

Residential Energy Services, Inc. (RESNET) appreciates the opportunity to provide input for the IRS on its direction on the 45L federal tax credit for energy efficient homes.

RESNET is a 501(C)3 public purpose membership nonprofit organization whose mission is to “To make the energy use of all homes transparent, thereby driving residential sector energy use toward net zero.” RESNET is a nationally recognized national standards-making body for residential building energy efficiency rating and certification systems in the United States. To date over 3.5 million homes have been energy rated through RESNET’s Home Energy Rating Index system.

The organization has also been accredited by the Environmental Protection Agency (EPA) as an ENERGY STAR Home Certification Organization (HCO) and verifies homes under the U.S. Department of Energy’s (DOE) Net Zero Energy Ready Homes (NZERH) Program.

RESNET was also cited in the original 45L IRS rules for verification of homes qualifying for the tax credit.

RESNET supported Congressional efforts to reform the 45L tax credit and incorporate compliance under two existing federal programs. We believe fundamentally that the Federal investment in the tax credit should result in the energy savings envisioned by Congress.

With this preamble RESNET submits the following comments:

- Please clarify the language, procedure and means to demonstrate compliance regarding “eligible to participate in ENERGY STAR. The current wording is ambiguous and open to interpretation. Without clear guidance and very specific wording, there will be significant market confusion and an open invitation to malevolent actors.

As stated in the RFC, 45L would apply to dwelling units “eligible” to participate in the applicable ENERGY STAR pathways, or dwelling units “certified” under Net Zero Energy Ready Home. All IRS issued guidance language must require “certification” in both cases.

Failure to reference a requirement for ENERGY STAR certification will result in unnecessary market confusion, an invitation to “loopholing” by unqualified parties claiming “eligibility” without the third-party verification. This will undermine the market of the ENERGY STAR label as the single most recognized, robust and trusted government endorsement of energy efficiency performance available to consumers.

RESNET urges the IRS to require ENERGY STAR certification for the \$2,500 credit. Furthermore, RESNET urges the IRS to clarify that homes receiving the tax credit must be certified by a HCO approved by EPA or DOE for ENERGY STAR or NZERH respectively.

- For the original 45L credit, the IRS requested that RESNET require professional liability insurance for credit verifiers companies. Since both DOE and EPA have limited resources to police HCOs, RESNET will advocate that the IRS requires verification companies have a minimum of \$1 million in professional liability coverage. This liability coverage will discourage market entry of actors intent on gaming the system. Homeowners will also have more confidence in the end product, is tax credit verifiers maintain a robust professional liability posture.

- For the prevailing wage requirement, RESNET recommends that the requirement only cover multifamily buildings over four (4) stories. Congress recognized that homes less than four stories be governed by the International Energy Conservation Code (IECC) and that buildings of four stories or more be governed by the commercial ASHRAE standard. The same logic needs to be applied to the prevailing wage requirement.
- Section 45L(b)(3) provides that for purposes of § 45L, the term “construction” includes “substantial reconstruction and rehabilitation.” The terms “substantial reconstruction and rehabilitation” do require additional guidance in defining the terms. The language should be clarified to ensure that substantial reconstruction or rehabilitation align with the exact language used for ENERGY STAR Certified Homes and MFNC as well as DOE NZERH.

In short, they should be further defined that so long as the work scope for a project undergoing substantial reconstruction or rehabilitation makes the dwelling unit(s) and common spaces of a building (if applicable) eligible for certification under the EPA and/or DOE programs then they should be eligible for 45L tax credits. This further clarification will ensure that the tax credit is not confused with the recently Congressional appropriated incentives for existing home energy retrofits. 45L has always been intended for new construction, and further clarification is needed.

- The IRA language references “acquisition date” as the determinant of eligibility. We understand this to mean “when the person that constructed the home sells or leases the home to another person for use as a residence”. However, this is not a useful criterion in new construction where the entity building the project may also be the owner of the property after occupancy. The most significant scenario may include “build and hold” developers of multifamily buildings. We recommend that a Certificate of Occupancy be substituted as the determinant of eligibility, or that “acquisition date” be defined as the completion of construction so as to include build-hold scenarios without changing the intended timing of the legislation.
- IRS should also be given access to all ENERGY STAR and NZERH HCO’s registries of rated homes for investigation and compliance purposes. EPA requires that all ENERGY STAR HCOs maintain a database of homes verified as ENERGY STAR. With today’s technology it is relatively easy to allow the IRS access to the ENERGY STAR and NZERH verified homes through such avenues as an API. All HCOs should be required to allow the IRS access to these registries for any future investigation.
- The IRS is requested to consider listing the specific standards/program requirements and require that they be uploaded and held for a specific amount of time (three (3) years or more) for confirmation, quality control and auditing purposes. The IRS should clarify the requirement of geotagged and time stamped required photos/checklists/reports to ensure certifications are legitimate and easily verified by enforcement officials.
- The IRS is requested to consider adding ENERGY STAR and NZERH verifiers credentialing requirements and enforcing such requirements by utilizing HCO registry data. The IRS should require the certification and renewal dates for verifiers are listed on the software verification reports.

Again, RESNET appreciates the opportunity to present its input and the IRS' consideration of this input.