/sites/ddoe/service_content/attachments/DC-NZECharetteToolkit.pdf)
* National Renewable Energy Laboratory (NREL) [Handbook for Planning and Conducting Charrettes for High-Performance Projects](https://www.nrel.gov/docs/fy09osti/44051.pdf)
* Enterprise Green Communities [Green Charette Toolkit](https://www.enterprisecommunity.org/solutions-and-innovation/green-communities/tools-and-services/charrette-toolkit)
* WBDG’s [Planning and Conducting Integrated Design Charettes](https://www.wbdg.org/resources/planning-and-conducting-integrated-design-id-charrettes)

The project team will tailor the workshop agenda to meet their needs depending on the complexity of the project. For example, the building owner may choose to have a 2-hour meeting with key project team members, or they could hold a full-day workshop with the entire project team, additional design consultants, and external stakeholders. At a minimum, DOEE suggests that the following project team members should attend this workshop:

* Building owner representative
* Building facilities management representative
* Energy auditor
* Architectural firm representative
* MEP engineering firm representative

Through the submission of the Integrated Design Workshop Summary, the project team will provide the following information:

1. Notes/minutes of meeting, including the agenda and a list of participants and their role in the project
2. Answers to these questions (maximum 2 paragraphs per question)
   1. How does this work fit into existing capital plans and timelines?
   2. How is the building poised for future BEPS compliance?
   3. What is the plan if the building does not meet the Standard in Cycle 2?
   4. Is the Prescriptive Pathway the right compliance method for this building?

#### 3.3.5.2 – O&M Program – Phase 2 Requirements

The action-based nature of the Prescriptive Pathway necessitates regular O&M program planning and reporting so that the building energy systems achieve their intended energy efficiency throughout the service life. The details of the O&M program will vary based on the existing building systems and which EEMs are chosen as part of the Prescriptive Pathway. Therefore, this Pathway requires several iterations of O&M program planning, implementation, and reporting throughout Phase 2, 3 and 4.

Every building is required to create and submit an O&M program with standard operating procedures that meet the specifications found in ASHRAE Standard 100-2018, Chapter 6, which addresses every applicable building system and element as outlined in Annex D and follows the implementation requirements laid out in Annex L.

The O&M Program document submitted to DOEE should at a minimum include the following information:

1. Phase Planning
   1. Proposed timeline for implementation
   2. Proposed method for verifying implementation of O&M program; if requested by DOEE in Phase 3 or 4, the method must describe how the records will be kept and maintained over time and how they will be transmitted to DOEE if audited
2. O&M Program Requirements
   1. O&M Objectives as described in ASHRAE 100-2018, 6.2
   2. O&M Implementation in accordance with ASHRAE 100-2018, 6.4 and Annex L
   3. O&M Tasks as described in ASHRAE 100-2018, 6.4 and Annex D
   4. Polices for tenant improvements (if applicable)
3. Submission
   1. Phase planning information will be submitted through answering questions in the O&M Program Submission form on the Portal with a file upload option for the O&M Program document

#### 3.3.5.3 – Final EEM Selection Requirement

Based on the EEMs identified in the energy audit in Phase 1 and the results of the Integrated Design Workshop, the project team will select a final EEM package to implement in Phase 3. The building owner will provide DOEE with a final EEM package that includes detailed descriptions, estimated costs, energy savings estimations, schematic design, and proposed methods to verify implementation of each EEM.

The final EEM package and individual EEMs must meet the following point requirements for DOEE to count them towards compliance with the Prescriptive Pathway:

* Targeted Savings
  + The project team must create a package of EEMs that achieve at least 25% savings in Site EUI.
* Optimization of Package
  + Occupant/employee and facility management team education and/or training shall be no greater than 2% of total Site EUI savings.
  + Retro-commissioning activities shall not comprise more than 5 to 8% of the total Site EUI savings target depending on if one or both types of retro-commissioning assessments were conducted and reported as part of the Preliminary Retro-commissioning Report.
  + Replacing components of an existing fossil fuel burning system can be proposed as part of the recommend EEMs. For example, a replacement of a valve or a pipe in an existing fossil fuel burning system is acceptable. However, replacement of the entire system with another fossil fuel burning system is not. Site EUI savings from the installation of new or replacement fossil fuel burning equipment/systems will not be counted towards the 25% savings target.

The format of the final EEM package must meet the following requirements:

1. Formatting:
   1. Use plain, white, 8 ½” x 11” virtual paper with one-inch margins.
   2. Limit each EEM description to no more than 5 pages. Supporting documentation directly related to the efficacy of the EEM may be attached and is not included in the 5-page limit.
2. Information/Sections:
   1. Project team information: Name and email contact information of all members of the project team involved in developing the final EEM package.
   2. Building information: General information about the building, including address and Portfolio Manager ID number, and a detailed breakdown of property use types in the building.
   3. Proposed final EEM package summary: Provide a brief one-paragraph summary that explains the full final EEM package. This section should provide high level savings estimates for the package.
   4. Individual EEM descriptions: Each EEM proposed must be organized in the outline detailed below. Each EEM description must not exceed the 5-pages limit:
      1. Overview of EEM: Provide a brief description of the EEM.
      2. Estimated Savings: Provided a detailed description of the expected energy savings from the EEM. Savings should be broken into system level, fuel type level, a building level savings. Please also provide a brief description of the methodology used to determine the savings numbers.
      3. Proposed implementation verification: Describe how a building owner will demonstrate that implementation of the EEMs is complete and how DOEE will verify that compliance at the end of Phase 3. The applicant should list reports/documents that will be submitted at the end of Phase 3. DOEE has listed examples of acceptable reports/documents in Table 15.
   5. Schematic design of each EEM: Provide all supporting schematic design documents that shall establish the conceptual design of the final EEM package. These documents should illustrate the scale and relationship of the individual EEMs. These shall include a conceptual site plan, if appropriate, and preliminary building plans, sections, and elevations. At the project team’s discretion, the documents may include study models, perspective sketches, electronic modeling, or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. If the EEM does not require schematic design or permitting through DCRA to install or complete the measure, a proposal from the contractor with detailed specifications of the proposed EEM will be acceptable.
   6. Occupant/employee outreach: If the building pursues occupant training as part of the final EEM package, provide a copy of the planned or executed curriculum and communication plan with details on outreach and planned activities. Provide suggestions for additional methods of documenting the action, if audited by DOEE.
   7. Facilities team training: If the building pursues a strategy of providing in-depth nationally recognized energy efficiency training for members of the facilities team (such as Building Operator Certification or Certified Energy Manager credentials), provide a copy of the invoice in which the training was paid (with employees’ names listed) if already completed, or a description of the proposed program with a written description of who would attend and when it will be executed. Provide suggestions for additional methods of documenting the action, if audited by DOEE.
   8. Retro-commissioning: If the building pursues RCx as part of the final EEM package, provide Preliminary Retro-commissioning Report.
3. Submission**:**
   1. Must be submitted electronically through the Portal.

As part of the final EEM package, a building owner must propose how they will document and verify the implementation of each EEM at the end of Phase 3. Because there is a variety of supporting documentation that could be submitted to meet the verification requirements, Table 12 lists example documentation that could be proposed as part of the final EEM package. The list is not comprehensive and other documentation can be proposed.

*Table 12 – Sample Supporting Documentation for Implementation Verification*

|  |  |
| --- | --- |
| **EEM Implementation** | **O&M Implementation** |
| All required permits and approvals to legally implement each EEM. If EEM did not require permitting, an invoice paying for the implementation or attestation from building owner and contractor that the work was completed | Collateral or curriculum used to perform occupant/employee outreach | |
| All legally required inspections that occurred during and after implementation of each EEM | Invoice for facilities team energy efficiency training with attendees’ names listed | |
| All commissioning and/or acceptance testing per District buildings codes | Schedule of completed communications plan with number of attendees listed | |
| Final design and construction documents (if available at this time) |  | |
| Final Retro-Commissioning Report |  | |

#### 3.3.5.4 – Phase 2 Reporting Requirements

Table 13 provides the report sections of the Action Plan for Phase 2 of the Prescriptive Pathway. Buildings using the COVID-19 PHE delay have a submission deadline of April 1, 2024.[[46]](#footnote-47)

##### *Table 13 – Phase 2 Reporting Requirements*

|  |  |  |  |
| --- | --- | --- | --- |
| **Report** | **Required Documentation** | **COVID-19 PHE Delay Deadline** | **Original Compliance Cycle Deadline  (no delay)** |
| Action Plan | Integrated Design Workshop Summary | April 1, 2024 | April 1, 2023 |
| O&M Program |
| Final EEM Package |

#### 3.3.5.5 – Action Plan Approval

After all deliverables from Phase 2 have been submitted, DOEE will review the complete package to ensure that it aligns with all requirements. DOEE may request additional documentation or clarification on any of the submitted documents. After DOEE has completed its review, it will use the proposed information to create and issue an Action Plan Approval Letter.

The Action Plan Approval Letter will include the following:

* Approval of the final EEM package with point values assessed on a 25-point scale based on the total energy savings estimated (used to determine alternative compliance penalty adjustments described in Chapter 6);
* Approval of proposed documentation methods for the Phase 3 Implementation Verification; and
* Approval of proposed documentation methods for O&M program implementation, if audited.

After DOEE has issued the Action Plan Approval Letter, the building owner will have thirty (30) days to appeal the approval by submitting a revised Action Plan through the Portal. DOEE will review the revised Action Plan and either issue a new Action Plan Approval Letter, ask for additional clarification or documentation, or reject the appeal. If the appeal is rejected, the building owner may proceed using the previously approved Action Plan or complete a Pathway Selection Change request to switch Pathways.

All items included in the Action Plan Approval Letter become requirements of the Prescriptive Pathway for that building and a building owner must successfully complete all of the requirements to be in compliance.

### 3.3.6 – Phase 3 – Implementation

Once the Action Plan is approved, the building enters the Implementation Phase. The building owner implements the EEMs from the Action Plan and the O&M program. Any changes to the EEMs from the approved Action Plan must be reported and approved by DOEE prior to implementation. Phase 3 submissions include the Implementation Report[[47]](#footnote-48) and supporting documentation to verify the EEMs were installed as approved, and an attestation of implementation of the O&M program.

#### 3.3.6.1 – Implementation Verification Requirements

The Implementation Verification section of the Implementation Report contains a summary of the implementation, testing, and commissioning work completed during Phase 3. If an EEM is not complete due to timing or climatic conditions, the building owner will describe the issue in the report submission, along with the steps needed to complete the EEM in Phase 4. In addition to the verification submission, the building owner will submit supporting documentation, as needed, to prove the work was completed as described in Table 12.

#### 3.3.6.2 – O&M Program – Phase 3 Requirements

During Phase 3, the building owner implements the O&M program as approved at the end of Phase 2. Through the O&M Program Implementation Attestation, the building owner attests that the O&M program has been implemented throughout Phase 3. DOEE may audit the building for proof of implementation.

#### 3.3.6.3 – Phase 3 Reporting Requirements

Table 14 describes the type of information and documentation that must be included in the Implementation Report for Phase 3 of the Prescriptive Pathway. Buildings using the COVID-19 PHE delay have a deadline for submission of April 1, 2026.[[48]](#footnote-49)

##### *Table 14 – Phase 3 Reporting Requirements*

|  |  |  |  |
| --- | --- | --- | --- |
| **Report** | **Required Documentation** | **COVID-19 PHE Delay Deadline** | **Original Compliance Cycle Deadline  (no delay)** |
| Implementation Report | Implementation Verification with Supporting Documentation | April 1, 2026 | April 1, 2025 |
| O&M Program Implementation Attestation |

### 3.3.7 – Phase 4 – Evaluation, Monitoring, and Verification

Phase 4 of the Prescriptive Pathway is an evaluation of the building’s performance post-EEM implementation.[[49]](#footnote-50) In this Phase, the building owner evaluates the success of each EEM to help the owner understand how the project has affected their building, assess any shortcomings in implementation, and make necessary corrective actions to bring the building up to the expected savings level. The evaluation may also help inform future energy efficiency measures if the building still does not meet the Standard.

In this Phase, the owner will also complete any remaining actions from project implementation, such as final commissioning of equipment, and complete a final update of the O&M program and attest to its implementation. If RCx was pursued as an EEM, the building owner will be required to submit a Final Retro-Commissioning Report as part of the Evaluation, Monitoring, and Verification Report.

#### 3.3.7.1 – Post-implementation Analysis Requirements

In Phase 4, the building owner is required to complete the Post-implementation Analysis which includes recalculating the effectiveness of the EEMs listed in the approved Action Plan through calculation of the realized savings, ROI, and SIR for each EEM (if sub-metered) and for the Action Plan as a whole.

#### 3.3.7.2 – Unfinished Phase 3 Verification Requirements

The building owner completes any deferred acceptance testing or commissioning not possible in Phase 3 due to timing or climatic conditions. The building owner will submit supporting documentation on the completed testing activities (Table 12) to DOEE through the Unfinished Phase 3 Verification submission on the Portal.

#### 3.3.7.3 – O&M Program – Phase 4 Requirements

During Phase 4, the building owner ensures that there is an update of the O&M program to account for the EEM measures installed during Phase 3. The building owner submits the updated O&M program document at the end of Phase 4 through the O&M Program Final Update and Attestation on the Portal and confirms its continued implementation.

#### 3.3.7.4 – Phase 4 Reporting Requirements

Table 15 provides the report sections of the Evaluation, Monitoring, and Verification report for Phase 4 of the Prescriptive Pathway. Buildings using the COVID-19 PHE delay have a submission deadline of April 1, 2027.[[50]](#footnote-51)

##### *Table 15 – Phase 4 Reporting Requirements*

|  |  |  |  |
| --- | --- | --- | --- |
| **Report** | **Required Documentation** | **COVID-19 PHE Delay Deadline** | **Original Compliance Cycle Deadline  (no delay)** |
| Evaluation, Monitoring, and Verification Report | Post-implementation Analysis | April 1, 2027 | April 1, 2026 |
| Unfinished Phase 3 Verification |
| O&M Program Final Update and Attestation |

# Chapter 4 – Alternative Compliance Pathway Options

The CEDC Act gives DOEE the authority to establish additional compliance methods as it deems necessary.[[51]](#footnote-52) The Alternative Compliance Pathway (ACP) allows for methods for compliance outside of the three Principal Pathways (Performance Pathway, Standard Target Pathway, or Prescriptive Pathway) that achieve the equivalent or greater energy savings than the Principal Pathways. There are multiple forms an ACP can take, and the final requirements will be specified in the ACP Decision Letter (detailed in Section 4.1). An ACP option could target energy savings beyond the minimum energy performance requirements or account for a building’s unique circumstance. DOEE has outlined a number of options that building owners may propose to use for the ACP and DOEE will readily approve. This chapter provides guidance and further explanation of DOEE’s policy related to the ACP options.[[52]](#footnote-53)

This chapter is divided into sections based on the ACP options:

* Deep energy retrofits
* New construction or change of property type
* Baseline adjustments
* Custom application

Other than the option for a deep energy retrofit with accelerated savings recognition, most ACP options will only apply to a small percentage of DC’s building stock and have specific eligibility restrictions. Because of this, DOEE’s approval of an ACP option selection requires a more in-depth review of the Pathway Selection Form and supporting documentation than for the Principal Pathways.

For Cycle 1, ACP options outlined in Chapter 4 generally use baseline and evaluation years in line with the COVID-19 PHE delay (Sections 2.1 and 2.4). One-Cycle ACP options will use the delay to establish the end of the Compliance Cycle as December 31, 2026, unless otherwise stated. This means that buildings will use the baseline years of CY2018-2019 and an evaluation year of CY2026 unless the Pathway energy performance requirements are evaluated over multiple Compliance Cycles. The adjusted evaluation years and reporting verification deadlines will be outlined in the ACP Decision Letter described in Section 4.1.

## 4.1 – ACP Approval Process

Building owners who wish to follow an ACP will submit a proposal in accordance with the requirements of the ACP option (outlined in following sections). DOEE will review the proposal to ensure that it aligns with all requirements. DOEE may request additional documentation or clarification on any of the submitted documents. After DOEE has completed its review, it will use the proposed information to create and issue an ACP Decision Letter.[[53]](#footnote-54)

The ACP Decision Letter will include the following:

* the status of the decision: approved, approved with modifications, or rejected,
* the performance-based and/or action-based energy performance requirements for each Cycle (used to determine alternative compliance penalty adjustments described in Chapter 6); and
* the documentation methods that will serve as the reporting/verification requirements.

After DOEE has issued the ACP Decision Letter, the building owner will have thirty (30) days to appeal the approval by submitting a revised ACP proposal through the Portal. DOEE will review the revised ACP proposal and either issue a new ACP Decision Letter, ask for additional clarification or documentation, or reject the appeal. If the appeal is rejected the building owner may proceed with the ACP as approved or use its Backup Pathway if one was stated in the proposal. All items included in the ACP Decision Letter become requirements of the Pathway for that building and a building owner must successfully complete all of the requirements to be in compliance.

## 4.2 – ACP Options for Deep Energy Retrofit

This section outlines the deep energy retrofit ACP options for building owners that have targeted a higher savings goal than required under a Principal Pathway. These options were developed with significant input from the BEPS Task Force and stakeholder groups.

### 4.2.1 – Accelerated Savings Recognition ACP Option

The Accelerated Savings Recognition (ASR) ACP option is designed for buildings owners who have achieved deep energy retrofits in Cycle 1 that meet the long-term goals of the BEPS Program and hasten energy efficiency work to meet DC’s climate goals. A building will follow the energy performance and reporting/verification requirements of its approved Principal Pathway for Cycle 1 (using the COVID-19 PHE delay evaluation year of 2026). If the energy performance at the end of Cycle 1 reaches a level listed in Table 16, the building is eligible to choose the ASR option in future Cycles. The ASR option will be applicable in future Cycles, even if the building does not meet the Standard for its property type at the beginning of that BEPS Period. The ASR option is open to all property types.

##### *Table 16 – Accelerated Savings Recognition Option Requirements*

|  |  |  |  |
| --- | --- | --- | --- |
| **Performance Levels  (Cycle 1)** | **Site EUI Savings (Cycle 1)** | **Eligibility for ASR** | **Maintained Site EUI Savings Requirement** |
| Level 1 | 36% | Cycle 2 | 27% by end of Cycle 2 |
| Level 2 | 49% | Cycle 2 and 3 | 37% by end of Cycle 2 and 3 |
| Level 3 | 59% | Cycle 2, 3, and 4 | 44% by end of Cycle 2, 3, and 4 |

The ASR option’s energy performance requirements are the building must demonstrate it has maintained at least 75% of the level's savings by the end of each Cycle where recognition is earned. For example, a building that achieves an ASR level 2 goal of 49% savings must show that it maintained at least 37% of those savings by the end of Cycle 2 and Cycle 3. Buildings that do not maintain savings will have an opportunity to implement corrective measures over the Compliance Cycle, or they will be subject to an alternative compliance penalty.

Upon approval of the Pathway Selection in future Cycles, the maintained savings energy performance and reporting/verification requirements will be outlined in an ACP Decision Letter. The Pathway Selection process and ACP Decision Letter will be completed by the deadlines of each applicable Compliance Cycle.

### 4.2.2 – Extended Deep Energy Retrofits ACP Option

The Extended Deep Energy Retrofit (EDER) ACP option is designed for affordable housing buildings (referred to as “Affordable Multifamily Housing”),[[54]](#footnote-55) rent-controlled buildings,[[55]](#footnote-56) a College/University/Hospital campus (referred to as “Campuses”), or for Cycle 1, buildings that are under financial distress due to the COVID-19 PHE[[56]](#footnote-57) that may wish to implement deeper retrofits to target higher energy savings that exceed the energy performance requirements over several Cycles. In exchange for additional time to achieve energy savings, this option requires more robust energy performance targets to make up for lost early savings.

The EDER option follows multiple Compliance Cycles built around each building or campus’s relative distance from its target under a performance-based Principal Pathway. With the EDER option, energy performance requirements are equal to the savings expected by the end of the first Cycle under a Principal Pathway multiplied by the number of Cycles the building owner requests. To ensure this option aligns with the District’s long-term energy and climate goals, DOEE has set minimum and maximum limits for the Site EUI savings targets, listed in Table 17.

Buildings eligible for the EDER option due to financial distress due to the COVID-19 PHE may only request a 2-Cycle EDER option.

The EDER option has energy performance and reporting/verification requirements for each Cycle based on the proposal outlined in Section 4.2.2.1 and set forth in an ACP Decision Letter.

*Table 17 – EDER Option Energy Performance Limits*

|  |  |  |
| --- | --- | --- |
| **Cycle Length** | **Minimum Site EUI  Savings Targets** | **Maximum Site EUI  Savings Targets** |
| 2-Cycle EDER | 30% | 40% |
| 3-Cycle EDER | 45% | 60% |

Examples of how the limits and the building’s situation will create the energy performance targets are shown in Table 18. In looking at the options for Building A in the performance-based Principal Pathways, Building A is only eligible for the Performance Pathway, which has an energy performance requirement of 20% Site EUI savings in Cycle 1. Under the EDER option, Building A would have to achieve 40% Site EUI total savings for two Cycles of time and 60% Site EUI total savings for three Cycles of time. Building B is eligible for the Standard Target Pathway, so for Cycle 1 it only has to achieve 16% in savings to comply. To have additional Cycles to complete the work under the EDER option, the savings target would be double or triple the Cycle 1 requirement. Under the Standard Target Pathway, Building C is only 9% away from its Cycle 1 requirement, so to use the EDER option the minimum limits are applied, and the building would have to commit to 30% minimum savings to have two Cycles to complete the energy efficiency improvements.

*Table 18 – EDER Option Energy Performance Requirement Examples*

|  |  |  |  |
| --- | --- | --- | --- |
| **Site EUI Savings Targets** | **Building A** | **Building B** | **Building C** |
| Existing Principal Pathway eligibility | Performance | Standard | Standard |
| Principal Pathway Minimum | 20% | 16% | 9% |
| 2-Cycle EDER Minimum | 40% | 32% | 30% |
| 3-Cycle EDER Minimum | 60% | 48% | 45% |

#### 4.2.2.1 – EDER ACP Option Plan Submission and Approval

Affordable Multifamily Housing buildings, rent-controlled buildings, Campuses, and (for the first cycle only) buildings under financial distress[[57]](#footnote-58) due to the COVID-19 PHE that wish to select the EDER option for an ACP will be required to complete the following proposal, with a Cycle 1 delayed submission deadline of April 1, 2023. In addition to the Pathway Selection form described in Section 2.5, DOEE requires that all buildings submit an EDER Proposed Milestone Plan. Additional information required if applicable for each building (either Affordable Multifamily Housing, rent-controlled, or buildings under financial distress due to the COVID-19 PHE) is designated below.

The proposal for the EDER Proposed Milestone Plan must meet the following requirements:

1. Formatting:
   1. Use plain, white, 8 ½” x 11” virtual paper with one-inch margins.
   2. Limit the Plan to 10 pages. Supporting documentation does not count in this page total.
2. Information/Sections:
   1. Building/Campus Information:
      1. Owner: describe the owner’s history, mission, and current or past projects that demonstrate the organization’s capacity to achieve the EDER option’s goals. This section should be limited to one page.
      2. Applicable building(s): general information about the building(s), including address and Portfolio Manager ID number, and a detailed breakdown of property use types in the building(s).
      3. Affordable Multifamily Housing: list the applicable affordable housing type
      4. Rent-controlled Buildings: provide the total number of dwelling units, the number of rent-controlled dwelling units, and the number of dwelling units exempt from rent-control.
   2. Proposed Description:
      1. Proposed savings target based on the examples in Table 17 and the number of Compliance Cycles requested for the EDER option
      2. A narrative explaining how the building/campus will benefit from this multi-Cycle option and how the building is constrained from meeting the energy performance requirements of the current Cycle
      3. Description of the potential EEMs, retrofits, or actions that will achieve the deep long-lasting savings by following an integrated design approach
      4. A list of proposed interim cost-effective EEMs that will be implemented throughout the Cycles and the expected year(s) of implementation
      5. Proposed timeline the building owner will follow to implement interim and final EEMs or retrofits to meet the savings target
      6. How the potential EEMs align with the District’s sustainability goals of electrification and carbon neutrality
      7. Affordable Multifamily Housing and rent-controlled buildings: description of the funding strategy that will be pursued in order to implement interim and final EEMs and/or retrofits to meet the savings target. Description should provide an estimate of the projected funding sources (property operating income, reserves, private financing, public financing, etc.) needed and the estimated costs to be incurred in order to meet the requirements for this ACP option.
   3. Supporting Documentation:
      1. Preliminary plans and documents associated with the EEMs; and
      2. Affordable Multifamily Housing: proof that the building meets the definition of Affordable Housing for the purpose of BEPS and as defined in the BEPS Compliance Regulations[[58]](#footnote-59)
      3. Rent-controlled buildings: provide the active rent-control registration number(s) and any active exemption number(s) that have been filed with the Rental Accommodations Division (RAD) of the Department of Housing and Community Development (DHCD)
      4. Buildings under financial distress due to the COVID-19 PHE: provide documentation to demonstrate good cause that the building is under financial distress[[59]](#footnote-60) as well as a narrative that demonstrates how experiencing financial distress makes it practically infeasible for the building to meet the performance requirements of other pathways in Cycle 1 (limited to 1 page)[[60]](#footnote-61)
   4. Hotels and buildings within the arts/cultural industries (i.e. buildings with the primary property type of Indoor Arena, Movie Theater, Museum, Performing Arts, and Other - Entertainment/Public Assembly) do not need to provide this documentation[[61]](#footnote-62).
   5. Backup Pathway: The owner must submit a Pathway Selection Form that indicates the Custom ACP option as the first choice and that includes a backup Pathway selection that will be used if the Custom ACP option application is rejected.
3. Submission:
   1. The EDER Proposed Milestone Plan and supporting documentation must be submitted electronically through the Portal by April 1, 2023.

DOEE will review the proposed plan and may request clarification, additional documentation, or explanations. DOEE will only approve plans that meet the intent of the EDER option to achieve robust energy performance savings in exchange for the additional time. If approved, DOEE will prepare an ACP Decision Letter that outline the energy performance requirements, reporting/verification requirements and deadlines, and the alternative compliance penalty. At a minimum, requirements will include:

* Energy performance and reporting/verification requirements for each Cycle.
* Deadlines for the EDER Milestone Reports that provide DOEE with an update on progress with supporting documentation requirements. Milestone Reports are an opportunity for a building owner to communicate challenges work with DOEE to adjust the plan accordingly to achieve the savings target.
* Deadline for the final Milestone Report submitted at the end of the applicable Cycle with supporting documentation requirements on completed actions and final savings achieved.

In reviewing energy performance and reporting/verification compliance at the end of each Cycle, buildings/campuses that do not meet the agreed-upon Cycle requirements could be removed from the Pathway. Failure to meet the energy performance or reporting/verification requirement of an ACP Decision Letter may subject the building owner to enforcement actions for that Cycle.

## 4.3 – ACP Option for New Construction or Change of Property Type

As described in Section 2.7, buildings issued a New Building Core and Shell Certificate of Occupancy from DCRA *before the beginning of the BEPS Period* (2019-2020) and did not submit a 2019 District Benchmark Report are eligible to select the New Construction/Change of Property Type ACP option.

Additionally, a building that has entered a Compliance Cycle and then undergoes a renovation that results in a change of property type during the Cycle and receives its Use Change Certificate of Occupancy from DCRA before the end of the evaluation year(s) will no longer have an accurate baseline for evaluation in the current Cycle. DOEE may allow these buildings to switch Pathways to the New Construction/Change of Property Type ACP option.[[62]](#footnote-63) Buildings that change property types may also be eligible for a delay of compliance per Chapter 5.[[63]](#footnote-64) DOEE highly encourages building owners request a delay of compliance if selecting this ACP Option if the building is undergoing to the change in property type towards the end of the Compliance Cycle.

### 4.3.1 – New Construction/Change of Property Type ACP Option Requirements

In this ACP option, the energy performance requirement would be that the building must meet or exceed its Standard (the Standard for the new Property Type in cases of a Change of Property Type) by the end of the Cycle. Performance metrics for this option are the same as the Standard Target Pathway and it follows the same reporting/verification requirements, with the exception of the deadline for the Pathway Selection form which is due one year after the building receives its certificate of occupancy. The applicable baseline and evaluation years, energy performance and reporting/verification requirements will be outlined in the ACP Decision Letter. DOEE will evaluate whether a building has met energy performance requirements through the submission of its third-party verified complete and accurate District Benchmarking Report for the applicable evaluation years(s).

## 4.4 – ACP Options for Baseline Adjustments

There are several situations where an adjustment to a building’s baseline years or Site EUI may be necessary (beyond the COVID-19 PHE delay’s adjusted evaluation years). A baseline adjustment approved under this section is granted for one Cycle only; any building seeking a baseline adjustment for a subsequent Cycle will need to reapply. DOEE will only approve adjustments that are in response to a permanent change to a building. Temporary and short-term changes (less than 5 years) that impact energy performance will not be considered for a baseline adjustment. The building will be switched to the ACP and the ACP Decision Letter will list the energy performance and reporting/verification requirements.[[64]](#footnote-65) This section provides the guidance and further explanation of DOEE’s policy related to baseline adjustments.

There are two types of baseline adjustments:

* Baseline year shift: a building may use different calendar year(s) as its baseline for the energy performance requirements. One method of baseline shifting is already allowed using the 2021 Option in the COVID-19 PHE delay, so this section covers the instances where a building may apply to use CY2018 only. This type of baseline adjustment is designed to address situations that occurred *before* the Cycle begins.
* Baseline EUI modification: a building may request a modification to the baseline Site EUI based on a measured or estimated energy penalty that is incurred for activities during the Cycle. This type of baseline adjustment is designed to address situations that occurred *after* the Cycle begins.

### 4.4.1 – Baseline Adjustment Eligibility and Methodology

A building that enters a Compliance Cycle for BEPS Period 1 may apply for a baseline adjustment if the building meets one of the following circumstances during the evaluation year (2018-2026) listed in Table 19. The actual adjustment is determined by when the circumstance occurred (either before or during the Cycle) and the specifics of the building and its situation. DOEE may, on a case-by-case basis, perform adjustments outside of the methods listed in this table to best suit the situation.

*Table 19 – Baseline Adjustment Eligible Circumstances and Methodology*

|  |  |  |  |
| --- | --- | --- | --- |
| **Circumstance** | **Description** | **Adjustment Methodology and Timeframe** | |
| **Circumstance Occurs Before Cycle Begins  (2018 – 2020)** | **Circumstance Occurs During Cycle (2021 – 2026)** |
| Previously Completed EEMs | Building implemented EEMs CY2018-2020 | Prescriptive: Credit building for points earned by EEM Performance: Shift baseline year(s) to before EEMs were implemented | N/A |
| Low Occupancy in Building | Building was below the occupancy threshold criteria in Appendix B | Shift baseline year(s) to when the building was above the occupancy threshold | N/A |
| Addition or Demolition to part of a Single Building | Buildings that add or demolish square footage that significantly affects energy consumption | Shift baseline year(s) to after addition/demolition was complete | Modify baseline EUI to account for metered or estimated energy from addition/demolition |
| New Construction or Demolition on a Campus | Campuses that construct or demolish buildings that significantly affects energy consumption | Shift baseline year(s) to after new construction or demolition | Modify baseline EUI to account for metered or estimated energy from addition/demolition |
| Historic | Buildings that demonstrate full compliance with the energy performance requirements is impossible given historic building restrictions | Shift baseline year(s) based on request | Modify baseline EUI based on request |
| New Ventilation | Buildings that were previously unventilated and planning to or have installed new ventilation systems and expect an increase in energy consumption | Shift baseline year(s) to after installation of new ventilation system | Modify baseline EUI to account for energy consumption increase |
| Low/No Global Warming Potential (GWP) Refrigerants | Buildings that replace high GWP refrigerants with low/no GWP refrigerants that result in energy efficiency losses | Shift baseline year(s) to after installation of low/no GWP system | Modify baseline EUI to account for energy consumption increase |
| Other Circumstances | Determined by DOEE and posted to the Portal | Shift baseline year(s) based on request | Modify baseline EUI based on request |

### 4.4.2 – Baseline Adjustment Process and Documentation

To grant a baseline adjustment, a building owner must submit the Baseline Adjustment Request with supporting documentation that shows good cause for granting the request. District Benchmark Results and Compliance Reports for the applicable years (described below) must be third-party verified and resubmitted with the Request:

* Baseline year shift: for the year(s) being shifted to and the year(s) being shifted from (Example: shift baseline from 2019-2020 to 2018 – all three years benchmarking report must be third-party verified)
* Baseline EUI modification: for the year(s) being modified

Because there could be a variety of documentation that could support the case for an adjustment, Table 20 lists example supporting documentation that could be submitted with the request. The list is not comprehensive and other documentation can be submitted and DOEE may request additional documentation as necessary. DOEE will then evaluate the building owner’s request, determine the type of baseline adjustment applicable, and either approve or deny the request.

##### *Table 20 – Example Supporting Documentation for Baseline Adjustment Request*

|  |  |
| --- | --- |
| **Circumstance** | **Documentation** |
| Previously Completed EEMs | Documentation demonstrating proper implementation of the measure in accordance with any of the example documentation requirements in Table 12 in Section 3.3.4.3, and energy modeling demonstrating calculated/modeled decrease in energy usage |
| Low Occupancy in Building | Documentation demonstrating the occupancy levels for either calendar years 2018-2019 or 2019-2020. |
| Addition or Demolition to Single Building or Campus | All approved permits and plans for the addition or demolition |
| Engineering calculations demonstrating an increase in expected energy usage for new building or engineering calculations demonstrating a decrease in expected energy use for the demolished building |
| If campus, annual submetering data for new building |
| Historic | A detailed description of the unique limitations placed on the building |
| ASHRAE Standard 211, Level 2 audit and effective SIR/ROI numbers demonstrating that available EEMs are practically infeasible |
| A meeting with a representative of the historic review board, the building owner, and a DOEE staff member |
| A letter from the local historic review board endorsing the baseline adjustment and restrictions placed on the building |
| Proposed O&M program per Section 3.3.4.2 |
| New Ventilation or Low/No GWP Refrigerants | Narrative of circumstance for new ventilation or refrigerant, existing conditions, and proposed new specifications |
| Engineering calculations estimating/modeling expected increase in energy usage for proposed/altered system |

### 4.4.3 – Adjusted Baseline ACP Option

The Adjusted Baseline ACP option is for buildings that requested a baseline adjustment for Cycle 1.[[65]](#footnote-66) This ACP option requires a building owner to complete the energy performance and reporting/verification requirements of the Principal Pathway selected for the baseline adjustment. Building owners requesting an adjusted baseline should select this ACP option when submitting the Pathway Selection Form or Pathway Change Application and identify the Principal Pathway they would like to follow with the adjusted baseline. Once the baseline adjustment is approved, the adjusted performance baseline or baseline year(s) will be outlined in an ACP Decision Letter.

## 4.5 – Custom Alternative Compliance Pathway Option

DOEE will consider alternative approaches to improving energy efficiency that might not be possible under the current compliance structure. To this end, building owners may propose a custom ACP option. The Custom ACP option is available to all property types.

DOEE will consider Custom ACP Option proposals that address the following core criteria:

* prioritizes energy efficiency and expects to achieve energy savings comparable to or greater than the Principal Pathways,
* addresses an existing barrier(s) in the building industry that makes it difficult to comply through the Principal Pathways,
* maintains or improves equity in the built environment for DC residents and building occupants,
* is thorough, complete, and technically achievable, and
* is measurable and verifiable by DOEE.

This section expands upon the concept of a Custom ACP option before detailing the application and approval process. Identifying what methods are *not* acceptable for compliance in a Custom ACP option is designed to help clarify the intent of the Custom ACP option process.

In most cases, DOEE will not accept a building obtaining or maintaining a third-party green/energy building certification as a Custom ACP option. Most existing certifications do not have advanced energy performance outcomes as a core requirement, so they do not meet the intent of the BEPS Program. Only a few certification programs have either significant energy performance requirements or are entirely energy-focused. The existing Principal Pathways align with the expected outcomes of these certifications in most situations and therefore DOEE encourages building owners to follow an existing Pathway rather than seeking a Custom ACP.

The primary goal of the BEPS Program is to reduce the energy demand of the District’s building stock and therefore DOEE will not accept any Custom ACP option that does not meet that goal. DOEE will not consider any “supply-side” methods as a Custom ACP option, such as installation of solar photo-voltaic systems, purchasing and retiring of renewable energy credits and carbon offsets, and power purchase agreements. The District has a separate policy, the Renewable Portfolio Standard (RPS), which is focused on reducing greenhouse gas (GHG) emissions of the District’s electrical grid supply. The RPS, BEPS Program, and other District polices are designed to work together; if they are not fully realized individually, the District will have a more difficult time achieving its end goal of net zero emissions. Therefore, DOEE will not consider a Custom ACP option for BEPS that might lead to double counting between these programs.

DOEE will publish a summary of proposed Custom ACP options on its website (based on the applicant-provided summary), along with its final status (accepted, accepted with modifications, or rejected). “Accepted with modifications” means that DOEE approves of the general concept of the application but ascribed additional requirements. DOEE expects to publish the summaries and statuses of proposed Custom ACP options on its website within six to twelve weeks after the application was received. Buildings may then use these Custom ACP options to better inform their own proposals or understand DOEE’s logic for modifying or rejecting a proposal.

### 4.5.1 – Custom ACP Option Application Process and Requirements

A Custom ACP option must be approved before a building owner can choose it as a selected Pathway. Therefore, all Custom ACP option Applications must be submitted by October 1, 2022 to be considered in time for the delayed Pathway selection deadline of April 1, 2023.[[66]](#footnote-67) DOEE will consider applications as they are submitted.

Given the timeline required to review and approve a custom ACP option, the building owner must select a Pathway from Chapter 3 or 4 as a secondary option as the building’s default approved Pathway if the custom ACP option is rejected. If the Custom ACP option application is submitted after the Pathway selection deadline, the proposed Custom ACP option must be accompanied with a request to change Pathways. DOEE will not consider a Custom ACP option application unless all the required materials are submitted. DOEE may provide comments and request that the building owner submit a revised proposal 30 days after receiving the comments.

An application for a Custom ACP option must meet the following requirements:

1. Formatting:
   1. Use plain, white, 8 ½” x 11” virtual paper with one-inch margins.
   2. Limit the Pathway description to 5 pages. Supporting documentation directly related to the efficacy of the proposed methods may be attached, but is also limited to 5 pages.
2. Information/Sections:
   1. Applicant Information
      1. Organization: Describe the organization’s history, mission, and current or past projects that demonstrate the organization’s capacity to achieve the ACP option’s goals. This section should be limited to one page.
      2. Applicable building(s): Address and Portfolio Manager ID number(s).
   2. Proposed Pathway summary: Provide a brief one-paragraph summary that explains the Pathway. This summary is not part of the 5-page proposal limit and will be made public on DOEE’s website. If the summary contains sensitive information, the building owner can provide a redacted version for publishing.
   3. Proposed Pathway description: Organize this 5-page section of the application outlined below:
      1. Purpose/objectives: State how this Custom ACP option will meet the goals of the BEPS Program of reducing energy demand in the District’s building stock to benefit the District’s energy and carbon goals and the specific objectives this Pathway will achieve or barriers (building-specific or industry-wide) that this ACP option will help overcome.
      2. Target sector: Identify the target building sector. Which type of building(s) could this Custom ACP option be used for? Will other building owners benefit from the Pathway, if so, who?
      3. Outputs: The proposal should connect the Custom ACP option to quantifiable outputs, including estimates of energy and carbon savings that would be achieved by this Pathway.
      4. Methods: Describe what EEMs will be implemented and how energy and carbon saving estimations were derived.
      5. Measurement/verification: Describe how a building owner will demonstrate energy performance requirements and how DOEE will evaluate and verify compliance. The applicant should outline specific reporting that will be submitted as part of this process.
   4. Backup Pathway: The owner must submit a Pathway Selection Form that indicates the Custom ACP option as the first choice and that includes a backup Pathway selection that will be used if the Custom ACP option application is rejected.
3. Submission**:**
   1. Application and supporting documentation must be submitted electronically through the Portal.

# Chapter 5 – Delay of Compliance

Under the CEDC Act, a building has five (5) years from the date the Standards are established to meet energy performance and reporting/verification requirements. If a building owner needs additional time to meet a Pathway’s energy performance requirements that extends beyond the end of the Compliance Cycle, it must obtain DOEE approval of a delay to avoid an alternative compliance penalty, discussed in Section 6.1. The BEPS Compliance Regulations describe the procedures a building owner must follow to request a delay and the criteria DOEE will use to decide whether to grant a delay.[[67]](#footnote-68) This chapter provides further guidance on the eligibility criteria, how to apply for a delay, and how DOEE will evaluate applications.

A building owner should request a delay only if meeting the energy performance requirement is practically infeasible by the end of a Cycle.[[68]](#footnote-69) DOEE may grant a delay if a building owner demonstrates that the infeasibility to meet the energy performance requirements is due to one or more of the specific circumstances identified in the BEPS Compliance Regulations and described in Section.5.2 or 5.3.

If a building owner needs additional time to meet a reporting or verification deadline, the owner may request an extension (Section 2.2). For example, the building owner may request an extension if more time is needed for Pathway selection or to meet a reporting deadline on the Prescriptive Pathway. If a situation occurs that could cause a building to fail to meet energy performance requirements at the end of a Cycle, the building owner should request a delay, not an extension.

A building on any Pathway may request a delay of up to three (3) years.[[69]](#footnote-70) Qualifying affordable housing building owners are eligible for more than three (3) years of delay.[[70]](#footnote-71) Delays will not change the start of the following BEPS Period or new Compliance Cycle; the building will be subject to the requirements of the new Cycle at the same time it is completing the prior Cycle. If a delay is approved, the building may be placed on an ACP (Section 5.2.4). For qualifying affordable housing buildings, additional requirements are outlined in Section 5.3 for extended delays.

All buildings, no matter the property type, Pathway, or length of delay requested, may request a delay at any point during the Cycle and must meet the criteria and follow the process described in Section 5.2. DOEE is more likely to approve a delay request if the building owner has demonstrated compliance efforts through other strategies first (such as improved operations and maintenance efforts, implemented low/no-cost energy efficiency measures, conducted an energy audit, etc.). DOEE will not automatically approve requests for delays, nor will DOEE necessarily grant the duration requested and may only grant a portion of requested time. DOEE may also establish conditions for the approved delay. The terms of each delay may differ depending on the building’s approved Pathway.

## 5.1 – COVID-19 PHE Delay

For Cycle 1 only, a building owner shall receive a one (1) year delay due the COVID-19 PHE upon DOEE receipt of the building’s 2020 District Benchmark Results and Compliance Report that demonstrates the building was operational during that time. A building owner can request to opt out of this delay. Opting out of the delay will retain the original Compliance Cycle dates and reporting/verification deadlines in the BEPS Compliance Regulations. All building owners that receive this delay, except qualifying affordable housing, would only be able to request up to two additional years of delay through the process outlined in this chapter, thereby maintaining the maximum total three-year delay allowed.[[71]](#footnote-72)

## 5.2 – Eligible Circumstances and Request Process for All Buildings

DOEE will grant a delay if a building owner shows good cause for the delay. To demonstrate good cause, the building owner seeking a delay must provide substantial evidence or documentation that demonstrates to the satisfaction of DOEE (1) the occurrence or existence of one or more of the eligible circumstances and (2) that due to the circumstance, meeting the energy performance requirements by the end of the Compliance Cycle is infeasible. Building owners should follow the process in this section for requesting the delay.

### 5.2.1 – Eligibility Circumstances

Buildings that meet one or more of the following circumstances may request a delay.[[72]](#footnote-73) Additional criteria for qualifying affordable housing are covered in Section 5.3.

* Financial distress
  + In reference to BEPS, financial distress means a building owner cannot honor financial obligations, including payment of ordinary and necessary 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.
* Change of ownership during a Compliance Cycle
  + Energy performance requirements are attached to the building, not the building owner. If the transfer of ownership creates unavoidable circumstances which prevent a building from achieving the energy performance requirements within the applicable Compliance Cycle, the new building owner may request a delay. Whether the new building owner and DOEE were properly notified of the applicable compliance requirements in accordance with Section 2.9 could affect DOEE’s approval of a delay.
* Major renovation
  + A building may be eligible for a delay if a major renovation will be completed within the timeframe allowed by the delay.
* Building becomes unoccupied
  + If a building’s occupancy falls below the occupancy thresholds during a Compliance Cycle per Appendix B, the building may be eligible for a delay to accommodate tenant fit-out and/or occupant turnover procedures to demonstrate a stable energy performance for performance evaluation. DOEE must be notified if building becomes unoccupied within one (1) year of the time it falls below the occupancy threshold. Building owners cannot manipulate occupancy levels or evict tenants to qualify for a delay. Such buildings will not be eligible for a delay and if such a scenario is discovered after a Compliance Cycle ends, a building owner may be subject to an enforcement action as outlined in Chapter 6.
* Pending demolition
  + An owner planning to completely demolish a building immediately after the end of a Cycle may apply for a delay. Upon complete demolition, the building would then be granted an exemption in accordance with Section 2.7. If the building is not completely demolished within the delay period, the building owner could be subject to an alternative compliance penalty.
* Change in Property Type
  + If a building undergoes a modification that would alter its Property Type in Portfolio Manager, DOEE may approve a delay (ex: a building changes from Multifamily to Office).
* COVID-19 PHE
  + For Cycle 1 only, owners of buildings consuming energy during the COVID-19 PHE will receive a delay in accordance with Section 5.1.
* Historic Building
  + Buildings that are on the [DC Inventory of Historic Sites](https://planning.dc.gov/page/dc-inventory-historic-sites) (maintained by the District Office of Planning) or is designated as contributing to a historic district that experience a delay in project implementation due to historic preservation board approval may be eligible for a delay.
* Innovative approach to energy efficiency
  + Buildings pursuing innovative EEMs or strategies that have not been widely implemented by the local building industry, which result in implementation delays inherent to novel design (such as a longer design development process, lengthier permit review process, extended product lead times, prolonged installation, or troubleshooting and commissioning) may be eligible for a delay.

### 5.2.2 – Process and Documentation Requirements

A building owner may apply for a delay by submitting a Delay of Compliance Request through the Portal. Applicants must specify the length of delay requested, provide a narrative explaining the need for the delay, and identify how one or more of the eligibility criteria in Section 5.2.1 creates the infeasibility of meeting the Pathway requirements on time.

Applicants must substantiate their delay request by providing the supporting documentation or information listed in Sections 5.2.2.1 and 5.2.2.2.

#### 5.2.2.1 – Documenting Eligible Circumstances

Applicants must provide supporting documentation to demonstrate good cause for approval of the delay based on one or more of the eligibility criteria, with example documentation listed in Table 21. Building owners are encouraged to submit as many of these documents or other supporting documents as necessary to demonstrate good cause. This list is not comprehensive and other documentation can be submitted. DOEE may also request additional documentation.[[73]](#footnote-74) Any information that falls within exemptions from disclosure pursuant to D.C. Code § 2-534, including exemptions for personal or financial information, will be protected from public release.

##### *Table 21 – Example Documentation for Eligibility Determination*

|  |  |
| --- | --- |
| **Eligibility Criteria** | **Documentation** |
| Financial Distress | Audited financial statements for the most recent three years |
| Evidence of a current tax lien on the building/property or a lien removed within the two- years prior to the delay request |
| Evidence of a court-appointed receiver in control of the building/property |
| Evidence of a financial institution owning the building/property due to default by the owner |
| A deed that has been acquired in lieu of foreclosure within the two years prior to the delay request |
| A notice of default on the mortgage |
| Evidence of pursuing the following support options and finding them to be insufficient to offset the building’s conditions of financial distress:   * financing options referenced by the Building Innovation Hub * meeting with DC Green Bank to review financing options * meeting with DC Sustainable Energy Utility (DCSEU) to review incentive and EEM implementation options * inquiring with other partners or entities that provide financial support, with interaction documented from initial inquiry to final outcome |
| Change of Ownership | Change of Ownership Disclosure Acknowledgment Letter (Section 2.9) signed by both the buyer and the seller |
| Completed Sale of Property Disclosure Report |
| Narrative explaining, to satisfaction of DOEE, building owner’s inability to comply on time |
| Pending Major Renovation | Alteration permit approval from DCRA |
| ≥75% Construction Documents |
| Financial commitment statement from a public-funding agency, investor, or financial institution demonstrating formal intention to complete a major renovation within the current BEPS Period or, at the latest, within the timeframe established by the delay request. |
| Other detailed evidence of pending major renovation including executed tenant lease agreements, design documents, scopes of work, owner’s project requirements, etc. |
| Building becomes Unoccupied | Third Party Verified Benchmarking Results and Compliance Report |
| Documentation from District Government agencies, including DCRA, DC’s Office of Tax & Revenue (OTR), or the Executive Office of the Mayor (EOM), showing the building is registered as vacant |
| Site visit by DOEE staff |
| Pending Demolition | DCRA Raze Permit or Application |
| Change in Property Type | Use Change Certificate of Occupancy, permits, or other documentation from DCRA indicating the change of use |
| Third Party Verified Benchmarking Results and Compliance Report |
| Site visit by DOEE staff |
| COVID-19 PHE | Compliant District Benchmark Results and Compliance Report that demonstrates building was consuming energy during CY2020 |
| Historic Building | A detailed description of the unique limitations placed on the building |
| ASHRAE Standard 211, Level 2 audit and effective SIR/ROI numbers demonstrating that available EEMs are practically infeasible |
| A meeting with a representative of the historic review board, the building owner, and a DOEE staff member |
| A letter from the local historic review board endorsing the delay and restrictions placed on the building |
| Proposed O&M program per Section 3.3.4.2 |
| Innovative Approach | Building owner has identified, in detail, the benefits of the innovation, the novelty of the project, demonstrated that the EEM has not been widely implemented by the local building industry, and why delays are anticipated and/or cannot be avoided |

#### 5.2.2.2 – Demonstrating Infeasibility

The building owner must also demonstrate how the circumstances of the applicable eligibility criteria make it practically infeasible for the building to meet the performance requirements during the Compliance Cycle. The presence of one or more of the eligible circumstances does not necessarily mean that the building cannot meet performance requirements. For example, even with a change in building ownership, it may be possible to implement energy efficiency improvements before or after the transfer. On the other hand, a building owner with financial distress may have applied for a grant to pay for energy efficiency improvements but will not receive funding until too late in the Cycle to meet the compliance deadline, demonstrating practical infeasibility.

DOEE makes determination of practical infeasibility based on the evidence submitted by the building owner when requesting a delay.[[74]](#footnote-75) DOEE will consider whether there are circumstances beyond the control of the building owner that:

* would impose a significant burden on the building’s ability to meet the energy performance requirements during the Compliance Cycle, OR
* render compliance not possible without significant burden that could be avoided if a delay is approved.

The building owner must provide a narrative that clearly connects the submitted documents to demonstrate that BEPS implementation is practically infeasible without additional time. DOEE will also consider whether additional requirements are needed to accompany a potential delay to ensure the building is moving toward compliance with its Standard.[[75]](#footnote-76)

### 5.2.3 – Delay of Compliance Approval Process

DOEE will approve a delay if the applicant demonstrates, to the satisfaction of DOEE, good cause that one or more of the eligibility criteria exist and that the documentation provided demonstrated practical infeasibility.[[76]](#footnote-77) DOEE will review the request to ensure that it aligns with all requirements. Within 60 days of receiving the request, DOEE will notify the applicant in writing if the delay is approved, approved with modifications, or rejected. DOEE may provide comments and request applicants make additional efforts to avoid the delay, or may request additional documentation. DOEE may also request a meeting or call with the applicant to discuss the building’s delay request. After DOEE has completed its review, it will use the proposed information to create and issue a Delay of Compliance Decision Letter.[[77]](#footnote-78)

The Delay of Compliance Decision Letter will include the following:

* the status of the decision: approved, approved with modifications, or rejected,
* the length of the delay granted,
* any modifications to existing performance or reporting/verification requirements, and
* any additional requirements as necessary.

After DOEE has issued the Delay of Compliance Decision Letter, the building owner will have thirty (30) days to appeal the decision by submitting a revised Delay of Compliance Request through the Portal. DOEE will review the revised request and either issue a new Decision Letter or ask for additional clarification or documentation. If the appeal is rejected the decision in the original Delay of Compliance Decision Letter stands and all items included in the letter become requirements of the Pathway for that building and a building owner must successfully complete all of the requirements to be in compliance. After being granted a delay, a building owner’s failure to meet updated deadlines or other requirements set forth in the Delay of Compliance Decision Letter may subject the building owner to enforcement actions or an alternative compliance penalty.

### 5.2.4 – Delay of Compliance Performance ACP Option

An approved delay may require a shift in the evaluation period and/or adjusted reporting/verification requirements for its approved Pathway.[[78]](#footnote-79) As a result, the building’s evaluation period might occur during the next Cycle. For example, a building following the Performance Pathway may receive a one-year delay in the reporting/verification requirement to demonstrate a 20% savings in Site EUI and a one-year delay of the deadline to submit a completed actions report. This means for Cycle 1, the building would have to demonstrate 20% savings in CY2027 (instead of CY2026) and submit a completed action report by April 1, 2028. For more in-depth examples please see Appendix C.

To address complications from overlapping Cycles caused by a delay, DOEE may place a building on a Delay of Compliance Performance (DCP) ACP option in the following Cycle to ensure the building still achieves the same energy performance as buildings that did not receive a delay. Buildings will be placed on the DCP option in the next Cycle if they select the Performance Pathway for that Cycle after receiving a delay in the current Cycle. The energy performance requirements are the building must demonstrate a 20% decrease in normalized Site EUI in the evaluation years of Cycle 2 (2-year average of the last two years of the Cycle), as compared to the higher of the Cycle 1’s expected or measured normalized Site EUI.

In most cases, only buildings that select the Performance Pathway for the next Cycle are required to follow a DCP option. Buildings that select the Standard Target Pathway can meet the Standard as their delayed energy performance requirements. Buildings selecting the Prescriptive Pathway can still complete Phase 1 and 2 for Cycle 2 while completing the requirements from the previous Cycle. Buildings that receive a delay while following an ACP option in Cycle 1 will be informed by DOEE of impacts to their future energy performance requirements in Cycle 2.

## 5.3 – Criteria and Process for Qualifying Affordable Housing Extended Delay

DOEE may approve a delay of compliance for more than three (3) years (extended delay) for qualifying affordable housing buildings (Section 5.3.1).[[79]](#footnote-80) The BEPS Compliance Regulations define qualifying affordable housing as a building that is primarily residential, contain 5 or more dwelling units, and can demonstrate that: (1) use restrictions or other covenants require that at least 50% of the building’s dwelling units are occupied by households that have household income of less than 50% of the area median income (AMI); (2) at least 50% of the dwelling units rent at levels that are affordable to households with incomes less than or equal to 50% of the area median income; or (3) the building is a Limited-equity cooperative (LEC).[[80]](#footnote-81) All qualifying affordable housing owners seeking an extended delay must meet the eligibility criteria and complete the process outlined in this section.

DOEE will only approve an extended delay request equal to one (1) Compliance Cycle in length to help maintain Cycle alignment. Owners of qualifying affordable housing proactively seeking delays longer than one Cycle should pursue the Extended Deep Energy Retrofit Pathway (Section 4.2.2). Buildings seeking an extended delay for consecutive Cycles will still be subject to the Standard for each new Cycle and must re-apply for a delay or extended delay for each Cycle, if needed.

### 5.3.1 – Eligible Circumstances

The first step is to determine if the building meets the definition of qualifying affordable housing as defined in the BEPS Compliance Regulations. If the building meets the qualifying affordable housing definition, an extended delay may be requested if the building:

* meets one or more of the delay eligibility criteria in Section 5.2.1,
* can demonstrate practical infeasibility as described in Section 5.2.2 after taking advantage of available BEPS support resources to make progress toward compliance during the Cycle, and
* completes an Extended Delay Milestone Plan to demonstrate it has sought compliance assistance and to propose a plan and milestones for moving forward.

### 5.3.2 – Process and Documentation Requirements

A building owner may apply for an extended delay by submitting an Extended Delay of Compliance Request through the Portal. Applicants must provide supporting documentation that proves the affordable housing qualification, eligible circumstances, and practical infeasibility, and provide a plan for moving forward (outlined in Sections 5.3.2.1 through 5.3.2.4).

Building owners may request a meeting or call with DOEE prior to submitting the request to ask questions and align expectations. DOEE may provide comments and ask applicants to attempt additional courses of action to avoid an extended delay. DOEE may also request a meeting or call with the applicant to discuss the delay request. DOEE may grant an extended delay if the applicant demonstrates good cause, to the satisfaction of DOEE, that one or more of the eligibility criteria exist and that these criteria make it practically infeasible to meet energy performance requirements during the Compliance Cycle or within a three (3) year delay.[[81]](#footnote-82)

#### 5.3.2.1 – Documenting Affordable Housing Qualification

Owners applying for an extended delay must submit documentation as evidence that the building meets the definition of qualifying affordable housing (Section 5.3.1). Table 22 contains examples of documentation a building owner may use to demonstrate that their building is qualified affordable housing. This list is not comprehensive and other documentation that may demonstrate affordable housing qualifications can be submitted.

##### *Table 22 – Example Documentation for Affordable Housing Qualification*

|  |  |
| --- | --- |
| **Affordability Criteria** | **Documentation** |
| Min. 50% of dwelling units required to be rented by households earning less than 50% AMI | Copy of covenant or other formal restriction that shows the building is required to rent to households earning less than 50% AMI. |
| Min. 50% of dwelling units rent at levels that are affordable to households earning less than 50% AMI | Financial ledger showing at least 50% of dwelling units are renting at or below 50% AMI. |
| Limited-Equity Cooperative | Cooperative agreement or other documentation demonstrating membership sale prices are limited to be affordable to incoming low- and moderate-income residents. |

#### 5.3.2.2 – Documenting Eligible Circumstances

Owners applying for an extended delay must document the existence of one or more eligibility criteria in accordance with Section 5.2.2.1.

#### 5.3.2.3 – Demonstrating Infeasibility

The building owner must also demonstrate how the circumstances of the applicable eligibility criteria make it practically infeasible for the building to meet the performance requirements during the Compliance Cycle. DOEE will consider whether there are circumstances beyond the control of the building owner that would impose a significant burden on the building’s ability to meet the energy performance requirements during the Cycle, or render compliance not possible without significant burden that could be avoided if a delay is approved.

Owners applying for an extended delay must submit a narrative as part of the Extended Delay of Compliance Request that describes the efforts that were pursued to avoid an extended delay. The narrative should include:

* what efforts were made to attempt on-time compliance,
* why they were unsuccessful and/or why they left needs unmet,
* what technical and/or financial assistance from at least three of DOEE’s supporting partners (such as DC Green Bank, DCSEU, Building Innovation Hub, or other utility-led energy efficiency incentive programs, etc.) were pursued to avoid or minimize the need for an extended delay, and
* why a delay would enable compliance better than any alternative (such as the Extended Deep Energy Retrofit ACP or a Custom ACP options).

#### 5.3.2.4 – Extended Delay Milestone Plan

Along with the Extended Delay of Compliance Request form, building owners must propose a plan for how they will achieve compliance with the energy performance and reporting/verification requirements in the extended timeline through submission of the Extended Delay Milestone Plan through the Portal, along with any supporting documentation.

The proposal for the Extended Delay Milestone Plan must meet the following requirements:

1. Formatting:
   1. Use plain, white, 8 ½” x 11” virtual paper with one-inch margins.
   2. Limit the Plan to 10 pages. Supporting documentation does not count in this page total.
2. Information/Sections:
   1. Building/owner Information:
      1. Building owner: Describe the owner’s history, mission, and current or past projects that demonstrate the organization’s capacity to achieve the Pathway’s goals. This section should be limited to one page.
      2. Applicable building(s): General information about the building(s), including address and Portfolio Manager ID number, and a detailed breakdown of property use types in the building(s).
      3. Applicable qualifying affordable housing type
   2. Proposed Milestone(s) Description:
      1. Proposed savings target the building will achieve by the end of the extended delay which is equal to or greater than a 20% site EUI reduction
      2. Narrative explaining how the extended delay will benefit occupants and the building generally and how the building is financially and/or technically constrained from meeting the energy performance requirements of the current Cycle
      3. Description of how the building will achieve the energy savings; any preliminary plans and documents associated with a retrofit if applicable
      4. List of proposed interim cost-effective EEMs that will be implemented throughout the Cycles
      5. Proposed timeline the building owner will follow to implement interim and final EEMs or retrofits to meet the savings target
      6. Description of the funding strategy that will be pursued in order to implement interim and final EEMs and/or retrofits to meet the savings target. Description should provide an estimate of the projected funding sources (building/property operating income, reserves, private financing, public financing, etc.) needed and the estimated costs to be incurred in order to meet the requirements for this Pathway
   3. Future Cycle Considerations
      1. description of how the building plans to comply with subsequent compliance Cycles
3. Supporting Documentation:
   1. Preliminary documents associated with the EEMs
4. Submission:
   1. Milestone plan and supporting documentation must be submitted electronically through the Portal.

DOEE makes a determination of practical infeasibility based on evidence submitted by the building owner when requesting a delay. DOEE will consider whether there are circumstances beyond the control of the building owner that:

* prevent the building from procuring sufficient assistance to offset the constraints inherent to qualifying affordable housing properties, AND
* would impose a significant burden on the building’s ability to meet the energy performance requirements during the Compliance Cycle and/or a three (3)-year delay, OR
* render compliance not possible without significant burden that could be avoided if an extended delay is approved.

The building owner must provide a narrative that clearly connects the submitted documents to demonstrate that BEPS compliance is practically infeasible without additional time – exceeding 3 years – to comply. DOEE will also consider whether additional requirements are needed to ensure the building is moving toward compliance with its Standard.[[82]](#footnote-83)

### 5.3.3 – Extended Delay of Compliance Approval Process

DOEE’s preferred outcome for approving extended delays is for the building to target and achieve additional energy savings beyond the one-Cycle energy performance requirement of 20% site EUI reduction. This preference is based on upholding the intent of the CEDC Act to reduce building energy use as well as preparing buildings for compliance in subsequent Cycles. As a result, the inclusion of substantive plans to achieve greater than 20% energy savings during an extended delay will strengthen a building’s application for a delay. Therefore, to improve chances of delay-request approval and long-term ability to meet BEPS requirements, buildings should plan to achieve greater than 20% energy savings when seeking a delay. While this is not mandatory, substantive plans for energy savings beyond 20% may offset shortcomings in an extended delay application.

DOEE will review the extended delay request to ensure that it aligns with all requirements. DOEE may request additional documentation or clarification on any of the submitted documents. After DOEE has completed its review, it will use the proposed information to create and issue an Extended Delay of Compliance Decision Letter.[[83]](#footnote-84)

The Extended Delay of Compliance Decision Letter will include the following:

* the status of the decision: approved, approved with modifications, or rejected,
* energy performance and reporting/verification requirements for each Cycle,
* deadlines for the Milestone Reports that provide DOEE with an update on progress with supporting documentation requirements. Milestone Reports are an opportunity for a building owner to communicate challenges work with DOEE to adjust the plan accordingly to achieve the savings target,
* deadline for the final Milestone Report submitted at the end of the applicable Cycle with supporting documentation requirements on completed actions and final savings achieved,
* any modifications to existing performance or reporting/verification requirements, and
* any additional requirements as necessary.

After DOEE has issued the Extended Delay of Compliance Decision Letter, the building owner will have thirty (30) days to appeal the decision by submitting a revised Extended Delay of Compliance Request through the Portal. DOEE will review the revised request and either issue a new Decision Letter or ask for additional clarification or documentation. If the appeal is rejected, the decision in the original Extended Delay of Compliance Decision Letter stands and all items included in the letter become requirements of the Pathway for that building and a building owner must successfully complete all of the requirements to be in compliance.

A building that is approved for an extended delay and meets or exceeds the requirements of its Extended Delay of Compliance Decision Letter may re-apply for an extended delay in future Cycles by following the actions in Section 5.3. Eligibility to re-apply does not guarantee that DOEE will approve the subsequent request for an extended delay. A building that does not meet the requirements of its Extended Delay of Compliance Decision Letter will not be eligible to apply for an extended delay in the next Cycle and may be subject to enforcement actions or an alternative compliance penalty.

# Chapter 6 – Enforcement

The CEDC Act provides several mechanisms to promote compliance with BEPS requirements: an alternative compliance penalty for failure to meet the energy performance requirements of a building’s approved Pathway, civil infraction fines for violation of the Act or regulations, or a civil enforcement action.[[84]](#footnote-85) The BEPS Compliance Regulations establish the alternative compliance penalty (“penalty”) amounts for failure to meet the energy performance requirements of each Pathway and outline how they will be determined.[[85]](#footnote-86) Additionally, the BEPS Schedule of Fines establishes individual civil infractions for failure to meet specific interim Pathway requirements.[[86]](#footnote-87) This chapter aggregates all penalty and fine information and further explains DOEE’s policy related to BEPS enforcement.

## 6.1 – Alternative Compliance Penalty

Under the CEDC Act and the BEPS Compliance Regulations, building owners that fail to demonstrate complete implementation of the energy performance requirements of a Compliance Pathway by the end of the Compliance Cycle must pay an alternative compliance penalty established by DOEE.[[87]](#footnote-88) For example, if an office building that can receive an ENERGY STAR Score is on the Performance Pathway and fails to meet the 20% Adjusted Site EUI energy performance requirement at the end of the Compliance Cycle, the building owner must pay a penalty.

An alternative compliance penalty is based on the gross floor area of the building. The penalty amounts are set to promote compliance with Pathway requirements and deter non-compliance. The BEPS Compliance Regulations establish the maximum alternative compliance penalty amounts with the maximum penalty for buildings at ten dollars ($10) per each square foot of gross floor area. The gross square footage is based on the y ENERGY STAR™ Portfolio Manager calculation as reported on the building’s most recent District Benchmark Results and Compliance Report. The maximum penalty for a building shall be no greater than seven million five hundred thousand dollars ($7,500,000). For College/University Campuses and Hospital Campuses there is a single maximum penalty amount of $7,500,000.[[88]](#footnote-89)

The maximum penalty for each building or campus will be adjusted proportionally based to the building or campus’ actual performance relative to its Pathway target.[[89]](#footnote-90) The adjustment factors vary due to the different energy performance requirements of each Pathway. The adjustment factor for each Pathway is listed in Table 23.

##### *Table 23 – Alternative Compliance Penalty Adjustment by Pathway*

|  |  |  |
| --- | --- | --- |
| **Pathway** | **Adjustment Factor** | **Example** |
| Performance Pathway  under §§ 3518.1(a) or 3518.1(e)(1) | The penalty shall be adjusted by calculating the percent of Site EUI reduction achieved divided by twenty percent (20%). | Building A achieves a 10% reduction in Site EUI. Its penalty is reduced by fifty percent (50%) (10/20 = 50%). |
| Standard Target Pathway under §§ 3518.1(b) or 3518.1(e)(2) | The penalty will be adjusted at two points:  1. A building approved for the Standard Target Pathway, would require less than a twenty percent (20%) reduction in Source EUI to meet the BEPS, and will receive an adjustment to its penalty for its initial performance relative to the BEPS.  2. Savings achieved at the end of the Compliance Cycle divided by savings required to meet BEPS. | 1. Building B starts ten (10) points away from the BEPS at the beginning of the Compliance Cycle. All buildings of building B’s property type could meet the BEPS with at most a twenty percent (20%) reduction in Source EUI if they started the Compliance Cycle at fifteen (15) points away from the BEPS.  (1-(10/15) = 33%)  2. Building B gains four (4) points by the end of the Compliance Cycle but needs 10 (10) total to meet the standard. Therefore, adjusted penalty is then reduced again by forty percent (40%).  (4/10= 40%)  3. The final penalty is reduced by sixty percent (60%), and thus is forty percent (40%) of the maximum alternative compliance penalty described in § 3521.1.  (1-33%)\*(1-40%)) = 40% |
| Prescriptive Pathway under § 3518.1(c) | The penalty shall be adjusted by calculating the number of Prescriptive Pathway points actually earned divided by total needed. | Building C completes measures worth fifteen (15) points but needs twenty-five (25) to meet the energy performance requirements. Its penalty is reduced by sixty percent (60%)  (15/25 = 60%). |
| Alternative Compliance Pathway under § 3518.1(d) | The penalty shall be adjusted using adjustment factors described in the Alternative Compliance Pathway approval prepared by DOEE, and shall be no less stringent than penalties for other Pathways, as described under § 3519.8. |  |

DOEE will assess a penalty at the end of the Compliance Cycle following the final reporting/verification deadline of the building’s approved Pathway and the building or campus’ benchmarking reporting deadlines. If a building owner has not submitted the necessary information for DOEE to determine whether the building or campus has met the energy performance requirement, DOEE will assess the maximum penalty amount. DOEE will also assess the maximum alternative compliance penalty if a building owner knowingly submits inaccurate information.[[90]](#footnote-91)

Additionally, any building owner that knowingly withholds information, submits inaccurate information, knowingly implements an energy efficiency measure that reduces indoor environmental quality, or implements any other energy efficiency measure that poses a threat to the health and safety of a building occupant or user may be subject to assessment of the maximum alternative compliance penalty regardless of the building’s performance relative to its Pathway target.[[91]](#footnote-92)

DOEE will assess and enforce payment of the penalty using the civil infractions process described in Section 6.2. If building ownership changes during the BEPS Period, the owner of the building at the end of the Compliance Cycle is responsible for payment of the alternative compliance penalty.[[92]](#footnote-93)

## 6.2 – Civil Infractions

DOEE may issue a civil infraction fine for a violation of the CEDC Act or BEPS Compliance Regulations. For example, if a building owner fails to select a Compliance Pathway, DOEE may assess a $1,000 fine. DOEE may also assess a fine if a required document is not submitted on time, a submitted document is not complete and accurate, or the submission is blank or contains false information. To possibly avoid civil infractions, building owners or project teams who are aware they will miss a deadline should contact DOEE well in advance of the deadline to request an extension as described in Section 2.2.

Civil infractions for BEPS violations are listed in Title 16, Chapter 40, of the DCMR (also called the BEPS Schedule of Fines), and summarized in Table 24. The fine escalates if a building owner has two or more violations of the same provision.[[93]](#footnote-94)

##### *Table 24 – Civil Infractions*

|  |  |  |
| --- | --- | --- |
| **Infraction** | **Initial Fine** | **Pathway** |
| Failure to submit selection of a Compliance Pathway | $1,000 | All |
| Failure to submit a report on completed actions | $500 | Performance and Standard Target |
| Failure to submit an energy audit | $500 | Prescriptive |
| Failure to submit an action plan | $500 | Prescriptive |
| Failure to submit an implementation report | $500 | Prescriptive |
| Failure to submit an evaluation, monitoring, and verification report | $500 | Prescriptive |
| Failure to submit additional documentation | $500 | Prescriptive |
| Failure to submit documentation | $500 | Alternative |
| Failure to submit supporting documentation | $500 | All |
| Failure to submit a complete and accurate plan or report or complete and accurate documentation | $500 | All |
| Failure to provide the buyer of a building with information prior to a transfer or sale | $500 | All |
| Failure to notify DOEE of the transfer of ownership of a building within sixty (60) days of the transfer | $500 | All |

DOEE has three enforcement tools to promote compliance with BEPS requirements during and after a Compliance Cycle: notice of violation, enforcement notice, and notice of infraction.[[94]](#footnote-95)

* A notice of violation (NOV) is a warning. It notifies the building owner of a violation and the consequences for failure to come into compliance, but does not impose a penalty or fine. DOEE may use an NOV to notify the building owner of its alterative compliance penalty, described in Section 6.1, if the building fails to meet the energy performance requirements of its approved Pathway.
* An enforcement notice is used to assess a civil infraction fine or alternative compliance penalty. A building owner may pay the fine or penalty or appeal the fine or penalty to DOEE following the directions on the notice.
* If the civil infraction fine or penalty is not resolved by an NOV or enforcement notice, DOEE may issue a notice of infraction (NOI). A building owner may request a hearing on the NOI at the DC Office of Administrative Hearings, a neutral administrative court. An administrative law judge may issue a court order imposing a fine or penalty. This court order can be appealed at the DC Court of Appeals.

DOEE may issue an NOV before issuing an NOI, but may also issue an NOI directly without first issuing an NOV. DOEE may place a building on a different Compliance Pathway as a result of violations, including a failure to submit a complete and accurate report, failure to implement a requirement of a Pathway, or failure to demonstrate required energy performance requirements. Buildings that receive a fine and fail to correct the infraction shall continue to be fined in accordance with the BEPS Schedule of Fines. For more information regarding the civil infraction enforcement process, please go to DOEE’s [Office of Enforcement and Environmental Justice](https://doee.dc.gov/oeej) web page.

## 6.3 – Judicial Enforcement

In addition to, or instead of, an alternative compliance penalty or civil infraction, the DC Attorney General may file an enforcement action against a building owner in DC Superior Court for damages, cost recovery, reasonable attorney and expert witness fees, or an injunction (a court order for a specific action).[[95]](#footnote-96)

# Appendices

A – Compliance Process Flow Chart

B – Occupancy Thresholds

C – Delay of Compliance Impact Examples

D – References

E – Definitions

## Appendix A – Compliance Process Flow Chart



## Appendix B – Average Annual Occupancy Thresholds

This section outlines the average annual occupancy thresholds that a building must be below during both baseline years of its approved Pathway (2019-2020 or 2018-2019) to be eligible to receive a baseline adjustment. If this circumstance applies, a building owner may submit a Baseline Adjustment Request form through the Portal.

Occupancy is not just a measurement of how many people are in the building. As defined by Portfolio Manager:

“Occupancy is the percentage of your property’s Gross Floor Area (GFA) that is occupied and operational. For example, if you have a 10-story building, that on average has nine of its ten floors fully leased and occupied, the occupancy would be 90%. If you have people working on all floors/areas of your building, then you are 100% occupied.”[[96]](#footnote-97)

In addition to measuring the amount of occupied space, occupancy measures the proportion of time a space is operational over the course of a calendar year. For example, if a retail store is operational six months of the year but is then not in use for the other six months of the year then its annual average occupancy is 50% (please note that times where a retail store open but not at person capacity should be counted as occupied).

In most cases, DOEE has set the occupancy threshold required by the EPA ENERGY STAR® Commercial and Industrial program for a building to apply and receive ENERGY STAR certification. For buildings that cannot receive this certification or for buildings that cannot receive an ENERGY STAR Score, DOEE sets the threshold to at least fifty percent (50%).

Table 25 lists the occupancy thresholds by Portfolio Manager Primary Property Type.

##### *Table 25 – Average Annual Occupancy Thresholds*

|  |  |
| --- | --- |
| **Portfolio Manager Property Type** | **Occupancy Threshold** |
| Adult Education | 50% |
| Ambulatory Surgical Center | 50% |
| Aquarium | 50% |
| Automobile Dealership | 50% |
| Bank Branch | 55% |
| Bar/Nightclub | 50% |
| Barracks | 50% |
| Bowling Alley | 50% |
| Casino | 50% |
| College/University | 50% |
| Convenience Store with Gas Station | 50% |
| Convenience Store without Gas Station | 50% |
| Convention Center | 50% |
| Courthouse | 55% |
| Data Center | 50% |
| Distribution Center | 50% |
| Drinking Water Treatment & Distribution | 50% |
| Enclosed Mall | 50% |
| Energy/Power Station | 50% |
| Fast Food Restaurant | 50% |
| Financial Office | 55% |
| Fire Station | 50% |
| Fitness Center/Health Club/Gym | 50% |
| Food Sales | 50% |
| Food Service | 50% |
| Hospital (General Medical & Surgical) | 50% |
| Hotel | 60% |
| Ice/Curling Rink | 50% |
| Indoor Arena | 50% |
| K-12 School | 67% |
| Laboratory | 50% |
| Library | 50% |
| Lifestyle Center | 50% |
| Mailing Center/Post Office | 50% |
| Medical Office | 50% |
| Mixed Use Property | 50% |
| Movie Theater | 50% |
| Multifamily Housing | 80% |
| Museum | 50% |
| Non-Refrigerated Warehouse | 50% |
| Office | 55% |
| Other | 50% |
| Other - Education | 50% |
| Other - Entertainment/Public Assembly | 50% |
| Other - Lodging/Residential | 50% |
| Other - Mall | 50% |
| Other - Public Services | 50% |
| Other - Recreation | 50% |
| Other - Restaurant/Bar | 50% |
| Other - Services | 50% |
| Other - Specialty Hospital | 50% |
| Other - Stadium | 50% |
| Other - Technology/Science | 50% |
| Other - Utility | 50% |
| Outpatient Rehabilitation/Physical Therapy | 50% |
| Performing Arts | 50% |
| Personal Services (Health/Beauty, Dry Cleaning, etc.) | 50% |
| Police Station | 50% |
| Pre-school/Daycare | 50% |
| Prison/Incarceration | 50% |
| Race Track | 50% |
| Refrigerated Warehouse | 50% |
| Repair Services (Vehicle, Shoe, Locksmith, etc.) | 50% |
| Residence Hall/Dormitory | 50% |
| Residential Care Facility | 50% |
| Restaurant | 50% |
| Retail Store | 50% |
| Roller Rink | 50% |
| Self-Storage Facility | 50% |
| Senior Care Community | 50% |
| Social/Meeting Hall | 50% |
| Stadium (Closed) | 50% |
| Stadium (Open) | 50% |
| Strip Mall | 50% |
| Supermarket/Grocery Store | 50% |
| Transportation Terminal/Station | 50% |
| Urgent Care/Clinic/Other Outpatient | 50% |
| Veterinary Office | 50% |
| Vocational School | 50% |
| Wastewater Treatment Plant | 50% |
| Wholesale Club/Supercenter | 50% |
| Worship Facility | 50% |
| Zoo | 50% |

## Appendix C – Delay of Compliance Impact Examples

This section gives the building owner example of the impacts of a delay of compliance on energy performance and reporting/verification requirements. The examples show some of the most common situations a building might encounter but are not exhaustive of all situations that might arise from a delay. Building owners may request interpretation or guidance from DOEE on how a delay might impact their building specifically.

**C.1  Performance Pathway**

Before diving into how a delay would shift requirements, it is first necessary to layout the energy performance and reporting/verification requirements of Cycle 1. For this example, we assume the building is following the Performance Pathway and shown in Table 26 and Table 27.

*Table 26 – Pre-delay Performance Pathway Energy Performance Requirements - Non-Compliant Example*

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Baseline Years** | | **Evaluation Year** |
| COVID-19 PHE delay | 2018-2019 | | 2026 |
| Reported Site EUI | 90 | 110 | 85 |
| Evaluated Site EUI | 100 | | 85 |
| Required Site EUI | | | 80 |
| Demonstrated Site EUI Savings | | | -15% |

\*All EUI values are kBtu/ft2

*Table 27 – Pre-delay Performance Pathway Reporting Requirements*

|  |  |
| --- | --- |
| **Documentation** | **Deadline** |
| Pathway Selection Form | April 1, 2023 |
| Completed Actions Report | April 1, 2027 |
| CY2026 District Benchmarking Report (third-party verified complete and accurate) | April 1, 2027 |

In this example, the building completed several projects during Cycle 1 but failed to secure additional funding for the projects necessary to push them over the 20% saving target. The building owner requested and DOEE approved an additional one-year delay of compliance to secure the funding and finish the projects. The delayed Performance Pathway requirements for this building are listed in Table 28 and Table 29 (delays in italics).

*Table 28 – Delayed Performance Pathway Energy Performance Requirements Example*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Baseline Years** | | **Evaluation Years** | |
| COVID-19 PHE delay | 2018-2019 | | *Delayed to 2027* |
| Reported Site EUI | 90 | 110 | 75 |
| Evaluated Site EUI | 100 | | 75 |
| Required Site EUI | | | 80 |
| Demonstrated Site EUI Savings | | | -25% |

\*All EUI values are kBtu/ft2

*Table 29 – Delayed Performance Pathway Reporting Requirements* *Example*

|  |  |
| --- | --- |
| **Documentation** | **Deadline** |
| Pathway Selection Form | April 1, 2023 |
| Completed Actions Report | *Delayed to April 1, 2028* |
| CY2027 District Benchmarking Report *(third-party verified complete and accurate)* | *Delayed to April 1, 2028* |

To summarize the changes from the tables: 1) the evaluation year is now CY 2027; 2) the CY2027 District Benchmarking Report and Completed Actions Report will now be used to evaluate performance; and 3) DOEE has added an additional requirement that the building must have its CY2027 benchmarking data third-party verified to ensure the savings were actually realized. With the approved delay, the building has been able to meet the 20% savings target and is compliant with the requirements of Compliance Cycle 1.

During the delay, BEPS Period 2 began (Jan. 1, 2027) and using the CY2026 data, it shows that the building does not meet Standard for BEPS Period 2, entering a second Compliance Cycle.  If the building had not needed a delay in Cycle 1, they might have selected the Performance Pathway for Cycle 2. Then the Performance Pathway baseline for Cycle 2 would be calculated based on the two years preceding the start of the new Compliance Cycle (CY2025-2026) and would have reflected the 20% (or higher) savings realized during the first Compliance Cycle.

However, because the savings for this building were not fully realized during the Cycle 1, DOEE will require the building to complete a Post-Delay of Compliance Performance Pathway for Cycle 2 (if they select the Performance Pathway again). This ACP option delays the baseline years of the Principal Performance Pathway so that it reflects the measured or required savings achieved by the end of the delayed Cycle. To demonstrate this, see Table 30 and Table 31 (possible delays in italics).

*Table 30 – Delayed Performance Pathway Energy Performance Requirements Example*

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Baseline Years Cycle 1** | | **Evaluation Year Cycle 1** | **Baseline Years**  **Cycle 2** | | **Evaluation Years Cycle 2** | |
| COVID-19 PHE delay | 2018-2019 | | 2027 | 2025-2026 | | 2030-2031 | |
| Reported Site EUI | 90 | 110 | 75 | 100 | 85 | 65 | 63 |
| Evaluated Site EUI | 100 | | *75* | *80* | | 64 | |
| Required Site EUI | | | 80 | N/A | | 64 | |
| Demonstrated Site EUI Savings | | | -25% | N/A | | 20% | |

*Table 31 – Delayed Performance Pathway Reporting Requirements* *Example*

|  |  |
| --- | --- |
| **Documentation** | **Deadline - 1** |
| Pathway Selection Form | April 1, 2023 |
| Completed Actions Report | April 1, 2028 |
| CY2027 District Benchmarking Report (third-party verified complete and accurate) | April 1, 2028 |
| Pathway Selection Form | April 1, 2028 |
| CY2030 District Benchmarking Report | April 1, 2031 |
| Completed Actions Report | April 1, 2032 |
| CY2031 District Benchmarking Report (third-party verified complete and accurate) | April 1, 2032 |

For this example, the building had its evaluated Site EUI for Cycle 2 adjusted so that it reflects the final Site EUI that the building would have achieved if there had been no delay. As a result, the building was able to comply by achieving an evaluated Site EUI of 64 even though the building demonstrated a 25% reduction in site EUI in Cycle 1. All reporting requirements are the same for the Cycle 2.

For buildings on the Delay of Compliance Performance ACP option, DOEE will adjust the evaluated Site EUI for the Cycle 2 baseline to be one of two numbers (whichever is higher):

1. the building’s Cycle 1 Anticipated Evaluation Year Site EUI (see Site EUI of 80 in Table 36);
2. or the building’s Cycle 1 Actual Evaluated Site EUI after the delay (see Site EUI of 75 in Table 36).

As shown for the building in Table 29, the evaluated Site EUI for the Cycle 1 performance period is greater than 20%, therefore the evaluated site EUI for the Cycle 2 baseline years is only set to 20%. On the other hand, if a building only achieved a 15% reduction by the beginning of the delay performance period, then DOEE would use the evaluated site EUI of the performance period as the evaluated Site EUI of the Cycle 2 baseline. However, in this instance the building would still have to pay the alternative compliance penalty for failing to meet the 20% savings energy performance requirement for Cycle 1.

**C.2  Standard Target Pathway**

Consider now if the building had chosen the Standard Target Pathway with the COVID-19 PHE delay in Cycle 1. In this example, the building meets the 2021 BEPS by the end of the Cycle 1 performance period, which the building has requested and been approved for an additional one-year delay (Table 32-33). For the subsequent BEPS Period, the BEPS increased so the building must complete another Compliance Pathway. In this case there is no need for a delay of compliance ACP because the building can just use the Standard Target Pathway again to meet the new BEPS.

*Table 32 – Delayed Standard Target Pathway Energy Performance Requirements Example*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Baseline Year Cycle 1** | **Performance Year Cycle 1** | **Baseline Year Cycle 2** | **Performance Year Cycle 2** |
| COVID-19 PHE delay | 2019 | *Delayed to 2027* | 2025 | 2031 |
| BEPS | 60 | | 65 | |
| Reported ENERGY STAR Score | 50 | 60 | 60 | 65 |

*Table 33 – Delayed Standard Target Pathway Reporting Requirements*

|  |  |
| --- | --- |
| **Documentation** | **Deadline** |
| Pathway Selection Form | April 1, 2023 |
| Completed Actions Report | *Delayed to April 1, 2028* |
| CY2027 District Benchmarking Report (third-party verified complete and accurate) | *Delayed to April 1, 2028* |
| Pathway Selection Form | April 1, 2028 |
| Completed Actions Report | April 1, 2032 |
| CY2031 District Benchmarking Report (third-party verified complete and accurate) | April 1, 2032 |

**C.3  Prescriptive Pathway**

Finally, consider the case where the building is on the Prescriptive Pathway with the COVID-19 PHE delay. For the Prescriptive Pathway, there are no explicit energy savings that must be demonstrated, only confirmation that EEMs have been implemented and reporting/verification requirements completed. Depending on where the building is in the Prescriptive Pathway process, a delay of compliance could be approved for a building on this Pathway. No adjustments may be necessary for Cycle 2 since Phase 1 and 2 consist of auditing and planning processes. Additionally, the project team will have already identified potential EEMs for Cycle 2 in the energy audit conducted for Cycle 1. Because the Prescriptive Pathway is designed to help buildings plan for multiple Cycles of BEPS, delays of compliance should not affect the long-term compliance requirements of a given building. Alternatively, the building can switch to a different Pathway for Cycle 2, such as the Performance or Standard Target Pathways, as part of the delay of compliance process.

## Appendix D – Useful Links

**BEPS Program Documents**

[2021 Building Energy Performance Standards](https://doee.dc.gov/publication/2021-standards-beps-period-1)

[Guide to Establishment of 2021 Building Energy Performance Standards](https://doee.dc.gov/sites/default/files/dc/sites/ddoe/publication/attachments/1_Guide%20to%20the%202021%20BEPS.pdf)

[2019 Benchmarking Disclosure](https://doee.dc.gov/node/1507996)

[Building Energy Performance Standards Proposed Rulemaking](https://www.dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N100436)

[BEPS Task Force Recommendations for Rulemaking](https://doee.dc.gov/sites/default/files/dc/sites/ddoe/service_content/attachments/BEPSTaskForce_RecommendationsForRulemaking_2020-10-16_final.pdf)

[Recommendations for Implementing the District’s BEPS in Affordable Multifamily Housing](https://www.nationalhousingtrust.org/news-article/recommendations-for-implementing-district%E2%80%99s-building-energy-performance-standard)

**District of Columbia Links**

[Building Innovation Hub](https://buildinginnovationhub.org/)

[CleanEnergy DC Plan](https://public.tableau.com/profile/dc.department.of.energy.and.environment#!/vizhome/CleanEnergyDC/DCCEP)

[CleanEnergy DC Omnibus Amendment Act of 2018](https://code.dccouncil.us/dc/council/laws/22-257.html)

[DC Municipal Regulations and DC Register](https://www.dcregs.dc.gov/)

[DC Sustainable Energy Utility](https://www.dcseu.com/)

[DC Green Bank](https://dcgreenbank.org/)

[DOEE Building Performance and Benchmarking Branch](https://doee.dc.gov/service/building-energy-performance-benchmarking)

DOEE Office of Enforcement and Environmental Justice

Renewable Portfolio Standard

[Sustainable DC Plan](https://sustainable.dc.gov/)

[Sustainability Guide for Existing and Historic Properties](https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/Sustainability%20Guide%20Nov%202020.pdf)

**Best Practices**

[ASHRAE Standard 100-2018](https://ashrae.iwrapper.com/ASHRAE_PREVIEW_ONLY_STANDARDS/STD_100_2018)

[ASHRAE Standard 211-2018](https://ashrae.iwrapper.com/ASHRAE_PREVIEW_ONLY_STANDARDS/STD_211_2018)

DOEE [Integrated Design Charrette Toolkit](https://doee.dc.gov/sites/default/files/dc/sites/ddoe/service_content/attachments/DC-NZECharetteToolkit.pdf)

[ENERGY STAR Portfolio Manager](https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager?s=mega)

[ENERGY STAR Score](https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager/understand-metrics)

Enterprise Green Communities [Green Charette Toolkit](https://www.enterprisecommunity.org/solutions-and-innovation/green-communities/tools-and-services/charrette-toolkit)

US DOE [Engaging Tenants in Energy Efficiency Resources](https://betterbuildingssolutioncenter.energy.gov/toolkits/engaging-tenants-energy-efficiency)

California Commissioning Initiative [Existing Building Commissioning Toolkit](https://www.cacx.org/resources/rcxtools/templates_samples.html)

US DOE [Federal Energy Management Program Tools](https://www.energy.gov/eere/femp/federal-energy-management-tools)

IMT [Green Lease Leaders Library](https://www.greenleaseleaders.com/green-lease-library/)

AIA [Guide to Building Lifecycle Assessment in Practice (American Institute of Architects)](http://content.aia.org/sites/default/files/2016-04/Building-Life-Cycle-Assessment-Guide.pdf)

NBI [Zero Energy Performance Targets for New Construction](https://newbuildings.org/nbi-releases-zero-energy-performance-targets-for-new-construction-projects/)

NREL [Handbook for Planning and Conducting Charrettes for High-Performance Projects](https://www.nrel.gov/docs/fy09osti/44051.pdf)

NREL [Strategies for 50% Energy Savings in Large Office Buildings](https://www.nrel.gov/docs/fy10osti/49213.pdf)

RMI [Deep Energy Retrofits Using Energy Savings Performance Contracts: Success Stories](https://rmi.org/wp-content/uploads/2017/05/Deep-Energy-Retrofits-Using-ESPC-2015.pdf)

RMI [The Retrofit Depot](https://rmi.org/our-work/buildings/deep-retrofit-tools-resources/deep-retrofit-case-studies/)

WBDG [Comprehensive Facility Operations & Maintenance Manual](https://www.wbdg.org/facilities-operations-maintenance/comprehensive-facility-operation-maintenance-manual)

WBDG [Planning and Conducting Integrated Design Charettes](https://www.wbdg.org/resources/planning-and-conducting-integrated-design-id-charrettes)

WBDG Project Delivery Teams

## Appendix E – Definitions

Affordable housing - buildings that are primarily residential, contain 5 or more dwelling units where: use restrictions or other covenants require that at least 50% of all of the building's dwelling units are occupied by households that have household incomes of less than or equal to 80% of the area median income; or the building owner can demonstrate that at least 50% of the dwelling units rent at levels that are affordable to households with incomes less than or equal to 80% of the area median income. (DC Code § 8–1772.21(k))

Approved District Data Verifier – an individual that can complete the Data Verification for third-party data verification in the benchmarking program in accordance with 20 DCMR 3515.4 -3515.6

Average annual occupancy – the percentage of your property’s Gross Floor Area (GFA) that is occupied and operational averaged over a calendar year

Baseline adjustment – the process by which a building’s baseline years are adjusted to account for special circumstances

Baseline shifting – the process by which a building’s baseline years are switched to a different calendar year(s)

Baseline modification – the process by which a building’s baseline Site EUI is adjusted based on a measured or estimated energy penalty

Baseline years – the defined timeframe of benchmarking data that marks the starting point for evaluation of energy performance requirements for compliance

BEPS Compliance Regulations – the set of rules that define the compliance requirements of the Building Energy Performance Standards Program, specifically 20 DCMR 3517 through 3521 including definitions from 3599

Building – any structure used or intended for supporting or sheltering any use or occupancy (20 DCMR 3599)

Building Energy Performance Standards (BEPS) – the level of energy efficiency set forth by DOEE as an ENERGY STAR Score or Normalized Source EUI value for each property type, as provided in section 301(b) of the Act (DC Code § 8-1772.21(b)) (20 DCMR 3599)

Building Energy Performance Standards Period (BEPS Period) – the period of time in which specific BEPS are in effect, which shall run from the date DOEE establishes BEPS until the next DOEE establishment of BEPS (20 DCMR 3599)

Building Energy Performance Standards Program (BEPS Program) – the DOEE program overseeing and implementing BEPS (20 DCMR 3599)

Building owner – an individual, partnership, corporation, trust, association, firm, joint stock company, organization, commission, or other entity either possessing title or designated to govern a building (20 DCMR 3599)

College/University Campus – a secondary educational institution with multiple buildings in a single location that are owned by a single entity (20 DCMR 3599)

Certificate of Occupancy – a document issued by DCRA that certifies a building’s compliance with applicable building codes and other laws. In reference to BEPS, the relevant [Certificates of Occupancy](https://dcra.dc.gov/node/1410111) are ownership change, use change, and new building (conditional, completion of core and shell, and establishment of new occupancy).

Compliance Cycle – a period of five (5) years from the date of the establishment of BEPS during which, in the absence of a delay of compliance granted by DOEE, a building must meet the performance requirements set forth in § 3518 and procedural requirements set forth in § 3519 (20 DCMR 3599)

COVID-19 PHE delay – a one-year delay automatically granted to buildings that have a CY2020 District Benchmark Results and Compliance Report on file with DOEE. Only available in Cycle 1, the delay extends the end of Compliance Cycle for applicable Pathways to December 31, 2026, adjusts the baseline years to CY2018-2019 and the evaluation year to CY2026, and extends all reporting/verification requirements one year in accordance with 20 DCMR 3520.7(g), 3519.1, 3519.2(b), 3518.1(e).

Integrated design workshop – A charrette is a focused work session where a project team kicks-off the integrated design process, reviews project expectations, and explores design strategies that are most appropriate to achieve a project’s sustainable design goals

District Benchmark Results and Compliance Report – the Portfolio Manager report that includes benchmark and ENERGY STAR statements of energy performance, identifies reporting methodology, and contains data verification information when required by section 4 of the Green Building Act of 2006, effective March 8, 2007 (DC Law 16-234; DC Code § 6-1451.03) (20 DCMR 3599)

Effective savings to investment ratio (E-SIR) – the marginal SIR of an EEM over replacement level equipment

Effective return on investment (E-ROI) – the marginal ROI of an EEM over replacement level equipment

ENERGY STAR Score – a number established by US EPA that allows comparison of energy use of a property with similar properties nationwide (20 DCMR 3599)

Evaluation years – the defined timeframe of benchmarking data that is used at the end of the Cycle for evaluation of energy performance requirements for compliance

Extended delay – a postponement of compliance deadlines that continue beyond the base three-year delay prescribed in the CEDC Act

Fossil fuel burning equipment – fossil fuels are an energy source formed in the Earth’s crust from decayed organic material (Energy Information Administration, 2021); this includes coal, petroleum, natural gas. Fossil fuel building equipment is machinery in the building that consume fossil fuels to operate.

Global warming potential (GWP) – the total contribution to global warming resulting from the emission of one unit of that gas relative to one unit of the reference gas, CO2, which is assigned a value of one (1)

High performing property type – a property type for which the BEPS is more stringent (i.e., more efficient) than the U.S. EPA’s national median for that property type

Hospital Campus – a hospital with multiple buildings in a single location that are owned by a single entity (20 DCMR 3599)

Integrated design approach – a comprehensive holistic process that breaks the siloed work of disciplines to create a collaborative, efficient team capable of developing a high performing building

Limited-equity cooperative (LEC) – a cooperative required by a government agency or nonprofit organization to limit the resale price of membership shares for the purpose of keeping the housing affordable to incoming members that are low- and moderate-income

Major renovation – any repair, alteration, or addition of a building or structure that (1) significantly affects multiple core building systems; and costs at least twenty-five (25) percent of the value of the building or structure, before the repair, alteration, or addition is started (20 DCMR 3599)

National median – the ENERGY STAR Score or Source EUI benchmark, available on the Portfolio Manager website, that fifty percent (50%) of properties perform above and fifty percent (50%) perform below (20 DCMR 3599)

Newly constructed building – an entirely new structure that has not been previously occupied (20 DCMR 3599)

Online BEPS Portal (Portal) – a web-based application created by DOEE for a building owner to submit required reporting and verification documents pertaining to BEPS, accessible through the DOEE BEPS Program webpage (20 DCMR 3599)

Operations and maintenance (O&M) – the functions, duties and labor associated with the daily operations and normal repairs, replacement of parts and structural components, and other activities needed to preserve an asset so that it continues to provide acceptable services and achieves its expected life

Property type – the primary function of a building as determined through Portfolio Manager (20 DCMR 3599)

Qualifying affordable housing – a building that is primarily residential, contain 5 or more dwelling units, and can demonstrate that: (1) use restrictions or other covenants require that at least 50% of the building’s dwelling units are occupied by households have household income of less than 50% of the area median income (AMI); or (2) at least 50% of the dwelling units rent at levels that are affordable to households with incomes less than or equal to 50% of the area median income; or (3) the building is a Limited-equity Cooperative (LEC) (20 DCMR 3599). This property type is referred to in this document as “Qualifying Affordable Housing” and is a subset of “Affordable Multifamily Housing.”

Rent-controlled building (rent-controlled) – a multifamily housing building that, for the duration of the applicable BEPS Period, has active registration number(s) filed with the Rental Accommodations Division (RAD) of the District’s Department of Housing and Community Development (DHCD) applying to greater than 50% of the total number of dwelling units in the building(s) in question and active registered exemption number(s) filed with RAD applying to less than 50% of the total number of dwelling units

Retro-commissioning – a process to improve the efficiency of an existing building's equipment and systems. It can often resolve problems that occurred during design or construction, or address problems that have developed throughout the building's life as equipment has aged, or as building usage has changed.

Schematic design – the design phase in which approximately 20% of design documents should clearly indicate the improvements and construction anticipated for the project or provide sufficient information and alternatives so that a clear direction for subsequent phases can be determined

Site energy use intensity (Site EUI) – the annual amount of all energy a building consumes on-site, as reported on a building’s utility bills, divided by the building’s gross floor area, as determined through Portfolio Manager (20 DCMR 3599)

Site energy use intensity adjusted to current year (Adjusted Site EUI) – the Site EUI a building would be expected to have if its operations were the same as in the current time period, as determined through Portfolio Manager (20 DCMR 3599)

Simple savings to investment ratio (SIR) – the total lifetime cost savings of an EEM divided by the initial cost to implement the EEM

Simple return on investment (ROI) – the total annual cost savings of an EEM divided by the initial cost to implement the EEM

Source energy use intensity (Source EUI) – the total amount of raw fuel that is required to operate a building, divided by the building’s gross floor area, as determined through Portfolio Manager (20 DCMR 3599)

Substantial improvement – any repair, alteration, addition, or improvement of a building or structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the improvement or repair is started

Third-party verification – the process of completing the Data Verification Checklist process on a building’s benchmarking data outlined in 20 DCMR 3515.1, 3515.7, and 3515.8

Weather normalized site energy use intensity (Normalized Site EUI) – the Site EUI a building would have consumed during thirty (30) year average weather conditions, as determined through Portfolio Manager (20 DCMR 3599)

Weather normalized source energy use intensity (Normalized Source EUI) – the Source EUI a building would have consumed during thirty (30) year average weather conditions, as determined through Portfolio Manager (20 DCMR 3599)

1. Section 301 of the CleanEnergy DC Omnibus Amendment Act of 2018, effective March 22, 2019 (DC Law 22-257; 66 DCR 3973 (April 5, 2019)), as amended. [↑](#footnote-ref-2)
2. 20 DCMR 3599 [↑](#footnote-ref-3)
3. DC Code § 8–1772.21(d), 20 DCMR 3518 [↑](#footnote-ref-4)
4. DC Code § 8–1772.21(c) [↑](#footnote-ref-5)
5. 20 DCMR 3520.7-.8 [↑](#footnote-ref-6)
6. 20 DCMR 3514 [↑](#footnote-ref-7)
7. 20 DCMR 3518.3 [↑](#footnote-ref-8)
8. 20 DCMR 3521.3 [↑](#footnote-ref-9)
9. DC Code § 8- 1772.21(d)(1) [↑](#footnote-ref-10)
10. 20 DCMR 3518.1(e), 3519.2 [↑](#footnote-ref-11)
11. 20 DCMR 3513.3 [↑](#footnote-ref-12)
12. 20 DCMR 3519.2 [↑](#footnote-ref-13)
13. 20 DCMR 3519.1 [↑](#footnote-ref-14)
14. 20 DCMR 3519.4 [↑](#footnote-ref-15)
15. 20 DCMR 3519.12 [↑](#footnote-ref-16)
16. 20 DCMR 3520.5(d) [↑](#footnote-ref-17)
17. 20 DCMR 3520.4 [↑](#footnote-ref-18)
18. 20 DCMR 3519.13 [↑](#footnote-ref-19)
19. 20 DCMR 3519.14 [↑](#footnote-ref-20)
20. 20 DCMR 3520.7 [↑](#footnote-ref-21)
21. Section 301(d) of the CleanEnergy DC Omnibus Amendment Act of 2018 (CEDC Act), effective March 22, 2019 (DC Law 22-257; 66 DCR 3973 (April 5, 2019)); as amended by Section 2 of the CleanEnergy DC Omnibus Temporary Amendment Act of 2020, effective May 6, 2020 (DC Law 23-94; 67 DCR 5015 (May 15, 2020)); DC Code § 8-1772.21(d) [↑](#footnote-ref-22)
22. 20 DCMR 3518.1 [↑](#footnote-ref-23)
23. 20 DCMR 3518.1(a) [↑](#footnote-ref-24)
24. DC Code § 8-1772.21(d)(1) [↑](#footnote-ref-25)
25. 20 DCMR 3518.1(a)(1) [↑](#footnote-ref-26)
26. 20 DCMR 3518.1(a)(2) [↑](#footnote-ref-27)
27. 20 DCMR 3518.1(e), 3519.2 [↑](#footnote-ref-28)
28. 20 DCMR 3519.1 [↑](#footnote-ref-29)
29. 20 DCMR 3519.9 [↑](#footnote-ref-30)
30. 20 DCMR 3518.1(b) [↑](#footnote-ref-31)
31. 20 DCMR 3530.1-.2 [↑](#footnote-ref-32)
32. 20 DCMR 3518.1(e), 3519.1 [↑](#footnote-ref-33)
33. 20 DCMR 3519.5 [↑](#footnote-ref-34)
34. 20 DCMR 3519.9 [↑](#footnote-ref-35)
35. 20 DCMR 3519.6 [↑](#footnote-ref-36)
36. 20 DCMR 3519.1 and .6 [↑](#footnote-ref-37)
37. 20 DCMR 3519.12 [↑](#footnote-ref-38)
38. 20 DCMR 3519.6-.7 [↑](#footnote-ref-39)
39. 20 DCMR 3519.6 [↑](#footnote-ref-40)
40. 20 DCMR 3519.7 [↑](#footnote-ref-41)
41. 20 DCMR 3519.6(a) [↑](#footnote-ref-42)
42. 20 DCMR 3519.6(a) [↑](#footnote-ref-43)
43. 20 DCMR 3519.6(a) [↑](#footnote-ref-44)
44. 20 DCMR 3519.6(a) [↑](#footnote-ref-45)
45. 20 DCMR 3519.6(b) [↑](#footnote-ref-46)
46. 20 DCMR 3519.6(b) [↑](#footnote-ref-47)
47. 20 DCMR 3519.6(c) [↑](#footnote-ref-48)
48. 20 DCMR 3519.6(c) [↑](#footnote-ref-49)
49. 20 DCMR 3519.6(d) [↑](#footnote-ref-50)
50. 20 DCMR 3519.6(d) [↑](#footnote-ref-51)
51. Section 301(d) of the CleanEnergy DC Omnibus Amendment Act of 2018 (CEDC Act), effective March 22, 2019 (DC Law 22-257; 66 DCR 3973 (April 5, 2019)); DC Code § 8-1772.21(d) [↑](#footnote-ref-52)
52. 20 DCMR 3518.1(d), 3519.8 [↑](#footnote-ref-53)
53. 20 DCMR 3519.8 [↑](#footnote-ref-54)
54. See Affordable Housing definition in Appendix E. Additionally, note the difference between Affordable Housings and Qualifying Affordable Housing. Affordable Housing represents a broad range of subsidized or naturally occurring multifamily housing whereas Qualifying Affordable Housing is a subset of Affordable Housing. [↑](#footnote-ref-55)
55. See rent-control definition in Appendix E. [↑](#footnote-ref-56)
56. Buildings experiencing financial distress, as described in section 5.2.1 for delays of compliance, may apply to use the EDER ACP Option described in this chapter or a delay of compliance described in chapter 5. DOEE will not approve both an EDER ACP Option and a delay of compliance. [↑](#footnote-ref-57)
57. As described in section 5.2.1 for delays of compliance [↑](#footnote-ref-58)
58. See Affordable Housing definition in Appendix E. [↑](#footnote-ref-59)
59. Example documentation that DOEE will consider for demonstration of good cause can be found in table 21 in section 5.2.2 [↑](#footnote-ref-60)
60. More description of how DOEE expects building owners to demonstrate practical infeasibility can be found in section 5.2.3 [↑](#footnote-ref-61)
61. DOEE is only requesting the narrative from these buildings due to forecasted data showing slow and incomplete recovery of demand due to COVID-19. [↑](#footnote-ref-62)
62. 20 DCMR 3519.4 [↑](#footnote-ref-63)
63. 20 DCMR 3520.7 [↑](#footnote-ref-64)
64. 20 DCMR 3518.1(d), 3519.8 [↑](#footnote-ref-65)
65. 20 DCMR 3518.1(d) [↑](#footnote-ref-66)
66. 20 DCMR 3519.2 [↑](#footnote-ref-67)
67. 20 DCMR 3520 [↑](#footnote-ref-68)
68. 20 DCMR 3520.7 [↑](#footnote-ref-69)
69. 20 DCMR 3520.5 [↑](#footnote-ref-70)
70. 20 DCMR 3520.6 [↑](#footnote-ref-71)
71. 20 DCMR 3520.8 [↑](#footnote-ref-72)
72. 20 DCMR 3520.7 [↑](#footnote-ref-73)
73. 20 DCMR 3520.2 [↑](#footnote-ref-74)
74. 20 DCMR 3520.3 [↑](#footnote-ref-75)
75. 20 DCMR 3520.9 [↑](#footnote-ref-76)
76. DC Code § 8-1772.21(e)(1); 20 DCMR 3520.3 [↑](#footnote-ref-77)
77. 20 DCMR 3519.8 [↑](#footnote-ref-78)
78. 20 DCMR 3520.10 [↑](#footnote-ref-79)
79. 20 DCMR 3520.6 [↑](#footnote-ref-80)
80. 20 DCMR 3599 [↑](#footnote-ref-81)
81. DC Code § 8-1772.21(e)(1); 20 DCMR 3520.7 [↑](#footnote-ref-82)
82. 20 DCMR 3520.9 [↑](#footnote-ref-83)
83. 20 DCMR 3519.8 [↑](#footnote-ref-84)
84. Sections 301(g), (i) and (j) of the CleanEnergy DC Omnibus Amendment Act of 2018 (CEDC Act), effective March 22, 2019 (DC Law 22-257; 66 DCR 3973 (April 5, 2019)); DC Code § 8-1772.21(g), (i), and (j) [↑](#footnote-ref-85)
85. 20 DCMR 3521 [↑](#footnote-ref-86)
86. 16 DCMR 4018 [↑](#footnote-ref-87)
87. Section 301(g) of the CleanEnergy DC Omnibus Amendment Act of 2018 (CEDC Act), effective March 22, 2019 (DC Law 22-257; 66 DCR 3973 (April 5, 2019)); DC Code § 8-1772.21(g). [↑](#footnote-ref-88)
88. 20 DCMR 3521.1(a-b) [↑](#footnote-ref-89)
89. 20 DCMR 3521.2 [↑](#footnote-ref-90)
90. 20 DCMR 3521.3 [↑](#footnote-ref-91)
91. 20 DCMR 3521.3 [↑](#footnote-ref-92)
92. 20 DCMR 3521.1 [↑](#footnote-ref-93)
93. 16 DCMR 4018.4 [↑](#footnote-ref-94)
94. 20 DCMR 3521.5-.8 [↑](#footnote-ref-95)
95. 20 DCMR 3521.10 [↑](#footnote-ref-96)
96. https://portfoliomanager.energystar.gov/pm/glossary#Occupancy [↑](#footnote-ref-97)