



August 24, 2021

The Honorable Ron Wyden  
Chairman  
Committee on Finance  
U.S. Senate  
Washington, DC 20510

The Honorable Mike Crapo  
Ranking Member  
Committee on Finance  
U.S. Senate  
Washington, DC 20510

Dear Chairman Wyden and Ranking Member Crapo,

As your Committee considers legislation intended to mitigate the effects of climate change, the undersigned roofing industry organizations urge you to consider energy tax proposals that will improve building energy efficiency and provide significant economic and environmental benefits to building owners across the country. In particular, we believe that changes to the 179D tax deduction related to existing buildings proposed under the Senate Finance Committee’s Clean Energy for America Act could be effective in achieving these goals. Our support for this legislation is based partly on the following understanding of the legislation’s intent as well as our proposed clarifications, which would increase the effectiveness of the policy. We encourage staff to include descriptions of the relevant provisions in the appropriate documents prepared by the Finance Committee and/or Joint Committee on Taxation. We think improved clarity on these parts of the legislation would facilitate implementation by the IRS and maximize the impact of your proposed changes on increasing energy efficiency, especially with respect to the building enclosure (envelope) and the contribution of energy efficient roofs.

**I. Description of Finance Committee Changes**

**Existing Buildings (New Subsection (h)):** For improvements to existing buildings, a taxpayer would have the option under proposed subsection (h) of receiving the deduction (*i.e.*, \$2.50 per ft<sup>2</sup> for a 25% improvement and \$0.10 for each additional 1% improvement, capped at \$5.00) based on the building’s actual energy use. For this purpose, energy use would be measured using Energy Star Portfolio Manager for a one-year time-period before and after the energy-efficiency measures are installed.

**Existing Building Retrofit Plans and Certifications:** To use the option under proposed subsection (h), building owners would be required to have a retrofit plan that documents the building’s baseline energy usage for the year prior to the retrofit and certifies that the energy-efficiency measures were installed according to the plan. Following completion of the retrofit plan, the deduction could be claimed based on results from a final certification that measures the building’s energy use post-retrofit and provides an Energy Star score. The deduction amount would be based on the second, post-installation measurement of energy usage. Also, the deduction would be available to the taxpayer in the tax year the final certification is completed, not in the year the property is installed.

**Partial Allowance:** The \$0.60 per ft<sup>2</sup> single-system “partial allowance” allowed under existing subsection (d)(1) would remain at \$0.60 and would otherwise be unchanged. The current partial allowance is available when improvements involve only one of the three main building systems related to energy use (*i.e.*, HVAC/hot water, lighting, or envelope). The energy savings percentage (ESP) target required for those building systems under current IRS guidance is 25% for Lighting, 15% for HVAC/Hot Water improvements, and 10% for Envelope improvements, measured against the ASHRAE Standard 90.1-2007 (but soon to be updated to a more current version of 90.1 under the legislation enacted in 2020).

## II. Areas Where Clarification is Needed

**Retrofits Involving Multiple Measures Installed Over Several Years:** Recognizing that major retrofit projects can take years to fully implement, subsection (h) seems to allow multiple upgrades to be grouped together into one retrofit plan that might take years to complete. Based on this interpretation, building owners would have latitude in deciding how long they want to postpone claiming the deduction on items that are installed over several years if those measures are all accounted for in the retrofit plan. This will potentially allow building owners to receive a higher deduction by including more energy efficiency measures and achieving greater energy savings, which benefit might outweigh having to wait longer to receive the deduction.

**Availability of Partial Allowance under (d)(1) for Retrofits Using Certification under Proposed Subsection (h):** It is not described in any of the explanations accompanying the legislation, but it appears that the existing \$0.60 per ft<sup>2</sup> single-system partial allowance under subsection (d)(1) would be available using the option for retrofits under proposed subsection (h). The current (d)(1) states that if the requirement under (c)(1)(D) (*i.e.*, meeting the 50% ESP) is not achieved, but “there is certification in accordance with paragraph (6)” that a measure affecting a single system meets the ESP for a partial allowance set by the IRS, “then the requirement of subsection (c)(1)(D) shall be treated as met with respect to such system.” Paragraph 6 (of subsection (d)) directs the IRS to “prescribe the manner and method for making certifications under this section.” We interpret this language to include not only certifications under the existing statute, but also certifications under the proposed subsection (h) related to retrofits.

## III. Policy Reasons for Clarifications

**Installation Time Period:** Flexibility regarding the length of the qualifying or eligible installation time-period is important to better align the deduction with other policy drivers and the realities of building energy efficiency retrofit projects. First, longer time periods would align with the 5-year time compliance cycles used under state and local building performance standards, which recognize that achieving significant energy saving in an existing building can take many years.<sup>1</sup> Secondly, the cost-effectiveness of energy conservation measures (ECM) improves significantly when they are undertaken near the end of a component’s useful life, so having this flexibility would improve the chances that a 179D retrofit plan could be timed to coincide with the life-cycles of more components and would encourage building owners to strive for greater improvements than would otherwise be the case.

**Partial Allowance & New Subsection (h):** For many reasons (e.g., expense, lack of financing, potential tenant disruptions, and building owner or contractor knowledge), building owners may not be willing or able to undertake a comprehensive energy retrofit that achieves a 25% or greater reduction in

---

<sup>1</sup> Washington, Colorado, Washington D.C., New York City, and St. Louis have enacted building performance standards and other states and cities are actively considering doing the same. See, U.S. EPA’s [Benchmarking and Building Performance Standards Policy Toolkit](#) for an explanation of this policy.

energy use (and as a practical matter, because of the uncertainty surrounding how much energy will actually be saved and how much energy use reduction is within the building owner's control, most retrofits will have to aim for much larger reductions in energy to ensure achieving at least 25% savings). For these reasons and more, many building owners could be incentivized to undertake smaller energy efficiency improvements involving just one building component, such as upgrading a building's roof or windows. Use of the partial allowance under subsection (h), as described above, for this purpose would allow this option. Also, the lower amount for the partial allowance (\$0.60 vs. \$2.50) would likely not undermine the incentive to strive for the larger deduction. Lastly, the partial allowance deduction is currently set at 1/3 of the full deduction. With the increase of the full deduction to \$2.50, it would make sense to increase the partial deduction to \$0.83 (i.e., 1/3<sup>r</sup> of \$2.50).

#### **IV. Labor Requirements**

**New Labor Requirements.** Lastly, while we believe the Clean Energy for America Act has the potential to be beneficial for the roofing industry, we have some concerns with the prevailing wage requirements, but primarily concerns with the provisions that would require a certain component of a contractor's employees be enrolled in federally registered apprenticeship programs with respect to the 179D tax credit. For example, only a very small component of roofing contractors can meet these apprenticeship requirements and thus the bill as written would likely exclude an overwhelming majority of companies from performing work on covered projects. These two requirements would limit the expansion of energy efficiency through retrofits of nonresidential buildings and therefore undermine the objectives of the bill. The approach taken to mandate registered apprenticeships for certain tax benefits also fails to recognize alternative workforce development models now being deployed within the roofing industry, such as the ProCertification and Training for Roof Application Careers programs recently established by the National Roofing Contractors Association which are competency-based rather than time-based career pathways for roofing employees. We urge you to remove or modify these provisions from the bill.

Thank you for your consideration of our views and suggested clarifications regarding changes to the 179D tax deduction in the Clean Energy for America Act. Again, we commend you for your leadership on this legislation and look forward to working with you and your staff to maximize its effectiveness in increasing building energy efficiency.

Sincerely,

Asphalt Roofing Manufacturers Association  
Chemical Fabrics & Film Association  
EPDM Roofing Association  
International Institute of Building Enclosure Consultants  
National Roofing Contractors Association  
National Women in Roofing  
Polyisocyanurate Insulation Manufacturers Association  
Roof Coatings Manufacturers Association  
Single Ply Roofing Industry  
Spray Polyurethane Foam Alliance  
Tile Roofing Industry Alliance