SECTION 179D DEDUCTION FOR ENERGY EFFICIENCY IN COMMERICIAL BUILDINGS

ISSUE BACKGROUND

Section 179D, the Energy Efficient Commercial Buildings Deduction, was retroactively reauthorized through the end of 2017 by the February 9, 2018, budget deal. Enacted as part of the Energy Policy Act of 2005, this provision allows commercial building owners who improve the building's energy-efficiency (via the building envelope, HVAC system, hot water, or the interior lighting system) to receive a deduction of as much as $1.80 per square foot in the year the upgrade goes into service, after receiving the proper third-party certification. It is available for both new construction and retrofits and does not favor any particular method of conserving/reducing energy use.

CCIM INSTITUTE POSITION

CCIM supports deductions such as Section 179D, which are designed to encourage property owners to make improvements to and/or rebuild real property in order to conserve energy and satisfy environmental goals. CCIM encourages improving energy usage in commercial buildings through voluntary, market-based programs which leave flexibility in the way that is achieved. Incentivizing these features improves the environment and encourages economic growth.

OPPOSING VIEWS

No specific policy arguments against this deduction have been identified, other than the cost of extending the deduction would either need to be offset in some way or be added to the budget deficit. There has been some concern that because government entities cannot take advantage of the Section 179D incentive these entities sometimes trade their incentive to a private sector company and possibly then receive a reduced fee or rebate. There has been some discussion about whether this is an improper use of the deduction.

CONGRESSIONAL ACTION TO DATE

Section 179D has been reauthorized several times, most recently on February 9, 2018, as part of the budget deal to keep the Federal Government open, which retroactively extended 179D through the end of 2017. Commercial property owners will be able to claim it on taxes filed in 2018 for 2017, but it will need to be extended again to cover any time past that.

CONGRESSIONAL ACTION NEEDED

Congressman David Reichert (R-WA) introduced H.R. 3507 last July to amend the Internal Revenue Code to make the Section 179D deduction permanent and to permit 501(c)(3) tax-exempt organizations to allocate the deduction to the person primarily responsible for designing the property in lieu of the owner of the property.

WHAT TO TELL YOUR REPRESENATIVES AND SENATORS

- The Section 179D deduction for energy-efficient commercial buildings encourages the construction and rehabilitation of new and existing commercial buildings to state-of-the-art efficiency levels. Incentivizing these features improves the environment, optimizes value and encourages economic growth at low revenue costs.

- The deduction has been a temporary part of the tax law since 2005 but has expired and been reinstated five times, most recently expiring on December 31, 2017, after being retroactively reauthorized.
- CCIM supports H.R. 3507, which would amend the Internal Revenue Code to make the Section 179D deduction permanent. Enacting HR 3507 would allow for greater stability in a taxpayer's building plans and tax planning. The bill would also make the deduction more compatible with the low-income housing tax credit.

INCREASE IN INFRASTRUCTURE INVESTMENT

ISSUE BACKGROUND

Continued investments in our country's physical infrastructure are critical to a thriving real estate sector. High quality infrastructure systems, including transportation, utilities and telecommunications, are a crucial factor influencing real estate investment throughout the United States. Investment and improvement in our infrastructure quality is imperative to maintaining economic competitiveness in today's global economy. This investment in our physical infrastructure not only improves commercial real estate opportunities but also contributes to positive job and economic growth. The Real Estate Roundtable has noted that "higher land values can generate revenue to help finance nearby infrastructure; that improved infrastructure adds further value to nearby real estate investments, creating a virtuous circle of local value and investment." Roads, transit systems and bridges are critical investments in every community. This type of infrastructure provides the basic fabric of economic competitiveness that cities and states throughout America rely on to transfer goods and services.

The Federal Government provides transportation and infrastructure funding through several different programs. The Highway Trust Fund was created in 1956 to fund the federal interstate system through a motor fuel tax. It now consists of both a Highway Account and a Mass Transit Account to support both the construction and maintenance of highways and mass transit systems. The motor fuel tax has not been raised since 1993 and was not indexed for inflation. Without raising the tax at minimal rates to keep up with inflation, the fund's purchasing power will continue to diminish and eventually will become insolvent.

Both TIFIA, the Transportation Infrastructure Finance and Innovation Act, and WIFIA, the Water Infrastructure Finance and Innovation Act, provide selected infrastructure projects with credit assistance in the form of direct loans, loan guarantees, and standby lines of credit. Either public or private entities may apply for TIFA or WIFIA credit assistance, including state and local governments, private firms and consortia. TIFIA and WIFIA offer borrowers low-cost financing and a comfortable repayment structure for up to 49% of a project's cost.

The BUILD, Better Utilizing Investments to Leverage Development, Transportation Discretionary Grants program (replaces the pre-existing TIGER grants program) makes funding available for road, rail, transit and port capital projects. The BUILD eligibility requirements allow project sponsors at both the state and local levels to obtain funding for multi-modal and multi-jurisdictional projects. The March 2018 Consolidated Appropriation Act appropriated $1.5 billion in BUILD grants through September 2020.

The Capital Investment Grants, CIG, program is a discretionary grant program that includes the New Starts, Small Starts and Core Capacity programs. CIG program grants provide funding for commuter rail, light rail, bus rapid transit and ferry projects. The March 2018 Consolidated Appropriations Act appropriated $2.413 billion for the CIG program, including $1.5 for New Starts, 716 million for Core Capacity projects and nearly $401 million for the Small Starts program.

CCIM INSTITUTE POSITION

CCIM supports increased investment in our country's physical infrastructure. CCIM supports continued investment in the TIFIA and WIFIA credit assistance programs, the BUILD and CIG grant programs and a modest increase in the federal motor fuel tax and annual adjustments for inflation to ensure the solvency of the Highway Trust Fund. CCIM also supports federal dollars leveraging both private dollars and state and local funds through public-private partnership programs.

OPPOSING VIEWS

Opponents claim that an increase in the fuel tax will unduly burden drivers in areas without additional public transportation options. Further, opponents will claim that a fuel tax will not generate enough revenue to sustain the Highway Trust Fund because new vehicles are being produced to be more fuel efficient; therefore, the fuel tax will be inadequate funding for transportation programs throughout the U.S.

CONGRESSIONAL ACTIONS TO DATE

In December 2015, Fixing America's Surface Transportation Act (FAST Act) was signed into law as a multi-year package for transportation planning and authorizes on average $56.2 billion per year of federal funds for highway and transit programs from 2016-2020. Although this multi-year transportation package remains in effect until 2020, every year Congress must appropriate funding amounts for federal programs. The FAST ACT continues the TIFIA Program. The March 2018 Consolidated Appropriations Act made $1.5 billion available for the BUILD grants program and the Capital Investment Grants program through 2020. The WIFIA program was enacted in 2014 as part of the 2014 Water Resources Reform and Development Act and is a 5-year pilot program set to expire in 2019. The House passed the Water Resources Development Act (H.R. 8) on June 6 and it is now being taken up in the Senate.

President Trump has talked about a "rebuilding America" plan with investments of $1 trillion to assist with crumbling infrastructure. Prior to being elected, President Trump campaigned on a message to "pursue an 'America's Infrastructure First' policy that supports investments in transportation, clean water" and several other areas of infrastructure. He also continues to voice supporting federal dollars to leverage public-private partnerships in financing infrastructure projects.

CONGRESSIONAL ACTION NEEDED

Congress needs to continue appropriating funding for the BUILD grants, Capital Investment Grants program, and the TIFIA and WIFIA programs. Congress should consider options that may include a modest increase in the motor fuel tax and index the tax for inflation.

Congress should pass the Water Infrastructure Finance and Innovation Act of 2017, (H.R. 4492/S. 2329) which was introduced by Representative Brian Mast (R-FL) in the House and Senator John Hoeven (R-ND) in the Senate. These bipartisan bills extend the authorization of the WIFIA program through 2024 and double the authorized funding amount. Congress should also pass the Water Resources Development Act, (H.R. 8), which was introduced by Representative Bill Shuster (R-PA) and authorizes funding for big water infrastructure projects.

WHAT TO TELL YOUR REPRESENTATIVES AND SENATORS

- Investment in our physical infrastructure is critical to the commercial real estate sector.
- Continue appropriating funding for both the TIFIA and WIFIA programs, BUILD grants and the Capital Investment Grants program (including New Starts, Small Starts and Core Capacity).
- Support policies facilitating public-private partnership that incentivize increased private sector investment in infrastructure projects.
- Support a modest increase in the motor fuel tax and index it for inflation so the Highway Trust Fund can maintain our highway infrastructure.
- Keep the FAST Act fully funded through 2020 and reauthorized in 2020.
- Support H.R. 4492/S. 2329, the Water Infrastructure Finance and Innovation Act of 2017. This bipartisan bill extends the authorization of the WIFIA program through 2024 and doubles the authorized funding amount.
- Support the Water Resources Development Act, H.R. 8, which authorizes funding for big water infrastructure projects including ports, inland waterways, flood protection, and other water resources infrastructure.

AMERICANS WITH DISABILITIES ACT REFORM

ISSUE BACKGROUND

Under the Americans with Disabilities Act (ADA), attorneys may collect fees related to pursuing claims of non-compliance of the law, but plaintiffs are not permitted to collect damages. Unscrupulous lawyers abuse this by sending "drive-by" demand letters or pursuing actual lawsuits simply to collect these fees, without regard for creating accessibility for the disabled. These suits often target easily-correctible infractions such as signage, soap dispenser heights, and transition lifts on ramps. Owners of these properties often have a reasonable belief that they are in compliance with the law based on state and local inspections. As a result of "drive-by" ADA suits, they are subject to paying high fees – money that would be better spent on making improvements to their property's accessibility.

CCIM INSTITUTE POSITION

CCIM supports legislation and public policy that would provide a "notice and cure" provision in ADA regulations. CCIM believes those facing possible sanctions under the law should be entitled to written notice of the alleged violation in combination with a reasonable time to rebut and/or cure the alleged violation before facing economic sanctions and/or litigation, except in the most grievous of circumstances involving a repeat pattern and practice of actual violations.

CCIM Institute heartily endorses an end to discrimination against individuals with disabilities. We encourage the regulatory agencies charged with the responsibility of enforcing the Act to adopt fair and workable regulations to ensure and facilitate timely compliance by public accommodations. Requiring property owners be given notice and time to cure would much more effectively achieve the result of increased accessibility.

OPPOSING VIEWS

Some argue that the industry has had sufficient opportunity to learn the requirements of the ADA and that instances where design and construction are noncompliant reflect situations in which providing accessibility has not been enough of a priority for the commercial building industry.

CONGRESSIONAL ACTIONS TO DATE

The ADA Education and Reform Act, H.R. 620, was passed by the House of Representatives in February and requires a plaintiff to give specific notice to the property owner about the alleged violation(s) so they know what they are looking for in terms of a barrier. The legislation allows property owners up to 120 days to fix the alleged violation before the clock starts running on attorneys' fees.

CONGRESSIONAL ACTION NEEDED

It is now the Senate's turn to take up this issue. We urge the Senate to take up H.R. 620 or similar reform legislation to address the issue of abusive lawsuits that do nothing to further the mission of the ADA.

WHAT TO TELL YOUR REPRESENTATIVES AND SENATORS

- If your Representative supported H.R. 620, please thank your Representative for their support of this important legislation.

- Urge your legislator to support H.R. 620 or other legislative solutions that could positively resolve the issue of drive-by demand letters and lawsuits without the opportunity for notice and cure of alleged violations.

NATIONAL FLOOD INSURANCE PROGRAM (NFIP) REAUTHORIZATION

ISSUE BACKGROUND

The National Flood Insurance Program (NFIP) provides flood insurance to properties in flood zones. Without the NFIP, small business owners in 22,000 communities nationwide would not be able to obtain a mortgage or insurance to protect their property against the most common and costly natural disaster in the U.S.: flooding. The program reduces the number of uninsured properties that would otherwise turn to the federal government for taxpayer-funded disaster aid after floods. The NFIP will expire on July 31, 2018, unless Congress reauthorizes it before then.

CCIM INSTITUTE POSITION

CCIM supports legislation and public policy that reauthorizes and gradually strengthens the NFIP so it is sustainable long-term. CCIM supports improving flood insurance coverage by encouraging the development of private market options for commercial and multifamily properties at lower cost than NFIP, while making available optional coverage including business interruption and multiple structure policies for commercial properties under the NFIP, and improving flood map accuracy.

OPPOSING VIEWS

Opponents believe that buying property in riskier flood zones will continue as long as flood insurance is underpriced by federal subsidies. As a result, the NFIP could be forced to borrow more to make up for shortfalls in premium revenue in order to cover the cost of future claim payments.

CONGRESSIONAL ACTIONS TO DATE

On November 14, 2017, the House of Representatives passed H.R. 2874: the 21st Century Flood Reform Act to reauthorize and make further improvements to the NFIP. The bill:

- Reauthorizes the NFIP for 5 years;
- Limits maximum flood insurance premiums to no more than $10,000 per year for residential properties;
- Preserves the practice of grandfathering for property owners who have built to code;
- Removes hurdles to the private flood insurance market, which often offers better coverage at lower cost than the NFIP;
- Authorizes $1 billion in pre-flood mitigation assistance grants to elevate, flood proof, buyout or mitigate high-risk properties;
- Doubles increased cost of compliance (ICC) coverage in the standard NFIP policy so policyholders may access up to $60,000 for property mitigation prior to a flood;
- Better aligns NFIP rates to flood risk, particularly for lower risk and value properties inland of the coast;
- Enables communities to develop more accurate and granular flood maps like North Carolina’s, and streamlines the map appeals process;
- Improves the claims process in light of problems experienced after Superstorm Sandy;
- Addresses issues with repeatedly flooding properties that account for 2 percent of NFIP policies but 25 percent of the claim payments over the history of the program; and
- Strengthens the overall solvency of the program over the long term.

CONGRESSIONAL ACTION NEEDED

Long-term reauthorization of the NFIP with updates to improve coverage options for businesses in flood zones, including business interruption and multiple structure policies, as well as improvements to the mapping and rating system used to determine which properties are in flood zones.

WHAT TO TELL YOUR REPRESENTATIVES AND SENATORS

- **Commercial Properties Shutting Down Due to Flooding Impacts the Economy**
  According to the Federal Emergency Management Agency (FEMA), 25% of businesses that close after a destructive event never reopen. When a commercial or multifamily building shuts down due to flooding, owners are without the cash flow necessary to cover payroll and expenses, hindering efforts to reopen the business or return residents to their home. The NFIP should provide up to $100,000 in optional business interruption coverage to deal with those expenses so businesses can focus on getting back up and running after a flood.
- **Improve Coverage Options for Commercial Properties**
  Small businesses and apartment communities may have several buildings across different lots or several structures on one property. The NFIP should permit multiple buildings to be covered under one policy as is typical in the private market, instead of making property owners obtain policies for each individual structure.
- **Improve FEMA Mapping**
  FEMA should adopt the recommendations of the Technical Mapping Advisory Council to improve its flood mapping, including moving toward structure-specific flood maps to improve their accuracy, taking advantage of mapping advances like Light Detection and Ranging (LiDAR), and lessening the financial and bureaucratic appeals process faced by communities and property owners.
- **Develop More Effective Pre-Flood Mitigation**
  Mitigation options for commercial and multifamily structures are expensive and implementing them does not guarantee a reduction in rates. FEMA guidance and grant programs should include a wider set of mitigation strategies that are appropriate for these structures and reflected in the insurance rate tables, as well as expressly authorize them to access FEMA mitigation grant programs.
- **Replacement Cost Value for Commercial and Multifamily Structures**
  Commercial and multifamily property owners pay for coverage as homeowners do, but only receive actual cash value – i.e., the replacement cost minus depreciation – for both the structure and contents. Adding NFIP options for full replacement coverage could help level the playing field between large and small businesses and encourage property owners and renters to purchase flood insurance absent a federal requirement.