

**National Multi Housing Council
National Apartment Association
Builders Owners and Managers Association International
Institute of Real Estate Management
National Association of Industrial and Office Properties
National Association of Real Estate Investment Trusts
National Association of Realtors
National Leased Housing Association
The Real Estate Roundtable
The U.S. Chamber of Commerce**

March 10, 2004

Information Quality Guidelines Staff
Mail Code 28220T, U.S. EPA
1200 Pennsylvania Ave., N.W.
Washington, D.C., 20460
RE: Docket: OW-2003-0065

Re: Request for Correction of Information

Dear Sir or Madam:

The National Multi Housing Council (NMHC), the National Apartment Association (NAA), the Builders Owners and Managers Association (BOMA), the Institute of Real Estate Management (IREM), the National Association of Industrial and Office Properties (NAIOP), the National Association of Real Estate Investment Trusts (NAREIT), the National Association of Realtors (NAR), the National Leased Housing Association (NLHA), the Real Estate Roundtable (RER), and the U.S. Chamber of Commerce (U.S. Chamber) jointly submit this Request for Correction of Information pursuant to the Federal Information Quality Act (FIQA),¹ the “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies” issued by the Office of Management and Budget (OMB) (“OMB Guidelines”),² and the “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency” (“EPA Guidelines”) issued by the Environmental Protection Agency (EPA).^{3,4} This Request for Correction of Information concerns certain information involving ratio utility billing systems (RUBS) and other allocation billing systems disseminated by EPA in its recent notice, *Applicability of Safe*

¹ 44 U.S.C. § 3516 note; Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554, H.R. 5658).

² 67 Fed. Reg. 8452 (February 22, 2002).

³ EPA/260R-02-008 (October 2002).

⁴ Collectively, the OMB and EPA Guidelines are referenced herein as “Information Quality Guidelines” or simply “Guidelines.”

Drinking Water Act to Submetered Properties (“Revised Policy”) published in the Federal Register on December 23, 2004 (68 Fed. Reg. 74233).

Specifically, we believe that EPA’s statement that “...**EPA believes that RUBS or other allocation billing systems ... do not encourage water conservation**” (68 Fed. Reg. 74235) (emphasis added) is erroneous in light of the conclusions of the open literature on this topic. For this reason, we believe that EPA’s statement violates the standards for objectivity and utility set forth in the Information Quality Guidelines. Further, it is unclear whether EPA’s statement concerning RUBS and other allocation billing systems was subjected to pre-dissemination review by the agency prior to its dissemination as required by the Guidelines.

I. SUMMARY OF COMPLAINT

EPA’s statement that RUBS and other allocation billing systems do not encourage water conservation violates the FIQA and the OMB and EPA Guidelines for the following reasons:

- EPA’s statement does not appear to have been subjected to “pre-dissemination” review as required by the Guidelines;
- EPA’s statement violates the “objectivity” standard of the Guidelines because it is not presented in an accurate, clear, complete, and unbiased manner;
- EPA’s statement violates the “objectivity” component of the Guidelines because it is not substantively accurate, reliable, and unbiased; and
- EPA’s statement violates the “utility” component of the Guidelines because it is not useful to the user, including the public, because it is erroneous.

II. FIQA AND THE INFORMATION QUALITY GUIDELINES

The Federal Information Quality Act (FIQA) required OMB to issue government-wide guidelines to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by federal agencies. FIQA § 515(a). OMB’s final Information Quality Guidelines were issued on February 22, 2002. 67 Fed. Reg. at 8452. Each federal agency was then required to issue its own implementing (or “conforming”) guidelines (based on OMB’s model) by October 1, 2002 (following the opportunity for public comment and OMB review). Consistent with OMB’s Guidelines, EPA issued its own “conforming” Information Quality Guidelines in October 2002.

OMB’s Guidelines require each federal agency to establish “administrative mechanisms” that allow “affected persons” to seek and obtain the correction of information that does not meet the OMB Guidelines. OMB Guidelines § II, 2, 67 Fed. Reg. at 8458. OMB makes clear that the purpose of these “administrative mechanisms” is to “facilitate public review” of agency compliance with the Guidelines. OMB Guidelines § III, 2, 67 Fed. Reg. at 8459. Finally, each agency is required to report annually to OMB on the number,

nature, and resolution of complaints received by the agency. OMB Guidelines § IV, 6, 67 Fed. Reg. at 8459.

III. NMHC, NAA, BOMA, IREM, NAIOP, NAREIT, NAR, NLHA, RER, AND THE U.S. CHAMBER ARE AFFECTED PARTIES UNDER THE GUIDELINES

NMHC, NAA, BOMA, IREM, NAIOP, NAREIT, NAR, NLHA, RER, and the U.S. Chamber meet the definition of “affected persons” under the OMB and EPA Information Quality Guidelines. OMB Guidelines § II, 2, 67 Fed. Reg. 8458, EPA Guidelines § 8.2.

NMHC represents the largest and most prominent apartment firms in the United States. NMHC’s members are engaged in all aspects of the apartment industry, including ownership, development, management, and financing. NMHC members own and manage multifamily properties that are directly and presently affected by EPA’s Revised Policy.

NAA is the largest national federation of state and local apartment associations. NAA is composed of 155 affiliates and represents more than 30,000 professionals who own and manage more than 4.5 million apartments. NAA members own and manage multifamily properties that are directly and presently affected by EPA’s Revised Policy.

BOMA International is a dynamic international federation of 107 local associations. BOMA International's 19,100-plus members own or manage more than 9 billion square feet of downtown and suburban commercial properties and facilities in North America and abroad. The mission of BOMA International is to advance the performance of commercial real estate through advocacy, professional competency, standards and research.

IREM was founded to provide a means of identifying and training property management professionals, according to stringent ethical and educational standards. Today, IREM’s 8,733 United States Certified Property Managers (CPM®) manage 6.4 million of the nation's conventionally financed apartment units; 1.6 million units of federally assisted housing; 3.6 billion square feet of the nation's office buildings and industrial space; and 1.2 billion square feet of the nation's retail space.

NAIOP is the trade association for developers, owners, investors and asset managers in industrial, office, and related commercial real estate. Founded in 1967, NAIOP is comprised of more than 11,000 members in 48 North American chapters.

NAREIT is the national trade association for real estate investment trusts (“REITs”) and other publicly traded real estate companies. Members include REITs and other businesses that own, operate, and finance income producing real estate, as well as those firms and individuals who advise, study and service those businesses.

NAR represents 970,000 professional members who are involved in all aspects of the real estate industry, including members who specialize in the management of commercial and residential properties.

NLHA represents owners, managers, and housing agencies involved in the development and administration of affordable rental housing.

RER is the organization that brings together leaders of the nation's top public and privately-held real estate ownership, development, lending and management firms with the leaders of major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy including environment issues. Collectively, Roundtable members hold portfolios containing over 5 billion square feet of developed property valued at more than \$450 billion. Participating trade associations represent more than 1 million people involved in virtually every aspect of the real estate business.

The U.S. Chamber is the world's largest businesses federation consisting of over three million members of every size, sector, and region. U.S. Chamber members include trade associations that represent the multifamily and apartment industries, including NMHC, NAA and BOMA, as well as multifamily builders and developers that are directly and presently impacted by EPA's Revised Policy.

IV. BACKGROUND ON SUBMETERING, RUBS, AND OTHER ALLOCATION BILLING SYSTEMS

As an initial matter, it should be noted that we generally applaud EPA's Revised Policy. Specifically, we agree with EPA that water submetering poses no added health concerns to residents and encourages water and sewer conservation. We also agree with EPA that direct billing for water can assist local jurisdictions in meeting their water conservation goals. Our objection in the Request for Correction applies solely to EPA's statement that **"... EPA believes that RUBS or other allocation billing systems ... do not encourage water conservation"** (68 Fed. Reg. 74234) (emphasis added) because we believe this statement is erroneous in light of the conclusions of the open literature on this topic.

By way of background, it is important to note that although 22 percent of the nation's households live in apartments, fewer than 10 percent of apartment homes are separately billed for water.⁵ Thus, any policy shift designed to encourage conservation in this sector has the potential to realize a significant impact. In contrast, more than 80 percent of apartment dwellers are separately billed for electricity.⁶ Direct billing for electricity was actually mandated by federal law as a means to foster energy conservation.⁷ Studies have found that when multifamily residents were required to pay their electric bill separately from their rent, consumption was significantly diminished.⁸

At present, more than 90 percent of apartment residents have no incentive to conserve water because they do not receive a separate bill for water. Unlike electricity, the

⁵ 2001 American Housing Survey.

⁶ *Id.*

⁷ See Munly, Appendix A – References.

⁸ See McClland, Appendix A – References.

cost of water is bundled into their rent charge. They receive no price signal associated with their consumption of water. This situation is analogous to the flat rate billing structure that was (and still is) applied to single-family homes in some areas. Studies show that, across all sectors of real estate, when utilities instituted programs that billed for consumption rather than employing a flat fee structure, water consumption levels went down.⁹

Based on the foregoing, we believe that EPA's statement that **"... EPA believes that RUBS or other allocation billing systems ... do not encourage water conservation"** (68 Fed. Reg. 74234) (emphasis added) is erroneous, and regrettably undermines the intent and purpose EPA's Revised Policy, which is to encourage water conservation consistent with the protection of public health. In the majority of the nation's already existing apartment housing stock, ***RUBS and other allocation billing systems are the only method by which water billing can take place.*** Newly constructed apartment homes may be designed to have a single point of entry for their plumbing and thus may be fitted with a single meter to measure consumption. However, much of the existing apartment housing stock has been constructed with multiple plumbing risers, and total capture metering may not be possible for technical or regulatory reasons. In the overwhelming majority of apartment properties, a resident's water bills may instead be calculated by a mathematical formula that takes into consideration either (1) the flow to the hot water heater in their individual apartment unit or (2) the total water consumption less a proscribed set aside for common area usage.¹⁰

According to EPA's Revised Policy, water conservation is only associated with total capture metering and not with RUBS or other allocation billing systems. However, multiple studies conclude that both water submetering and RUBS and other allocation billing systems also have the effect of stimulating water conservation.¹¹ The erroneous statement contained in EPA's Revised Policy has the practical effect of discouraging these important and necessary methods of water billing or, at the very least, subjecting them to a higher level of regulatory compliance involving water quality testing. This, despite the fact that since ratio billing is a purely mathematical equation, it can have absolutely no impact on water quality whatsoever.

V. THE FIQA APPLIES TO EPA'S STATEMENT IN REVISED POLICY

In order to be covered by the OMB and EPA Information Quality Guidelines, an agency dissemination of information must meet several threshold requirements. Specifically, there must be a "dissemination" of "information" to the public "after October 1, 2002." Each requirement is readily met in this instance.

First, "dissemination" is defined as "agency initiated or sponsored distribution of information to the public." OMB Guidelines § V, 8, 67 Fed. Reg. at 8460; EPA Guidelines § 5.3. EPA's Revised Policy has clearly been disseminated since it was published in the

⁹ See AWWA; Blackburn; Boyet; Bryson; Dietemann; Flechas; Goodman; Lineaweaver, Appendix A – References.

¹⁰ See, e.g., Title 30, Texas Administrative Code, Chapter 291, Subchapter H (Texas regulations specifying how utility billing and allocation may be performed).

¹¹ See Goodman; Koplów; Strub; and Wilcut, Appendix A – References.

Federal Register on December 23, 2003. Second, “information” is defined as “any communication or representation of knowledge such as facts or data, in any medium or form.” OMB Guidelines § V, 5, 67 Fed. Reg. at 8460; EPA Guidelines § 5.3. EPA’s Revised Policy is clearly “information” because it communicates the agency’s conclusion that “...RUBS and other allocation billing systems ... do not encourage water conservation.” Finally, EPA’s Revised Policy was published in the Federal Register on December 23, 2003.

VI. EPA’S FINAL MEMORANDUM DOES NOT SATISFY INFORMATION QUALITY GUIDELINES.

A. EPA’s Statement Does Not Appear to Have Been Subjected to Pre-Dissemination review.

OMB and EPA’s Guidelines require that information disseminated by federal agencies after October 1, 2002 must undergo internal, pre-dissemination review before it is released to the public. Specifically, OMB’s Guidelines require that “[t]his process shall enable the agency to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information.” OMB Guidelines § III, 2, 67 Fed. Reg. at 8459. EPA Guidelines include similar requirements. EPA Guidelines §§ 6.1, 7.1.

There is no indication in EPA’s Revised Policy that EPA’s statement concerning ratio billing was subjected to internal, pre-dissemination review prior to its release to the public.

B. EPA’s Statement Does Not Meet the Standard for Objectivity Under the Guidelines.

Under OMB and EPA’s Guidelines, all information disseminated by federal agencies must meet the standard of “objectivity.” According to OMB, “objectivity” has two distinct components: presentation and substance. OMB Guidelines § V, 3a-b, 67 Fed. Reg. at 8459; EPA Guidelines § 5.1. For the reasons discussed below, we do not believe that EPA’s statement that “...**EPA believes that RUBS or other allocation billing systems ... do not encourage water conservation**” meets either the “presentation” and “substance” component of the objectivity standard.

1. “Presentation” Objectivity.

OMB’s Guidelines require that the all information disseminated by a federal agency must be presented objectively, which means:

[W]hether disseminated information is being presented in an accurate, clear, complete, and unbiased manner... This involves whether the information is presented within the proper context... Also, the agency needs to identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections)... Where appropriate, data should have full, accurate, transparent documentation... OMB Guidelines § V, 3a, 67 Fed. Reg. at 8459; *see also* EPA Guidelines § 5.1.

EPA's statement that "... **EPA believes that RUBS or other allocation billing systems ... do not encourage water conservation**" fails the test for "presentation objectivity." EPA's statement does not appear to be "accurate, clear, complete, or unbiased" because it fails to mention, and is directly contradicted by, the conclusions of substantial research available in the open literature that roundly conclude that RUBS and other allocation billing systems *do in fact spur water conservation*. It also appears to impermissibly reach a pre-determined policy decision by EPA to include water submetering but not RUBS and other allocation billing systems. Accordingly, EPA has violated the "objective presentation" component of the Information Quality Guidelines.

2. "Substantive" Objectivity

The OMB and EPA Guidelines also require that the substance of all information disseminated by a federal agency must meet a general standard of objectivity, defined as: "a focus on ensuring accurate, reliable, and unbiased information." OMB Guidelines § V, 3b, 67 Fed. Reg. at 8459; EPA Guidelines § 5.1.

We believe that EPA has failed to satisfy this standard for objectivity as well. EPA's statement that "... **EPA believes that RUBS or other allocation billing systems ... do not encourage water conservation**" is contradicted by the numerous studies present in the open literature. EPA's assertion that RUBS and other allocation billing systems do not conserve water appears to be "inaccurate, unreliable, and biased" as numerous studies support a contradictory conclusion. Further, EPA fails to cite *any* studies to support its finding.

By way of example, a 1999 study,¹³ conducted by Industrial Economics of Cambridge, Massachusetts, analyzed water billing practices at properties in Texas, Florida, and California that had installed some type of submeter or implemented RUBS. On submetered properties, no distinction was made between total capture and hot water meters. Detailed information was collected on the property characteristics and water usage through site visits, utility records, and interviews with property staff. The study found that the metered properties use 18 to 39 percent less water than properties that included water costs in the rent. The study also found that RUBS properties used between 6 and 27 percent less water than properties that charged for water as a flat fee contained in the rent.¹⁴

Further, other studies have also found a statistically significant difference in consumption patterns between properties that have allocated billing systems and those for which consumers receive no direct bill but are charged as part of their rent.¹⁵ Additional studies directly contradict EPA's assertion about RUBS and other allocation billing systems. For example, in 2002 the American Water Works Association published a study, *A Comparison of Water Consumption Patterns Between Bill Allocated and Non-Allocated Multifamily*

¹³ Koplw, Appendix A – References.

¹⁴ *Id.*

¹⁵ See Strub; and Wilcut, Appendix A – References.

Residential Establishments in San Antonio, Texas conducted by the San Antonio Water System¹⁶ that surveyed 11 submetered, 10 allocated, and 10 non-allocated establishments. The survey concluded that consumption was less in bill allocated establishments than in non-allocated establishments. Specifically, the study found that:

Based on differences between the means tests for gallons per capita per day, it is evident that *the practice of charging tenants for water consumption has at least some impact on per capita water consumption.*¹⁷

For these reasons, EPA’s statement that “... **EPA believes that RUBS or other allocation billing systems ... do not encourage water conservation**” appears to violate the objective substance component of the Information Quality Guidelines.

C. EPA’s Statement Does Not Meet the Standard for Utility Under the Guidelines.

OMB and EPA’s Guidelines require that information disseminated by a federal agency must have “utility,” which refers to: “the usefulness of the information to its intended users, including the public.” OMB Guidelines § V, 2, 67 Fed. Reg. at 8459; EPA Guidelines § 5.1.

OMB further explains that:

In assessing the usefulness of information that the agency disseminates to the public, the agency needs to consider the uses of the information not only from the perspective of the agency but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information’s usefulness from the public’s perspective, the agency must take care to ensure that transparency has been addressed in its review of the information. OMB Guidelines § V, 2, 67 Fed. Reg. at 8459.

We believe that EPA’s statement that “... **EPA believes that RUBS or other allocation billing systems ... do not encourage water conservation**” is not useful to the public because it appears to be erroneous and is contradicted by the numerous studies present in the open literature, which support a direct relationship between ratio billing and water conservation.

VII. REQUEST FOR CORRECTION

The FIQA and the Information Quality Guidelines require that federal agencies must establish administrative mechanisms that allow “affected persons to seek and obtain correction of information” that does not comply with the OMB Guidelines. FIQA, § 515(2)(B). Thus, statute requires that the public not only be able to “seek” the correction of non-conforming information, but also to “obtain” its correction. In addition, OMB makes clear that the purpose of the correction mechanism is to “facilitate public review” of agency

¹⁶ AWWA, Appendix A – References.

¹⁷ *Id.*(emphasis added).

information practices. OMB Guidelines § III, 3, 67 Fed. Reg. at 8459. “Correction” may include supplementation of the record and other actions. 67 Fed. Reg. at 8459. EPA possesses the authority to determine what corrective action is appropriate, based on the nature and the timeliness of the information involved, the significance of the error on the use of the information and the magnitude of the error. EPA Guidelines § 8.4.

Because EPA’s statement that “... **EPA believes that RUBS or other allocation billing systems ... do not encourage water conservation**” appears to be erroneous and is contradicted by the numerous studies present in the open literature, we respectfully request that EPA make the following correction:

- (1) **Pre-Dissemination Review.** EPA should disclose the process that the statement at issue underwent as part of EPA’s internal, pre-dissemination review process; and
- (2) **Comprehensive Literature Review.** EPA should conduct a comprehensive literature review of the established studies, available in the open literature, to determine whether its statement at issue complies with the Guidelines. We have provided an representative list of these studies, attached as Appendix A – References; and
- (3) **Correct the Statement in the Revised Policy.** If EPA concludes that its statement is, as we respectfully assert, erroneous, EPA should correct the statement to accurately reflect the relationship between ratio billing and water conservation; and
- (4) **EPA should reissue its Revised Policy to treat RUBS and other allocation billing systems the same way it treats water submetering.** If, as we suspect, EPA concludes that RUBS and other allocation billing systems do in fact encourage water conservation and pose no added health concerns to the public, there is no reason why EPA should not treat ratio billing the same way it treats water submetering, and we request that EPA revise its policy accordingly.

VIII. Contact Information:

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NMHC, NAA, BOMA, IREM, NAIOP, NAREIT, NAR, NLHA, RER, and the U.S. Chamber consider compliance with FIQA and the Information Quality Guidelines to be a foremost responsibility of federal agencies and a chief manner in which agencies can

improve the quality of information they disseminate to the public and use or rely upon in making regulatory and policy decisions. Please feel free to contact us if you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink that reads "Eileen Lee". The script is fluid and cursive, with the first letters of "E" and "L" being significantly larger and more stylized than the rest of the letters.

Eileen Lee, Ph.D.
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APPENDIX A – REFERENCES

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