

# DC'S BUILDING ENERGY PERFORMANCE STANDARDS

## COMPLIANCE & ENFORCEMENT GUIDEBOOK















# ALTERNATIVE COMPLIANCE PATHWAY PROCESS



The Alternative Compliance Pathway (ACP) allows for methods for compliance outside of the three Principal Pathways that achieve the equivalent or greater energy savings.

Submit a proposal according to ACP option requirements. DOEE will issue an ACP Decision Letter containing:

- status of the decision: approved, approved with mods, or rejected
- performance-based and/or action-based energy performance requirements for each Cycle
- 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.

One-Cycle ACP will use COVID-19 PHE Delay timeline

Compliance Cycle ends December 31, 2026

Baseline years are CY2018-2019.  
Evaluation year is CY2026.



# ALTERNATIVE COMPLIANCE PATHWAY OPTIONS



## Deep Energy Retrofit

Accelerated Savings Recognition

Extended Deep Energy Retrofit

## New Buildings

New Construction in 2019 and 2020 and on Campuses

Change in Property Type

## Baseline Adjustments

Circumstance creates Eligibility

Baseline Shift or Modification

## Custom

All property types eligible

Addresses building-specific barriers or inequities and achieves comparable savings

# ACCELERATED SAVINGS RECOGNITION OPTION



All property types eligible

Performance-based savings in Cycle 1

Target an ASR Performance Level

Earn recognition for Cycle 2, 3, or 4

1. Follow the requirements of a Principal Pathway in Cycle 1
2. Realized a Performance Level by end of Cycle 1
3. Choose ASR Pathway for Cycle 2 (or 3, 4) and sign ACP Decision Letter to maintain % of savings

Performance Levels (Cycle 1)	Site EUI Savings (Cycle 1)	Eligibility for ASR Pathway	Maintained Site EUI Savings Requirement (75% of Cycle 1)
Level 1	36%	Cycle 2	27% by end of Cycle 2
Level 2	49%	Cycle 2 and 3	37% by end of Cycle 3
Level 3	59%	Cycle 2, 3, and 4	44% by end of Cycle 4

# EXTENDED DEEP RETROFIT OPTION



Affordable  
Multifamily and  
Rent-controlled  
Housing eligible\*

College/University  
and Hospital  
Campuses  
eligible\*

Target Cycle 1  
savings times # of  
Cycles requested

Performance  
and Action  
Based

1. Submit Pathway Selection form by April 1, 2023
2. Submit EDER Proposed Milestone Plan by April 1, 2023
3. Submit interim and final Milestone Reports as required
4. Submit Benchmarking Report as required

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

\* For first cycle only: buildings under financial distress due to COVID-19 PHE are also eligible for this pathway

# EXTENDED DEEP RETROFIT OPTION EXAMPLES



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

*\*minimum applied*

# EDER PROPOSED MILESTONE PLAN

- Proposed savings target and # of Cycles requested
- A narrative explaining how the building/campus will benefit from this multi-Cycle option and how it is constrained from meeting the requirements of the current Cycle
- Description of the potential EEMs, retrofits, or actions that will achieve the deep long-lasting savings with an integrated design approach
- A list of proposed interim cost-effective EEMs that will be implemented throughout the Cycles and timeline of implementation
- Proposed timeline the building owner will follow
- How the potential EEMs align with the District's sustainability goals of electrification and carbon neutrality
- 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.



Limit the Plan to 10 pages

Identify Backup Pathway if EDER not approved

Submit through the Portal



# NEW CONSTRUCTION OR CHANGE OF PROPERTY TYPE



Buildings issued a  
C of O in 2019 or  
2020

Buildings that  
change property  
type during Cycle

Change of  
property type  
buildings could  
also be eligible  
for a delay

1. Target: meet or exceed its Standard by the end of the Cycle
2. Performance metrics same as Standard Target Pathway
3. Pathway Selection:
  - New Construction (2019-2020) – due April 1, 2023
  - Change of Property Type - due one year after receiving Certificate of Occupancy
4. Applicable baseline and evaluation years, energy performance and reporting/verification requirements will be outlined in an ACP Decision Letter

# BASELINE ADJUSTMENT OPTION ELIGIBLE CIRCUMSTANCES

Circumstance	Description
Previously Completed EEMs	Building implemented EEMs CY2018-2020
Low Occupancy in Building	Building was below the occupancy threshold criteria in Appendix B
Addition or Demolition to part of a Single Building	Buildings that add or demolish square footage that significantly affects energy consumption
New Construction or Demolition on a Campus	Campuses that construct or demolish buildings that significantly affects energy consumption
Historic	Buildings that demonstrate full compliance with the energy performance requirements is impossible given historic building restrictions
New Ventilation	Buildings that were previously unventilated and planning to or have installed new ventilation systems and expect an increase in energy consumption
Low/No Global Warming Potential (GWP) Refrigerants	Buildings that replace high GWP refrigerants with low/no GWP refrigerants that result in energy efficiency losses
Other Circumstances	Determined by DOEE and posted to the Portal

INTERNAL

# BASELINE ADJUSTMENT ACP OPTION

Submit Baseline Adjustment Request with supporting documentation (Table 20) that shows good cause. If approved, requirements will be outlined in an ACP Decision Letter.

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

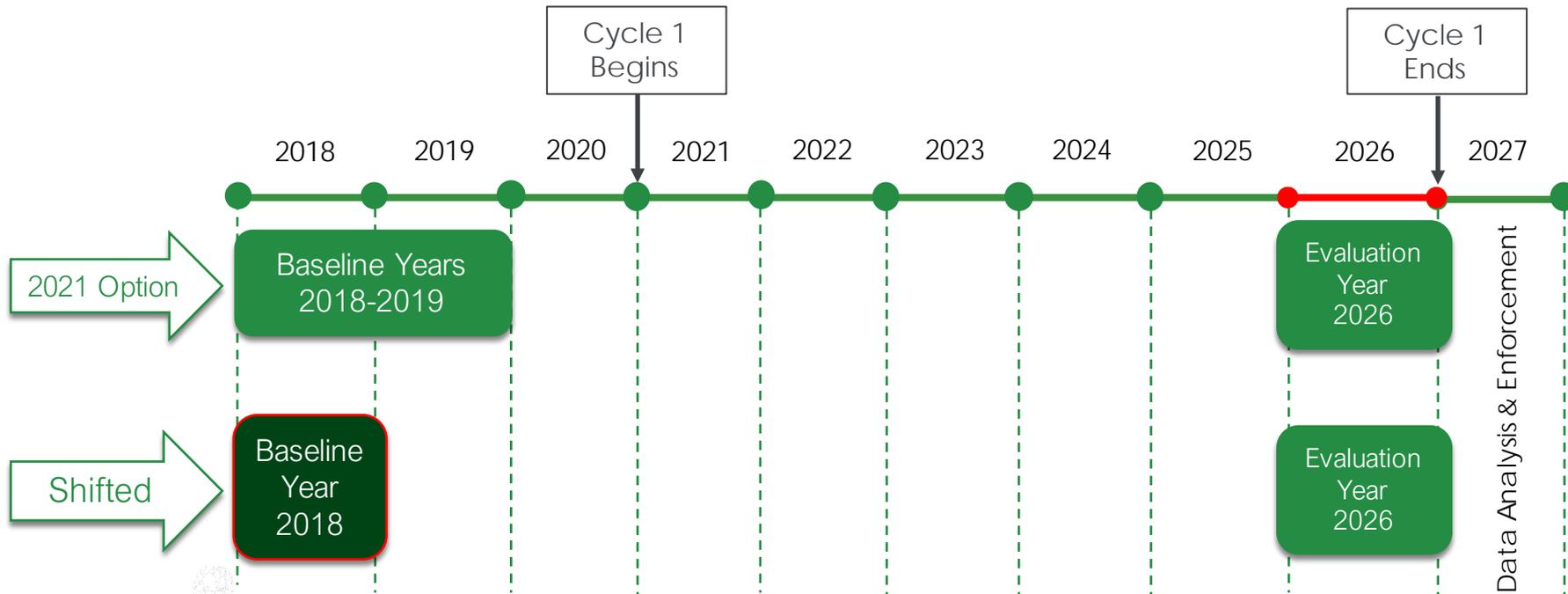
Two types of adjustments:

- Baseline shifting – changing the year(s) used (Ex. 2018 instead of 2018-2019)
- Baseline modification – adjust baseline Site EUI based on estimated or measured energy penalty incurred for activities during the cycle.

*Buildings will be switched to an Alternative Compliance Pathway with the original Principal Pathway energy performance requirements and adjusted baselines*

# EXAMPLE OF BASELINE SHIFTING

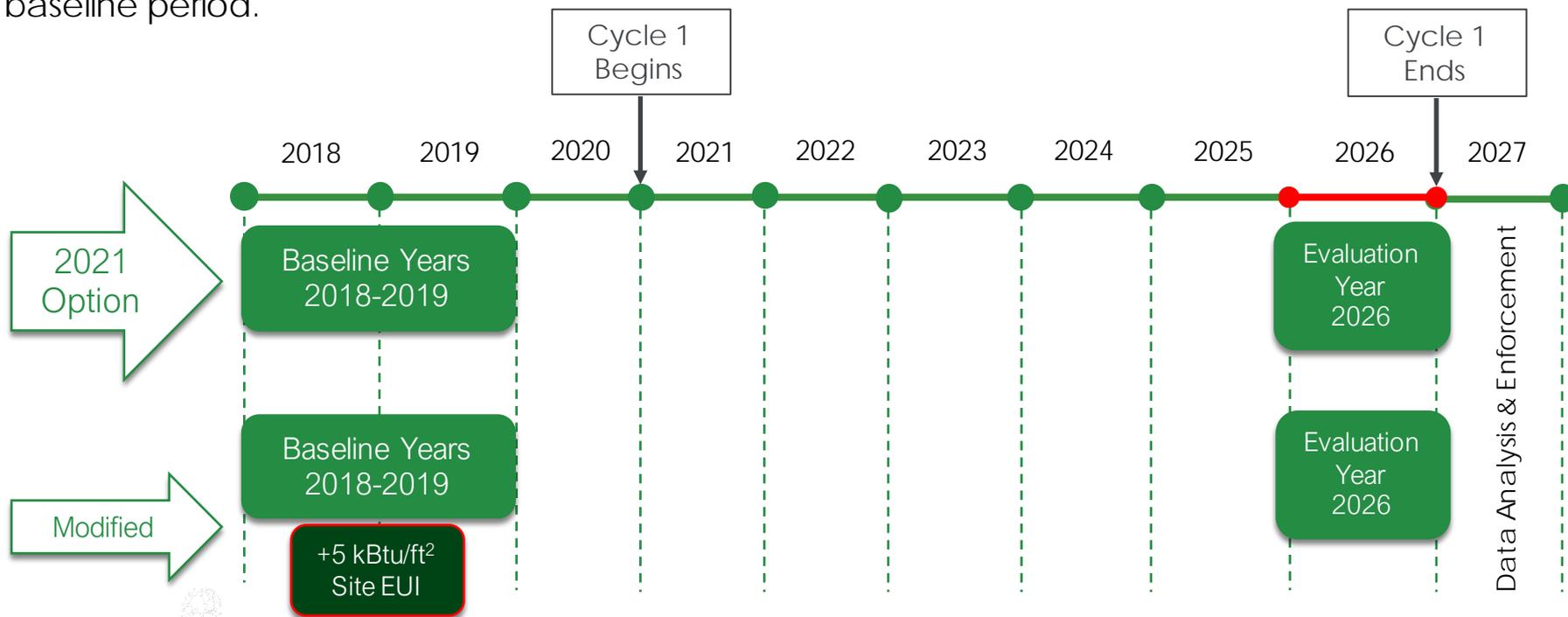
Building implemented an EEM in 2019 that reduced Site EUI. Instead of faulting the building with a more aggressive target, DOEE will shift the baseline back a year to allow the building to count the savings towards compliance.



# EXAMPLE OF BASELINE MODIFICATION



Building added increased ventilation that added 5 kBtu/ft<sup>2</sup> to its annual energy consumption. Instead of penalizing for improvements, DOE will modify the unavoidable energy to the baseline period.



# CUSTOM ACP OPTION CORE CRITERIA



DOEE will consider alternative approaches to improving energy efficiency that might not be possible under the current compliance structure. Core criteria for a Custom ACP option proposal:

- 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
- Proposal is thorough, complete, and technically achievable
- Results are measurable and verifiable by DOEE

All property types eligible

Could be performance- or action-based or both

Must have savings comparable to Performance Pathway

Application due by October 1, 2022...

...so it can be chosen during Pathway Selection by April 1, 2023



# CUSTOM ACP APPLICATION PROCESS

- Purpose/objectives: State how this Custom ACP option will meet the goals of the BEPS Program, objectives it will achieve, or barriers that it will help overcome.
- Target 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?
- Outputs: quantifiable outputs, including estimates of energy and carbon savings
- Methods: Describe what EEMs will be implemented and how energy and carbon saving estimations were derived.
- 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.

Limit the application to 5 pages

Supporting documentation on efficacy of methods limited to 5 pages each

Submit through the Portal

Approved Custom ACPs will be listed on Portal for other buildings to choose on April 1





# DELAY OF COMPLIANCE – INTRODUCTION

- All buildings may request a delay of up to 3 years
  - COVID-19 PHE delay uses 1 year – up to 2 more available in Cycle 1
- Qualifying affordable housing may request more than 3 years of delay
- Delays will not change the start of the following BEPS Period or new Compliance Cycle
- DOEE is more likely to approve a delay request if building has demonstrated some compliance efforts (such as improved operations and maintenance efforts, implemented low/no-cost energy efficiency measures, conducted an energy audit, etc.).



## Postponements

Cannot meet a reporting deadline  
= Extension  
(up to 6 months)

Eligible circumstance makes it practically infeasible to meet energy performance by end of Cycle  
= Delay



# DELAY OF COMPLIANCE – ELIGIBLE CIRCUMSTANCES



## 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.

## Change of Ownership during a Cycle

- 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.

## Major renovation

- A building may be eligible for a delay if a major renovation will be completed within the timeframe allowed by the delay.



# DELAY OF COMPLIANCE – ELIGIBLE CIRCUMSTANCES



## 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.

## 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.

## 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).



# DELAY OF COMPLIANCE – ELIGIBLE CIRCUMSTANCES



## 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](#) or are 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 delays inherent to novel design (such as a longer design development process, lengthier permit review process, extended product lead times, etc.) may be eligible for a delay.



# DELAY OF COMPLIANCE – PROCESS



Building owner submits a Delay of Compliance Request that:

1. Documents eligible circumstance(s) – submit supporting documentation proving that the circumstance(s) exist (Table 21)
2. Demonstrates infeasibility - 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 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.

# DELAY OF COMPLIANCE – DECISION



Within 60 days of receiving the request, DOEE will notify the applicant in writing if the delay is approved, approved with modifications, or rejected.

**Delay of Compliance Decision Letter** will include the following:

- status of the decision,
- length of the delay granted,
- any modifications to existing performance or reporting/verification requirements, and
- any additional requirements as necessary.

Building owner will have thirty (30) days to appeal the decision by submitting a revised Delay of Compliance Request through the Portal.

# EXTENDED DELAY OF COMPLIANCE



For the extended delay, **qualifying affordable housing** is defined 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) (see guidebook for official definition).

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 ACP option (Section 4.2.2).

# EXTENDED DELAY – PROCESS



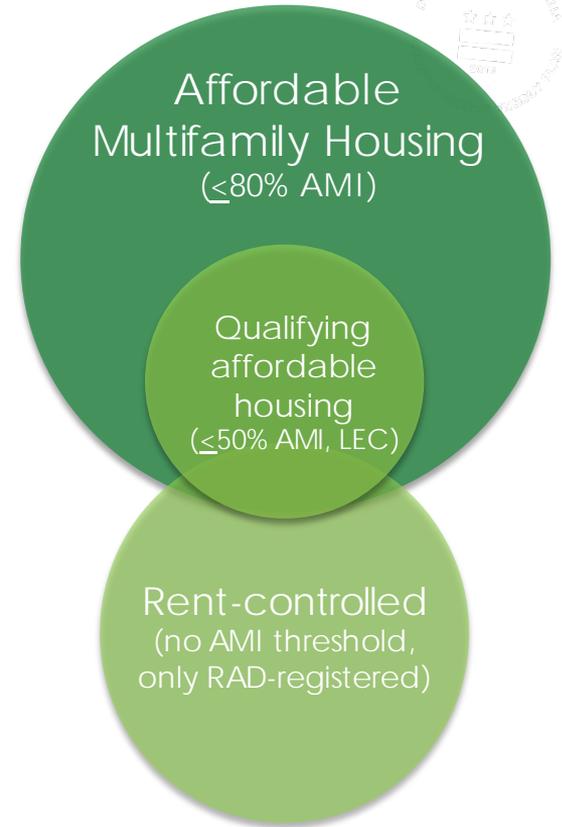
**Step 1:** determine if building meets the definition of qualifying affordable housing

**Step 2:** an extended delay may be requested if the building:

- meets one or more of the delay eligible circumstances 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.

# BEPS DEFINITIONS FOR AFFORDABLE HOUSING

- Affordable Multifamily Housing as defined by the CEDC Act:
  - 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.
  - Qualifying affordable housing:
    - a building that is primarily residential, contain 5 or more dwelling units, and can demonstrate that: 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 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 the building is a Limited-equity Cooperative (LEC).
- 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.



# EXTENDED DELAY – DEMONSTRATING INFEASIBILITY



Part of the Extended Delay of Compliance Request is a narrative 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).

# EXTENDED DELAY MILESTONE PLAN

- 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
- 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
- List of proposed interim cost-effective EEMs that will be implemented throughout the Cycles
- Proposed timeline the building owner will follow to implement interim and final EEMs or retrofits to meet the savings target
- 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.

Limit the Plan to 10 pages

Important to identify how the building plans to address future Compliance Cycles

Submit through the Portal

# EXTENDED DELAY OF COMPLIANCE – DECISION



Within 60 days of receiving the request, DOEE will notify the applicant in writing if the delay is approved, approved with modifications, or rejected.

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

- status of the decision,
- 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,
- 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, and
- any additional requirements as necessary.

Building owner will have thirty (30) days to appeal the decision by submitting a revised Delay of Compliance Request through the Portal.



# ENFORCEMENT COMPONENTS



**Alternative Compliance Penalty** – failure to meet the energy performance requirements of the building’s approved Pathway

**Civil Infractions (fines)** – failure to meet the reporting and verification requirements of a building’s approved Pathway

**Civil Enforcement Action** - 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)

# ALTERNATIVE COMPLIANCE PENALTY



- Maximum penalty based on the gross floor area of the building as reported in the building's most recent District Benchmark Results and Compliance Report.
- Single building maximum penalty no greater than \$7,500,000
- College/University and Hospital Campuses – maximum penalty is \$7,500,000
- Adjusted proportionally based on the actual performance relative to its Pathway target. ACP penalty will be outlined in the ACP Decision Letter and be no less stringent than the Principal Pathways.

## Scenarios that could result in maximum penalty amount:

- Information has not been submitted for DOEE to determine compliance
- Building owner knowingly withholds information or submits inaccurate information
- Building owner knowingly implements an EEM that reduces indoor environmental quality, or poses a threat to the health and safety of an occupant or user

# PENALTY EXAMPLE – PERFORMANCE PATHWAY



## Maximum Penalty

Building A that is 74,000 ft<sup>2</sup> has a maximum penalty of \$740,000

## Target

20% Site EUI reduction on the Performance Pathway

## Adjustment Factor

Penalty adjusted by calculating the percent of Site EUI reduction achieved divided by twenty percent (20%)

## Final Penalty

Building A achieves a 10% reduction in Site EUI. Its penalty is reduced  $10/20 = 50\%$  for a penalty of \$370,000.

# PENALTY EXAMPLE – STANDARD TARGET PATHWAY



## Maximum Penalty

Building B that is 74,000 ft<sup>2</sup> has a maximum penalty of \$740,000

## Adjustment Factor 1

A building on STP would require less than 20% reduction in Source EUI, so it receives an adjustment for its initial performance relative to the BEPS.

Building B starts 10 points away from the BEPS. 20% Source EUI reduction equivalent in this property type is 15 points away from the BEPS.  $(1-(10/15)) = 33\%$

## Adjustment Factor 2 for Final Penalty

Savings achieved at the end of the Compliance Cycle divided by savings required to meet BEPS. Building B gains 4 points out of 10.

Penalty is reduced again by  $4/10 = 40\%$ .  
The final penalty is  $(1-33\%)*(1-40%)*740,000 = \$297,480$



# PENALTY EXAMPLE – PRESCRIPTIVE PATHWAY



## Maximum Penalty

Building A that is 74,000 ft<sup>2</sup> has a maximum penalty of \$740,000

## Target

25 points

## Adjustment Factor

The penalty shall be adjusted by calculating the number of Prescriptive Pathway points earned divided by total needed.

## Final Penalty

Building C completes measures worth 15 points out of 25 needed. Its penalty is reduced by  $15/25 = 60\%$  for a penalty of \$296,000

# CIVIL INFRACTIONS (FINES)



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/Std. 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

DC PERMITS



# IMPORTANT PROGRAM LINKS



- [2021 BEPS Establishment Rulemaking](#)
  - [Guide to Establishment of 2021 Building Energy Performance Standards](#)
  - [BEPS Energy Performance Disclosure](#)
- [BEPS Compliance and Enforcement Rulemaking](#)
  - [BEPS Compliance and Enforcement Guidebook](#)
- [CleanEnergy DC Omnibus Amendment Act of 2018](#)
- [CleanEnergy DC Plan](#)
- [DOEE Building Performance and Benchmarking Branch](#)

# BEST PRACTICE LINKS



- [ASHRAE Standard 100-2018](#)
- [ASHRAE Standard 211-2018](#)
- DOE [Integrated Design Charrette Toolkit](#)
- [ENERGY STAR Portfolio Manager](#)
- [ENERGY STAR Score](#)
- Enterprise Green Communities [Green Charette Toolkit](#)
- US DOE [Engaging Tenants in Energy Efficiency Resources](#)
- California Commissioning Initiative [Existing Building Commissioning Toolkit](#)
- US DOE [Federal Energy Management Program Tools](#)
- IMT [Green Lease Leaders Library](#)
- AIA [Guide to Building Lifecycle Assessment in Practice \(American Institute of Architects\)](#)
- NBI [Zero Energy Performance Targets for New Construction](#)
- NREL [Handbook for Planning and Conducting Charrettes for High-Performance Projects](#)
- NREL [Strategies for 50% Energy Savings in Large Office Buildings](#)
- RMI [Deep Energy Retrofits Using Energy Savings Performance Contracts: Success Stories](#)
- RMI [The Retrofit Depot](#)
- WBDG [Comprehensive Facility Operations & Maintenance Manual](#)
- WBDG [Planning and Conducting Integrated Design Charettes](#)
- WBDG [Project Delivery Teams](#)

INTEGRAL

# PARTNER LINKS

[Building Innovation Hub](#)



[DC Green Bank](#)



[DC Sustainable Energy Utility](#)



# LEARN MORE!

[doee.dc.gov/service/BEPS](https://doee.dc.gov/service/BEPS)  
[info.beps@dc.gov](mailto:info.beps@dc.gov)  
[info.benchmark@dc.gov](mailto:info.benchmark@dc.gov)

- Attend a BEPS Task Force meeting
- Attend a future education session (search DOEE in EventBrite)
- Check out the [Building Innovation Hub](#) and their events
- Join us for the next [BEPS monthly update!](#)
- Tell your friends/coworkers/clients about BEPS

