

The Honorable Janet Yellen  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Secretary Yellen:

Thank you for your tireless work to implement the energy-related tax provisions of the Inflation Reduction Act. We know that this is a massive undertaking, and we recognize and appreciate your dedication and commitment to the successful implementation of this historic law.

While several tax incentives in the IRA address energy efficiency, only one – the Sec. 179D tax deduction – is aimed specifically at commercial buildings, which alone account for nearly 20% of U.S. energy consumption and greenhouse gas emissions.

The 179D deduction is an important tool for driving energy efficiency investments into the sector, and there is strong interest in the 179D improvements under the IRA. Thus far, however, the IRA's expansion of the deduction has not lived up to its promise due to major questions around the rules for using it. This lack of certainty is limiting investment and preventing projects from moving forward. We note that 179D guidance was included in the Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions and urge you to release as much 179D information and guidance as you can, as quickly as possible.

There are two primary areas of uncertainty around the 179D deduction:

The first involves the new retrofit pathway created under the IRA for achieving the deduction by demonstrating energy use intensity (EUI) improvement in existing buildings. This is a critical new pathway because it opens up far more opportunity for using the deduction on existing buildings, which are typically far less efficient than new buildings and which will continue to account for the vast majority of building-sector emissions for decades. According to the International Energy Agency, we need to retrofit 20% of global building space by 2030 to meet emissions targets, or 2.5% of building space annually, up from a current rate of less than 1% per year.

There are significant questions about how to count and document savings for the new pathway. Yet two years after the IRA was signed into law, Treasury has released no information or guidance on what building owners must do to demonstrate the EUI improvement necessary for earning the deduction. We are not aware of a single instance of a building owner attempting to use the retrofit pathway.

This is a missed opportunity. Even abbreviated guidance could help to provide clarity and pave the way for new activity. It is widely expected, for example, that building owners would be able to use EPA's ENERGY STAR Portfolio Manager tool to track and demonstrate compliance under Sec. 179D. Even if other options for demonstrating compliance might be approved in the future, affirming this expectation for Portfolio Manager tracking and clarifying how project owners can use it would be a significant step forward.

The second area of uncertainty involves the expansion of the allocation provision to nonprofit entities. Even before this expansion, when the allocation provision was limited to public entities, there was considerable confusion in the market over how public entities could share in the value of the deduction when they allocated it to designers. With nonprofits now able to take advantage of allocation, many are

questioning how they can receive part of the financial benefit of the deduction to help offset the additional costs of efficiency improvements in their projects.

As efficiency advocates who want to see Sec. 179D drive more activity and investment, we believe that the administration should clarify how owners of projects can share in the value of the tax deduction in order to incentivize owners to use it, particularly now that Sec. 179D is permanent and can be more reliably planned for by all stakeholders in a project. This is clearly the intent of the Sec. 179D allocation provision - just as elective pay is intended to encourage public and nonprofit entities to use other tax incentives under the IRA.

Continued uncertainty around this question will discourage use of Sec. 179D among project owners who simply don't see benefit in spending additional money to achieve the efficiency improvements necessary to receive the deduction. Even short of official guidance, the administration could clarify through hypothetical examples or case studies that allocation can be incorporated into a project bidding process, for example, or otherwise negotiated with the designer as the project is being planned.

Thank you again for your tremendous efforts thus far in implementing the IRA. Given the leading role that buildings play in generating emissions and creating clean energy jobs, we believe clarifying the above issues should be a top priority of the administration, and we are eager to work with you in doing so and raising awareness in the sector around the improved opportunities under the Sec. 179D deduction. Please don't hesitate to contact Ben Evans with the U.S. Green Building Council at [bevans@usgbc.org](mailto:bevans@usgbc.org) with any questions.

Sincerely,

U.S. Green Building Council  
American Council for an Energy-Efficient Economy (ACEEE)  
RMI  
Institute for Market Transformation

CC:

Seth Hanlon, Deputy Assistant Secretary for Tax and Climate Policy, U.S. Department of the Treasury  
Laurel Blatchford, Chief Implementation Officer, Inflation Reduction Act, U.S. Department of the Treasury  
Charles Hyde, General Attorney, Tax, Internal Revenue Service, Department of the Treasury  
Heather Clark, Senior Director for the Building Sector, Climate Policy Office, The White House  
Jean Lupinacci, Director, Climate Protection Partnerships Program, U.S. Environmental Protection Agency  
Carla Frisch Acting Executive Director and Principal Deputy Director, Office of Policy, Department of Energy