



November 16, 2018

US 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 potential changes to the eligibility requirements for organizations seeking recognition as a Verification Oversight Organization (VOO) for the ENERGY STAR Certified Homes Program. Specifically, Home Innovation strongly supports EPA's proposal to require a VOO(s) to earn and maintain ISO/IEC 17065 "Conformity Assessment: Requirements for bodies certifying products, processes, and services" accreditation. As the international standard for certification bodies designed to ensure certification bodies operate in a competent, impartial, effective, and consistent manner, ISO/IEC 17065 is the appropriate standard for EPA to consider. Simply stated, ISO 17065 is the international benchmark for product certification.

Before we address the specific issues regarding 17065 accreditation, Home Innovation is compelled to make two overarching observations.

First, over the past two decades the ENERGY STAR for Homes program has experienced rapid growth from the development stage in the late 1990s through recent expansion stage. Now that the program has matured and benefits from remarkable brand awareness EPA has an opportunity to strategically plan for the next decade of program growth. We believe that ISO 17065 accreditation can help EPA further strengthen the ENERGY STAR brand and value for both builders and consumers.

Second, whether EPA decides to pursue ISO 17065 accreditation for the ENERGY STAR for Homes program or not, EPA must address the requirement that the VOO must be a non-profit and the current situation that there is only one VOO. Neither requirement is beneficial to the home energy ratings industry in general, or the ENERGY STAR program specifically. An organization's status as a non-profit or a for-profit has **absolutely nothing** to do with whether that organization can operate in an impartial, competent, and consistent manner. Furthermore, it could be argued that because for-profit organizations primary mission is to generate profit and develop effective products and services that are valuable to consumers, that they are far better suited to administering the ENERGY STAR certification. Currently raters, who do the testing and inspections of homes seeking ENERGY STAR certification are for-profit organizations, and Home Innovation believes that the industry is better for that situation. Furthermore, by anointing only one organization to be the VOO, EPA has created a monopolistic situation that does not allow for competition and market demand. We believe that this would help ensure that costs are competitive, and the services offered are of increasing value. Therefore, should EPA not pursue 17065 accreditation for the VOO, Home Innovation respectfully recommends that EPA revise VOO application process to address these issues.

Is ISO/IEC 17065 Accreditation Essential?

Yes. Obtaining and maintaining accreditation by an appropriate agency such as the International Accreditation Service (IAS) is dispositive of all matters governing the conduct of third-party certification programs including the requirement to demonstrate impartial governance, and is recognized as such in state building codes, law and regulations. It is the credential true third-parties obtain and maintain, just as a doctor obtains an MD, or an engineer a PE.

As stated in the 17065 Standard, “ISO 17065 provides an international industry standard for **Conformity assessment – Requirements for bodies certifying products, processes and services**. The overall aim of certifying products, processes or services is to give confidence to all interested parties that a product, process or service fulfils [*sic*] specified requirements. The value of certification is the degree of confidence and trust that is established by an impartial and competent demonstration of fulfilment of specified requirements by a third party. Parties that have an interest in certification include, but are not limited to:

- a) the clients of the certification bodies;
- b) the customers of the organizations whose products, processes or services are certified;
- c) governmental authorities;
- d) non-governmental organizations; and
- e) consumers and other members of the public.”

In general, the aim of certifying products, processes, or services is to give confidence to interested parties that a product, process, or service fulfils specified requirements. Regarding the ENERGY STAR for Homes program, the ESTAR certification provides home buyers with the confidence that their new home will meet the comprehensive, climate-specific ENERGY STAR program specifications. The value of third-party certification is the high degree of confidence and trust that is established by an impartial, consistent, and competent demonstration of fulfillment of specified requirements. If there was not value in third-party certification, surely the ENERGY STAR Team would merely allow builders to self-certify compliance. And without question, that route would be cheaper and easier for the builder. However, self-certification is not considered nearly as trustworthy, valuable, or effective as an independent, third-party assessment by an ENERGY STAR Rater. Thus by the same rationale, why wouldn't ENERGY STAR subject the VOO(s) to the same sort of third-party assessment via ISO 17065 accreditation? By not requiring the VOO to obtain accreditation, ENERGY STAR is relying on the VOO's self-certification.

What are the benefits of ISO/IEC 17065 Accreditation?

ISO/IEC 17065 Accreditation will hold the VOO(s) accountable in a demonstrable way, removing personal relationships, business alliances, and industry politics from the certification equation. It will provide all segments of the market which relies upon these certifications – consumers, policy makers, builders, code officials, lenders, GSEs – confidence that their investments in pursuing improved energy efficiency, especially incentive programs where tax dollars are being spent, are being made wisely.

Will ISO/IEC Accreditation Cost More?

With respect to costs, administered by a competent agency, ISO/IEC 17065 accreditation should not result in significant cost increases for the certification. For a certification body that is not currently accredited there will be start-up costs, but this is the cost of doing business as a competent, impartial,

and consistent certification agency. If the ENERGY STAR label is worth the investment in the form of subsidies or incentives at the federal, state, and local level, isn't the additional compliance costs justified to ensure the certification program is conducted by an organization that can prove it does business in an open, transparent and objective manner by competent personnel who are held accountable for their performance?

As a small example, consider the recent HUD disaster recovery funding allocated for the State of Texas. The US Department of Housing and Urban Development (HUD) allocated over **\$1.5 billion** to provide for the rehabilitation, reconstruction and new construction of housing. These available funds came with a requirement by HUD that the housing meet one of several national green standards, and the State of Texas specifically called for housing to be ENERGY STAR certified. It seems not only reasonable, but vital, that the federal government and the State of Texas be assured that homes built or reconstructed using this funding be truly ENERGY STAR compliant.

Below, as requested, we have provided specific responses to the specific areas for which EPA requested feedback.

Is earning and maintaining ISO/IEC 17065 accreditation an appropriate demonstration that an organization meets the eligibility criteria for Demonstration of Impartial Governance required for recognition as a Verification Oversight Organization?

Yes. ISO/IEC 17065 accreditation is the most relevant demonstration that an organization meets the eligibility criteria for *Demonstration of Impartial Governance*. ISO 17065 is the international standard specifically designed to ensure that certification bodies (such as the ENERGY STAR VOO) operates in a competent, consistent, and **impartial** manner.

Accreditation is the formal recognition of a body's competence to conduct a specific activity such as testing, inspection and/or certification. It seems inconceivable that we would allow a non-accredited Rater to test and inspect a home to determine its compliance with ENERGY STAR criteria. Why do we not hold the same expectation for the organization overseeing the certification/conformity decision? Accreditation is based on an assessment of **performance** of a product certification body including procedures, staff competence, inspection, review of product/process/service acceptability, and reporting. It is an independent assessment that the certification organization is competent, can make reliable decisions, and operates in a fair, and impartial manner. To oppose such an accreditation would be to reject the idea that individuals and/or organizations should have to demonstrate they are qualified to perform a job.

However, while operating in an impartial manner is critical for certification bodies, there are other equally important criteria. ISO 17065 is a comprehensive standard that sets out detailed requirements for certification bodies and their certification activities specifically with an aim to provide trustworthy certification decisions.

For example, in addition to being impartial, certification bodies need to be able to operate in a competent manner. Certification bodies need to deliver consistent compliance decisions. Certification bodies need to make their certification services available to all applicants within their scope of activities. Certification bodies need to operate in a transparent manner, with an opportunity for complaints and appeals, and an established procedure for corrective **and** preventative actions. Certification bodies need to be able to demonstrate control of documents (internal and external) and records.

ISO/IEC 17065 looks at the intent, the method and the result of a certification scheme. It helps ensure the claims of the certification are reliable, in this case that a home is more energy efficient than a code-minimum home. This is important not merely for marketing homes as ENERGY STAR compliant, because the significance of the ENERGY STAR label is so much more than just a marketing claim. Each ENERGY STAR home certification is potentially securing multiple financial transactions.

For example, home buyers rely on the ENERGY STAR certification mark as proof of compliance. The ENERGY STAR mark may convince a buyer to pay more for a labeled home than a code-minimum home. Other interested parties are also making financial decisions based on the ENERGY STAR certification mark. Lenders and GSEs, such as Fannie Mac and Freddie Mac, secure the mortgages for ENERGY STAR homes. Utilities provide financial incentives for Energy Star Homes and often rely on reduced energy demand for future facilities planning. The federal government, through HUD and the IRS, provides federal funds and tax credits to ENERGY STAR labeled homes. Local jurisdictions often mandate ENERGY STAR certification as a pre-requisite of the entitlement process or incentivize ENERGY STAR certification with increased density and/or expedited permitting.

Certification bodies necessarily face threats to impartiality, and only when there is a system, embedded in the organization's culture and codified in their daily rules and procedures, can they successfully guard against these risks.

When an organization operates under ISO 17065 accreditation, responsibility for ensuring impartiality of services is the responsibility of both the leadership and staff. ISO 17065 accreditation confirms an organization's compliance with the following:

1. Identified threats to impartiality, including relationships of individual staff, consultants, vendors and from the business interests and stakeholders of the company itself, whether actual or perceived;
2. Relationships of the organization or its staff (business, personal or professional) do not create a threat to impartiality, and are identified and evaluated on a case-by-case basis;
3. Evidence of an effective mechanism for safeguarding impartiality, such as an impartiality committee involving external stakeholders;
4. Evidence that the certification body's senior leadership is aware of potential threats to impartiality in their accredited services and, when necessary, have approved the necessary policies and procedures to minimize these risks;
5. Regular/documented management reviews that address threats to impartiality;
6. Defined/written policies and procedures to minimize threats to impartiality;
7. Documented training and agreement of staff, including the top management, on potential threats to impartiality, and approved policies and procedures intended to minimize these threats; and
8. Availability of services to any party without restriction.

For the VOO to provide reliable assessment, being impartial is most necessary. For the same reason that the ENERGY STAR for Homes program doesn't allow builders to self-certify their homes compliance with the ENERGY STAR specifications, neither should EPA allow the VOO to self-certify that they can make certification decisions in an impartial manner. ISO 17065 provides an internationally recognized scheme specifically to ensure impartiality in certification decisions. Accreditation will provide the mechanism by which EPA can be assured an organization is 17065 compliant.

What are the potential benefits or drawbacks to expanding the eligibility criteria for recognition as a Verification Oversight Organization to include ISO/IEC 17065 accredited organizations (such as impacts on consistency/reliability of ratings, or barriers to entry related to cost of accreditation)?

Expanding the eligibility criteria for recognition as a VOO to include ISO 17065 accredited organizations will have several benefits.

First, it will improve the confidence of buyers, builders, regulators, financial institutions, and other stakeholders in the reliability and consistency of ENERGY STAR for Homes certification decisions. In recent years, some stakeholders in the process have questioned the reliability and consistency of the testing, inspections, and certifications that occur under ENERGY STAR. 17065 Accreditation can improve the confidence of stakeholders for these activities and help level the playing field across the industry.

Second, by setting out the criteria by which organizations can participate as a VOO (ISO 17065) and how their competence is independently judged (accreditation), more organizations will be able to participate. Providing choices in the market for certification bodies (VOO) can stimulate competition, increase innovation, and even potentially lower prices. If stakeholders (builders and raters) have a choice of what organization to use as their VOO, so long as the playing field is level, they will likely get better service from the VOO as they compete for their certification business. And better service isn't the only potential advantage – with more organizations competing to provide certification oversight, certification costs may even decrease. At the same time, because of the ISO 17065 accreditation requirements, the market (builders, raters, and buyers) get more reliable certification decisions. It is not mere speculation to suggest that at least several organizations are likely to want to apply to be a VOO under this new regulatory rubric. There have been a few organizations, including Home Innovation, that have already told EPA that they wish to be allowed to apply to be a VOO. Furthermore, if the recent experience of the Leading Raters of America is any indication when they solicited for organizations to partner with them to provide QA, there are at least a half a dozen organizations that might be interested in participating.

Some may argue that ISO 17065 accreditation may bring higher costs to entry. Home Innovation believes that is only true if the playing field is not level. For example, if we know that the testing equipment that is used to determine if a home is ENERGY STAR compliant should be calibrated regularly to ensure reliable results, then everyone should be required to calibrate the equipment if we want reliable certification decisions. So long as everyone must follow the same rules, the costs are relatively equal across the board.

What are the potential benefits or negative impacts to builders, verifiers, and homebuyers resulting from an ISO/IEC 17065-based approach to verification oversight (such as cost, certification time, and/or rating consistency and reliability)? What information is available to validate these benefits or concerns?

Since 2008, Home Innovation has administered the NGBS Green certification program in an ISO/IEC 17065-based approach. Here is what we have learned in the past decade. First, ISO 17065 works well with a complex, multi-facet certification scheme like the NGBS Green program. Second, the 17065 approach can help deliver consistent, reliable certification decision without adding any additional time. For the NGBS Green program we deliver certification results within one business-day typically. Third, a 17065-based approach doesn't have to cost more. NGBS Green certification fees and verifier accreditation fees are affordable, and often less expensive than comparable green certification programs. Fourth, delivering a certification program that is transparent with clearly defined process and procedures, we have gained a good amount of program loyalty from our clients. When we survey them

(as required by 17065 for internal audits and to determine client satisfaction) they reliably report that they like the NGBS Green process because it is predictable and knowable.

Are there examples of other programs similar to the ENERGY STAR Certified Homes Program (other than ENERGY STAR Labeled Products, as identified above) that have relied on ISO/IEC 17065 accreditation? What has been the result of requiring accreditation for these programs and what lessons have been learned that could help to inform EPA's decision?

Yes. EPA's eligibility criteria for the selection of an ENERGY STAR Multifamily Review Organization (MRO) for the Multifamily Highrise (ESMFHR) certification program replicated the ISO 17065 requirements. Specifically, EPA required that MROs demonstrate that they are organized and operated to preserve the objectivity of their activities, maintaining a system or process to safeguard impartiality. The eligibility criteria stated,

Organizations seeking recognition must demonstrate to EPA that they:

- *Maintain policies to ensure that potential conflict of interest issues 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 dispute resolution process.*

Based on these program requirements, EPA selected two MROs to implement the ESMFHR program nationally. Home Innovation was one of the organizations selected as MRO. We believe that these eligibility criteria have allowed EPA to outsource the certification decisions for the ESMFHR program in a credible and cost-effective manner that is accepted by the program applicants and industry at large, including regulatory agencies or utilities who have a stake in the certification decisions made by the designated MROs.

USGBC's LEED for Neighborhood Development rating system provides points toward green certification of the neighborhood for buildings that attain LEED certification OR "through a green building rating system requiring review by independent, impartial, third-party certifying bodies that have been accredited by an IAF-accredited body to ISO/IEC Guide 65 or, when available, ISO/IEC 17065." [emphasis added]. Thus, with this requirement, USGBC has recognized that buildings with a green certification attained through an ISO 17065 accredited body can be expected to be credibly and reliably green.

NTA is ISO 17065 accredited for "Manufactured Homes & Modular Factory Built Construction," and their certification mark is accepted as proof of code compliance in local jurisdictions. ANSI administers an ISO 17065-accreditation service for certification bodies operating under the Sustainable Forestry Initiative Chain of Custody (SFI CoC) and/or the PEFC Chain of Custody (PEFC CoC) programs.

Is earning and maintaining ISO/IEC 17020 accreditation (or being a sub-contractor to an ISO/IEC 17020 accredited inspection body) an appropriate requirement for verifiers of ENERGY STAR certified homes?

Yes. The ENERGY STAR conformity decision is reliant on an on-site inspection to determine if the home has been constructed in compliance with the ENERGY STAR criteria. Accreditation to ISO/IEC 17020 "Conformity assessment -- Requirements for the operation of various types of bodies performing inspection" involves an independent accreditation body assessing an inspection body's competence to

carry out specific inspection activities, such as the ENERGY STAR for Homes inspection. The focus of ISO/IEC 17020 is on the independence, impartiality and integrity of the inspection body and the competence of its people, its inspection processes, and its equipment. In addition, the standard also includes a requirement for the inspection body to maintain a quality management system.

Builders seeking to hire an inspection organization (or rater) want to be reassured that the rater or inspection agency is competent. They can be reassured by the rater or inspection company that they have the necessary attributes by way of their experience and reputation (first- party or self-declaration), or the builder can attempt to evaluate their competence in some meaningful way (this is called a second party audit). Alternatively, the builder can seek the services of a third-party 17020 accredited organization/individual.

ISO/IEC 17020 specifically addresses factors relevant to an inspection body's ability to produce reliable and defensible inspection results including:

- technical competence of staff;
- validity and appropriateness of inspection methods;
- suitability and maintenance of inspection equipment;
- where necessary, traceability of measurements;
- sampling, handling and identification of inspected items; and
- quality assurance of inspection data, inspection reports and certificates

To ensure continued compliance, accredited inspection bodies are regularly re-assessed to ensure they are keeping pace with technical and regulatory changes in their area of expertise, are maintaining their standards of work and can continue to demonstrate practical competence and sound judgement.

Is ISO/IEC 17020 accreditation (or becoming a sub-contractor to an accredited organization) feasible/reasonable for the types of companies that are currently delivering energy ratings in the marketplace today?

Yes. While it is less likely that the smaller companies currently delivering energy ratings could not earn a 17020 accreditation, there is no reason that they could not earn ISO 17020 accreditation. More likely, however, is that energy raters would work under an ISO 17020 accredited company as a sub-contractor.

For Home Innovation, that is exactly how our plumbing and metal building insulation 17020 accredited programs work. We have a team of field inspectors that operate under the Home Innovation 17020 accreditation which allow us to bear the costs and responsibilities of earning the accreditation and the field inspectors to leverage our expertise, process, and management system to provide oversight to their inspections and operations.

What are the potential benefits or drawbacks to requiring ISO/IEC 17020 accreditation or becoming a sub-contractor to an accredited organization (such as impacts on consistency/reliability of ratings, or barriers to entry related to cost of accreditation or sub-contracting relationships)?

Same as 17065 above.

What are the potential benefits or negative impacts to builders and homebuyers resulting from an ISO/IEC 17020-based approach to conducting inspection surveillance activities and verification assessments of homes (such as cost, certification time, and/or rating consistency and reliability)? What information is available to validate these benefits or concerns?

The benefit to builders, homebuyers, and the homebuilding industry at large, of requiring ISO/IEC 17020 compliance is simple, yet significant. Compliance will ensure inspection bodies provide uniform and reliable inspection services which will help improve the consistency in Energy Star for Homes certification decisions, and by extension, the consistency by those compliant organizations for HERS Ratings, ERI compliance, and even potentially code compliance. Currently, we believe there is tremendous variability in the testing and inspections that occur for homes seeking ENERGY STAR certification. By adopting a 17020-based approach to conducting inspection activities, EPA would be imposing a more rigorous approach that would help reduce the variability.

Accreditation to ISO/IEC 17020 “Conformity assessment – Requirements for the operation of various types of bodies performing inspection” involves an evaluation of an inspection body’s competence to carry out specific inspection activities. The focus of ISO/IEC 17020 is on the independence, impartiality and integrity of the inspection body and the competence of its people, its inspection processes, and its equipment. It is hard to imagine a more important evaluation of organizations charged with conducting home inspections. Simply, are the people that are performing the inspections competent in their jobs? Are the inspection processes that are used by the organization expected to produce accurate and reliable results? And is the equipment used for the inspection able to produce reliable and defensible results from the inspection in a consistent manner?

Home Innovation believes that there are currently a good number of inspections that would pass the muster of a 17020-compliance test. These inspectors were largely doing all the right things to make sure that their inspections were consistent, reliable, and defensible. Their testing protocol, which perhaps not intentionally designed to be 17020-compliant, would with only a little amount of work and improvement, certainly be compliant. Other inspectors will have to work harder to meet the requirements of 17020.

Home Innovation foresees zero negative impacts for home buyers to imposing a 17020-based approach to inspections. Home buyers will undoubtedly benefit from greater certainty that their homes were inspected and tested correctly, and that the certification was accurately conferred. Builders who have hired inspectors that are largely 17020-compliant, but maybe didn’t realize that their inspection services were rigorous, will now have assurance that they are getting what they paid for. Of course, builders who may have previously benefited from lax rules and processes regarding testing and inspections, and questionable quality assurance procedures, will undoubtedly feel like they suffer the consequences of a more rigorous inspection protocol. Surely EPA will not want to maintain a certification system that allows below-market pricing because some raters are cutting corners.

Are there examples of other programs similar to the ENERGY STAR Certified Homes Program that have relied on ISO/IEC 17020 accredited inspection bodies? What has been the result of requiring accreditation for these programs and what lessons have been learned that could help to inform EPA’s decision?

PSF TECO and NTA are IAS accredited as an ISO 17020 inspection body for manufactured homes.

Some will argue that the ISO 17065/17020/17025 Standards are too difficult to apply to the certification of homes built on-site because of factors such as variable weather, myriad sub-contractors, and the

complexity of the home construction process. Instead, they assert that ISO 17065/17020/17025 Standards are more relevant when applied to a product manufactured in a controlled factory environment. However, these individuals do not fully understand the ISO 17065 rubric and its implementation. Specifically, ISO 17065 does not set the requirements for the certification scheme (here, the ENERGY STAR for Homes criteria, MINHERS, ANSI/RESNET 301 and 380), and it is not intended to restrict in any way the role or choice of the scheme owners (namely, EPA). If EPA selects to apply the 17065 conformity assessment rules to the ENERGY STAR for Homes program, EPA will have the ability to tailor the decision rules by which the ENERGY STAR conformity assessment is made. The only restriction that 17065 imposes is that the certification criteria cannot contradict or exclude the requirements laid out in 17065.

Please provide any general or specific comments/feedback regarding the timeline outlined above.

As an organization that operates certification programs that are 17065-accredited or 17065-compliant, Home Innovation absolutely believes that the ENERGY STAR for Homes program should require 17065 accreditation. This would be consistent with EPA's decision to administer the ENERGY STAR Certified Products program under ISO 17065 and to administer the ENERGY STAR MFHR program in a 17065-compliant manner. Further, we understand that EPA is also considering operating the WATER SENSE program in a similar fashion.

EPA should heed the previous problems with non-compliant products earning the ENERGY STAR label because EPA had not required a more robust third-party certification assessment such as ISO 17065. It was widely reported that hundreds, if not thousands of consumers took advantage of rebates or tax credits for the purchase of ENERGY STAR Certified appliances when in fact those appliances did not meet the ENERGY STAR efficiency specifications.

While we believe that 18-24 months for a VOO(s) to earn 17065 accreditation is reasonable, we don't believe that EPA necessarily needs to deliberate this issue until the end of 2019. In fact, it would be more beneficial to the market and for ENERGY STAR stakeholders for EPA to decide to proceed by mid-2019, but then allow the longer period (24 months) for organizations to obtain accreditation.

If EPA proceeds with allowing entities to meet the impartial governance eligibility criteria through ISO/IEC 17065 accreditation, and subsequently develops a Certification Scheme, what would be an appropriate timeframe for requiring such entities to add the Certification Scheme to their scope of accreditation?

Home Innovation believes that 18-24 months would be an appropriate timeframe. To earn accreditation the certification body must be administering the certification scheme in a 17065 compliant manner, meeting all the 17065 requirements. Once an organization is operating in a 17065 compliant manner, they can apply for formal accreditation. To earn accreditation will take a well-prepared applicant three to six months. Some organizations may need more time to be compliant. Certainly, two years would be a generous amount of time to allow organizations to earn their accreditation.

The current VOO application references the Mortgage Industry National Home Energy Rating Standards (MINHERS) as a baseline for many VOO responsibilities (such as verifier training and quality assurance), but also permits applicants to propose alternative approaches, provided that they are at least as rigorous as the requirements specified in the relevant chapter of the Mortgage Industry National Home Energy Rating Standards. Are there other industry standards that should be referenced in addition to, or in lieu of, MINHERS?

To answer this question, it is necessary to review the history of Home Energy Ratings and Energy Efficient Mortgages. Much of the history below is copied directly from the RESNET website.

Home energy ratings date back to 1981, when a group of mortgage industry leaders set up the National Shelter Industry Energy Advisory Council. The Council consisted of representatives of Fannie Mae, Freddie Mac, the Federal Home Loan Bank, American Society of Real Estate Appraisers and the leading Multi-Listing Services. The Council's goal was to establish a measurement system which factored the energy efficient features of a home into the mortgage loan. The result was the establishment of Energy Rated Homes of America, a national non-profit organization.

Energy Mortgages also date back to the early in the 1980s when Fannie Mae, Freddie Mac, the U.S. Department of Housing and Urban Affairs' Federal Housing Administration (FHA) and the Veteran's Administration (VA) all adopted energy mortgage programs.

In 1984, home energy ratings and energy mortgages emerged as a national policy issue. The party platforms at both the Democratic and Republican National Conventions called for a national system of home energy ratings and energy mortgage programs. In 1990, President George Bush included market-driven initiatives, such as home energy ratings and energy mortgages, in his administration's national energy strategy.

In 1990, the National Association of State Energy Officials asked the U.S. Department of Energy to work with the states, operating home energy rating systems, and the mortgage and housing industries to develop protocols encouraging nationwide uniformity in home energy ratings and energy mortgages. In response, the Department of Energy and the Department of Housing and Urban Development formed a national collaborative on home energy ratings and energy mortgages in 1991.

The collaborative represented a broad spectrum of the housing market including state governments, operating home energy rating systems, Realtors, builders, appraisers, consumer and environmental groups, and the secondary mortgage market. The following year, the collaborative issued its recommendations calling for a national uniform system of voluntary home energy ratings and energy mortgages.

The recommendations were included in several pieces of legislation passed by Congress that year:

The National Energy Policy Act of 1992 required the Department of Energy to promulgate voluntary guidelines to encourage the adoption of home energy ratings in all states after consultation with the states, operating home energy rating systems and the secondary mortgage market.

The Housing and Community Development Act of 1992 required the Department of Housing and Urban Development to test a pilot energy efficient mortgage program in five states.

The Veterans' Home Loan Program Amendment of 1992 required the Veteran's Administration to adopt a national energy efficient mortgage program for its veteran home loan program.

In 1993, the Department of Energy contracted with the Home Energy Rating System Council (HERS® Council) to develop voluntary technical guidelines for home energy rating systems. A joint task force of the NASEO and HERS Council technical committees developed a consensus recommendation of a technical standard. This recommendation were [sic] the basis of DOE's proposed guidelines in its 1995 notice of rule making. Because a dispute between competing utility issues over fuel neutrality, DOE never adopted the proposed standard. Using the recommendations of the joint RESNET/HERS Council Task Force the National Association on September 19, 1999, adopted technical guidelines that addressed the fuel neutrality issue.

In October of 1993, the Clinton-Gore Administration announced its Climate Change Action Plan in compliance to the Rio Accord. The Climate Change Action plan included a provision for making home energy ratings and energy mortgages available nationally. In 1995, DOE selected Energy Rated Homes of Alaska, Inc., Energy Rated Homes of Arkansas, Inc., California Home Energy Efficiency Ratings, Inc., Energy Rated Homes of Colorado, Energy Rated Homes of Mississippi, Inc., Energy Rated Homes of Vermont Inc., and Virginia Home Energy Rating Organization, Inc. to provide support for the national home energy rating effort.

In April 1995, the National Association of State Energy Officials and Energy Rated Homes of America founded RESNET to develop a national market for home energy rating systems and energy mortgages. RESNET's activities are guided by a mortgage industry advisory council composed of the leading national mortgage executives.

In October 1998, the mortgage industry, RESNET and National Association of State Energy Officials adopted the Mortgage Industry National Home Energy Rating System Accreditation Standard. Fannie Mae and Freddie Mac adopted the national accreditation standard.

After more than a decade of development, the infrastructure needed to make energy efficiency a standard feature in the nation's housing market is in place. Across the nation, states, in partnership with their housing industries, are forging the public/private partnerships required for successful home energy rating systems. RESNET is providing the technical, program and marketing assistance required for this effort.

Why is this important? It is clear from the above narrative, that the development of MINHERS was a largely government-sponsored, and funded effort undertaken specifically to provide a uniform and reliable system for determining the energy efficiency of residential buildings. As a result, it is troubling that there have been rumors and allegations that RESNET is seeking to prohibit other organizations from using the suite of standards they have developed for the purposes of rating a home's energy performance.

We do not have a problem with RESNET protecting their copyright of the Standard so that they can sell the Standard, so long as their copyright doesn't violate the recently decided Code Revision Commission v. Public Resource Org, Inc. [United States Courts Of Appeals for the Eleventh Circuit, No. 17-11589, filed October 19, 2018], but it would be antithetical to the industry standards development process to prohibit the use of the ANSI Standard, referenced in ICC building codes, by other organizations besides RESNET, building departments, or government jurisdictions. The intellectual property protects afforded by the copyright extends only to the standard itself and not to its use. For instance, if a builder sells a home compliant with the MINHERS standard, the builder is not liable for further

payment to RESNET unless they held patent rights, or some other ownership of the intellectual property described in the standard.

Consequently, we believe that EPA, DOE, HUD, and other organizations should oppose any such monopolistic behavior on the part of RESNET. One swift and efficient method to handle this issue is for EPA to prohibit any EPA-appointed VOO, that also serves as a standards developer, from developing a standard specifically for use and recognition by the ENERGY STAR program and limit that Standard's use by other VOOs.

Please provide any additional general or specific comments/feedback regarding other areas that EPA should address in revising the Verification Oversight Organization application.

It is understandable why EPA chose to have one VOO for the ENERGY STAR for Homes program twenty years ago when the energy ratings industry was undeveloped and the market small. However, 20 years later, it is more detrimental than beneficial to have a government-mandated monopoly by authorizing only one organization to provide certification services. The market has matured, and the energy ratings industry has boomed. Now is the time to open opportunities for other organizations to provide VOO services and allow innovation to propel the industry and the ENERGY STAR for Home program to the next level.

With this change, EPA's role becomes one of oversight, providing the specifics of the certification scheme, with revisions as necessary, for the certification bodies. By requiring ISO 17065/17020/17025 accreditation for those operating under the ENERGY STAR certification scheme, EPA is assured that certification decisions are made in a competent, impartial, and consistent manner. Furthermore, should issues arise during the certification process, 17065 ensures that there is a complaints and appeals process and that corrective action, if necessary, will happen. All participants are required to be audited by a third-party to imbue the highest level of quality assurance and control to the entire process.

Home Innovation fully supports EPA's implementation of the 17065-accreditation process for the ENERGY STAR Certified Homes program.

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