May 5, 2011
The Honorable Jeff Bingaman
The Honorable Dianne Feinstein
The Honorable Olympia Snowe
United States Senate
Washington, DC 20510

CC: The Honorable Max Baucus
The Honorable Orrin Hatch
The Honorable Lisa Murkowski

Dear Senators Bingaman, Feinstein, and Snowe:

We represent real estate owners, builders, contractors, building managers, energy service companies, building efficiency manufacturers and suppliers, energy efficiency financing sources, environmental and efficiency advocates, architects and engineers, and other stakeholders who believe that modifications to the Energy Efficient Commercial Buildings Deduction (Section 179D of the Internal Revenue Code) could increase its effectiveness at encouraging retrofits of existing buildings.

We appreciate your leadership in recognizing that federal tax incentives to improve the energy performance of commercial buildings could deliver tremendous benefits in terms of job creation, energy savings and greater competitiveness. In particular, we commend your work to establish and improve Section 179D. We understand that the Department of Energy is currently working on prescriptive guidance to make 179D more useable, and that your offices have been encouraging them to do so. While we support these efforts, we have concluded that additional statutory options are required for Section 179D to have a meaningful impact on the market for retrofits of commercial buildings. The Obama Administration's Better Buildings Initiative also suggests legislative modifications to increase the uptake of Section 179D for existing building retrofits and we are supportive of the goals of this initiative.

We recommend adding an additional tax incentive provision that is specifically targeted at encouraging existing building retrofits. This provision should include the following key elements:

- ***Measure energy savings compared to the existing building baseline.*** Currently Section 179D rewards buildings that reduce the energy consumption of the whole building to 50 percent of the amount the building would use if it were built to a particular code. This is an arbitrary baseline for buildings that were constructed decades ago. Additionally, the current savings threshold of 50 percent better than this code is very aggressive for existing buildings. For instance, the project at the Empire State Building—a leading and internationally recognized example of whole-building commercial retrofits that makes a $106 million investment in efficiency upgrades—would not meet this target, despite the fact that the retrofit is guaranteed to reduce the building's energy consumption by about 38 percent.[1]

  Energy usage pre- and post-retrofit is a more appropriate comparison metric for existing buildings. For example, many building owners today commonly use the EPA Portfolio Manager tool to document the total energy use of a building. This information could be used in

[1] http://apps1.eere.energy.gov/news/news_detail.cfm/news_id=12387; http://www.esbnyc.com/sustainability_project_finances.asp.

combination with analysis by a Professional Engineer to project and measure energy savings. The incentive should be structured in such a way that reductions in energy used by exterior lighting can also qualify, even though it falls outside of the building envelope.

- ***Link the amount of the incentive to energy savings achieved.*** This would calibrate the tax benefit to the value created. We recommend that the minimum amount of the incentive should correspond to 20 percent total energy savings compared to the building's baseline energy consumption, and the maximum incentive should correspond to 50 percent savings. The amount of the incentive would increase for every 5 percent increase in energy savings within this range. This will encourage ambitious projects while also rewarding projects that achieve meaningful yet more moderate levels of energy savings. A larger incentive for deeper energy savings is justified as achieving high percentage savings is often dependent on addressing the building's core systems, such as the HVAC system, which can be more technologically challenging and costly.

- ***Tie a portion of the tax incentive to implementation of efficiency measures and a portion to demonstrated energy savings.*** There are good reasons to reward a building owner for implementing energy savings measures, and good reasons to reward energy savings actually realized at the meter level. We recommend doing both by allowing the building owner to claim 60 percent of the incentive at the time measures designed to save a certain percentage of energy (as certified by a Professional Engineer) are put in to service. The remaining 40 percent of the incentive would be available 2 years later, based on demonstrated energy savings (as measured using the ENERGY STAR Portfolio Manager tool or other tools designated by the Secretary).[2]

- ***Allow owners or tenants to claim some incentive for improving a substantial space within a building.*** There is significant opportunity and appetite for building owners and tenants to improve energy efficiency during tenant build-out of office space, but current landlord-tenant arrangements seldom seize that opportunity. Similarly, there is also appetite and opportunity for building owners to improve the efficiency of a large space within a building, but where they do not necessarily have access to all tenant space. To encourage these objectives, the Department of Energy should be directed to develop guidance for how the tax incentive can be used for efficiency improvements for large defined spaces within an existing building.

- ***Make the tax incentive useable for a broad range of building efficiency stakeholders and building types, including REITS and multifamily buildings.*** Commercial buildings are owned by a variety of organizations, some of which do not have appetite for conventional tax incentives. To gear a tax incentive for optimal benefit by Real Estate Investment Trusts (REITS), the full amount of the incentive that considers such entities' special tax requirements should be available for REITS.[3] Furthermore, we believe it is important to enable a range of building efficiency stakeholders to realize the value of the tax incentive when making investments in energy savings. Hence, we suggest clarifying language that the building owner be permitted to allocate the incentive to other parties related to the transaction, such as the contractor, a tenant, engineer, architect, or source of financing. Additionally, multifamily buildings should remain eligible for any commercial building incentive given their similarity to commercial buildings with respect to ownership, structure, and application of energy codes. To capture a larger set of multifamily buildings within the scope of the incentive, it will also be critical to ensure that the incentive complements the rules of the existing low-income housing tax credit to encourage energy efficiency upgrades in the affordable housing stock.

[2] http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfoliomanager.

[3] For example, see: S. 3935, "Advanced Energy Tax Incentives Act" (introduced Sept. 29, 2010).

- ***Supplemental incentives should be considered for retrofits that multiply energy efficiency benefits.*** Some retrofit projects and technologies can achieve important policy objectives beyond energy efficiency, are not normally implemented as part of comprehensive retrofits, and thus may not be effectively incentivized by the base provision. Congress should consider additional incentives for certain improvements that multiply energy efficiency benefits -- such as renovating historic buildings, installing energy-efficient "cool roofs" to mitigate urban heat island effects, and replacing chillers that use ozone-depleting refrigerants.

We welcome your continued leadership in paving the way for tax incentives that will drive efficiency upgrades in commercial buildings and appreciate the opportunity to share these suggestions with you. We are available to discuss these issues with you in greater detail at your convenience.

Sincerely,

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Advanced Energy Innovations, Inc.
Air Conditioning Contractors of America
Air-Conditioning, Heating, and Refrigeration Institute (AHRI)
Alliance to Save Energy
American Council for an Energy Efficient Economy (ACEEE)
American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)
Beacon Capital Partners
Brandywine Realty Trust
Building Owners and Managers Association International (BOMA)
California Clean Energy Fund (CalCEF)
California Housing Partnership
Campbell Coyle Holdings, LLC
Cannon Design
Carrier
CB Richard Ellis
Copper Development Association
Council of North American Insulation Manufacturers Association (CNAIMA)
Cushman & Wakefield
Danfoss
e4 inc.
Earth Day New York
Eaton
Empire State Building Company/Malkin Holdings
Energy Future Coalition
EnerNOC
Enterprise Community Partners
Forest City Enterprises
Grubb & Ellis Management Services
Guardian Industries Corp
Hannon Armstrong
Heating, Airconditioning and Refrigeration Distributors International (HARDI)
Institute for Market Transformation (IMT)
International Association of Heat and Frost Insulators & Allied Workers
International Council of Shopping Centers

International Window Film Association
Johnson Controls, Inc.
Jonathan Rose Companies
Jones Lang LaSalle
Joseph Freed and Associates
Knauf Insulation
Legrand
Lend Lease
McKinstry
Mechanical Contractors Association of America (MCAA)
MEI Hotels
Metrus Energy, Inc.
NAIOP, Commercial Real Estate Development Association
National Association of Home Builders (NAHB)
National Association of Real Estate Investment Trusts (NAREIT)
National Association of State Energy Officials
National Electrical Contractors Association
National Electrical Manufacturers Association (NEMA)
National Insulation Association (NIA)
National Lumber and Building Material Dealers Association
National Multi Housing Council
National Apartment Association
National Restaurant Association
National Roofing Contractors Association
National Union Insulation Contractors Alliance (NUICA)
National Wildlife Federation (NWF)
Natural Resources Defense Council (NRDC)
New Buildings Institute (NBI)
Plumbing, Heating, Cooling Contractors – National Association (PHCC)
Polyisocyanurate Insulation Manufacturers Association (PIMA)
Real Estate Board of New York (REBNY)
Related Companies
Rose Smart Growth Investment Fund
Schneider Electric
Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)
Sierra Club
Simon Property Group
Skanska
The Associated General Contractors of America
The National Trust for Historic Preservation
The Real Estate Roundtable (RER)
The United Association of Plumbers and Pipefitters
Tishman Construction
Tishman Speyer
Trane
Transwestern
Urban Green Council
U.S. Equities
U.S. Green Building Council (USGBC)
Vornado
Window and Door Manufacturers Association