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The Real Estate Roundtable

October 8, 2024

The Honorable Jennifer Granholm
Secretary, U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20024

Re: *Inflation Reduction Act* Support for
Building Performance Standards (BPS) – Round 1 Grants

The Real Estate Roundtable (www.rer.org) (RER) represents the leaders of public and private companies that own, develop, finance, manage, and service all types of income-producing real estate in the United States and abroad. Their buildings house our population, small businesses, classrooms, government agencies, and health care facilities. They provide cell towers to let us communicate, laboratories where we invent, facilities where we store personal and business items, and hotels where we vacation with family and friends. We include owners, developers, and financiers of shopping centers, data centers, and warehouses. Investors seek out our members' assets for their efficiency and sustainability features to support pensions and retirement obligations.

Our members' properties are subject increasingly to [Building Performance Standards \(BPS\)](#). These include state and local laws imposing stringent mandates to significantly limit energy use and cut greenhouse gas (GHG) emissions associated with commercial and residential buildings. International NGOs also aim to influence global markets by directing investment capital to real estate assets that align with performance levels for building decarbonization.¹

On August 27, 2024, US-DOE [announced](#) its selection of [19 states and localities](#) across the nation to receive grants as part of "Round 1 funding" to advance BPS laws. These awards totaling nearly a quarter of a billion dollars are issued under the *Inflation Reduction Act* ("IRA") section allowing federal grants to support building energy codes.² Chosen jurisdictions must go through a "negotiation process"³ before US-DOE ultimately awards Round 1 grants.

¹ See [letter](#) from RER to Treasury Secretary Janet Yellen, Energy Secretary Jennifer Granholm, and EPA Administrator Michael Regan (July 16, 2024).

² Public Law [117-169](#), section 50131, "Assistance for Latest and Zero Building Energy Code Adoption."

³ US-DOE's award [announcement](#) states: "selection for award *negotiations* is not a commitment by DOE to issue an award or provide funding. Before funding is issued, DOE and the applicants will undergo a *negotiation process*, and DOE may *cancel negotiations* and rescind the selection for any reason." Emphasis supplied.

RER respectfully requests opportunities to participate in these negotiations and any future negotiations for similar federal grants that may be awarded. We have paramount interests to ensure that federal taxpayer dollars support BPS laws that:

- Will achieve their intended goals to reduce overall energy use and emissions;
- Are enacted by policymakers that consider costs and benefits of complex performance mandates on housing supplies affordable to low- and middle-income families, the economic well-being of impacted communities, building asset values, and availability of debt and equity needed to finance BPS-induced retrofits;
- Avoid unnecessary and duplicative overregulation;
- Take into account the landmark programs created by the federal government to recognize the nation’s best performing buildings, as potential optional paths for state and local BPS compliance; and
- Adopt frameworks that emphasize compliance support over punishment and fines.

US-DOE’s negotiation process provides a prime opportunity to help align divergent BPS targets, metrics, and deadlines. The federal government is best postured to lead states, localities, and other policymakers to adopt more harmonious BPS rules and standards. Ameliorating the complex nationwide “patchwork” of conflicting performance mandates, and easing the challenges of multi-jurisdictional regulatory compliance, should be a prime goal that motivates US-DOE when it awards grants.

A “global, data-driven” study published in *Science* (August 22, 2024) assessed policies that have proved to be most effective in lowering GHG emissions.⁴ It concluded that regulations – like BPS laws – focusing on a specific industry sector “*rarely worked to reduce emissions* unless they were combined with [incentives and] price-based strategies aimed at changing consumer and corporate behavior.”⁵ The *Science* study supplies evidence that even the most aggressive building performance targets, alone, will not slow or prevent global warming.

Addressing the climate crisis requires a “whole of economy” perspective. Real estate – and the residents, businesses, tenants, visitors, and other building occupants who consume energy – along with the utilities and grid operators that generate and supply power, all have important roles to play. Discussions with US-DOE’s awardees and other BPS policymakers provide opportunities for education, collaboration, and compromise among all stakeholders. BPS policymakers must demonstrate a comprehensive and visionary strategic plan to cut energy use and slash GHG emissions from *all* sources, with compliance costs and burdens borne fairly and proportionately by *all* economic sectors and consumers of energy. This comprehensive way of thinking should be a guiding principle as US-DOE negotiates *IRA* grant awards.

RER has developed 20-point, peer reviewed policy guide (the “Guide”) addressing issues at the fore of the BPS trend. It is available on our website [here](#). The Guide’s key points are summarized below. We request that US-DOE consider the Guide when negotiating *IRA* grants and ask that the agency’s awardees act on the Guide’s key points when designing and implementing BPS laws. We also request that US-DOE post the Guide on its online “[BPS Library](#)” of resources.

⁴ Annika Stechemesser, Nicholas Koch, *et al.*, “[Climate Policies that achieved major emission reductions: Global evidence from two decades.](#)” *Science* (Aug. 22, 2024). The study “assessed 1500 climate policy measures implemented over the past 2 decades across 41 countries from six continents.”

⁵ Eric Niiler, “[Most Climate Policies Don’t Work. Here’s What Science Says Does Reduce Emissions.](#)” *Wall Street Journal* (Aug 23, 2024).

Fundamental Prerequisites for Data-Driven and Science-Based BPS Laws

The complexities of BPS frameworks, and the resource burdens on both the public and private sectors to implement them, make policymakers (including state legislatures and local councils) accountable to develop well-reasoned and reasonable laws. Jurisdictions must conduct the research, hold the hearings, conduct the studies, and assemble the data to buttress robust, balanced legislative records that support BPS regulations.

The following “checklist” of prerequisites should provide the foundational underpinnings of any BPS framework:

- ✓ A study showing how much energy and emissions are caused by building occupant behaviors beyond the ability of asset owners to control, as well as a “big picture” perspective on the climate impacts caused directly by the real estate sector compared to the power grid and other industry sectors within the jurisdiction’s borders;
- ✓ A housing impact report that, among other things, assures BPS regulations do not rise to such heightened levels that make it harder to increase affordable housing supplies for economically disadvantaged and working class families; accelerates projects to re-imagine struggling assets and convert them to more productive uses (such as office-to-housing conversions); and assesses whether rent control laws limit income available for residential owners to pay for BPS-induced retrofits;
- ✓ An economic impact analysis that, among other things, addresses a BPS law’s impact on real estate asset values and property tax streams generated to provide essential local government services; estimates the costs of retrofit projects and availability of financing and capital to underwrite them; and considers whether performance mandates could be so strict to drive economic development and real estate investments to other jurisdictions with meaningful but more cost-efficient climate laws;
- ✓ A “grid stress test” showing the region’s power grid can sustain all of the extra loads from widespread electrification of data centers and other buildings intended or caused by a BPS law;
- ✓ An opinion from the jurisdiction’s chief legal officer geared to avoid litigation and justify that a BPS law, ban on gas equipment, and/or a natural gas “use tax” satisfies federal preemption requirements under the U.S. Constitution and other legal obligations;
- ✓ Corollary laws and policies ensuring utilities and tenants provide property owners with “whole-building” energy data necessary for BPS compliance;
- ✓ Assessment of whether there is sufficient domestic supply of “made in the U.S.A.” equipment to support all of the building projects striving for BPS compliance – or whether components like heat pumps must be imported from China and other foreign markets for owners’ investments to meet performance targets; and

- ✓ At least 3-5 years of high-quality building energy data collected previously from a separate “benchmarking” law in advance of developing a BPS law, to provide factual and statistical bases for setting and adjusting performance targets.

Key Substantive Issues for Designing Rational BPS Targets

The primary actions induced by BPS policies are replacements of older building systems with equipment that is more efficient and does not rely on fossil fuels to operate. For example, performance targets aim to drive “retrofits” that install new windows with better insulation, deploy solar panels where they may be accommodated on rooftops, and switch out gas-fired boilers or chillers with heat pumps that run on electricity.

Such retrofit projects may fail to produce demonstrable benefits that reduce the community’s overall emissions. This is because BPS laws focus on regulating buildings, which may not be the largest source of GHGs in a given state or locality. Rather, a region’s power grid likely emits the most emissions in any given BPS jurisdiction because electricity generation relies heavily on fossil fuels and much less on zero or low-carbon sources such as solar, wind, or nuclear. Building owners have no ability to control directly the mix of fuels that powers a community’s energy infrastructure. Simply put, performance limits on buildings will not achieve policymakers’ climate goals unless they have concomitant laws in place to decarbonize electricity.

This fact must inform the substantive limits BPS laws impose on real estate performance and shape DOE’s negotiations with Round 1 awardees. Energy efficiency and emissions targets in state/local laws supported by the U.S. government should:

- Defer to building owners’ capital expenditure plans for “life-cycle investments” – and eschew “one size fits all” frameworks that force destruction and replacement of functioning building equipment by strict, rigid deadlines;
- Avoid “double regulations” where BPS efficiency targets duplicate or conflict with existing energy codes that already apply to new construction and major rehabs;
- Develop BPS performance levels that are bespoke for different asset types, and further account for the nuances in a particular building’s design, operational, and weather conditions and characteristics;
- Understand that building owners can take actions to reduce emissions on-site, within property boundaries – but those efforts may increase electricity consumption and thereby cause greater off-site emissions from power grids supported by fossil fuels, which owners cannot control;
- Recognize that buildings will not be able to fully decarbonize unless the electric grid also decarbonizes, but transitioning the grid away from fossil fuels will come at high costs to the strained budgets of families, businesses, government agencies, and power providers – and also require streamlined and consistent permitting, zoning, and land use laws across jurisdictional boundaries;
- Support owners’ compliance with BPS performance levels through high-quality and assured investments in clean power purchases that help increase renewable energy supplies to the nation’s electric grid; and

- Explain the technical “factors” and “coefficients” BPS lawmakers select to convert various fuel sources to GHG emissions that are integral to meet climate-related performance targets.

Ensure Fair BPS Enforcement and Compliance Regimes

Jurisdictions must build acceptance from regulated real estate stakeholders responsible to finance projects and bring their assets into BPS compliance. States and localities must have the staff and technical capacity to implement building performance mandates fairly and reasonably. When US-DOE considers *IRA* grant eligibility and awards, the agency should assess whether it supports a BPS jurisdiction that:

- Provides compliance guides showing what specific packages of equipment, operational protocols, and other building control measures will be necessary to meet both imminent and remote efficiency and emissions performance levels;
- Establishes remedies encouraging compliance and deemphasizing punishment – such as giving owners written advanced notice that their assets may not meet performance levels and providing reasonable opportunities to correct a possible infraction; and channeling any fines to a specific government budget created for the purpose to help finance high performance retrofits and new construction;
- Avoids “reinventing the wheel” and relies on landmark building performance programs created by the federal government, by allowing optional pathways for BPS attainment based on policies including [US-EPA’s NextGen criteria](#) and [US-DOE’s Zero Emissions Building \(“ZEB”\) national definition](#); and
- Evaluates availability of taxpayer-supported equipment rebates, low-interest loans, tax credits, property tax abatements, and other means of financial assistance – while recognizing such existing incentive programs are neither funded sufficiently nor structured appropriately to support systemic BPS compliance.

* * *

Thank you for the opportunity to provide our perspectives. We look forward to an inclusive *IRA* grant negotiation process that considers the views of the real estate community regarding BPS laws. For more information, please contact Duane Desiderio, Senior Vice President and Counsel with The Real Estate Roundtable (ddesiderio@rer.org).

Sincerely,



Jeffrey D. DeBoer
President and Chief Executive Office