Summary of Major Concerns about the Enterprises' Radon Policy (February 2023)

Health Equity. All tenants deserve competent radon services delivered by professionals who have proven specialized knowledge and are complying with established practices. By not requiring that radon-related work in rental properties be performed by qualified individuals or comply with widely recognized EPA-recommended voluntary consensus standards for measurement and mitigation, the policy poses significant challenges to health equity. Withholding full use of the proven knowledge and technology will not protect occupants from radon-induced lung cancer, which is the purpose of the policy.

Qualified Personnel. The policy relies exclusively on Environmental Professionals (EPs), who are not inherently or actually qualified to perform or oversee radon testing and mitigation. An EP is defined in the regulation for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as the EPA Superfund Program) at 40 CFR 310.12 as "a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases (see § 312.1(c)) on, at, in, or to a property." At 40 CFR 300.5, "release" is defined as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant." The definition of releases also specifically excludes radioactive material. The Indoor Radon Abatement Act (IRAA), which is the federal statute relevant to radon, directed EPA at 15 USC 2665 to operate a radon proficiency program. After developing the model, EPA no longer operates the proficiency program but has recognized two private radon certification programs that carry out this function. These EPA-recognized programs implement Congressional intent regarding indoor radon and deliver the only nationwide framework for qualifications to perform radon services, not CERCLA.

State Sovereignty. The many inconsistencies between the policy as presented and current state policies are going to create confusion, conflict, and noncompliance. By continuing to allow transactions that finance non-compliance with state regulations and laws that require that (1) work be performed by state-credentialed individuals and (2) work be performed in accordance with consensus standards, the Enterprises are facilitating violations of state law.

Standards. Unlike HUD, most regulatory states, and both EPA-recognized national proficiency programs, the Enterprises' radon policy does not require adherence to the EPA-recommended voluntary consensus standards. Instead, the policy permits subjective decisions and actions by an environmental professional, who is not even required by the policy to possess the relevant education, training, and experience to determine the extent and thoroughness of radon measurement or mitigation. The National Technology and Transfer of Information Act at 15 USC 272 requires that federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies.

Cost. Employing the claim that the cost of radon measurement and mitigation might jeopardize affordability as an excuse for endangering the health of occupants is a thin argument. No one has provided evidence that the typical pro forma over the life of the loan cannot manage 26 cents a month per unit for measurement and one dollar and 96 cents a month per unit for mitigation as presented in AARST's "Characterizing the Potential Impacts of the Radon Policy on Costs". is higher than the AARST estimate.