



National Association of State Energy Officials

April 26, 2023

The Honorable Jennifer Granholm
Secretary of Energy
U.S. Department of Energy
1000 Independence Ave SW
Washington, DC 20585

Re: Request for Information on the Inflation Reduction Act (IRA) Section 50131, Technical Assistance for Latest and Zero Building Energy Code Adoption DE-FOA-0003054

Dear Secretary Granholm,

Thank you for the opportunity to provide comments in response to the Request for Information on the Inflation Reduction Act (IRA) Section 50131, Technical Assistance for Latest and Zero Building Energy Code Adoption DE-FOA-0003054. The National Association of State Energy Officials (NASEO) represents the 56 Governor-designated State and Territory Energy Offices, and we want to bring to your attention our deep concern with the U.S. Department of Energy’s (DOE) approach to implementing this historically-significant section of the IRA.

DOE’s intent to utilize a time-consuming, competitive funding approach to IRA Section 50131 will result in dramatically narrowing the benefits and slowing implementation of a program that could improve energy-related building resilience, reduce homeowner and commercial building energy costs, and lower greenhouse gas emissions from building operations for the 75 or more years many newly-constructed buildings will remain in service. An overburdened federal procurement system will be further slowed by thousands of needless competitive applications under Section 50131. State and local governments already possess great expertise and commitment to implementing such programs directly via a formula approach which avoids even more burden on federal, state, and procurement systems.

The proposed DOE approach to Section 50131 also misses the significant differentiation across existing state and local laws (and building markets) governing building energy codes and building performance standards. Ignoring the nuance of state and local laws and processes governing building energy codes and building performance standards will produce unintended consequences, such as disadvantaging those state and local governments with the least resources by forcing them to navigate burdensome, year-long competitive applications. It directly limits the ability – by statute or capacity – of many state and local governments to apply for

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these funds. Such an approach is neither what Congress nor what the states that supported this IRA provision as it was developed envisioned.

In February 2023, approximately 25 State Energy Directors and their staffs met with DOE career staff to discuss the importance of this program and suggested implementation approaches. State after state – with states present representing every region of the nation – called on DOE to advance the majority of these funds through formula funding and via the U.S. State Energy Program (SEP). Every state present noted the critical importance of continuing and expanding their partnerships with local governments in the utilization of these funds. Unfortunately, the DOE Notice of Intent for this program is counter to every significant recommendation the states made. With this context in mind, following are NASEO’s detailed comments and recommendations on DOE’s plans for IRA Section 50131 implementation.

**Equitable Distribution of Opportunities and Unintended Consequences** – NASEO recommends that the Section 50131 funds be allocated via a combination of formula and competitive grants (e.g., 80 percent formula / 20 percent competitive), rather than the proposed 100 percent competitive allocation. The capacity of DOE’s procurement structure to administer these funds on a purely competitive basis is extraordinarily constrained despite the hard work and dedication of federal employees. For example, DOE delivered the *first* allocation of funding from the *Infrastructure, Investment and Jobs Act (IIJA)* (enacted in November 2021) to just eight of the 56 states and territories during the second week of April 2023. State and local government agencies also have limited capacity and DOE’s discretionary policy decision to add resource-intensive competitive actions where a streamlined, formula approach would produce results across a greater range of state and local jurisdictions at a lower cost, is out of step with the practical implementation input offered by the states to DOE in February 2023.

In addition, distribution of Section 50131 funds to the State Energy Offices through a mix of formula and competitive funding would also limit the negative impact of a full-scale competitive version of this program – *involving several hundred recipients* – on the procurement pace of other, large-scale DOE competitive IIJA and IRA programs that are equally important. From a national clean energy infrastructure, economic development, and climate perspective, the unintended “procurement-slowness” consequence of a competitive approach to 50131 on other IIJA and IRA programs may be the most compelling reason to utilize a formula approach for Section 50131.

Finally, state and local governments are already working on an historic number of competitive opportunities under the IIJA (e.g., building energy codes, hydrogen hubs, carbon hubs) and IRA. In fact, many of the same state and local governments targeted by the proposed Section 50131 codes program just completed competitive applications under the IIJA Resilient and Efficient Codes Implementation program. A mixed formula-competitive approach would benefit all states and their local partners and support a more equitable distribution of resources (i.e., state and local governments with the least resources are generally disadvantaged in competitive funding processes). In addition, the formula approach is best suited to helping meet the Administration’s Justice 40 goals in the codes area by reaching the vast majority of states and their communities rather than only those that make it through a resource-intensive national competitive process.

**Congress Set Program Eligibility** – Section 50131 explicitly states that the program is to “carry out activities under Part D of title III of the *Energy Policy and Conservation Act* (42 U.S.C. 6321-6326),”

which is the U.S. State Energy Program (SEP) (see Section 50131(a)(1) and (2)). Section 50131(d) also explicitly waives the state match requirement for SEP. The SEP statute only provides funds directly for states. The underlying statute does provide support for building energy codes and coordination with units of local government (42 USC 6322(c) and (d)). Congress also expects assistance to be provided through states to “units of local government” as described under Section 50131(b) and (c). When Congress explicitly intends funds to go directly to local governments, they so state. For example, the Energy Efficiency and Conservation Block Grant (EECBG) program, authorized under the *Energy Independence and Security Act of 2007* (P.L. 110-440; 42 USC 17151-17158) and provided with \$550 million under IIJA, provides 68 percent of the funds to units of local government and 28 percent of the funds to the states. The text of Section 50131 indicates that these funds are to be distributed via 42 USC 6321 – 6326. Therefore, by law, the only entities eligible to receive these funds are the governor designated State and Territory Energy Offices. If DOE fails to abide by the statute, it may create a risk of litigation that would severely delay the implementation of this critical program.

**The Nuance of Critical State-Local Partnerships** – Local governments play a critical role in the enforcement of building energy codes, but in many states, they are not permitted to adopt building codes or stretch codes directly. State Energy Offices have decades of experience working with local governments to implement cost effective energy policies, including building energy codes and standards. For most State Energy Offices, collaboration with local governments is foundational. Formula funding directed through the State Energy Offices provides more equitable, statewide resources and technical assistance on building energy codes and building performance standards – serving large and small, urban and rural local jurisdictions, many of which lack the resources to compete for federal funds. Statewide programs are particularly beneficial in home-rule states and in states where cities are not permitted to adopt codes or stretch codes directly. DOE’s proposed approach to Section 50131 does not appreciate the nuance and complexity of state and local jurisdictions’ roles and authorities in the area of building energy codes and building performance standards.

In addition to the statutory requirements of 42 USC 6321-6326, distributing the funds appropriated by Congress to the State Energy Offices directly will enable the development and implementation of uniform statewide policies. State-led building policies can create effective, uniform efficiency programs that provide builders, building owners, and building industry stakeholders with consistent, understandable, and uniform rules. This can also lessen the impact of code changes on construction costs and workforce training in a market that already suffers from a lack of new detached home construction. The State Energy Offices would welcome a flexible program that encourages collaboration with local governments to establish consistent statewide programs. Furthermore, local governments that would like to apply for direct funding may do so through the IIJA’s Resilient and Efficient Code Implementation grant program, for which the first procurement cycle is underway and four more are planned.

**Support States that Have Advanced Codes and Building Performance Standards** – NASEO also recommends that states that have already or are in the process of adopting the latest codes, which are identified by the statute as IECC 2021 and ASHRAE 90.1-2019, or codes that achieve equal or greater energy savings, be granted funds via formula, rather than through competitive or so called “streamlined” competitive grants. States that have already adopted highly efficient codes should not be

restrained by unnecessary requirements and burdensome competitive applications for funding that they qualify for based on the clear meaning of the statute.

*Category 1, question 4: What tools or services should DOE provide to support applicants? AND Category 1, question 5: What tools or services should DOE provide to support grantees?* DOE should provide tools and services to states to link Section 50131 activities with applications for the Federal Emergency Management Agency's (FEMA) Building Resilient Infrastructure in Communities (BRIC) program, which includes adoption of the three most recent building codes as scoring criteria in evaluating grant applications.

*Category 1, question 6: Should eligible entities include authorities having jurisdiction (AHJs) (e.g., certain city governments, State Energy Offices, etc.) in addition to state and local government agencies?*

Only State and Territory Energy Offices are eligible for funds distributed through 42 USC 6321-6326. No other entities are eligible for funds distributed via this statute.

*Category 1, question 7: How can DOE incentivize rapid adoption of codes or standards with long-term commitment to robust compliance activities?*

DOE can incentivize rapid adoption of codes and building performance standards by ensuring that states that adopt the latest or zero energy codes that meet the efficiency criteria established by DOE are eligible for funding from Section 50131 through a simplified application process via the existing SEP formula. Some states adopt building energy codes on a regular cadence established by state law. In these states, particularly those states where the 2021 International Energy Conservation Code or ASHRAE standard 90.1-2019 have already been adopted, a simplified application process to obtain funding through Section 50131 will ensure that the program satisfies the Congressional intent. DOE should permit State Energy Offices to use up to five percent of funds for administrative purposes.

*Category 2, question 2: How should funding under other federal programs (e.g., BIL Section 40109: State Energy Program, BIL Section 40552: Energy Efficiency and Conservation Block Grant Program, other federal programs, or tax incentives for efficient buildings) be leveraged to maximize the impact of the IRA codes funding?*

Leveraging of tax incentives for efficient buildings is strongly encouraged. We recommend that DOE work with the U.S. Treasury Department and Internal Revenue Service and other federal agencies to provide guidance to policy makers and industry about how to leverage tax incentives for this purpose.

DOE should work with FEMA to ensure that states considering building code updates to support applications for the BRIC program are aware of Section 50131 funding. Combining BRIC funding with Section 50131 code funding will support increased building and energy system resilience in states, as well as improving energy efficiency and reducing the cost of adopting and enforcing new building codes. BRIC funding is a significant source of federal investment in building code activities and ensuring the two programs work in concert will help increase the efficiency and resilience of new buildings.

*Category 3, question 7: What equity considerations should DOE incorporate into any guidance or plans, especially surrounding workforce and training?*

DOE should support approaches that increase recruitment of a diverse workforce into the building industry as well as support incumbent building code and construction professionals. States are well-positioned to support building energy code workforce growth and recruitment by leveraging funding to increase access to building career skills training through subsidized accreditation course fees, integrated community college and vocational curricula, and paid apprenticeship opportunities. Many states have existing relationships with trade associations, community colleges or public universities, and trade unions that could more readily reach the next generation of code professionals, inspectors, builders, developers, engineers, and all other positions necessary to support the compliance and enforcement of newly adopted building energy codes. To support the existing workforce and train incumbent building code officials, states can develop and fund training programs on new energy code developments that offer wrap-around services to eliminate common attendance and completion barriers. These wrap-around services may include free or subsidized course materials, childcare expenses, language interpretation services, transportation costs, access to mentoring and peer networking, and other methods to ensure equitable access to training. For more information on equitable building energy code implementation strategies, please refer to the NASEO publication, “Opportunities for Equity-Focused Building Energy Code Activities”.

*Category 4, question 4: Should DOE prioritize projects that leverage other funding sources?*

DOE should provide maximum flexibility to states to allocate federal funds to achieve their energy policy goals. When available, leveraging of utility funds to support code adoption may be appropriate, but states may not have existing utility programs supporting energy codes, and IRA funds may serve as funding to accelerate building energy code adoption and use for stakeholders in those states. DOE should prioritize projects that leverage BRIC funding in combination with Section 50131 funding for updating building energy codes and improving community resilience.

*Category 4, question 5: What resources and tools should DOE provide, as well as those that DOE can leverage that already exist, to support existing-building codes and standards?*

DOE should refer to standards such as ASHRAE 100 but should also allow for experimentation among the states as Building Performance Standards are still an emerging policy type. DOE should evaluate development of resources to help states leverage programs such as the Greenhouse Gas Reduction Funds administered by the U.S. Environmental Protection Agency, utility programs that support building audits, IJA revolving loan fund grants, and the tax credits established by the IRA.

NASEO appreciates the opportunity to provide both context and comments on this critical program. We urge your consideration of the above issues and recommendations as DOE moves forward with the deployment of the Section 50131 funds. In addition, we strongly encourage DOE leadership to discuss this program directly with State Energy Directors from a geographically diverse group of State Energy Offices, experienced in building energy codes and building performance standards before making final decisions on implementation.

Best regards,



David Terry, President, NASEO