December 3, 2012

The Hon. Max Baucus
Chairman
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Hon. Jeff Bingaman
Chairman
Committee on Energy & Natural Resources
United States Senate
304 Dirksen Senate Office Building
Washington, D.C. 20510

The Hon. Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Hon. Lisa Murkowski
Ranking Member
Committee on Energy & Natural Resources
United States Senate
304 Dirksen Senate Office Building
Washington, D.C. 20510

Re: ***Real Estate and Industry Support for S. 3591, The Commercial Building Modernization Act***

Dear Chairmen and Ranking Members:

We write as representatives of the real estate, construction, lending, building products manufacture and supply, and energy efficiency communities. We urge support for S. 3591, the Commercial Building Modernization Act ("CBMA") introduced by Senators Snowe, Bingaman, Feinstein and Cardin. The CBMA extends and enhances the tax deduction at Section 179D of the Internal Revenue Code for energy efficient commercial and multifamily buildings.

Your respective Committees each held hearings last summer to consider energy incentive and financing platforms. The CBMA is the type of legislation that achieves the tax and energy policies important to both Committees. Witnesses at the recent Finance Committee hearing remarked that *deductions* like 179D – which allow businesses to expense capital improvements as part of their ordinary operating costs – must be considered in a different light compared to tax *credits*, which may function more like subsidies that finance energy creation. Section 179D must be retained because the tax code allows businesses to immediately deduct ordinary and necessary operating expenses such as utility bills, but only allows for long-term depreciation of capital expenses like energy efficiency investments in buildings. Section 179D thus plays an important role to align the tax code so that it properly awards capital investments to *save* energy, as opposed to the operating expenses deduction that may otherwise be claimed for *wasted* energy.

Both Committees have emphasized that energy financing incentives should be **"performance-based"** and **"technology-neutral."** The 179D deduction—particularly as improved by the CBMA—furthers both of these goals. It is performance-based because it would reward building retrofit projects that achieve actual and verifiable energy savings; the better the performance, the higher the award. And, S. 3591 is technology-neutral because it supports *projects*, not *products*. The CBMA does not specify any particular type of equipment or material that must be deployed in a building retrofit project. Rather, private sector building owners and their contractors can decide among the best suite of efficiency measures that will achieve optimal energy performance in their assets.

Specifically, the CBMA improves Section 179D's effectiveness in promoting energy efficiency retrofits by:

- ***Measuring energy savings and improvements by reference to the existing building's own consumption baseline.*** The CBMA bases the tax deduction amount on a logical "before and after" comparison regarding how much energy savings a retrofit project is designed to, and does, achieve. The internationally renowned, whole-building retrofit project at the Empire State Building (ESB) would not meet the law's current targets, even though that project is guaranteed to reduce the ESB's energy consumption by about 38 percent. The CBMA corrects this problem and enables existing buildings to qualify for the enhanced 179D deduction, by reference to measured and verified energy savings over the baseline of that structure's energy performance prior to the retrofit project.

- ***Linking the amount of the enhanced 179D deduction to energy savings achieved.*** The CBMA provides for a sliding scale that increases the amount of the incentive for retrofits with greater energy savings. This approach will encourage ambitious projects while also rewarding projects that achieve meaningful yet more moderate levels of energy savings.

- ***Making the tax incentive useable for a broader range of real estate owners and other stakeholders.*** Currently, many buildings are unable to access 179D because they are owned by entities like real estate investment trusts (REITs) and certain limited liability partnerships (LLPs) that cannot benefit from Section 179D as currently drafted. The CBMA would improve current law by allowing REITs to deduct Section 179D expenses for taxable income and dividend calculation purposes, both to avoid shareholder double taxation and to ensure that the REIT is able to distribute the majority of its income as a dividend, which is legally mandated. Further, the CBMA would give the private sector the same advantage that presently exists for government-owned buildings. The bill levels the playing field so all building owners – public, private, and non-profit – may allocate the incentive to other parties that can benefit from the tax deduction who are also primarily responsible for the specific retrofit project at issue (such as the contractor, tenant, engineer, architect, or source of financing).

Increased focus on policies to make existing buildings (as opposed to new construction) more energy efficient is important, because it is estimated that 80% of the structures that stand today will still be part of our landscape in 2050. As our industry continues the slow climb out of the recession, initiatives like the CBMA are needed now more than ever to leverage greater private investment in U.S. real estate, create American construction and manufacturing jobs, save businesses billions of dollars in utility bills – and help make our nation more energy secure.

The 179D deduction is scheduled to expire at the end of 2013, but it is important to lay a place marker now to extend and improve this incentive. We thus urge your support for the CBMA (S. 3591) to retain and improve the 179D tax deduction for energy efficient commercial and multifamily buildings.

Sincerely,

Air Conditioning Contractors of America
American Gas Association
American Hotel & Lodging Association
American Public Gas Association
Appraisal Institute
ATCO Properties and Management, Inc.
Bayer MaterialScience LLC
Brandywine Realty Trust
Building Owners and Managers Association (BOMA) International
CCIM Institute
CRE Finance Council
Council of North American Insulation Manufacturers
Cushman & Wakefield, Inc.
Duke Realty Corporation
Empire State Building Company/Malkin Holdings
Feldman Realty Group

First Potomac Realty Trust
Hirschfeld Properties LLC
Independent Electrical Contractors
Ingersoll Rand
International Council of Shopping Centers
Institute of Real Estate Management
Johnson Controls
Jones Lang LaSalle Americas, Inc.
Mechanical Contractors Association of America
MEI Hotels
NAIOP, the Commercial Real Estate Development Association
National Apartment Association
National Association of Home Builders
National Association of REALTORS®
National Association of Real Estate Investment Trusts
National Electrical Contractors Association
National Lumber and Building Material Dealers Association
National Multi Housing Council
Omnispective Management Corp.
Owens Corning
Plumbing-Heating-Cooling Contractors—National Association
Polyisocyanurate Insulation Manufacturers Association (PIMA)
Real Estate Board of New York
Realtors Land Institute
Sheet Metal and Air Conditioning Contractors' National Association
Society of Industrial and Office Realtors
The Real Estate Roundtable
Tishman Speyer
Transwestern
USAA Real Estate Company
Vornado Realty Trust
Window and Door Manufacturers Association

cc: Members of the Senate Finance Committee
Members of the Senate Energy & Natural Resources Committee