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Chairman Greg Walden
House Energy and Commerce Committee
2185 Rayburn House Office Building
Washington, D.C. 20515

Ranking Member Frank Pallone
House Energy and Commerce Committee
237 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Walden and Ranking Member Pallone,

On behalf of the U.S. Green Building Council (USGBC), a national nonprofit representing more than 12,000 member companies and organizations committed to cost effective and energy-efficient buildings, I write to provide comments on the Energy Star Reform Act. Sound policy solutions can be achieved when interested parties have the ability to work with the committee and stakeholders in a collaborative fashion. USGBC appreciates the ability to comment on this draft proposal.

We want to commend the committee for its work this Congress in advancing important environmental and energy legislation including H.R. 3017, "The Brownfields Enhancement Economic Redevelopment and Reauthorization Act of 2017", H.R.627 – "The Streamlining Energy Efficiency for Schools Act of 2017" and H.R.306 "The Energy Efficient Government Technology Act."

USGBC would like to provide the following comments to the ENERGY STAR discussion draft.

USGBC does not support a move of responsibilities or duties from the U.S. Environmental Protection Agency (EPA) to the U.S. Department of Energy (DOE).

USGBC has a long working relationship with the ENERGY STAR program. Through our interaction and collaborations with the program we have found ENERGY STAR to be a vital public-private partnership that helps businesses, consumers, as well as state and local governments save money by investing in efficiency and reducing negative environmental impacts. Indeed, with a long track record of cost effective success, ENERGY STAR is the most widely recognized symbol for energy efficiency, with a brand awareness of about 90%. In 2015 alone, American consumers and businesses saved over \$34 billion with the help of ENERGY STAR. Since 1992, ENERGY STAR has assisted companies and consumers save \$430 billion on utility bills.

ENERGY STAR serves a critical role in real estate across the country. About 45% of the commercial building floor space in the U.S. has been benchmarked for tracking and



analyzing utility consumption using ENERGY STAR's Portfolio Manager. Since 1999, ENERGY STAR has certified more than 28,000 buildings and more than 5 billion square feet of space. ENERGY STAR also counts more than 3,100 home builder partners who have constructed almost 1.8 million certified new homes since 1995. Many of these properties also pursue additional third-party certifications like the LEED rating system which USGBC administers.

EPA's program activities, in particular, have stood out for their transparency and their commitment to proactively seeking and considering stakeholder input, as outlined below.

Given the track record of results and the economic impact of the program USGBC would encourage that further study be undertaken, perhaps by the Government Accountability Office (GAO), on the potential advantages and disadvantages of relocating a program of this importance before such an action is taken.

New funding would be needed for DOE to adequately support the existing ENERGY STAR program.

While, at this time, we do not support moving the core operations of ENERGY STAR, we would note that relocating the ENERGY STAR program would require additional resources at DOE to address existing market engagement and program activity. This is especially true when the Administration and the House of Representatives are in support of funding reductions¹² and realigning the programmatic activity of the Office of Energy Efficiency and Renewable Energy (EERE) at DOE³. *To that end we support an annual authorization to support the important work of the program.*

USGBC does not support adding bureaucracy and cost to the ENERGY STAR development process.

USGBC has a long working relationship with the ENERGY STAR program. Our experience has been open and inclusive as technical content has been refined and new ratings have been offered. We do not support the application of Administrative Procedures Act (APA) requirements to the ENERGY STAR program, which is a voluntary public-private partnership in nature, rather than a regulatory program for which the APA is intended. USGBC works with a number of other voluntary rating systems administered by the federal government and is unaware of other voluntary programs having APA requirements in place.

¹ EERE's FY 2018 Congressional Budget Request available at:

https://www5.eere.energy.gov/office_eere/program_budget_formulation.php

² H.R. 3354 "Make America Secure and Prosperous Appropriations Act, 2018." Page 1612, available at: <https://www.congress.gov/115/bills/hr3354/BILLS-115hr3354pcs.pdf>

³ The Energy and Water Development Appropriations Report for fiscal year 2018 Page 80 available at: <https://appropriations.house.gov/uploadedfiles/hrpt-115-hr-p2.pdf>



Over the years it has implemented key elements of the ENERGY STAR program, EPA's management of the program has matured and the agency has become a valuable partner to market stakeholders. Notably, in 2012, EPA adopted the ENERGY STAR Strategic Vision and Guiding Principles, in which the agency sets forth "a systematic framework built on a foundation of transparency and collaboration with a range of stakeholders."⁴ The agency also provides public information on potential standards in development or revision,⁵ and does not limit stakeholder engagement to formal comment processes. In our view, these principles and the agency's demonstrated commitment to following them, adequately address stakeholder protections.

Moreover, the APA requirements would certainly have the consequence of adding time and money to the development process,⁶ and are unnecessary in light of stakeholder involvement processes that EPA has set for the ENERGY STAR program. For example, as part of "The Energy Efficiency Improvement Act of 2015"⁷ EPA was authorized to develop a voluntary program to recognize commercial building owners and tenants that use high-performance energy efficiency measures in the design and construction of separate spaces. In late 2016 EPA solicited stakeholders' input on the development of this program using a notice and comment process (not the full APA process) and by summer of 2017 had already begun piloting the program with private sector partners. APA requirements would likely not have allowed the process to move as quickly in response to congressional direction and interest from private industry.

Clarify application of no warranty provisions.

We would note that the language of the discussion draft appears to have ambiguity as to what types of ENERGY STAR "products" would apply. *We would suggest the section be clarified so that ENERGY STAR certified devices and buildings would be covered.*

Thank you again for the ability to provide input on the draft proposal. Please contact me if I can be of assistance as you the committee looks to update the draft proposal.

⁴ Available at;

https://www.energystar.gov/ia/partners/prod_development/downloads/ENERGY_STAR_Strategic_Vision_and_Guiding_Principles.pdf?6e8a-91f4.

⁵ https://www.energystar.gov/index.cfm?c=prod_development.prod_development_index

⁶ For example, one study found formal rulemakings to take from 1 to 14 years, depending on complexity. See GAO, *Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews* (2009), available at <http://www.gao.gov/assets/290/288538.pdf>. Additionally, we note that APA processes do not in themselves ensure adequate or meaningful consultation. GAO, *Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments* (2012) available at <http://www.gao.gov/assets/660/651052.pdf>.

⁷ The Energy Efficiency Improvement Act of 2015 available at: <https://www.gpo.gov/fdsys/pkg/PLAW-114publ11/pdf/PLAW-114publ11.pdf>



Sincerely,

A handwritten signature in black ink, appearing to read "B. Howard", is enclosed within a thin black rectangular border.

Bryan Howard
Legislative Director
U.S. Green Building Council

Cc: Energy Subcommittee, House Energy and Commerce Committee