The Real Estate Roundtable

February 26, 2025

The Hon. Tom Cole, Chairman
The Hon. Rosa DeLauro,
Ranking Member
Appropriations Committee
U.S. House of Representatives

The Hon. Susan Collins, Chair
The Hon. Patty Murray,
Ranking Member
Appropriations Committee
U.S. Senate

The Hon. Brett Guthrie, Chairman
The Hon. Frank Pallone,
Ranking Member
Energy & Commerce Committee
U.S. House of Representatives

The Hon. Mike Lee, Chairman
The Hon. Martin Heinrich,
Ranking Member
Energy & Nat. Resources Comm.
U.S. Senate

The Hon. James Comer, Chairman
The Hon. Gerald Connolly,
Ranking Member
Oversight & Gov't Reform Comm.
U.S. House of Representatives

The Hon. Jay Obernolte, Chair
The Hon. Ted Lieu, Co-Chair
Bipartisan Task Force on AI
U.S. House of Representatives

Dear Republican and Democratic Leaders:

As Congress works with the Administration to identify and cut wasteful expenditures, we respectfully request your oversight regarding almost a quarter of a billion dollars in federal grants issued by the Department of Energy (DOE).

Our members own, develop, construct, finance, and manage all types of income-producing properties in every U.S. market and abroad. We provide housing for our citizens, offices for our businesses, and classrooms for our students. Patients heal in our health care facilities and innovation happens in our laboratories. Our data centers are critical for AI technologies and crypto asset markets; our cell towers enable communication; and our warehouses support supply chains for storing and transporting goods. Our members own shopping centers where commerce happens, and hotels where we connect with family and friends. Our members' buildings touch virtually every aspect of life in America. Addendum 1 summarizes the massive economic benefits that real estate delivers for the economy.

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Last year, DOE committed $240 million to 19 cities, municipalities, and states across the country to create and enforce local laws known as Building Performance Standards (BPS). DOE claimed the *Inflation Reduction Act* provided authority for these grants. BPS laws are like "EV mandates" for buildings. They impose fines and penalties on all types of properties if they fail to meet "targets" for greenhouse gas emissions, and unless they "electrify" by abandoning use of natural gas heaters, boilers, stoves, and other equipment. The Real Estate Roundtable has developed a comprehensive, peer reviewed policy guide explaining some of the flaws that render these climate-related laws unreasonable.

For example: State and local BPS laws – including those supported by federal taxpayer dollars – levy monetary penalties on buildings even if properties meet the federal government's ***own*** voluntary standards for high performance real estate.

Our members have collaborated with federal agencies for years to develop industry-driven, non-regulatory guidelines signaling the best performing U.S. real estate assets to domestic and global markets. Our public-private partnerships with DOE and the U.S. Environmental Protection Agency (EPA) serve multiple business and economic purposes. They incentivize buildings to reduce energy consumption and cut waste – thus saving families and businesses money on their utility bills. These programs encourage the real estate sector to do more with less so buildings minimize strain on the power grid – thereby conserving electricity our nation needs to lead the world in artificial intelligence, mine crypto assets, and generate a domestic manufacturing boom. Buildings branded with DOE's and EPA's imprimatur also attract investors seeking profitable assets that deliver high quality, modern spaces competing with the best real estate in the world. Our industry's public-private partnerships with the federal government are opportunities to unleash America's energy dominance and independence.

We ***support*** these collaborative EPA and DOE voluntary programs. However, we ***oppose*** DOE grants made by the last administration to encourage excessive and costly state and local "emissions targets" that regulate buildings. Issues warranting Congressional oversight include:

- Whether it is appropriate for a federal grant program to make an end run around federal limits on regulatory power. Should states and localities receive federal money to develop and enforce climate laws on buildings that no U.S. agency has authority from Congress to implement in the first place? In our view, the answer is "no."

- Whether it is appropriate for a federal grant program to support state and local climate laws imposing monetary fines on buildings, even if those assets meet federal criteria for top energy efficiency performers. What reasonable policy basis justifies spending federal money to create building performance laws that inflict penalties on properties lauded by the U.S. government itself? In our view, there is no reasonable basis.

- Whether the particular BPS grants at issue exceed the scope of legislative authority based on the plain text of the *Inflation Reduction Act*. In our view, these BPS grants fall outside statutory authority conferred by Congress.

At minimum, any state or locality that receives federal grants to develop onerous BPS laws should not levy monetary fines on buildings participating in federal partnership programs with the private sector. If these jurisdictions insist on imposing such fines, they should return federal taxpayer dollars.

The attachment and addenda provide more details explaining this issue. We welcome opportunities to meet with your Committees to explore avenues for investigation and hearings. Thank you for considering our request. Please contact Duane J. Desiderio, Senior Vice President and Counsel with The Real Estate Roundtable (www.rer.org), if you have further questions.

Sincerely,

Jeffrey D. DeBoer
President and Chief Executive Officer

Cc:
Members of:
U.S. House Committee on Appropriations
U.S. Senate Committee on Appropriations
U.S. House Committee on Energy & Commerce
U.S. Senate Committee on Energy & Natural Resources
U.S. House Committee on Oversight & Government Reform
U.S. House Bipartisan Task Force on Artificial Intelligence

The Real Estate Roundtable

The Case for Congressional Oversight Regarding Federal Grants for
State and Local Building Performance Standards (BPS)

- ***State and Local BPS Laws are "EV Mandates" – Directed at Buildings.***

We urge Congress's attention to federal grants to states and localities that undermine US-EPA and US-DOE guidelines through excessive climate regulatory laws known as Building Performance Standards (BPS). State and local BPS laws impose costly, burdensome, and unreasonable restrictions on properties to reach "net zero emissions." A key fault of these laws is they fail to account for choices and behaviors of the people who occupy and primarily consume power in buildings. While commercial property owners are responsible for central systems they do not set thermostats, turn off lights, or run appliances in leased spaces controlled by tenants. In practice, reaching a "net zero" BPS mandate requires renter households, small business tenants, and building owners to eventually stop using gas appliances and switch to equipment that runs on electricity instead.

BPS laws are thus like "EV mandates" for building owners and their occupants. A leading real estate data analytics firm described excessive state and local BPS mandates as approaching a European-like framework similar to the Paris Treaty's "net zero" emissions goals.[1] Of course, no law passed by Congress imposes a "net zero" standard or natural gas ban on private sector buildings. Some cities and states may go down this path. If they do, federal grants should not support their efforts.

- ***States and Localities Should Not Receive Federal Grants for BPS Laws That Penalize "High Performance Buildings" Meeting Federal Guidelines.***

Certain jurisdictions are using federal taxpayer money to create laws that levy fines on apartments, offices, stores, health care facilities, hotels, and other commercial properties – without any exemption or relief for a building that satisfies the federal government's own ambitious energy efficiency standards.

DOE announced its first round of federal BPS grant recipients on August 29, 2024, with a second round of applications from state and local governments closing on September 13, 2024.[2] Addendum 2 describes a sample of these state and local awards.

Congress did not intend these grants to be blank checks. A jurisdiction opting to take money ***from the federal government*** should not have unbridled discretion to develop climate-related regulations that punish buildings recognized ***by the federal government.*** Such real estate assets merit praise – not fines. Congressional review is warranted where, as here, U.S. grant dollars are being used to promote laws penalizing building cited by federal agencies as examples of industry leadership.

[1] See Green Street, "ESG & Property Insights: Your 'E' Sensitivity Training."
[2] See Daily Energy Insider, "DOE awards $240 million to municipalities to improve building codes, energy efficiency" (Aug. 29, 2024). DOE issued these grants under authority it claimed under the *Inflation Reduction Act* (*IRA*). The agency provided no criteria as to the terms or substance of state and local BPS laws that merited federal funding. See letter from The Real Estate Roundtable to former U.S. Energy Secretary Jennifer Granholm (Oct. 8, 2024). See also RTO Insider, "DOE Awards $240M for City, State Building Performance Standards" (August 28, 2024); Utility Dive, "State, local building energy codes get makeovers with over $240M from US DOE" (Aug. 28, 2024).

- ***The U.S. Real Estate Industry Strongly Supports Our Voluntary, Market-Driven Partnerships with EPA and DOE.***

The United States government has created the best system of voluntary guidelines in the world recognizing high performance, energy efficient buildings. Our industry is proud of the public-private partnerships we have forged over many years with non-partisan, non-regulatory programs like ENERGY STAR for buildings run by EPA and the Better Buildings Initiative run by DOE.

These programs are market-driven and science-based. They give our members standardized tools and data to monetize and forecast massive energy savings – which translate to utility bill savings for families and businesses. These EPA and DOE programs help reduce the strain on our power grids. They also provide a competitive edge for our industry to attract global capital from overseas investors seeking modern, profitable, and resilient real estate assets. ***We urge Congress's strong support and continued ample appropriations for these non-regulatory EPA and DOE industry partnership programs.***

At minimum, DOE should place a condition that no BPS law supported by a federal grant can impose monetary penalties on a building certified under EPA's ENERGY STAR program, or included in a company's real estate portfolio participating in DOE's Better Buildings Initiative. If a jurisdiction declines such a reasonable grant condition, it should return any money it already received and/or not receive any future disbursements.

- ***BPS Mandates Do Not Adequately Consider Grid Reliability – Or Whether They Will Even Prove Effective in Cutting Overall Emissions.***

BPS laws, and their hyper-focus on building electrification and emissions reduction, overlook their impact on the electric grid's ability to deliver reliable power to the community.

"Uncertainty abounds as to how much electricity demand will grow in the future and where it will come from. We are at the start of a new demand era, with no historical trend line to consult and a wide range of potential outcomes."[3] A recent report from the Bipartisan House Task Force on Artificial Intelligence concluded, "the growing demands of AI are creating challenges for the grid."[4] Proper planning is critical now to ensure expanded power supplies are available for AI innovation and adoption. "While new data centers take one to two years to construct, new power plants take five to ten years, and new power transmission lines take fifteen to twenty years."[5] Aside from AI, energy-intensive U.S. domestic manufacturing and continued consumer interest in electric vehicles will result in unprecedented electricity demand growth.[6]

BPS policy makers, however, would place even more strain on the power grid with fleets of electric buildings on every street corner. We request Congress to investigate BPS laws in an effort to galvanize states and localities to evaluate fully whether their electric grids have the basic capacity to achieve widespread building electrification. Any state or locality receiving a federal BPS grant should be compelled to assess how their laws impact the electric grid and report accordingly to Congress, DOE, and its citizens.

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[3] Wood Mackenzie, *Gridlock: the demand dilemma facing the US power industry* (Oct. 2024), at p. 3.
[4] 118th Congress, Bipartisan House Task Force Report on Artificial Intelligence (Dec. 2024) at p. 173.
[5] *Id.*
[6] Wood Mackenzie, *supra* note 3.

Furthermore, BPS jurisdictions largely neglect whether their laws singling out buildings will actually reduce emissions ***overall***. EPA data show that grid operators across the country rely predominantly on natural gas, coal, and other fossil fuels to provide electricity.[7] In most jurisdictions, grid-related emissions far exceed direct building emissions, and onerous BPS mandates on buildings will not result in climate benefits while emissions from electric plants only increase to handle insatiable demands for power. EPA evidence showing this fact is an afterthought for most state and local BPS lawmakers.

A 20-point policy guide developed by The Real Estate Roundtable ("RER") discusses these and other shortcomings inherent to many BPS laws, such as their potential to worsen the affordable housing crisis.[8] We urge Congress to investigate whether state and local building performance mandates – particularly those supported by federal grants – fairly and adequately address grid reliability, the fuel mix for electricity generation, housing affordability, and other policy matters addressed in RER's peer reviewed policy guide.

- ***DOE Exceeded its Statutory Authority in Issuing BPS Grants.***

The legality of DOE's grants is questionable. Any purported authority here derives from §§ 50131(a)(2) and (c) of the *Inflation Reduction Act.* (See statutory text at Addendum 3.) The statute gives DOE authority to issue state and local grants "for zero building energy ***code*** adoption" pertaining to "***new and renovated*** residential and commercial buildings." However, DOE did ***not*** disburse the $240 million in grants for ***codes***. The money went to ***BPS laws,*** beyond § 50131's scope.

In real estate circles, it is well-understood that building "codes" are ***not*** building "performance standards." "Codes" cover "new and renovated buildings," consistent with the statutory text at issue. "Codes" do not impose regulations on how ***existing*** buildings function or operate. That is where "performance standards" come in. BPS mandates apply to ***existing*** buildings – but the statutory authority only extends to "***new and renovated"*** construction. Insofar as the $240 million grants support "performance standards" for ***existing*** buildings, these awards exceed § 50131's bounds.

DOE itself recognizes the basic distinction between "codes" and "performance standards." So does the Institute for Market Transformation (IMT), the NGO that has "played a key role in every building performance standard in the U.S. to date." IMT itself received a $5.5 million federal grant to provide "tailored technical assistance" to 11 jurisdictions across the country to develop BPS laws.[9] Addendum 4 sets forth DOE and IMT sources explaining the difference between "codes" versus "BPS" laws.

As part of its oversight, we urge Congress to consider the legality of BPS grants in light of the *IRA*'s plain text in § 50131 and recent U.S. Supreme Court case law on principles of statutory interpretation.[10]

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[7] See EPA, Emissions & Generation Resource Integrated Database (eGRID) (Power Profiler tool shows all regions of the U.S. combust more fossil fuels than non-fossil fuels to generate electricity).
[8] The Real Estate Roundtable, *Lessons Learned to Shape Fair and Reasonable Building Performance Standards: 20-Point Policy Guide* (Oct.2024).
[9] IMT, press release, "Department of Energy Awards IMT $5.5 Million for Building Performance Standards Work" (Sept. 19, 2024). IMT states it is offering BPS assistance to States of California and Oregon; Berkeley, CA; Boston; Chicago; Denver; Kansas City, MO; Montgomery County, MD; New York City, San Francisco; St. Louis; and Washington, DC). A number of these jurisdictions received their own direct grants under *IRA* § 50131(a)(c) at issue. See Addendum 2.
[10] E.g., *West Virginia v. EPA* (597 U.S. 697 (2022) (agency must point to "clear congressional authorization" to support the power it claims); *Loper Bright Enterprises v. Raimondo* (603 U.S. 369) (2024) (no agency deference is due to its interpretation of ambiguous statutory language).

The Real Estate Roundtable

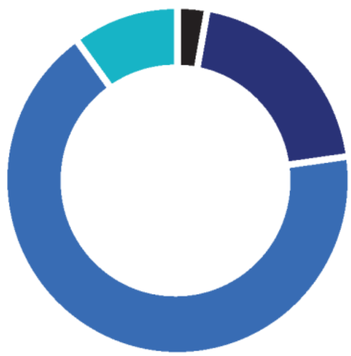
ADDENDUM 1

About The Real Estate Roundtable

www.rer.org

The Real Estate Roundtable brings together leaders of the nation's top publicly-held and privately-owned 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.

Who We Are



Asset Managers

3%

Financial Services

20%

58% Banks (Commercial & Investment)

16% Mortgage Bankers

26% Insurers

Owners

67%

55% Private	14% Office	11% Housing
44% Public	12% Retail	4% Industrial
46% Mixed	12% Hotel	2% Other

Real Estate Trade Organizations

10%

- American Hotel & Lodging Association (AHLA)
- American Resort Development Association (ARDA)
- Association of Foreign Investors in Real Estate (AFIRE)
- Building Owners and Managers Association Int'l. (BOMA)
- CRE Finance Council (CREFC)
- CREW Network (CREW)
- International Council of Shopping Centers (ICSC)
- Mortgage Bankers Association (MBA)
- NAIOP, the Commercial Real Estate Development Association (NAIOP)
- National Apartment Association (NAA)
- National Association of Home Builders (NAHB)
- National Association of Real Estate Investment Managers (NAREIM)
- Nareit (NAREIT)
- National Association of Realtors® (NAR)
- National Multifamily Housing Council (NMHC)
- Pension Real Estate Association (PREA)
- Real Estate Executive Council (REEC)
- Urban Land Institute (ULI)

Real Estate's Impact on the U.S. economy:
(*See* Commercial Real Estate by the Numbers: 2024)

- **$22.5 trillion:** Total value of America's commercial real estate
- **$2.5 trillion:** Real estate's contribution to U.S. GDP
- **14.1 million:** U.S. jobs directly supported by real estate
- **$600 billion:** Yearly property taxes paid by CRE owners to local governments
- **$900 billion:** Amount invested in U.S. real estate by pension funds, educational endowments, and charitable foundations

ADDENDUM 2

"Round 1" federal BPS grant recipients include the following cities and states. To our knowledge none of these jurisdictions commit to exempting buildings, deemed as "high performers" by the US-EPA or US-DOE, from monetary fines or penalties.

- **Chula Vista, CA:** Received a $10 million grant "to be provided over the next nine years" focused on "improving the performance of the city's 750 multifamily, commercial, and industrial buildings 20,000 square feet or larger."

- **Colorado:** Received a $20 million BPS grant from US-DOE to provide "technical assistance" to upgrade buildings in "low-income disadvantaged communities."

- **Denver, CO:** Received a $7.5 million grant from DOE "to implement its existing BPS and start working on future, more rigorous standards."

- **Evanston, IL:** Received a $10.7 million grant, "subject to negotiation with the U.S. Department of Energy, will support the adoption and implementation of building performance standards that will reduce emissions" and "require buildings to phase out onsite fossil fuel combustion."

- **Hawaii:** Received an $18.1 million grant to "develop and adopt a building performance standard with an objective of simultaneously reducing costs and making resources, jobs, and training available in disadvantaged communities."

- **Kansas City, MO:** Received a $9 million grant to develop a new BPS law that will "require buildings to meet specific energy and greenhouse gas emissions targets" and "elevate the performance of existing structures through ongoing upgrades and improvements."

- **Milwaukee, WI:** Received a $9 million grant "to develop a building performance standard informed by an existing data-driven buildings analysis program and engagement with local community stakeholders."

- **Lakewood, CO:** A suburb of Denver, received a $5 million BPS grant "to develop and implement a local standard in line with the state BPS."

- **Massachusetts:** Received a $19.9 million grant "to support implementation of building performance standards through direct technical support and capacity building among existing building trades programs in Justice40 communities and the creation of a Building Performance Exchange hub."

- **New York City:** Received a $19.9 million "federal funding infusion" to implement Local Law 97 (LL 97), requiring most NYC buildings to achieve "stricter limits" of 40% emissions reductions by 2030, with the ultimate goal to reach "net zero" emissions by 2050. On December 20, 2024, DOB published the final version of its latest package of rules to implement Local Law 97 that do not exempt buildings from fines if they meet US-EPA or US-DOE performance criteria.

- **Ohio cities of Cincinnati, Cleveland, Columbus and Dayton:** Received a joint $10 million grant to develop a BPS law and create a "High Performance Buildings Hub" to "support" building owners with meeting BPS targets.

- **Philadelphia, PA:** Received $19.8M "to develop a building performance standard to maximize emissions reductions from large buildings, while providing support programs that will ensure equitable outcomes with high compliance rates."

- **San Francisco and Berkeley, CA:** Received a joint $19.9 million grant "to electrify large commercial and multi-family buildings" and "implement equitable Building Performance Standards (BPS) aimed at modernizing buildings and reducing carbon emissions."

- **Seattle:** Received a $17.2 million BPS grant that will "span across nine years (2025-2033)" with a a focus on supporting buildings in overburdened communities and building an equitable climate workforce." DOE grant dollars will be used, among other things, to create a BPS "customer support hub" and consult with building owners on net zero GHG emissions "compliance pathways."

ADDENDUM 3

***Inflation Reduction Act,* §§ 50131 (a), (c) (see pp. 225-226 here).**

PART 3—BUILDING EFFICIENCY AND RESILIENCE

SEC. 50131. ASSISTANCE FOR LATEST AND ZERO BUILDING ENERGY CODE ADOPTION.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2022, out of any money in the Treasury not otherwise appropriated—

….

(2) $670,000,000, to remain available through September 30, 2029, to carry out activities under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 through 6326) in accordance with subsection (c).

(c) ZERO ENERGY CODE.—The Secretary shall use funds made available under subsection (a)(2) for grants to assist States, and units of local government that have authority to adopt building codes—

(1) **to adopt a building energy code** (or codes) for residential and commercial buildings that meets or exceeds the zero energy provisions in the 2021 International Energy Conservation Code or an equivalent stretch code; and

(2) to implement a plan for the jurisdiction to achieve full **compliance with any building energy code** adopted under paragraph (1) **in new and renovated residential and commercial buildings,** which plan shall include active training and enforcement programs and measurement of the rate of compliance each year.

ADDENDUM 4

The U.S. Department of Energy recognizes that a building energy "code" is not a building "performance standard":

> ***"Unlike building energy codes,*** which set minimum requirements for energy-efficient construction at the time of construction and major renovation, a Building Performance Standard (BPS) is designed to ensure buildings meet specific levels of performance over their lifetime. ***Given the different goals of codes and BPS,*** it is possible that buildings constructed and occupied within the years preceding, during, or immediately following the adoption of BPS may be ***compliant with the applicable energy code but unable to meet the BPS targets*** …."[11]

- DOE, Office of Energy Efficiency and Renewable Energy, *Energy Codes and Building Performance Standards* (2023) (emphasis supplied).

The Institute for Market Transformation (IMT) likewise recognizes that a building energy "code" is not a building "performance standard":

> "Leading jurisdictions are seeking to address climate and decarbonization goals on ***two policy fronts:*** energy codes and building performance standards. The combination seems like a perfect match, with ***one addressing new construction and one addressing the existing building stocks."***

- IMT, *The Intersection of Energy Codes and Building Performance Standards* (2022) (emphasis supplied).

[11] DOE, Office of Energy Efficiency and Renewable Energy, *Energy Codes and Building Performance Standards* (2023) (emphasis supplied).