U.S. Real Estate Industry's Perspectives on
EPA's ENERGY STAR Program for Buildings

November 6, 2017

The Honorable Fred Upton
Chairman
Energy Subcommittee of the
Energy and Commerce Committee
U.S. House of Representatives

The Honorable Bobby Rush
Ranking Member
Energy Subcommittee of the
Energy and Commerce Committee
U.S. House of Representatives

Re: **November 7, 2017 Hearing,**
"Discussion Draft – Energy Star Reform Act of 2017"

Dear Chairman Upton and Ranking Member Rush:

Our undersigned organizations represent the U.S. real estate industry. We represent members involved in almost every aspect of commercial and residential real estate development, design, construction, ownership, management, finance, brokerage, contracting, renovation, and building product supply. Our members provide the homes, apartments, offices, health care facilities, hotels, shopping malls, data centers, and industrial sites where the American people live, work, heal and play.

We appreciate this opportunity to provide our perspectives for the hearing scheduled for November 7, 2017, "Discussion Draft, Energy Star Reform Act of 2017." As there are no witnesses from the real estate community to offer our experiences over nearly 20 years regarding the building aspects of EPA's ENERGY STAR program, we ask that you include this letter in the hearing record – to emphasize the importance of this platform to our industry, and to consider our comments on the discussion language as presently drafted.

I. Background on EPA's ENERGY STAR Buildings Program

Since EPA certified the first ENERGY STAR building in 1999,[1] our organizations have enjoyed a cooperative relationship with the agency. We have collaborated with EPA to increase our industry's participation in this voluntary, non-regulatory program. Our members have provided "real world" technical input to improve EPA's free, on-line tool – known as Portfolio Manager – that has become the standard in the United States for buildings to measure and

[1] See EPA, *Celebrating a Decade of ENERGY STAR Buildings 1999-2009,* available at https://www.energystar.gov/buildings/tools-and-resources/celebrating-decade-energy-star-buildings.

manage energy, water and waste consumption. We have encouraged ENERGY STAR's broader market penetration so more real estate categories have opportunities to obtain voluntary labels that recognize optimal energy design, construction and performance. And, to implement a law passed by Congress in 2015, our groups have closely coordinated with EPA to improve ENERGY STAR in a manner that uses market signals to incentivize commercial landlord-tenant collaborations on strategies to reduce energy waste in leased office spaces within buildings.

- ENERGY STAR certified buildings are located in all 50 states, D.C., Puerto Rico, and other territories. Members of Congress can find where these buildings are located in their states or districts with EPA's easy-to-use on-line locator tool.[2]

- The real estate sector has continually assisted EPA in growing and evolving the ENERGY STAR platform for commercial and residential buildings. Our industry has helped the agency reach the following milestones:[3]

Year	Milestone
1999	ENERGY STAR label extends from appliances to office buildings.
2000	Portfolio Manager tracking tool released; ENERGY STAR label extended to schools.
2001	ENERGY STAR label extended to acute care hospitals, supermarkets and grocery stores.
2002	More than 100,000 new homes awarded the ENERGY STAR label for above-code construction, while the commercial label is extended to hotels.
2003	50% of top U.S. homebuilders participate in ENERGY STAR for New Homes.
2004	Nearly 1 in 10 new homes built certified as ENERGY STAR, while the commercial label is extended to warehouses, financial centers, and bank branches.
2006	12% of new single-family home starts earn the ENERGY STAR.
2007	ENERGY STAR label extended to retail buildings.
2008	ENERGY STAR label extended to distribution centers.
2009	ENERGY STAR homes achieve a market penetration of 17%, as the number of certified homes surpasses 1 million. Commercial label extended to certain manufacturing plants.
2010	ENERGY STAR label extended to data centers and senior care communities.
2011	Market share for ENERGY STAR homes reaches 25%.
2013	Upgraded Portfolio Manager tool debuts to the real estate marketplace.
2014	ENERGY STAR label expands to multifamily buildings using Portfolio Manager.
2017	ENERGY STAR implements design and construction (D&C) pilot program to implement 2015 "Tenant Star" law.
2018	(anticipated) ENERGY STAR to award Charter Tenant labels for high performance tenant spaces leased within office buildings, completing "Tenant Star" D&C pilot.

- Today, an estimated 40% of the U.S. commercial real estate market is involved with the ENERGY STAR buildings program in some manner. This is primarily through EPA's

[2] http://www.energystar.gov/index.cfm?fuseaction=labeled_buildings.locator.

[3] Compiled from "ENERGY STAR Major Milestones," available at https://www.energystar.gov/about/history/major-milestones.

Portfolio Manager platform,[4] which has become the real estate sector's standard to measure, benchmark, and manage energy consumption in buildings (as well as water use and waste generation). Based on the thousands of Portfolio Manager accounts administered by the ENERGY STAR program, as of December 31, 2015: ***More than 450,000 commercial buildings covering 40 billion square feet of space actively use EPA's on-line tool to measure and track energy use.***[5]

- Measuring and tracking energy consumption using EPA's Portfolio Manager – as the foundational strategy to improve a building's energy efficiency and lower its utility costs – have significant consequences for real estate's profitability, the economy at large, and the nation's energy security.

  - The U.S. Energy Information Administration's 2012 Commercial Building Energy Consumption Survey (CBECS)[6] shows that commercial buildings used 6,963 trillion Btu of total site energy (from electricity, natural gas, fuel oil, and district heat steam combined). While there was a 22% increase in total commercial floorspace between 2003 (the year of the last CBECS data set) to 2012, building energy use went up just 7% during that nine-year span. In other words, how buildings are constructed and managed, and the systems and equipment installed in them, have become considerably more energy efficient. This data would not be available without EPA's Portfolio Manager tool – which allows individual buildings to provide a snapshot of their energy use, which is then aggregated to provide critical information that guides national energy policy, planning, and private sector investments in energy efficiency innovations.

  - For building owners and managers, the best practice of using Portfolio Manager to track energy usage results in significant dollar savings for businesses. Benchmarking resulted in a 7% energy savings across 35,000 buildings that consistently used EPA's tool over a three-year period.[7] ***As utility costs are frequently the highest expense for building operations – about 20% of total operating costs[8] – energy savings identified through***

[4] EPA's Portfolio Manager landing page: https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager.

[5] See https://www.energystar.gov/buildings/about-us/facts-and-stats.

[6] CBCES is "the only comprehensive source of detailed information on energy use in the wide variety of commercial buildings across the United States." See https://www.eia.gov/consumption/commercial/reports/2012/energyusage/.

[7] See EPA, "Benchmarking and Energy Savings – Data Trends," available at https://www.energystar.gov/sites/default/files/buildings/tools/DataTrends_Savings_20121002.pdf.

[8] Total operating expenses for private sector U.S office buildings are reported at $8.07 per square foot. Of that amount, utilities are the highest cost, reported at $2.16 per square foot. See Building Owners and Managers Association (BOMA) International, *2016 Office Experience Exchange Report*" available at http://www.boma.org/research/newsroom/press-room/PR16/Pages/BOMA-Internationals-Office-and-Industrial-Benchmarking-Reports-Released-.aspx.

Portfolio Manager analyses can have a significant impact on a real estate asset's profitability.

- One industry study showed that a one dollar per square foot savings in office building energy costs increased the building's cash flow by $0.95 and asset value by $14 per square foot.[9]

➢ Portfolio Manager is also the key compliance tool for building owners and managers to meet the requirements of numerous state and local energy disclosure laws. A growing number of states, cities, and municipalities across the U.S. require building owners to use EPA's platform to meet such disclosure regulations. Without Portfolio Manager, there is no readily available, feasible means for our members to comply with these laws.[10]

- In addition to using Portfolio Manager as an energy management tool, many buildings owned, managed and financed by our members opt to go further to earn EPA's ENERGY STAR label and distinguish their assets as "top performers" in real estate markets across the country.

➢ An ENERGY STAR certified building must meet strict energy performance standards and use less energy and operate less expensively than its peers.

➢ To qualify for an annual ENERGY STAR award, a building must be verified to earn a score of 75 or higher on EPA's 1-100 energy performance scale, indicating that the building performs better than at least 75% of similar buildings nationwide.

➢ In this regard, ***EPA has awarded the ENERGY STAR label to more than 25,000 commercial buildings in a range of asset classes, covering 3.7 billion square feet.*** These high performance, energy efficient buildings have been estimated to save building owners and tenants $3.4 billion on utility costs.[11]

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[9] See EPA, "ENERGY STAR Certification – Data Trends," available at https://www.energystar.gov/sites/default/files/buildings/tools/DataTrends_Certification.pdf.

[10] State and local jurisdictions that require some private sector commercial buildings to use Portfolio Manager to measure, report and/or disclose energy use include Atlanta, GA; Austin, TX; Berkeley, CA; Boston, MA; Boulder, CO; Cambridge, MA; Chicago, IL; Denver, CO; Evanston, IL; Kansas City, MO; Los Angeles, CA; Minneapolis, MN; Montgomery County, MD; New York, NY; Orlando, FL; Philadelphia, PA; Pittsburgh, PA; Portland, ME; Portland, OR; Salt Lake City, Utah; San Francisco, CA; Seattle, WA; South Portland, ME; St. Louis, MO; and Washington, D.C.; and the States of California and Washington. Even more states and jurisdictions compel public buildings to measure, report and disclose energy use using Portfolio Manager. See EPA, "Benchmarking Programs and Policies Leveraging ENERGY STAR" (Sept. 2017), available at https://www.energystar.gov/sites/default/files/tools/ES_Government-Factsheet_09292017.pdf.

[11] https://www.energystar.gov/buildings/about-us/facts-and-stats (through December 31, 2015).

- A number of studies have evaluated the added market value of ENERGY STAR certified buildings. These real estate assets boast higher tenant rents, better leasing occupancy rates, and higher sales prices compared to non-EPA labeled buildings.[12]

- ENERGY STAR is the basis for bipartisan legislation that Congress passed last session. The signature energy policy of the 114th Congress is the "Energy Efficiency Improvement Act" (H.R. 2126/S. 535), which passed the House in 2014 by an overwhelming bipartisan margin (375-36), and then the House again and the Senate by simple voice votes in each chamber in 2015.[13] The bill creates a program called "Tenant Star" intended by Congress to amplify ENERGY STAR's impressive successes at the "whole building" level and translate the platform to leased spaces within commercial buildings. This tenant-based evolution of ENERGY STAR responds directly to our industry's requests for policies to help overcome the so-called "split incentive" problem, where building owners may lack the incentive to invest in energy efficiency innovations if the cost savings primarily accrue to tenants paying lower utility bills. EPA's "ENERGY STAR for Tenants" is a critical step to commend commercial tenants with their own label for energy efficiency investments within spaces they lease, and thereby align with technology retrofits and whole-building innovations implemented (and paid for) by owners.

II. Comments on "Energy Star Reform Act of 2017" Discussion Language

Considering the real estate industry's longstanding participation in and support of ENERGY STAR, we are concerned that legislative efforts to reform the *appliance* side of the program may have unintended, negative consequences for EPA-certified *buildings.* In this regard, we are pleased to offer these comments on the discussion draft language for a potential "Energy Star Reform Act of 2017."

- ***The discussion draft, consistent with the underlying law that it would amend, should use text that carefully distinguishes ENERGY STAR appliance reforms from the buildings platform.*** The draft language would amend section 324A of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. § 6294a). This section of EPCA, which authorizes ENERGY STAR, establishes a "voluntary program" within DOE and EPA "to identify and promote energy-efficient products ***and buildings*** …." (Emphasis supplied). Thus, the very underlying statute that the draft language would amend makes clear that the program covers *both* buildings *and* appliances. While the discussion draft is apparently directed toward reforms for ENERGY STAR appliances, real estate stakeholders do not believe the potential bill sufficiently considers the impact of such reforms on our industry's *buildings*. Respectfully, we strongly believe that greater pains must be taken during further drafting to ensure that any new statutory language intended to improve EPA's appliances program does not cause collateral damage to the buildings aspects of ENERGY STAR.

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[12] See "The Value of ENERGY STAR Certification," at: https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/learn-benefits/value-energy-star-certification.

[13] See https://www.congress.gov/bill/114th-congress/senate-bill/535/text.

- ***We prefer that ENERGY STAR for buildings continue to operate with EPA in the leading role, with support from DOE.*** The discussion language would have the opposite result, and shift ENERGY STAR's programmatic implementation and management to DOE. Our members report excellent customer service with regard to EPA's operation of the ENERGY STAR buildings program. Of course, we recognize that appliance stakeholders have a different experience with the products-side of ENERGY STAR. DOE's assumption of a lead role may indeed make ENERGY STAR ***for appliances*** run more effectively. However, we believe that confusion and inefficiency would likely result if that same outcome were pursued for ENERGY STAR ***commercial buildings***, where we prefer the status quo be maintained. That is – insofar as commercial buildings are concerned – we request that EPA continue to take the lead with DOE in a supporting role.

  We have asked our members, and have not identified any harms or problems to be addressed or fixed by moving ENERGY STAR for buildings over to DOE as the lead agency. Rather, over almost two decades, EPA has built its own infrastructure to efficiently maintain thousands of Portfolio Manager accounts; issue certifications and quality reviews for its ENERGY STAR building labels; and conduct regular trainings and webinars for transparent outreach to real estate stakeholders so our input is gathered and our requests considered as consumers of their program. Relationships have been built between our rank-and-file members, and our associations' leaders, to coordinate with EPA staff running the ENERGY STAR buildings program. We are concerned that these efficiencies will be lost if ENERGY STAR for buildings shifts to DOE, which does not have the same history, culture and resources to run the buildings program. (Rather, DOE serves an important role to research, develop and innovate new and emerging energy deployment and generation technologies, which helps advance the building efficiency sciences as a key but relatively secondary role within DOE's larger portfolio.)

  Accordingly, we recommend that the shift in roles and responsibilities set forth in Section 2 of the draft be expressly limited to "products" – and expressly not pertain to "buildings." Alternatively, language could reflect that the "Administrator, in consultation with the Secretary" continues in the lead for ENERGY STAR buildings.

- ***Delegation of EPA and DOE responsibilities, as set forth in the 2015 Tenant Star law, should be expressly preserved.*** We noted above Congress's passage in 2015 of the "Energy Efficiency Improvement Act," also known as "Tenant Star"[14] (since re-branded by EPA as "ENERGY STAR for Tenants").[15] The bipartisan bill overwhelmingly passed the House twice last Congress on suspension votes. We continue to thank the Energy and Commerce Committee staff for their excellent work in building support for the bill and ultimately getting it to the President's desk for signature.

  "Tenant Star" set forth a detailed timeline to implement this law over several years – with EPA's and DOE's respective roles carefully and specifically balanced and delineated in the

[14] See *supra* note 13.

[15] See https://www.energystar.gov/buildings/tenants/about_tenant_space.

statutory text. As major aspects of the "Tenant Star" program fall within EPA's ENERGY STAR responsibilities, we are concerned that the discussion draft could upset the deliberate allocation of spheres to EPA and DOE, as they are in the midst of successfully and cooperatively implementing the 2015 law.

Accordingly, we recommend that any possible re-allocation of ENERGY STAR roles through the discussion draft makes clear that it does not alter the balance of EPA and DOE responsibilities set forth in "Tenant Star." In fact, insofar as the Subcommittee is considering greater clarity and specific delineation of the agencies' respective roles regarding ENERGY STAR generally, we recommend using "Tenant Star" as a successful guide to allocate responsibilities in a manner that garnered widespread bipartisan, industry, and NGO support.

- ***The "No Warranty" section should cover buildings and products.*** Page 3, line 20 of the discussion language states: "Any disclosure relating to participation of a ***product*** in the Energy Star program shall not create an express or implied warranty, or give rise to any private claims or rights of action under State or Federal law …" Because this text is expressly limited to *products*, we are concerned that an implication could be created that Congress left open warranties/private rights of action with regard to *buildings* that may lose their ENERGY STAR ratings from one year to the next (or see their scores drop). Indeed, in August 2018, scores for ENERGY STAR buildings are expected to change in response to the latest building-related energy consumption data obtained by the U.S. Energy Information Administration through the most recent CBECS data set. Current ENERGY STAR scores are based on 2003 CBECS data, and to remain current, EPA is updating ENERGY STAR building scores with the most recent 2012 CBECS data set. Plainly, buildings became more energy efficient in the nine years that lapsed between these data sets; what was "energy efficient" in 2003 may not be "energy efficient" when compared against 2012 data. EPA is already forecasting: "[T]he ENERGY STAR scores for every property in Portfolio Manager may change when EPA releases the updates" next August.[16] These anticipated changes in building scores should not create even the spectre of inadvisable, frivolous suits. We thus request that, if any bill precludes warranties and private lawsuits for ENERGY STAR certified appliances, certified buildings should receive those same legislative protections.

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[16] See EPA, "Updates to ENERGY STAR Scores with CBECS Data," available at https://www.energystar.gov/buildings/facility-owners-managers/existing-buildings/use-portfolio-manager/update-energy-star-scores-cbecs.

Thank you for the opportunity to provide these comments for the record of the November 7, 2017 hearing, regarding the "Energy Star Reform Act of 2017." We look forward to continuing our collaboration with the Subcommittee to provide input on the discussion language.

American Hotel & Lodging Association

Building Owners and Managers Association (BOMA) International

CCIM Institute

Institute of Real Estate Management

International Council of Shopping Centers

NAIOP, Commercial Real Estate Development Association

Nareit®

National Apartment Association

National Association of Home Builders

National Association of REALTORS®

National Multifamily Housing Council

The Real Estate Roundtable

Cc:
The Honorable Greg Walden, Chair, U.S. House Energy & Commerce Committee
The Honorable Frank Pallone, Jr., Ranking Member, U.S. House Energy & Commerce Comm.
Members of the Energy Subcommittee of the U.S. House Energy and Commerce Committee