The Real Estate Roundtable

November 21, 2019

The Honorable Kathy Castor
Chair
Select Committee on the Climate Crisis
U.S. House of Representatives
Washington, DC 20515

The Honorable Garret Graves
Ranking Member
Select Committee on the Climate Crisis
U.S. House of Representatives
Washington, DC 20515

Re: *Response to Request for Information*

Dear Chair Castor and Ranking Member Graves:

The Real Estate Roundtable (www.rer.org) is pleased to submit these comments in response to the request for information (RFI) from the Select Committee on the Climate Crisis.

The Roundtable brings together leaders of the nation's top publicly-held and privately-owned real estate ownership, development, lending and management firms with leaders of the major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy. By identifying, analyzing and coordinating policy positions, The Roundtable's leaders seek to ensure that a cohesive industry voice is heard by government officials and the public about real estate and its important role in the global economy. Collectively, Roundtable members' portfolios contain over 12 billion square feet of office, retail and industrial properties valued at more than $3 trillion; over 2 million apartment units; and in excess of 3 million hotel rooms.

With depth and experience, The Roundtable's members navigate the intersection where building technology investments meet actual and verifiable energy reduction and climate benefits. Their companies' energy efficiency, distributed generation and other energy-related building projects are grounded in business fundamentals that assess returns on investment, net present value, and internal rates of return. Our members must use these metrics to evaluate the cost effectiveness and profitability of any capital expenditures – including energy- and climate-related measures – to serve the market demands of investors, tenants, the workforce, and other customers.

The Roundtable's Sustainability Policy Advisory Committee ("SPAC") is comprised of the senior executives that direct the energy and environmental programs of the nation's leading real estate firms. SPAC's thought leadership and real world experiences inform The Roundtable's advocacy agenda on sustainability policy.[1] For example:

- We have a track record of success in partnering with the U.S. Environmental Protection Agency (EPA) to enhance and modernize the ENERGY STAR "whole building" program to encourage greater energy efficiency in, and reduced GHG emissions from, commercial buildings.[2] The Roundtable's early advocacy helped create ENERGY STAR for buildings in 1998.

- We were the main industry advocate that built bipartisan consensus in Congress for the "Energy Efficiency Improvement Act of 2015,"[3] the last piece of legislation to create a new federal government energy efficiency program. The act passed the Senate by unanimous consent and the House on a voice vote, and authorized EPA to create "ENERGY STAR for Tenants."[4]

- We assisted the Department of Energy (DOE) to drive support in the U.S. real estate industry to create the "Better Buildings Initiative"[5] in 2011. The initiative highlights corporate leaders and case studies for innovations in high performance commercial building investments.

- We have provided technical comments and input for years to DOE's data gathering arm, the Energy Information Administration (EIA), to improve the quality, utility and integrity of the Commercial Building Energy Consumption Survey (CBECS) – the key federal data set upon which policy makers and our industry rely regarding nationwide energy consumption statistics across the U.S. real estate sector.[6]

It is often stated that buildings account for 40% of U.S. energy consumption. This truism is imprecise. A more accurate statement is that buildings – and their residents, tenants and other occupants – account for 40% of the U.S.'s overall energy consumption. Indeed, in any given commercial office building, tenants usually account for more than 50% of that asset's energy use. The homes where we live, the office buildings where we work, the stores where we shop, the hospitals where we heal, and the schools where we learn are not static monoliths. They are complex environments that respond to the needs and adjust to the behaviors of their occupants. Accordingly, energy and climate policies affecting the real estate sector must consider both the investments that owners make in their buildings – as well as the end-use energy consumption behaviors of tenants in the spaces they occupy.

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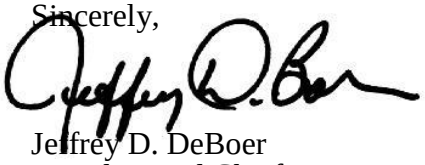
[1] See https://www.rer.org/media/publications.
[2] https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/earn-recognition/energy-star-certification.
[3] See https://www.congress.gov/bill/114th-congress/senate-bill/535.
[4] See https://www.energystar.gov/buildings/tenants/about_tenant_space.
[5] See https://betterbuildingsinitiative.energy.gov/.
[6] See https://www.eia.gov/consumption/commercial/.

The Roundtable appreciates the opportunity to submit the attached recommendations for your consideration. For further information, please contact Duane J. Desiderio, Senior Vice-President and Counsel (ddesiderio@rer.org).

Sincerely,



Jeffrey D. DeBoer
President and Chief Executive Officer

ENERGY AND CLIMATE POLICY RECOMMENDATIONS AND INITIATIVES

OF THE REAL ESTATE ROUNDTABLE

1. Improve the model building energy codes process by enacting the *Energy Savings and Industrial Competitiveness* (*ESIC*) Act.

The Roundtable has long supported the *ESIC* Act (S.2137/H.R. 3962),[7] to improve the process by which model energy codes are developed regarding new building construction and major modifications of existing buildings. The bill would:

- Provide real estate stakeholders with opportunities to comment on code revisions offered by the Department of Energy (DOE), and thereby bring greater transparency to the currently opaque process by which federal code proposals are developed without opportunities for stakeholder input;
- Import new economic and cost considerations into the process by which DOE proposes revisions to "model" building energy codes that state and local bodies may ultimately adopt;
- Direct DOE to consider impacts on small businesses when developing its energy code submissions;
- Clarify standards for real estate appraisers and banks to consider energy efficiency capital investments when determining an asset's market value; and
- Create a voluntary program that can lead to lower interest rates and greater qualifications for home buyers seeking mortgages on new energy efficient residences.

The *ESIC* Act's overriding approach – to modernize the existing building energy codes development process – is far preferable to "one size fits all" federal-level mandates on buildings that are sometimes considered. The amount of energy any specific building consumes is based on myriad variables such as its location, climate zone, type, use, hours of operation, the comfort level demanded by its occupants, materials availability and pricing, and other factors. The Roundtable favors the bipartisan *ESIC* Act because it facilitates "example standards" to help drive higher energy performance in real estate while allowing flexibility and economic considerations in setting building energy reduction targets.

2. Enhance EPA's voluntary ENERGY STAR incentive programs for both buildings and commercial tenants.

EPA's ENERGY STAR for buildings – established in 1998 with input and support from The Roundtable – is the real estate industry's premier program to signal optimal energy efficiency performance across commercial real estate asset classes.[8] EPA reports that[9]:

- More than 8,100 buildings earned the ENERGY STAR in 2018, bringing the total to more than 34,000.

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[7] S. 2137 (lead sponsors Senators Rob Portman [R-OH] and Jeanne Shaheen [D-NH]); H.R. 3962 (lead sponsors Peter Welch [D-VT] and David McKinley [R-WV]).
[8] See https://www.energystar.gov/buildings.
[9] See https://www.energystar.gov/buildings/about-us/facts-and-stats.

- In 2018 alone, more than 270,000 buildings, comprising 26 billion square feet of floorspace, used the ENERGY STAR Portfolio Manager® tool to measure and track their energy and water use, and waste disposal.
- Studies correlate ENERGY STAR certified buildings with a premium of up to 16 percent for sales prices and rental rates.
- ENERGY STAR certified buildings are verified to use 35% less energy on average, and are thus verified to contribute 35% fewer greenhouse gas emissions to our atmosphere.[10]

The omnipresence of ENERGY STAR buildings across the U.S. compels The Roundtable's continued collaboration with EPA. In prior appropriations cycles, we have organized industry-wide advocacy efforts in Congress to secure sufficient funding for ENERGY STAR to continue operations and achieve its important mission. More recently, in August 2019, we concluded a year-long "study period" with the agency to update the equations underlying the ENERGY STAR building scoring process.[11] Technical expertise provided by The Roundtable's Sustainability Policy Advisory Committee (SPAC) successfully urged EPA to revise its proposed scoring models to ensure that buildings – regardless of their size, location in colder or warmer climates, or the fuel sources that power them – are on a level playing field as they seek ENERGY STAR recognition.

While ENERGY STAR is voluntary at the federal level, an increasing number of states and municipalities are converting elements of EPA's program into their own mandates on building owners.[12] The Roundtable advocates for EPA to coordinate with its non-federal partners and develop guidance and standards for local policy makers that synchronize with the national ENERGY STAR platform. For example, one of The Roundtable's current initiatives is to harmonize information collected by EPA in its Emissions & Generation Resource Integrated Database (eGRID)[13] with state/local GHG regulatory programs on buildings. eGRID is poised to be a critical source for data on coefficients that convert various fuel sources consumed to power buildings (*e.g.*, electricity, district steam, natural gas, fuel oil) into greenhouse gas emissions.[14] It is critical for the ENERGY STAR program – voluntary at the federal level – to understand how eGRID data is being used for regulatory purposes by local governments.

Looking toward 2020, The Roundtable's coordination with EPA will also focus on supporting the agency's development of the next round of high performance labels under the "ENERGY STAR for Tenants" program.[15] The Roundtable was the chief industry advocate that supported legislation in 2015[16] authorizing EPA to create ENERGY STAR for Tenants. This EPA incentive complements the ENERGY STAR whole-building program. It offers a federal-level "label" to recognize commercial building office tenants for high performance design and construction of the spaces they lease. In implementing the 2015 law, EPA successfully issued its first round of tenant space labels in 2018. The Roundtable urges EPA to expand version 2.0 of ENERGY STAR for Tenants in 2020 to include retail

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[10] See https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/earn-recognition/energy-star-certification/ten-reasons-pursue-energy-star.
[11] See https://www.energystar.gov/buildings/facility-owners-managers/existing-buildings/use-portfolio-manager/update-energy-star-scores-cbecs.
[12] See https://www.energystar.gov/buildings/program-administrators/state-and-local-governments/see-federal-state-and-local-benchmarking-policies.
[13] See https://www.epa.gov/energy/emissions-generation-resource-integrated-database-egrid.
[14] E.g., Local Law for the City of New York No. 97 (2019), §28-320.3.1.1, §28-320.3.2.1, available at https://www1.nyc.gov/assets/buildings/local_laws/ll97of2019.pdf.
[15] See https://www.energystar.gov/buildings/tenants/about_tenant_space
[16] See supra note 3, "Energy Efficiency Improvement Act of 2015," available at https://www.congress.gov/bill/114th-congress/senate-bill/535, codified at 42 U.S.C. § 17085.

and industrial leased spaces (in additional to office spaces). EPA must also ensure that its tenant-level award criteria reflect current market trends and energy estimation tools deployed in our industry.

3. <u>Improve the quality and reliability of the national data collected by the federal Commercial Building Energy Consumption Survey.</u>

Two federal agencies collect critical data regarding energy use across the stock of U.S. commercial buildings: (1) the Energy Information Administration (EIA) through the Commercial Building Energy Consumption Survey (CBECS)[17]; and (2) the Environmental Protection Agency (EPA) through ENERGY STAR's online Portfolio Manager[18] tool. The Roundtable strongly encourages better coordination between these two agencies to ensure that the data each separately collects are of the highest quality.

CBECS collects data by randomly sampling a very small subset of the entire stock of U.S. commercial buildings. From this small random sample, EIA then makes estimates on energy use across *all* U.S. commercial buildings.[19] In contrast, EPA and a growing number of states/localities collect energy data on tens of thousands of individual buildings through the Portfolio Manager benchmarking tool. The amount of data on individual buildings in EPA's possession, from Portfolio Manager, is much larger than the microdata collected by EIA through CBECS.

For example, in the most recently completed CBECS data from the 2012 cycle, EIA's nationwide random sample survey captured only 41 private sector office buildings of the size 500K ft^2 or larger. CBECS then estimated a total of 3,000 office buildings of this size in the entire U.S. population of commercial buildings.[20] ***That is: EIA captured only 1.37 percent of actual buildings in this "very large" building sub-population to draw conclusions about industry-wide energy usage.*** In stark contrast, EPA's Portfolio Manager possesses data on literally thousands more $\geq$ 500K ft^2 buildings, compared to the minuscule amount that CBECS collects. EPA has data on over 2,000 buildings that are at least 500K ft^2 in size, while the 2012 CBECS collected data on only 41 such buildings.

The public must have high confidence in the latest 2018 CBECS data collection cycle. There should be appropriate oversight from Congress directing EIA to coordinate with EPA, and to report on such data coordination efforts. To this end, The Roundtable has been the chief advocate for section 103 of the *ESIC* Act.[21] Section 103 directs EIA and EPA to provide to Congress an "information coordination agreement" between the agencies, whereby:

- EIA shall obtain access to building-specific data in EPA's Portfolio Manager database, and explain how it will consider such data into the **<u>2018</u>** CBECS cycle for analyses and estimates regarding building population, size, location, activity, energy usage, and other building characteristics;
- EIA shall explain how it will incorporate into the **<u>2018</u>** CBECS cycle data that—
  - is collected through EPA's Portfolio Manager;

[17] https://www.eia.gov/consumption/commercial/.
[18] https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager.
[19] In the 2012 CBECS cycle, EIA surveyed 6,700 actual buildings for energy consumption and other data. From that sample, it estimated a total population of 5.6 million commercial buildings in the U.S. See https://www.eia.gov/consumption/commercial/2012-cbecs-building-sampling.php.
[20] CBECS 2012 data set, Table B6 (revised May 2016), at https://www.eia.gov/consumption/commercial/data/2012/bc/pdf/b6.pdf.
[21] *Supra* note 2, starting at p. 31.

- is available to the public on the Internet as required by state and local government building energy disclosure laws; and
- emphasizes private sector buildings that are 250,000 square feet or larger; and

- EIA shall coordinate with EPA to study, describe and compare—
  - the methodologies that EIA, EPA and state/local government managers use to maximize the quality, reliability and integrity of data they respectively collect through CBECS, Portfolio Manager, and state/local building energy disclosure laws, and how those methodologies might be improved; and
  - consistencies and variations in data for the same buildings captured in CBECS that are also contained in EPA's Portfolio Manager database.

In addition, while The Roundtable's work is on-going to ensure high quality CBECS data on building-level energy statistics, we also advocate for the creation of an analog dataset on commercial tenant-level energy used in leased spaces within buildings. A provision in the Energy Efficiency Improvement Act of 2015 directs EIA to expand CBECS to gather data for a tenant-based energy consumption survey.[22] Reliable, nationwide energy data for commercial leased-spaces will be essential for an eventual federal labeling program that awards tenants for actual, verifiable energy reductions in the spaces they occupy over the duration of a lease term.

4. <u>Create meaningful accelerated depreciation periods to encourage investments of high performance equipment to retrofit existing commercial and multifamily buildings.</u>

Bonus depreciation and cost recovery rules from the 2017 tax reform law, the *Tax Cut and Jobs Act (TCJA)*, have an unintended consequence to *discourage* businesses from making energy efficiency investments to modernize our nation's building infrastructure, reduce energy consumption, and lower greenhouse gas emissions. The tax code should be aligned to promote building owners to move from "business as usual" and invest in HVAC, windows, lights, roofs, and other equipment that carry higher upfront costs but also achieve higher energy savings above baseline code requirements and DOE's federal equipment standards.

To correct this shortcoming, a coalition including The Roundtable – comprised of both real estate business groups and environmental advocacy organizations – urges Congress to establish in the tax code a new category of Energy Efficient Qualified Improvement Property – or "E-QUIP."[23] We recommend a 10-year cost recovery period for E-QUIP installations. A uniform E-QUIP 10-year recovery period will promote productive business investment by spurring high performance upgrades in commercial and multifamily buildings. In turn, optimizing energy efficient building performance will help create well-paying jobs in the construction, design, and energy sectors; boost equipment manufacturing; enhance our country's energy independence; and reduce the built environment's carbon footprint.

The *TCJA* included sweeping changes in our nation's cost recovery system intended to encourage certain nonresidential building investments, known as Qualified Improvement Property ("QIP"). A drafting error failed to incentivize QIP investments as Congress desired. Legislation is currently pending to fix this error. However, correcting the QIP drafting mistake will still not be sufficient to encourage expensive investments aimed at substantially improving energy efficiency in buildings. Even with anticipated QIP technical corrections in place, new cost recovery rules *increase*

[22] *Supra* note 3, at section 104, entitled "Expanding Survey Data" (codified at 42 U.S.C. § 17085(c).
[23] See https://www.rer.org/archive-search/roundtable-weekly/roundtable-weekly-may-10-2019-environment-real-estate-opportunity-zones-affordable-housing#f11d6f67-54cd-4fbd-8ce8-2041bb1a2b59.

the after tax cost of certain building improvements and particularly *discourage* costly, high-performance energy efficiency upgrades. Moreover, as QIP technical corrections under consideration pertain to nonresidential properties, they would not encourage high efficiency investments in multifamily residential properties.

Accordingly, to stimulate robust building investments in E-QUIP, our groups respectfully recommend legislation that includes the following elements:

- Elective 10-year, straight-line cost recovery period under the Alternative Depreciation System (ADS) for a new category of E-QUIP expenditures for taxable income;
- Six year duration of incentive;
- Applies to improvements in existing commercial and multifamily rental buildings;
- E-QUIP benefit available to all taxpayers, including an electing real property trade or business under section 163(j);
- Covers interior and exterior components of, and the controls and drives for, the main systems that most impact building energy consumption: (1) heating and cooling; (2) lighting; and (3) envelope;
- Pertains to equipment and systems manufactured to meet above-code, high performance specifications to be subsequently defined by statutory language, that exceed levels of performance ordinarily required through energy codes and federal equipment efficiency standards; and
- Certification that E-QUIP is installed to maximize the performance for which it is designed, accompanied by an on-going operations and maintenance plan.

5. Foster public-private partnerships to finance safety and resiliency improvements to energy infrastructure assets.

America's energy grid is increasingly vulnerable to climate change, cyber-attacks, other manmade threats, and strains from rising power demands from consumers. Taxes and ratepayer fees alone cannot foot the entire bill to meet the country's extensive infrastructure challenges. Private sector capital should be part of any comprehensive financing strategy to improve our energy grid assets. Yet, the United States is far behind other regions of the world in harnessing private investment for public power and other infrastructure development.[24]

In the transportation arena, the Transportation Infrastructure Finance Innovation Act (TIFIA) program is the federal government's main tool for encouraging public-private partnerships (P3s) and bringing private capital investments to help finance surface transportation projects.[25] Low costs of borrowing, term length, and repayment flexibility offered by TIFIA[26] have minimized risks for private investors and attracted them to partner with government entities to build, own, operate and maintain nationally and regionally-significant transportation projects across the country.[27] In light of TIFIA's

[24] *See* OECD, *Pension Funds Investment in Infrastructure: A Survey* (2011); Infrastructure Investor, Fundraising Report (2018).
[25] https://www.transportation.gov/tifia/projects-financed.
[26] *E.g.*, the TIFIA loan interest rate offered by the Build America Bureau is 2.30% as of this writing. https://www.transportation.gov/buildamerica/programs-services/tifia.
[27] Nationwide list of TIFIA-financed projects: https://www.transportation.gov/tifia/projects-financed

success for surface transportation, Congress has extended its model to help finance railroad[28] and water[29] infrastructure.

The Roundtable recommends that Congress should develop a TIFIA-type pilot program to encourage P3 financing for energy infrastructure. For example, the Transportation Department's Pipeline and Hazardous Materials Safety Administration should be granted authority for a test program to underwrite loans so eligible gas distribution companies can attract private co-investment for repair and replacement of natural gas assets. Modernization of the pipeline network connected to U.S. buildings and plants is vital, as aging distribution mains and service lines "constructed of cast iron, wrought iron and bare steel represent the oldest pipelines and … pose the highest-risk for potential leaks." [30] Aside from the costs associated with wasted fuel and system inefficiency, the climate toll from the leaking grid is considerable: "Natural gas distribution systems account for 6% of methane emissions from U.S. natural gas infrastructure."[31] We thus encourage consideration of a credit enhancement program to encourage P3 investments to harden our leaking, existing natural gas pipeline network.

Extending a TIFIA loan guarantee model to finance electric grid modernization also merits a pilot program. To facilitate access to local-scale power in remote rural areas – and to enable reliable supplies of locally-generated renewable energy in denser communities – a cohesive national strategy should be developed to accelerate private capital investments in microgrids that can operate both independently from and back-up centralized power infrastructure. We urge Congress to authorize a pilot program that brings together government agencies, power commissions, utilities, real estate and other stakeholders to explore co-investment in a cleaner, more reliable, and more resilient electric grid.

[28] Railroad Rehabilitation and Improvement Financing (RRIF): https://www.transportation.gov/buildamerica/programs-services/rrif.
[29] Water Infrastructure Finance Innovation Act (WIFIA): https://www.epa.gov/wifia
[30] U.S. Dep't of Transportation, Pipeline and Hazardous Materials Safety Administration, Report to Congress, "State-Level Policies That Encourage or Present barriers to the Repair and Replacement of Leaking Natural Gas Pipelines" (Aug. 2, 2017) at p. 4.
[31] U.S. Department of Energy, "Natural Gas Infrastructure Modernization Programs at Local Distribution Companies: Key Issues and Considerations (Jan. 2017) at p. 5.