

**Congress of the United States**  
**Washington, DC 20515**

July 17, 2012

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

Dear Mr. Secretary:

We are writing to express our support for effective and reasonable implementation of the energy efficiency performance standards for new federal buildings under section 433 of the Energy Independence and Security Act of 2007 (EISA). The Department of Energy is required to revise these standards to require that new federal buildings are designed to reduce fossil fuel-generated energy use.

Stakeholders have raised concerns regarding a lack of detail in the proposed rule on how certain issues might be addressed, including the treatment of major retrofit projects, which are subject to section 433. The purpose of section 433 is to encourage greater energy efficiency in federal buildings, and it should be interpreted in a way that is consistent with that purpose. We urge DOE to issue a supplemental notice of proposed rulemaking to explain how DOE proposes to implement section 433 with respect to issues that were not addressed in detail in the proposed rule and to allow for additional public comment on the specific proposals.

Section 433 requires DOE to revise the performance standards for new federal buildings and those undergoing major renovations. The performance standards must require the buildings to be designed to reduce fossil fuel-generated energy use. The percentage of energy use reduction required depends on the year the building is designed, phasing in gradually from a 55% reduction for buildings designed in 2010 and gradually increasing to 100% for buildings designed in 2030. DOE issued a proposed rule to implement section 433 on October 15, 2010.<sup>1</sup>

Effective and reasonable implementation of section 433 is important for advancing energy efficiency in this country. Buildings consume more than 70% of our nation's electricity and about 40% of our total energy used, and they account for almost 40% of our carbon pollution. Section 433 adopts the fossil fuel reductions and timing established by the widely adopted Architecture 2030 goals. It aims to make the federal government a leader in incorporating energy efficiency and clean energy into building design.

Recently, stakeholders have raised concerns about how DOE may implement section 433. Specifically, they are concerned that the final rule could have the effect of discouraging energy efficiency upgrades in existing buildings and the use of energy savings performance contracts

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<sup>1</sup> U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, *Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings*, 75 Fed. Reg. 63404 (Oct. 15, 2010) (notice of proposed rulemaking).

The Honorable Steven Chu  
July 17, 2012  
Page 2

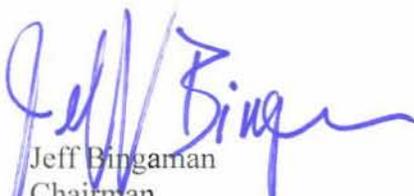
and efficient systems such as combined heat and power. Such results are not mandated by the language of section 433 and would be contrary to the purpose of section 433.

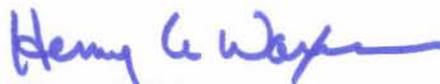
Section 433 can and should be implemented in a way that is reasonable and promotes maximum energy efficiency. The legislative language provides DOE with authority and flexibility to interpret and implement this provision in a sensible, appropriate manner based on DOE's technical expertise. For example, section 433 directs the Secretary of Energy to establish criteria for identifying "major renovations." In establishing the criteria, the Secretary shall "take into account the scope, degree, and types of renovations that are likely to provide significant opportunities for substantial improvements in energy efficiency." DOE has the responsibility and substantial discretion to define, through rulemaking, the types of renovations that are "major" for purposes of section 433 and thus are subject to the performance requirements.

In its proposed rule, DOE expressed its intent to implement the requirements in a flexible and workable manner. For example, DOE requested comment on the possibility of providing credit for efficient systems such as natural gas-fueled combined heat and power, allowing the use of renewable energy credits to help an agency offset fossil fuel use and still meet the requirements, and treating various fossil fuels differently based on their relative carbon contributions.

However, DOE's proposed rule lacked sufficient detail to assure the public that DOE will promulgate a rule that will encourage energy efficiency and avoid perverse results, and it did not provide the public a sufficient opportunity to comment on the specifics of how the performance standards will be implemented, especially with respect to retrofits. We ask DOE to issue a supplemental notice of proposed rulemaking to address these issues and allow for public comment. Thank you for your consideration of this request.

Sincerely,

  
Jeff Bingaman  
Chairman  
Senate Committee on Energy  
and Natural Resources

  
Henry A. Waxman  
Ranking Member  
House Committee on Energy  
and Commerce