



National Association of State Energy Officials

October 3, 2023

The Honorable Jennifer Granholm
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

Dear Secretary Granholm:

The National Association of State Energy Officials (NASEO), on behalf of our 56 State, Territory, and District of Columbia Energy Office members, is deeply concerned about the U.S. Department of Energy's (DOE) actions that would either require or allow for retroactive rebates under the Inflation Reduction Act's Home Energy Performance-Based, Whole-House Rebates (HOMES) and High-Efficiency Electric Home Rebate (HEEHR) programs. First, we strongly disagree with DOE's existing interpretation of the HOMES statute as requiring retroactive rebates. Congressional intent of this portion of the statute was aimed at encouraging DOE to move the funds rapidly and to provide states with flexibility in the launch date of programs. It was not intended to require states to offer rebates before DOE and state program rules are created to protect consumers' interests and taxpayers' funds. NASEO has discussed this issue with hundreds of state, federal, and private-sector experts and all agree retroactive approaches are inadvisable. Thus, NASEO recommended to DOE in our January 26, 2023, letter that retroactive rebates should not be allowed. Second, applying retroactive rebates to HEEHR – as a requirement or an allowable feature – simply repeats the incorrect retroactivity interpretation DOE made for HOMES. Retroactivity has damaging implications for consumers and taxpayers, including the following:

- 1. Retroactivity Undermines Justice 40 Goals – Because of their lack of disposable income, it is unlikely that most low-income Americans have already made purchases that would meet pending DOE and state requirements to qualify for rebates. Retroactivity will undermine the Administration's Justice 40 goals and diminish aid to those most in need.
1. DOE Implementation Delays – If DOE moves forward with either requiring or allowing retroactive rebates, program implementation by DOE and states will be substantially delayed. In order for states to design and implement retroactive rebate programs, DOE must create detailed guidance on the process and requirements for approval of the expenditure of federal funds retroactively. That guidance must establish a process that the DOE General Counsel and the DOE Inspector General will find acceptable if implemented by states. Having each state develop and negotiate unique retroactive processes for DOE consideration will create more delays.
2. Increased Risk of Fraud – Retroactive rebates substantially increase the risk of fraud and abuse by some private-sector actors. In a retroactive approach, purchases assisted by rebates would occur without the benefit of prudent

1300 North 17th Street
Suite 1275
Arlington, Virginia 22209
Telephone: 703.299.8800
www.naseo.org

BOARD OF DIRECTORS

Chair

JOHN WILLIAMS
New York

Vice Chair

MOLLY CRIPPS
Tennessee

Treasurer

EDDY TREVINO
Texas

Secretary

WILL TOOR
Colorado

Parliamentarian

JASON LANCLOS
Louisiana

Member at Large

MICHELLE GRANSEE
Minnesota

Past Chair

ANDREW MCALLISTER
California

Regional Representatives

DAN BURGESS
Maine

KATIE DYKES
Connecticut

DAVE ALTHOFF
Pennsylvania

KAREN LASURE
West Virginia

MITCHELL SIMPSON
Arkansas

KENYA STUMP
Kentucky

BRIAN SELINGER
Iowa

JULIE STAVELAND
Michigan

MICHAEL FURZE
Washington

RICHARD STOVER
Idaho

MARIA EFFERTZ
North Dakota

LYNN RETZ
Kansas

President

DAVID TERRY

General Counsel

JEFFREY C. GENZER

state program designs that educate and protect lower-income consumers. While the vast majority of private-sector energy providers are an asset to their communities and the nation, those few that prey on consumers will take advantage of a confusing retroactive approach. Decades of state experience in operating energy efficiency incentive programs demonstrates that retroactive approaches are inadvisable.

3. Increased Administrative Costs — Retroactive rebates necessitate higher administrative costs to verify retroactive rebates utilizing considerable, yet-to-be developed requirements from DOE. The approach would reduce funds for rebates that could help eligible consumers. It is also an inefficient use of taxpayer funds to advance an approach that all experienced energy efficiency program managers have rejected as needlessly complex, risky, and without public benefit.

In addition to our concerns about retroactive rebates, we are also concerned about the U.S. Environmental Protection Agency's (EPA) proposed elimination of high-efficiency fossil fuel appliances from its voluntary certification process because of the impact it would have on HOMES program implementation for many states and the diminished purchasing guidance it would offer consumers. DOE, at its discretion, is requiring states to only offer ENERGY STAR appliances under the HOMES program. If EPA moves forward with its proposed change to ENERGY STAR, it will have the effect of eliminating the option of high-efficiency fossil fuel heating and air conditioning systems under HOMES — which, for many families in certain areas of the country, is the only economically viable option. NASEO strongly recommends allowing states to determine if only electric appliances should be incentivized under HOMES, and to retain the option for states to include high-efficiency natural gas, distillate, and propane heating appliances. Depending upon the climate zone, condition of homes, and local cost of fuels, electrification may not be the right option for every consumer. The proposed one-size-fits-all approach by DOE and EPA will cause additional DOE implementation delays as states are required to match evolving program rules with their own laws and consumer needs.

Finally, we wish to again convey our appreciation to you and the many DOE staff that have worked tirelessly with the State Energy Offices and NASEO to develop these and other IRA and *Infrastructure, Investment and Jobs Act* programs. Many of the states' rebate recommendations have been addressed by DOE and will result in more impactful rebate program offerings for the residents of our states. We look forward to working with you to resolve these and other program implementation challenges.

Best regards,



David Terry,
President, NASEO