NATIONAL MULTIFAMILY HOUSING COUNCIL
NATIONAL APARTMENT ASSOCIATION

June 7, 2019

The Honorable Mike Crapo
Co-Lead Cost Recovery Task Force
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Benjamin Cardin
Co-Lead Cost Recovery Task Force
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Crapo and Cardin:

The National Multifamily Housing Council and the National Apartment Association are writing to request that the Senate Finance Committee's cost recovery tax extender task force support both a long-term extension of and modifications to the Energy Efficient Commercial Buildings Deduction (IRC Section 179D). We believe the incentive should be modified to: (1) incentivize retrofits of existing multifamily buildings and (2) enable Real Estate Investment Trusts (REITs) to take advantage of the provision.

By way of background, for more than 20 years, NMHC and NAA have partnered to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of 160 state and local affiliates, NAA encompasses over 75,000 members representing 9.25 million rental housing units globally.

Prior to its expiration at the end of 2017, the Energy Efficient Commercial Buildings Deduction enabled owners of buildings with four or more stories to deduct between $0.60 and $1.80 per square foot when they installed certain energy efficient systems, including HVAC, lighting, or building envelope. To receive the full tax deduction, property owners had to reduce a building's total annual power and energy usage by at least 50 percent beyond the baseline requirements established by the ASHRAE standard 90.1-2007 building energy code.

This stringent ASHRAE standard has made it difficult for owners of older apartment communities to retrofit properties and claim the deduction. Nearly 80 percent of the current apartment stock was constructed before 2000. Investment in modern high-performing building systems would markedly increase the energy performance of these older properties; however, due to the age of the specific property, it may still be unable to meet the performance metric specified by the ASHRAE reference. This is why considering significant improvement of building performance over the building's own baseline performance (as opposed to rating against the exogenous ASHRAE standard) is more effective and will meaningfully spur investment in upgraded systems.

To spur the retrofitting of existing buildings, NMHC and NAA strongly support modifying the Energy Efficient Commercial Buildings Deduction (and extending the deduction over a significant period to provide taxpayer's certainty) to incentivize reduced energy consumption by establishing a sliding scale relative to a building's own energy usage. A tax deduction should be provided based on the amount of energy efficiency achieved relative to the building's baseline. We appreciate Section 305 (Energy Efficiency Deduction for Existing Commercial Buildings) of the *Clean Energy for America Act* (S. 1288) introduced by Senate Finance Committee Ranking Member Ron Wyden that adopts this approach.

Additionally, we encourage the Finance Committee to modify the Energy Efficient Commercial Buildings Deduction to enable REITs to utilize the incentive. This could be accomplished by conforming a REIT's tax deduction under IRC Section 179D for earnings and profits to its corollary deduction for taxable income.

Under current law, a REIT's shareholders may be unable to benefit from the IRC Section 179D deduction. REIT distributions are today treated as dividends to the degree of a REIT's earnings and profits. However, the IRC Section 179D deduction does not include a mechanism to reduce earnings and profits, and as a result, shareholders cannot access the IRC Section 179D tax benefit.

NMHC and NAA thank you for considering our views. Please feel free to contact Cindy Chetti, NMHC's Senior Vice President of Government Affairs, at 202-974-2300 or Greg Brown, NAA's Senior Vice President of Government Affairs, at 703-518-6141, should you have any questions.

Sincerely,

Cindy V. Chetti

Cindy V. Chetti
Senior Vice President of Government Affairs
National Multifamily Housing Council

Gregory S. Brown
Senior Vice President of Government Affairs
National Apartment Association

CC:
Senate Finance Committee Chairman Charles Grassley
Senate Finance Committee Ranking Member Ron Wyden
Senator Todd Young
Senator Catherine Cortez Masto