



May 8, 2019

U.S. Environmental Protection Agency
Climate Protection Partnerships Division
ENERGY STAR
1200 Pennsylvania Ave NW
Washington, DC, 20460 US

Comments submitted via email: energystarhomes@energystar.gov

Dear ENERGY STAR Team:

On behalf of Home Innovation Research Labs, I respectfully submit comments on proposed changes to the eligibility requirements for organizations seeking recognition as a Verification Oversight Organization (VOO) for the ENERGY STAR Certified Homes Program. We applaud EPA's decision to revisit the process and eligibility requirements for organizations seeking to be a VOO. For too long, the program operated as a government-granted monopoly with only one EPA-sanctioned VOO. This de jure monopoly over the ENERGY STAR label is not beneficial to home builders or to home buyers. EPA's proposal to recognize multiple VOOs and encourage competition will benefit the home building industry and home buying public.

If EPA is to realize the benefit of breaking RESNET's de jure monopoly, it must develop and implement eligibility criteria that is fair, impartial, consistent with previous EPA ENERGY STAR program decisions, and recognizes organizational competency. The eligibility criteria recently proposed has none of these attributes. The suggested VOO application process sets up a system where some organizations are judged to be eligible on their ability to render fair, impartial, transparent, consistent, and reliable ENERGY STAR certification decisions as judged by an independent, third-party accreditation agency using IAS/IEC 17065. Other organizations are judged to be eligible simply because they have secured a non-profit tax status with the Internal Revenue Service. Such a system would be unfair, arbitrary, and biased. We urge EPA to reconsider their eligibility criteria to ensure that all current and prospective VOOs are treated equally and designed to ensure that future ENERGY STAR certifications are conferred in a reliable and consistent manner. This is the only path forward. If EPA continues forward on this path of a bifurcated eligibility process, the agency will merely perpetuate the current de jure monopoly because they will have made the playing field so uneven that no other organization can be expected to reasonably compete.

Our comments detailed below may seem to contradict the comments we previously submitted to EPA in which we stated that ISO/IEC 17065 accreditation was essential for any future VOO. However, on close inspection, our comments are consistent with what we stated previously. We believe ISO/IEC 17065 accreditation would be the preferred path should all existing and prospective VOOs be treated the same. However, the current EPA proposal lays out two very separate and unequal eligibility paths depending on an organization's tax status – a criteria which has zero bearing on that organization's ability to render fair, impartial, and reliable certification decisions.

Since tax status has no bearing on an organization's functional capability, if EPA accepts applications from non-profits who lack ISO/IEC 17065 accreditation, who will judge their functional capability? The benefit of

ISO/IEC 17065 accreditation is that an independent accreditation agency expert in auditing organizations for 17065 conformity has deemed the organization to be compliant. The 17065 accreditation certificate proves conformity. If EPA allows tax status to be dispositive of capability, then EPA must accept responsibility to ensure VOOs operate consistent with third-party practice. And, if EPA can judge the capability of a non-profit, it can judge the capability of a for-profit. There is no reasonable basis for EPA to create a competitive advantage for one tax class of organization by imposing extra-ordinarily high-performance requirements and costs on another. In short, Home Innovation believes 17065 accreditation is the ultimate judgement of 17065 conformity, but it must be imposed on all or none.

If concerns regarding accreditation costs led EPA to suggest that non-profits be deemed eligible merely by their tax status, or a desire to grandfather the current incumbent organization, we have a compromise solution to address those concerns. Home Innovation recommends that EPA institute a two-phased approach. In Phase I, organizations demonstrate to EPA that they comply with the 17065 objectives – that they are competent, impartial, and reliable in their certification decisions.

After a two-year period, which would allow EPA sufficient time to consider the benefits and costs to the ENERGY STAR for Homes program of a 17065-**compliant** based eligibility scheme, EPA can reconsider requiring active and/or prospective VOOs to obtain 17065 **accreditation** by an independent accreditation agency. This approach is practical because an organization seeking 17065 accreditation will have to demonstrate to the accreditation agency that they have demonstrated competence in administering the ENERGY STAR certification, not theoretical, competence. And this approach is fair and unbiased because it treats all organizations even-handedly, judging them on competence and performance, and not tax status.

There is one more significant benefit from this approach. If EPA's intent is to ensure that ENERGY STAR certification is carried out in a fair and capable manner, then it must ensure that all VOOs and the rater/verifiers that operate under those VOOs all operate in a similar and consistent manner. If EPA embraces this philosophy and the 17065 criteria it will send a clear message to the those involved in the modeling, testing, inspection, and construction of homes seeking the ENERGY STAR label that these are the rules of engagement and anything less is not enough to earn the ENERGY STAR mark. Christian Priller, head of the ISO 17065 committee stated, "Product certification is perhaps the most visible type of certification because it is usually accompanied by a mark that is recognized and appreciated by regulators, consumers and other stakeholders. It is therefore crucial that [EPA] ensure the reliability of these claims ... ISO/IEC 17065 will increase trust and comparability of product certification around world."

Below is a more detailed explanation of our recommendation.

1. Demonstration of Impartial Governance using 17065

EPA notes that "Impartiality is of critical importance for Verification Oversight Organizations." Home Innovation concurs. Being impartial, and being perceived to be impartial, is necessary for a certification body or VOO to deliver an ENERGY STAR certification that provides confidence. The power behind the ENERGY STAR brand and certification is that it provides consumers with confidence that the home they are purchasing is truly high performing and energy efficient. In fact, 76% of the public believe independent third-party certification is the best way to verify a product's environmental claims such as

energy efficiency.¹ Certification is such an important driver of consumer purchasing decisions that the Federal Trade Commission developed specific guidance related to how “green” certifications could be used by marketers to ensure the certifications were not misleading or deceptive.

The viability of the ENERGY STAR brand and certification program rests on the confidence that builders, home buyers, and the industry in general ascribe to the ENERGY STAR label. Impartiality in certification decisions rests at the center of the level of confidence. As a result, EPA has proposed two eligibility paths for prospective VOOs:

- (1) 501(c)(3) or 501(c)(6) not-for-profit corporation status, with a Board of Directors or Executive Committee with a diverse representation of interests; and/or
- (2) ISO/IEC 17065 “Conformity Assessment: Requirements for bodies certifying products, processes, and services” **accreditation** to the ENERGY STAR Certification Protocol for Site-Built and Modular Single-Family Homes and Multifamily New Construction Using an Energy Rating Index-Based Compliance Path through a signatory to the International Accreditation Forum (IAF) Multilateral Recognition Agreement (MLA).[emphasis added]

We believe that this eligibility proposal is unreasoned, and incompatible with the objective for ENERGY STAR to be impartial.

First, an organization’s profit and tax status are unrelated to its ability to act in an impartial manner. Some non-profit organizations manage impartiality exceptionally well. Others do not. The IRS requires non-profits to have a written conflict of interest policy; however, there is no provision to require an external audit of the non-profit organization to ensure compliance with the policy.

Second, membership organizations (as is specifically encompassed in the 501(c)(3) and (6) organizations) are almost by definition not able to be entirely impartial. A 501(c)(3) designation includes membership organizations whose purpose is to advance the profession *of their members* and 501(c)(6) organizations exist to advance the common business interests *of their members*. Such organizations exist to advance their industry and represent their members in front of elected officials and the public, and therefore are of course biased in favor of their members. That is the foundation of the value of membership – that one accrues greater benefits and will be treated differently than non-members. To be clear, we are not asserting that RESNET is incapable of being impartial. What we argue is that merely by being a non-profit doesn’t ensure impartiality.

What does govern impartiality and ensure consistent and reliable certification decisions? ISO/IEC Standard 17065 which is used extensively used by certification bodies worldwide to demonstrate that they are competent, impartial, and reliable.

Thus, EPA should simplify the VOO eligibility criteria by simply requiring that any organization that seeks to be a VOO is *17065-compliant*.

¹ Fairtrade Foundation research, “76% of people believe that independent, third-party certification is the best method to verify the social and environmental claims of a product,” 2014.

This simplification of the eligibility criteria accomplishes four important objectives. First, it serves to accomplish EPA's stated objective of ensuring impartial, consistent, and reliable ENERGY STAR certification decisions. Second, it better aligns the ENERGY STAR for HOMES VOO requirements with the ENERGY STAR for Multifamily MRO requirements to provide consistency within review organization schemas. Third, it will create a level playing field for existing and prospective VOOs. Last, it helps address the previously stated concerns that requirements for VOOs to be 17065-accredited will impose additional costs without a concurrent increase in value.

To be clear, as stated in our previous comments on this issue, Home Innovation believes that there are potentially real and significant benefits to requiring VOOs to seek and attain 17065-accreditation. However, given the concern that it will impose additional costs, plus the desire on behalf of EPA to ensure a smooth and efficient transition from a system where one organization had a monopoly on ENERGY STAR certifications to a more market-driven, multiple VOO approach, it might make more sense for a phased approach where the existing and prospective VOOs first demonstrate to EPA 17065-compliance, and then after a set period of time, require VOOs in good standing to commit to seeking full 17065-accreditation to maintain their VOO status.

The ENERGY STAR MFHR (and then subsequently, the Multifamily New Construction) program required the "compliance" approach for eligibility for Multifamily Review Organizations (MROs, the multifamily program equivalent of VOOs). The MRO application required as follows:

1) Demonstration of ability to operate impartially MROs must demonstrate that they are organized and operated to preserve the objectivity of their activities, maintaining a system or process to safeguard impartiality. Organizations seeking recognition must demonstrate to EPA that they: [emphasis added]

- Maintain policies to ensure that potential conflicts of interest are identified and avoided;
- Maintain an open participation policy related to Submitter qualifications;
- Maintain impartiality and confidentiality in the project approval process;
- Maintain impartiality in the internal oversight of Reviewers; and
- Establish an impartial conflict resolution process.²

Because the ENERGY STAR Multifamily program previously established the eligibility criteria for MROs, and because the Multifamily program now has a certification path that would fall under the purview of the VOO, it would be particularly beneficial that the eligibility criteria were aligned. Home Innovation applied for and was accepted as an MRO for the Multifamily program. Clearly, we have a desire to apply for an be accepted as a VOO. It would be beneficial to us, to our prospective clients, to the residential construction industry, and for consumers, if the eligibility criteria were aligned. Consumers benefit from consistency as they fluidly move from one housing type to another.

² MULTIFAMILY REVIEW ORGANIZATION APPLICATION (Version 1.1)

https://www.google.com/search?q=ENERGY+STAR+MRO+application&rlz=1C1CHBF_enUS827US827&oq=ENERGY+STAR+MRO+application&aqs=chrome..69i57j69i64.5086j0j7&sourceid=chrome&ie=UTF-8

This revised approach to VOO eligibility offers all the benefits, and none of the disadvantages, of the proposed bifurcated VOO eligibility approach. Further, because allowing multiple ENERGY STAR for Homes VOOs is a fresh approach for the program it would benefit from a phased transition process where EPA has with greater oversight during the initial transitory period and the agency accepts responsibility for demonstrating 17065-compliance, before moving to the requirement for third-party accreditation. Under this approach, EPA imposes requirements on the VOO that ensure that ENERGY STAR certification decisions are reliable, consistent, and impartial, and the organizations seeking to be a VOO are not forced to compete against an organization that is eligible simply because of its tax status.

RESNET, as the sole EPA-approved VOO for almost two decades, has an unquestionable market advantage in comparison to any new prospective VOO. Should EPA impose the bifurcated eligibility process, organizations that do not meet the non-profit eligibility requirements will also shoulder far greater administrative costs to apply for and earn 17065-accreditation. While we are ready to compete in the market, the proposed process will create an unlevel playing field and fortify the current monopolistic system. Home Innovation estimates conservatively that earning accreditation as a 17065/17020/17025 certification body from a national standards agency would cost tens of thousands of dollars. Is there value to accreditation that justifies the cost? Yes. However, it would be an unlevel playing field to require other than non-profit VOOs to earn accreditation and non-profit VOOs to merely reproduce their tax documents.

In conclusion, Home Innovation strongly encourages EPA to abandon the proposed bifurcated eligibility criteria and instead require all VOO applicants to demonstrate to EPA 17065-**compliance** for the near-term with an expectation that all must seek 17065-**accreditation** in the mid-term to successfully continue as a VOO in good standing. We further understand that an initial transition period of up to 12 months would be a practical solution to (1) require the current VOO to formally declare its commitment to ISO 17065 principles, and (2) allow the current VOO to continue offering services during the transition without disruption in the market immediately after the new rules take effect.

2. 17020 and 17025 Compliance

ISO Standard 17065 governs certification bodies and focuses on establishing confidence in certification decisions. The EPA VOO application focuses on these requirements. However, it is also important that EPA consider the requirements for ISO 17020 (requirements for organizations performing inspections) and ISO 17025 (requirements for performing testing) as both of those standards are the essential underpinnings for certification decisions that require inspections and/or testing (as ENERGY STAR for Homes do). While it may have been implicit in the proposed rule, EPA should state specifically that existing and prospective VOOs should also ensure that any inspections and testing that is done under the ENERGY STAR for Homes certification scheme must also be at a minimum 17020 and 17025 **compliant**.

This requirement is implicit in the EPA requirements as 17065 limits outsourcing of inspection services to agencies that meet the requirements of 17020, therefore a decision to require ISO 17065 accreditation necessarily requires 17020 compliance for all those who contribute inspection observations and/or data that the certification agency relies on to make a certification decision. Home Innovation proposes that if EPA accepts our recommendation to require VOOs to be 17065-compliant, that EPA also make it clear that all raters and verifiers that contribute inspection information to an approved VOO also be 17020-

compliant for inspection activities and 17025-compliant for testing activities. Working under Home Innovation as a VOO, raters/verifiers will have two paths for becoming accredited by Home Innovation: (1) provide a copy of their certificate of accreditation as an ISO 17020 inspection agency issued by a national accreditation service; or (2) become an approved vendor under Home Innovation's ISO 17020/17025 accreditations (and eventually accreditation), in which they agree to meet Home Innovation's requirements, accept our surveillance, and are responsive to taking corrective actions required by Home Innovation. Demonstrating compliance using the latter path would minimize rater/verifier costs without a concurrent reduction in the quality of testing or inspection services.

3. EPA Audit Function

Home Innovation concurs with the proposed requirement to allow EPA to audit VOO activities. Home Innovation suggests that EPA include "testing" in the areas that can be audited so that the sentence reads "Allow EPA, at its discretion, to audit certification, testing, and inspection activities." Testing, such as blower door or duct testing is critical to ENERGY STAR certification decisions and EPA should clarify that any testing activities are also subject to EPA audit.

4. VOO Responsibilities regarding Accredited Software

EPA proposes that VOOs accredit energy modeling software as follows:

- Accredited Software
 - Establish and maintain policies requiring that only home energy modeling software programs that are tested and approved in accordance with the most current version of **RESNET Publication 002** shall be used in ENERGY STAR certifications for homes and apartments.
 - When a new version of home energy software is released, ensure that it shall be used according to the timelines established in section 103.3 of Mortgage Industry National Home Energy Rating Standards (MINHERS).

Home Innovation rejects this proposal as unworkable and offers a preferred alternative.

The proposal as written is unworkable for two reasons. First, RESNET has copyrighted **Publication 002** and therefore would presumably assert claim to the publication's distribution and use. Such a claim might serve to bar competitors from using the publication for the purpose of accrediting software. Second, Home Innovation would not want to enter the market having to use a competitor's rules for accrediting software – especially when the ultimate control of those software accreditation rules remained under the control and administration of RESNET. We suspect other prospective VOOs would agree with us on this point.

As an alternative, we recommend that instead all VOOs be required to use "DOE approved energy modeling software programs." Such a recommendation is consistent with DOE's approval of energy modeling software programs used to verify compliance with the energy efficiency requirements for the tax credit under section 45L of the Internal Revenue Code (§ 45L). In conversations with DOE, the agency has indicated a willingness to accept the responsibility to approve software that calculates ERI in a timely

fashion. We believe this proposal has two strong benefits. First, it keeps the authority to approve energy modeling software programs with a single agency/organization which will help promote consistency in energy modeling across the industry. Second, it makes the approval of software independent from the VOOs that oversee the certification to help ensure impartiality in software approvals.

5. Sampling-based Scheme

In the draft VOO application, EPA states that “When homes/apartments are certified as ENERGY STAR through a sampling-based scheme, [the VOO must] ensure that the protocol used shall be at least as rigorous as Chapter 6 of Mortgage Industry National Home Energy Rating Standards (MINHERS).” Home Innovation recommends that EPA require any home certified as part of a sampling scheme to disclose that information on the ENERGY STAR certificate issued and report that information in the database discussed below.

6. Database of ENERGY STAR Certified Homes and Apartments

EPA will require that any VOO “maintain a database of homes and apartments that are certified as ENERGY STAR, and provide EPA with summary reports, as needed, to allow the Agency to track partners’ participation in the ENERGY STAR program, as well as obtain general aggregate information about the energy-efficiency features being used in ENERGY STAR certified homes and apartments.” Home Innovation supports this requirement and recommends that EPA specify the minimum data points to be collected and shared in the database. Also, it would be helpful if EPA specifies if all the data collected is to be shared publicly. This specificity will help ensure that the data collected and made available is consistent across all VOOs which will allow for more robust program analysis and datamining.

Please don’t hesitate to contact Michelle Foster (mfoster@homeinnovation.com, 301.430.6205), our Vice President, Innovation Services, directly if she can be of further assistance. I look forward to working with EPA going forward on this matter.

Sincerely,



Michael Luzier
President and CEO