April 4, 2013

The Honorable Dave Camp
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
1106 Longworth House Office Building
Washington, DC 20515

The Honorable Kevin Brady
Energy Tax Reform Working Group Chair
Committee on Ways and Means
301 Cannon House Office Building
Washington, DC 20515

The Honorable Mike Thompson
Energy Tax Reform Working Group Vice Chair
Committee on Ways and Means
301 Cannon House Office Building
Washington, DC 20515

RE: Incentives for improving energy efficiency in commercial buildings and large multifamily properties

Dear Chairman Camp, Ranking Member Levin, Representatives Brady and Thompson:

The National Multi Housing Council (NMHC) and the National Apartment Association (NAA) appreciate the Committee's efforts to streamline and improve the Nation's tax code. As you consider how the code could be used to facilitate national priorities in the energy sector, we wish to call your attention to the Energy Efficient Commercial Buildings Tax Deduction (Sec. 179D of the Internal Revenue Code of 1986) and the importance of this incentive in achieving improved environmental quality, reinforcing our national security, creating jobs in the construction and manufacturing sector and increasing housing affordability by decreasing utility expenses for millions of Americans who live in apartment homes.

We believe that S. 3591, the *Commercial Building Modernization Act*, which was introduced in the 112th Congress, provides a responsible plan for enhancing the current Sec. 179D to assist property owners to make meaningful improvements in the energy performance of their properties. Many older properties have been unable to fully utilize the current-law incentive because they have had difficulty in achieving the requisite 50 percent improvement in building energy performance over the level specified in the 2001 version of the American Society of Heating,

Refrigerating and Air-Conditioning Engineers (ASHRAE) 90.1 code. While S. 3591 includes updated energy code references against which whole building performance will be measured for many properties, it also includes a pathway for older properties to qualify for incentives that will assist property owners in making building system upgrades that will yield significant energy savings.

Older building structures face technical limitations in achieving the energy performance metrics specified by the current code, let alone reaching the incremental "above-code" performance characteristics required to claim the current deduction under Sec. 179D. S. 3591 establishes a sliding scale of energy improvements, using the property's current energy performance as the baseline. This pathway of significant improvement in energy performance relative to the property's own baseline performance will provide a much-needed financial tool for property owners who want to make these types of investments but have not been able to do so.

Advances in residential construction methods have improved the energy use profile of new buildings; however the majority of the Nation's building stock predates the use of highly energy efficient products and techniques. The U.S. Department of Energy (DOE) reports that housing built after 2000 used 14 percent less energy per square foot than housing built in the 1980s and 40 percent less than housing built before 1950.[1] As such, there is considerable room for improvement in energy performance even among well designed, constructed and maintained properties. A recent study conducted by CNT Energy and the American Council for an Energy-Efficient Economy finds that "[b]uilding owners often need financial incentives to adopt new technologies or equipment with higher up-front costs. Despite this, studies have documented that affordable housing, often multifamily, receives a disproportionately small share of available energy efficiency funding."[2]

According to the American Housing Survey (2009), almost 81 percent of the Nation's stock of apartment properties (with 5 or more units) was constructed prior to 1990, which marks the decade in which the first building energy codes were implemented. This older stock of housing, which is an important source of affordable housing, represents a significant opportunity for achieving energy savings while at the same time adding to the available spending capacity of individuals who live in these apartment homes. This is a significant consideration given that in 2010 approximately 70 percent of renter households had incomes below the *national median* and more than 40 percent had incomes in the bottom quartile.[3] Furthermore, "energy costs as a share of gross rents rose from 10.8 percent to 15.0 percent between 2001 and 2009. Lowest income renters saw the largest increase in their utility share, a jump from 12.7 percent to 17.4 percent."

There is a direct relationship between the age of a residential building and energy expenditures. The per-square-foot energy costs of housing constructed between 1980 to 1989 is 16 percent higher than that of a building constructed after 2000. Those expenditures soar to a 28 percent

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[1] U.S. Department of Energy, 2011 Buildings Energy Data Book. March 2012. Chapter 2.
[2] CNT Energy and American Council for an Energy-Efficient Economy, Engaging as Partners in Energy Efficiency: Multifamily Housing and Utilities. January 2012. http://www.cntenergy.org/media/Engaging-as-Partners-in-Energy-Efficiency-MF-Housing-and-Utilities-Final-012512.pdf. p.4.

[3] Joint Center for Housing Studies of Harvard University. America's Rental Housing-Meeting Challenges, Building on Opportunities. 2011. p. 17 http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/americasrentalhousing-2011.pdf; U.S. median household income fell from $51,144 in 2010 to $50,502 in 2011 according to the *United States Census, American Community Survey Briefs*, September 2012, Appendix Table 1, page 5.

increase in residential buildings built between 1970 and 1979 over post-2000 properties.[4] Energy efficiency in multifamily properties could be economically improved by 30 percent with a savings of $9 billion in averted energy costs not to mention the substantial savings in greenhouse gas emissions. [5]

NMHC/NAA believe that a sound national tax policy can be used to catalyze a market transformation marked by significant improvements in building energy performance. A meaningful and predictable tax incentive would leverage private investment in qualified building retrofits and would have a positive effect on the economy as it would result in increased demand for construction services, materials and equipment.

We appreciate the opportunity to provide the apartment industry's perspective on energy tax reform and look forward to working with the Committee as it moves forward. For additional information please contact Cindy Chetti, NMHC's Senior Vice President of Government Affairs, at 202-974-2328.

Sincerely,

Douglas M. Bibby
President
National Multi Housing Council

Douglas S. Culkin, CAE
President
National Apartment Association

[4] U.S. Department of Energy, *supra* note 1, at p. 2-20 derived from Table 2.3.12.
[5] Joint Center for Housing Studies of Harvard University, *supra* note 2, at p.33.