

July 28, 2017

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

Re: Risk of Impoundment of Appropriated Funds to Energy Efficiency Programs

Dear Chairman Cochran and Ranking Member Leahy:

Thank you for your support for funding for federal energy efficiency programs.

We, the undersigned, on behalf of a coalition of energy efficiency organizations, states, and others, write today to urge you to prevent impoundment of appropriated funds and ensure clear understanding of Congressional intent by taking three actions: including in bills or reports direction to agencies to carry out funded programs, specifying that funding for technical assistance and commercialization programs is to be used for those purposes, and requiring transparency of spending at a subprogram level. While the risk of impoundment is always present, however minimal, and even when an administration and Congress have similar priorities, we are especially concerned that critical energy efficiency programs could go unsupported during any time the federal government operates under the terms of a continuing resolution after September 30, 2017.

As you know, the administration's budget request proposes severe cuts across the board for energy efficiency programs, especially those administered by the U.S. Department of Energy (DOE) and Environmental Protection Agency (EPA), and energy efficiency activities carried out by the U.S. Department of Housing and Urban Development (HUD), General Services Administration (GSA), and other agencies. We are adamantly opposed to those cuts, and in response have proposed funding levels equal to or greater than what Congress provided in the Fiscal Year (FY) 2017 omnibus appropriations bill passed in April. The justification for our requests are more completely addressed in separate letters enclosed as attachments.

However, we have become increasingly concerned that a scenario could unfold under the terms of a continuing resolution or omnibus package for FY2018 that gives the administration the discretion—or the appearance of discretion—to suspend or discontinue programs, activities, or projects in the absence of clear direction from Congress. Any such administrative action could contravene legislative direction, and potentially amount to impoundment, which, as you know, is “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.”¹ Enforcement of the prohibition on

¹ According to the U.S. Government Accountability Office (GAO), “[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

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impoundment is highly sensitive and might not result in a timely expenditure or other release of funds. Therefore, we urge you take the precautions necessary to prevent any such scenario from occurring.

To this end, we have three recommendations, and stand ready to provide additional support for your efforts to ensure that Congress's directives are followed and programs continue uninterrupted. First, we recommend including clear direction to the administration in legislation or accompanying reports, as appropriate, to carry out programs, activities, and projects and expend funds as appropriated to at least the subprogram level. In some cases, where a program lacks specific authorization (i.e., EPA's WaterSense) or is funded as part of a portfolio of initiatives (i.e., EPA's ENERGY STAR®), it could be necessary to provide more detailed instructions than in past years to ensure these programs, activities, and projects continue.

Second, we recommend providing clear direction to the administration with respect to specific programmatic activities. Some successful programs provide commercialization assistance for energy efficiency technologies or funding for field demonstrations, which the administration has indicated will be deprioritized. As evidenced by the language included in the Senate Energy and Water Development appropriations bill and report for FY2018, 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.

And third, due to the inherent difficulties with identifying potential impoundment situations in a timely way, we suggest Congress include provisions to improve transparency with respect to how the administration is spending funds. For example, Congress could require agencies to provide it with FY2017 and FY2018 budget allotments at the subprogram level. This would facilitate tracking and potentially address congressional queries concerning spending and progress. A complementary approach would be to require agencies to provide notification to Congress of certain reallocations or reallocations of funds.

We recognize that each Appropriations Subcommittee works in its own way and writes legislation and reports based on different customs and preferences; therefore, we are prepared to work with each Subcommittee chair and ranking member to provide more assistance as requested to identify specific programs, activities, and projects that require extra attention. We are also willing to be a resource for Subcommittees that do not primarily or ordinarily deal with appropriations for energy efficiency programs.

Thank you for your consideration.

Alliance for Industrial Efficiency
Alliance to Save Energy
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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.

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American Council for an Energy-Efficient Economy
E4TheFuture
Efficiency First
Environmental and Energy Study Institute
Federal Performance Contracting Coalition
Home Performance Coalition
Institute for Market Transformation
Integrated CHP Systems
Midwest Cogeneration Association
Midwest Energy Efficiency Alliance
National Association for State Community Services Programs
National Association of Energy Service Companies
National Association of State Energy Officials
Natural Resources Defense Council
Power Equipment Associates
U.S. Green Building Council

Enclosures: March 7 Letter re: Support for Funding for U.S. Department of Energy Office of
Energy Efficiency and Renewable Energy Programs
March 21 Letter re: Support for FY2017 and FY2018 Funding for ENERGY
STAR

CC: Members of the U.S. Senate Committee on Appropriations