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To: Lorraine D. Hunt OIRA ECON GUIDE/OMB/EOP@EOP
cc: Eileen Lee <ELEE@nmhc.org>
Subject: Comments on Draft Guidelines

Lorraine Hunt,

Attached please find the comments of the National Multi Housing Council and the National Apartment Association on OMB's Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements (Appendix C).

Should you have any problems receiving this document, please do not hesitate to contact me.

Sincerely,

Alex Hecht
National Multi Housing Council
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Washington, DC 20036
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- Comments for OMB Cost Benefit AnalysisFINAL.doc

May 5, 2003

Lorraine Hunt
Office of Information and Regulatory Affairs
Office of Management and Budget
NEOB, Room 10202
725 17th Street, NW
Washington, DC 20503
OIRA_ECON_GUIDE@omb.eop.gov

Re: Comments on OMB's Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations.

Dear Ms. Hunt,

The National Multi Housing Council and National Apartment Association (NMHC/NAA) submit the following comments in response to OMB's Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations (Draft Report). In particular, NMHC/NAA focuses on Appendix C of this document, entitled OMB Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements (Appendix C or Draft Guidelines).

NMHC/NAA appreciates the opportunity to submit comments. Overall, we believe that the Draft Guidelines provide sound guidance about how regulatory analysis should be conducted, and are well written, comprehensive, and strongly grounded in economic theory and practice.

From the perspective of the multifamily housing industry, NMHC/NAA submits comments on the following issues:

Issue: OMB's use of lower discount rates for analyzing inter-generational effects is not well reasoned.

OMB notes that the base-case discount rate is 7 percent, which it regards as an estimate of the average before-tax rate of return to private capital in the U.S. economy. The draft suggests using lower discount rates — as low as 1 percent in fact — for analyzing inter-generational effects, suggesting there are ethical reasons for lower discount rates.

The American apartment industry...working together for quality, accessible, affordable housing.

We believe this is a mistake, on several grounds. Inter-generational effects are those that occur over very long time periods. The Draft Guidelines note that private market rates provide a reliable reference for determining how society values time within a generation. Those market rates generally show an upward-sloping yield curve — that is, rates are *higher* for *longer* time periods. One might fairly conclude, therefore, that the discount rate for very long time periods would be higher still — that is, higher than the 7 percent base-case rate, rather than below 3 percent.

In addition, the longer the time horizon used in calculating benefits, the greater the uncertainty of actually receiving such benefits. Changes in technology, the environment, social preferences, and individual preferences, for example, can make today's regulation moot, thereby ending whatever stream of benefits might have been received. (One can imagine, for example, that improved technologies and changing economics could make other energy sources entirely replace coal-fired electric generators. At that point, there would be no further benefits from regulations that mandated investments in such plants to reduce harmful emissions.) Where uncertainty is greater, the discount rate should, if anything, be larger, not smaller.

Issue: OMB should take measures to ensure that the Draft Guidelines are not overly “technology-forcing.”

The Draft Guidelines seem to rely heavily on technical change. For instance, OMB contends that “[n]ew methods may become available in the future. This document is not intended to discourage or inhibit their use, but rather to encourage or stimulate their development.” NMHC/NAA believes that OMB should remain mindful that such language might be interpreted and applied as “technology-forcing.”

One of the most significant issues facing the apartment industry remains that of the occurrence of excessive mold in the built environment. Since 1999, prior to the federal government issuing any guidance on mold, NMHC/NAA has carefully tracked the mold issue for our members. We remain committed to the precept that any regulation dealing with mold, whether on a local, state, or federal level, must be based on sound science. To date, there exist no scientific standards establishing what particular levels of mold exposure may cause adverse health effects in certain susceptible individuals. The widely used phrase, “toxic mold,” carries absolutely no scientific significance.

However, the hysteria and media focus on the “toxic” mold phenomenon has helped to create a cottage industry of mold remediation and indoor air quality professionals, who tout new remediation methods and technologies and products that allegedly prevent mold growth. NMHC/NAA are concerned that technology-forcing guidelines would overly facilitate regulations that might stimulate mold remediation technologies and methodologies and products before they have been fully vetted for efficacy.

While agencies should recognize that technical change does occur, and regulatory structures should not only accommodate, but reward innovation, agencies should make no assumptions about the appearance of any particular technologies in the future. No technology should be assumed unless it has been shown to both physically possible and economically practical.

Issue: OMB's suggested focus on alternative actions is particularly applicable to the context of environmental regulations.

We believe that it is important to analyze multiple alternative regulations, particularly in instances when it is not possible to monetize costs benefits. This is a common occurrence in the context of environmental regulations. For instance, EPA recently proposed effluent limitation guidelines (ELGs) for the construction and development industry. EPA estimated the benefits from the ELGs in terms of the amount of reduced sediment flow. In cases like the proposed ELGs, where benefits may not be readily or accurately monetized, we believe it is most important to consider alternative approaches.

Indeed, the most significant benefit of regulatory analysis may be in helping to refine regulatory approaches in order to increase benefits and/or reduce costs, rather than in determining whether or not a rule should go forward. In this respect, the guidance to separately analyze the provisions within a regulation, and to analyze alternatives that are both more and less stringent than the agency's preferred choice, may be especially useful. In many cases, the most desirable regulation strikes a balance between competing objectives, such as greater efficacy and smaller opportunity costs. The best level of stringency is likely to be somewhere between the minimum and maximum feasible, and it should be useful to confirm that the proposed rule is better than both stronger and weaker alternatives.

Issue: Where possible, agencies should conduct both benefit-cost analysis and cost-effectiveness analysis.

OMB states that agencies should conduct both benefit-cost analysis (BCA) and cost-effectiveness analysis (CEA) whenever possible. OMB's rationale is that both analyses have strengths and drawbacks and that the two techniques "offer regulators somewhat different but useful perspectives and more robust information about tradeoffs." In particular, the two analyses address different questions: BCA addresses the question of whether a proposed regulatory action is "worth it" (i.e. which alternative can yield the greatest net benefits) while CEA addresses the question of regulatory "effectiveness" (e.g. which alternative can achieve the regulatory objective at the lowest cost). As such, performance of both types of analysis will greatly strengthen agency regulatory analysis.

We strongly support this approach and recommend that OMB require that agencies perform both types of analyses whenever it is feasible to do so, and make this requirement a standardized "robustness check" for regulatory impact analyses. In cases where agencies fail to conduct both BCA and CEA, OMB should require that they

document why it is infeasible to do so. Thus, OMB (and the public) will have additional information to determine if the agency has appropriately implemented these guidelines.

Issue: OMB should recognize that a cost-effectiveness analysis could lead to uneven results.

OMB's Draft Guidelines include a detailed definition of cost-effectiveness analysis (CEA). We believe that this methodology, "which provides a rigorous way to identify options that achieve the most effective use of the resources available without requiring you to monetize all of the relevant benefits or costs," is particularly apt in environmental regulations, when benefits and costs are often impossible to monetize.

OMB should recognize that when using CEA, it is important to ensure that the effectiveness metric actually captures the relative value of different consequences. The simple fact that consequences can be measured in a common unit (e.g. acres of wetland) does not by itself imply that consequences having the same value on this scale are equally valued. To continue this example, acres of wetland may differ in ecological significance, productivity, presence of endangered species, location, historical or cultural significance, or other dimensions so that it may be much more valuable to protect an acre of one wetland than of another.

Issue: OMB's suggested approach to dealing with regulatory uncertainty is well founded.

We support the Draft Guidelines language on uncertainty, an important component of regulatory analysis. The Draft Guideline's emphasis on reporting uncertainty, and on conducting formal uncertainty analysis, offers the possibility of substantial improvements in the practice of regulatory analysis. OMB suggests that when the uncertainty is due to a lack of data, agencies might consider deferring a regulatory decision as an explicit regulatory alternative, pending further study to obtain sufficient data. In addition, we are encouraged by (1) OMB's recognition that delaying such a decision will have costs, as will further efforts at data gathering and analysis; (2) OMB's advisory to agencies to weigh the benefits of delay against these additional costs; and (3) the statement that formal tools for assessing the value of additional information are now well developed in applied decision sciences and can be used to help resolve this type of complex regulatory decision.

National Apartment Association. NAA is the largest national federation of state and local apartment associations. NAA is comprised of 155 affiliates and represents more than 30,000 professionals who own and manage more than 4.5 million apartments.

National Multi Housing Council. NMHC is a national association representing the interests of the nation's larger and most prominent apartment firms. NMHC advocates on behalf of rental housing, conducts apartment-related research, encourages the exchange of strategic business information, and promotes the desirability of apartment living.

We appreciate the opportunity to comment on OMB's Draft 2003 Report to Congress, and look forward to working closely with OMB in the future.

Sincerely,

Handwritten signature of Eileen Lee in cursive script.

Eileen Lee, Ph.D
Vice President – Environment

Handwritten signature of Alex Hecht in cursive script.

Alex Hecht
Legislative Analyst