



NATIONAL HEADQUARTERS
7 Winthrop Square, Boston, MA 02110
(617) 542-8010

WASHINGTON OFFICE
Spanogle Institute for Consumer Advocacy
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202) 452-6252

NCLC.ORG

Comments of the National Consumer Law Center on the National Association of State Energy Officials Request for Information – Implementation Options for Home Energy Performance-Based Whole-House Rebate Program and High-Efficiency Electric Home Rebate Program

Category 2: Program Elements [limit 4 pages]

Contact Information: Olivia Wein, National Consumer Law Center (NCLC),¹ non-profit, 617-542-8010, owein@nclc.org.

Overview of our approach to equity, diversity, inclusion, and accessibility (DEIA): In support of its mission to serve low-income consumers, NCLC is committed to supporting diversity and advancing racial justice inside and outside the organization. By devoting resources to support diversity, NCLC strives to foster an inclusive and welcoming climate that respects different viewpoints, backgrounds and life experiences. NCLC's advocacy for racial justice addresses systemic racism in housing, credit, employment, and other markets that have long prevented consumers of color from accessing economic and wealth-building opportunities. These policies and practices lead to higher rates of poverty, lack of housing, a persistent wealth gap, community disinvestment, and other economic consequences. NCLC works to eradicate discriminatory policies and practices that have prevented people of color from accessing the same economic benefits as other Americans.

Low-income Energy Affordability Programming: NCLC advocates before state utility commissions as an intervenor or expert witness to promote strong low-income energy affordability programs and rate designs. NCLC also supports low-income energy affordability proposals before state legislatures, and advocates for robust federal utility affordability program funds.

Program Elements: Consumer Protections²

The one-time investment of nearly \$9 billion in DOE home energy rebates will provide states with the opportunity to package critical energy efficiency investments to help the most vulnerable households enjoy the benefits of efficient homes while maximizing the climate and economic benefits. These comments focus on necessary consumer protections for the state rebate programs to ensure that they do not result in unaffordable costs or predatory practices. For additional recommendations for the rebate program design, NCLC, along with the Center for American Progress and the American Council for an Energy-Efficient Economy submitted proposed [best practices](#) to the Department of Energy (DOE)

¹ Since 1969, the nonprofit [National Consumer Law Center \(NCLC\)](#) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

² No proprietary or confidential information is included in our response and these comments are suitable for public dissemination by NASEO.

regarding these rebate programs in January 2023. NCLC also filed [comments](#) in response to DOE's RFI on the rebate programs.

Ensuring Low-Income Energy Affordability

1. *Leverage and stack federal, state and ratepayer resources to cover full project costs for low-income households.* The state rebate programs should be aligned and braided with existing low-income energy efficiency and health and safety programs. States should also request approval from DOE to increase the HOMES incentive levels for low-income households.
2. *Prioritize the no-cost programs in the layering of funding for low-income households.* Federal weatherization, low-cost weatherization measures from LIHEAP funds, and ratepayer-funded low-income energy efficiency and health and safety measures that are no-cost to low-income households should be used first in the stacking of programs before rebate funds are tapped. This will help ensure that the full program costs are covered for low-income households and will stretch the rebate funds. This also facilitates a whole-home approach for low-income homes.
3. *Preserve affordable rents for 3 to 5 years from the receipt of the rebate payments.* Preservation of affordable rental units is an important consumer protection. Similar to DOE's WAP, states should require rental property owners who participate in the rebate programs to maintain affordable rents for 3 to 5 years.

Rebate Contracts Transactions (includes POS) Should Avoid Replicating the [Problems](#) of PACE.

4. *Consumer consent should be obtained where rebate measures are likely to increase household utility bills.* Where rebates measures are likely to increase low-income energy burdens, households must be educated about the bill impacts and affirmatively consent to the measures. These households must also be informed about any available discount rates, bill assistance, and other efficiency programs to mitigate harm from unaffordable electric bills. The affirmative consent must be in writing.
5. *States must require an ability to repay analysis if there is financing included as a part of the project.* States should, at the outset, prohibit financing for low-income projects and instead rely on layering no-cost weatherization and efficiency programs before the rebates to cover the full cost of the project. Should states permit financing to cover any remaining costs, states must require a strong ability to repay analysis. Due to the financial harm from abusive financing [practices](#), states have added ability-to-repay provisions to their residential Property Assessed Clean Energy (PACE) products and the CFPB is also contemplating strong ability-to-repay rules in their forthcoming PACE [rules](#). State rebate programs should avoid repeating the problems from the initial PACE program design that led to abuses, unaffordable loans and subsequent state and federal responses.
6. *Prohibit forced arbitration clauses in contracts.* [Forced arbitration clauses](#) in contracts deprive consumers of their right to seek redress in court. Arbitration clauses also often prevent consumers' ability to band together in a class action, further placing consumers at a disadvantage. Noncompliant companies that participate in the rebate program should be held accountable in court.
7. *Require disclosures and contracts be provided in paper and prohibit electronic-only contract formats.* In the initial marketing of [predatory PACE contracts](#), contractors urged consumers to sign contracts on electronic tablets with cursory or no review while promising to later send a copy of the

contract by email. The contracts were usually not readable in their entirety on the tablet. In some instances the email addresses used did not belong to the homeowner or were not accessible to the homeowner. Consumers should have a right to a paper contract, and if documents are also provided by email, there must be verification that emails are accessible and used by the consumer.

8. *Provide at least 3 business days to cancel any contract, particularly if there is financing, and provide written notice of this right.* California's PACE law requires a 3-day right to cancel and 5-day right to cancel for older adults.³ The right to cancel is an essential back-stop to protect consumers from high-pressure door-to-door sales tactics. Non-English speakers and elderly consumers may need the help of other family or members of their community to fully understand the terms of the rebate and the layering of other programs.
9. *Protect sensitive consumer data and prohibit contractor access to this information.* States should provide strong privacy protections of sensitive consumer data, including income information. Contractors should not perform income eligibility determinations. Processes for income verification should be through highly secure processes and only accessible to program administrators who need to know that information. There should be an audit trail of who accesses this information in the case of privacy breaches. Consumers should be provided with notification of data breaches.

Consumer Protections for Work Performed Under the Contract

1. *States should publish a list of approved contractors:* States should publish and maintain a list of contractors that are approved to participate in the rebate programs. This list should be kept current and contractors that repeatedly fail to meet standards of performance should be removed from this list. Only contractors in good standing on this list should be eligible to administer the "point of sale" rebates.
2. *Do not fully reimburse contractors for "point of sale" rebates until there is independent certification/verification that the measures were installed properly and the equipment (if applicable) is operating as expected.* To ensure "point of sale" rebates are provided only for performance that meets the standards of the rebate program and the terms of the contract, States should withhold full payment of the "point of sale" reimbursement to contractors until there is independent verification that the measures were installed properly and the equipment (if applicable) is operating as expected. Consumers should not bear the risk of poor work or faulty equipment.
3. *Establish a consumer protection fund.* States should set aside a portion of their rebate programs grant to establish a restitution fund to address incomplete or improper work or equipment failure. Consumer redress to access this fund should be timely.
4. *Ensure inclusion of the FTC Holder-in-Due-Course Rule notice.* The rule prohibits a seller from taking or receiving a consumer credit contract without a prescribed notice that preserves the consumer's claims and defenses in the event that the contract is negotiated or assigned to a third-party creditor. While government entities are exempt, requiring inclusion of the notice would allow consumers to obtain recourse from public entities when they are involved in the financing.

³ Cal.Sts. & High. Code §5898 16-17.

Program Monitoring

States should collect data on the zip codes where the rebates have been provided along with data on complaints by zip code, and should make data free and available to the public to the greatest extent possible while protecting privacy.

RFP Language That Could Be Used To Execute the Consumer Protection Recommendations:

Rebate Programs Should Ensure Low-Income Affordability

In the design and administration of rebate programs, rebate program implementers:

1. Should explain how they plan to leverage federal, state and ratepayer resources to cover full project costs for low-income households;
2. Should explain how they will prioritize no-cost programs in the layering of funding for low-income projects and provide a whole-home approach for these projects; and
3. Should describe how they will ensure the preservation of affordable rents in the design and administration of rebate programs.

Rebate Contracts Transactions (includes POS) Should Ensure Consumer Protections

In the design and administration of rebate programs, rebate program implementers:

1. Should describe how they will obtain written notice and informed consent from consumers where rebate measures are likely to increase household energy burdens;
2. Should describe how they will inform consumers about any available discount rates, bill assistance and other efficiency programs that can help reduce unaffordable electric bills;
3. Should describe how they will implement a meaningful ability to repay analysis if financing is included as a part of a project;
4. Must prohibit the inclusion of forced arbitration clauses in rebate program contracts;
5. Must prohibit electronic-only contract formats and describe how they will provide written disclosures and contracts;
6. Must provide a 3- to 5-day right to cancel;
7. Should describe how they will protect sensitive consumer data and must prohibit contractor access to this information;
8. Should describe the process for phased-in reimbursement of “point of sale” rebates to contractors to ensure work is independently verified for quality control; and
9. Should describe the process for consumer redress and advertising the consumer redress process.