

February 2, 2018

The Honorable Thad Cochran
Chairman
U.S. Senate
Committee on Appropriations
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
U.S. Senate
Committee on Appropriations
Washington, DC 20510

The Honorable Rodney Frelinghuysen
Chairman
U.S. House of Representatives
Committee on Appropriations
Washington, DC 20515

The Honorable Nita Lowey
Ranking Member
U.S. House of Representatives
Committee on Appropriations
Washington, DC 20515

Re: Increased Appropriations for Energy Efficiency Programs, Continuing Risks of Impoundment, and Robust Congressional Oversight of Federal Spending

Dear Chairman Cochran, Ranking Member Leahy, Chairman Frelinghuysen, and Ranking Member Lowey:

We, the undersigned, on behalf of a coalition of energy efficiency and clean energy organizations, states, businesses, trade associations, and others, write today to urge you to increase Fiscal Year (FY) 2018 budget cap allocations for federal energy efficiency programs. We support an increase in available funds for FY2018 for non-defense discretionary priorities, distributed across programs that deliver direct benefits to taxpayers. In addition, in the wake of a December 2017 impoundment finding by the U.S. Governmental Accountability Office (GAO), Congress must be committed to continuous and rigorous oversight to ensure that appropriated funds are spent as directed by Congress.

As you know, the Budget Control Act of 2011 (Pub.L. 112–25) set caps on discretionary spending through 2021, which have since been modified. Without further action by Congress, the original statutory cap allocations will be reduced by about \$90 billion in FY2018 because of the imposition of a subsequent automatic reduction. This could result in steep cuts across the board, including to critical energy efficiency programs managed by the U.S. Department of Energy (DOE) and Environmental Protection Agency (EPA). Funding at these lower levels would cause harm to multiyear research and development activities that contribute to U.S. competitiveness and productivity. It also would seriously impair a wide range of programs that deliver annual savings to homeowners, consumers, and businesses and that reduce stress and strain on our energy systems and power grid.

The importance of increased appropriations for federal energy efficiency programs is contrasted with the administration's proposals to cut or reduce funding for several efforts underway at DOE and EPA. Those proposals, and the inherent risk of impoundment, especially while a continuing resolution is in effect, have now manifested in a documented delay of funding appropriated by

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Re: Appropriations for Energy Efficiency Programs, Continuing Risks of Impoundment, and Robust Congressional Oversight of Federal Spending

Congress.¹ On December 12, 2017, GAO General Counsel Thomas H. Armstrong notified Congress that, “ARPA-E [(Advanced Research Projects Agency-Energy)] improperly withheld the obligation of budget authority in connection with the President’s proposed elimination of ARPA-E and a so-called ‘cancellation proposal’ in the President’s budget request.”² We urge you to be vigilant and conduct vigorous oversight of DOE (the agency that directed ARPA-E to withhold funds), EPA, and other agencies to ensure that federal energy efficiency programs have timely access to funding provided by Congress.

To help mitigate the risks of impoundment and prevent future instances, we urge you to include clear direction to the administration with respect to specific levels of funding for current energy efficiency programs, and with respect to the programmatic activities in legislation or accompanying reports for the remainder of FY2018. For example, the administration has indicated that it will deprioritize federal assistance for field demonstrations and commercialization activities. When Congress expects an agency (e.g., U.S. DOE) to carry out activities beyond basic research and demonstration, we recommend providing the administration with additional instructions that reflect Congress’s intent.³ In addition, where a program lacks specific authorization or is funded as part of a portfolio of initiatives (e.g., the ENERGY STAR program at EPA), we recommend that you provide more detailed instructions to ensure these programs, activities, and projects continue.

We are prepared to work with you and your colleagues on the Appropriations Committees to provide more assistance as requested to identify specific programs, activities, and projects that we believe may warrant specific congressional direction and guidance. We pledge to assist your staff by identifying instances of delayed funding disbursements, which could merit additional investigations by GAO, and which might negatively impact your constituents. And, as your attention shifts to longer-term funding in FY2018 and the budget and appropriations for FY2019, we will support your efforts to advance U.S. energy efficiency programs.

Thank you for your consideration.

Alliance for Industrial Efficiency
Alliance to Save Energy
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¹ GAO defines impoundment as, “an action or inaction by the President or a federal agency that delays or withholds the obligation or expenditure of budget authority provided in law.” GAO explains, “[t]here are two types of impoundment actions: deferrals and rescission proposals. In a deferral, an agency temporarily withholds or delays funds from obligation or expenditure.... A rescission involves the cancellation of budget authority previously provided by Congress (before that authority would otherwise expire), and can be accomplished only through legislation.” In a footnote, GAO advises that “[d]eferrals for policy reasons are not authorized.” (2 U.S.C. § 684(b).” Principles of Federal Appropriations Law: Fourth Edition, Chapter 2, GAO-16-464SP, March 10, 2016, pgs. 2-47 and 2-48.

² Impoundment of the Advanced Research Projects Agency-Energy Appropriation Resulting from Legislative Proposals in the President's Budget Request for Fiscal Year 2018, B-329092, December 12, 2007, pg. 5.

³ For example, the U.S. Senate Energy and Water Development appropriations bill and report for FY2018 includes additional direction and explanation of Congressional intent. See S. Rept. 115-132, “Energy and Water Development Appropriations, 2018,” pg. 70.

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American Council for an Energy-Efficient Economy
ASHRAE
Building Performance Institute
Business Council for Sustainable Energy
Copper Development Association
Cree, Inc.
E4TheFuture
Efficiency First
Energy Efficiency Business Coalition
Environmental and Energy Study Institute
Federal Performance Contracting Coalition
Home Performance Coalition
Institute for Market Transformation
International Association of Lighting Designers
National Association for State Community Services Programs
National Association of Energy Service Companies
National Association of State Energy Officials
Natural Resources Defense Council
U.S. Green Building Council
Vermont Energy Investment Corporation

cc: Members of the U.S. Senate Committee on Appropriations
Members of the U.S. House of Representatives Committee on Appropriations