October 18, 2011

The Honorable Patty Murray
Co-Chair, Joint Select Committee on Deficit Reduction
448 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeb Hensarling
Co-Chair, Joint Select Committee on Deficit Reduction
129 Cannon House Office Building
Washington, DC 20515

Dear Senator Murray and Representative Hensarling:

We write to thank you for your service as Co-Chairs of the Joint Select Committee on Deficit Reduction. We understand the monumental task you face and applaud your willingness to tackle the issues facing our nation's economy. The 18 undersigned commercial real estate associations, a coalition that represents the millions of taxpayers that comprise the real estate industry, stand ready to work with you to achieve these goals.

It is imperative for Congress to work together to make these difficult decisions and we want to see you succeed in addressing our country's dire fiscal situation. However, as you work to achieve the required savings, we urge you not to lose sight of the long-term implications of choices made today. To that end, we are registering our strong opposition to modifying the current tax treatment of carried interest income and respectfully request that you oppose any effort to include a tax increase on carried interest in any final agreement.

Undoubtedly in the discussions regarding revenue, changing the way that "carried interest" income is taxed will be in included. This is of huge concern to the commercial real estate industry. It seems some in Congress think that dramatically changing the tax on "carried interest" would only affect hedge fund managers. In fact, the tax increase would squarely hit commercial real estate, since 46% of all investment partnerships in America are real estate and the vast majority of them use a carried interest structure.

Further, Congress continues to use the characterization of carried interest as a "tax loophole". This couldn't be farther from the truth. This structure is not something recently discovered by some sophisticated tax lawyers. Carried interest (or promote) has been used as an investment model in commercial real estate for several decades It is the way to reward the general partner in a real estate business venture for taking on the countless risks and liabilities associated with long term real estate projects, such as potential environmental concerns, operational shortfalls, construction delays and loan guarantees. No matter how it is spun politically, raising taxes on carried interest is bad for the entrepreneurs and small businesses that need capital to innovate, grow, build and create jobs.

The proposal would effectively be a retroactive tax increase. It would apply to gain received by existing partnerships from investments made in the past, based on law that provided that the carried interest received by the general partner would be taxed as capital gain just like gain received by the limited partners. In addition to compensating the general partner for assumed risks and potential liabilities, this effectively assures alignment of interests in the partnership.

Clearly, more than doubling the tax on carried interest (from capital to ordinary) would discourage risk taking and the type of investment in real estate that we now need across the country. A tax increase on real estate partnerships would limit future economic development projects and slow the creation of desperately needed jobs. The U.S. Conference of Mayors opposes this tax increase on commercial real estate partnerships because of this potential damage to already weak local communities.

As you know, the carried interest issue has been debated in Congress the last few years and has been highly controversial for a number of reasons, primarily because it will destroy jobs and job creation, but also, because of the treatment of family partnerships and "enterprise value". Families invest together throughout the US in partnerships for many ventures. The carried interest proposals all would treat any partnership in which one partner loans money to another, or they jointly guarantee bank loans, as being subject to the carried interest rules. This is even though no carried interest or promote exists what so ever. The second problem is the so-called "enterprise" tax that would treat as ordinary income the gain on the sale of the partnership interest itself, rather than the gain on the sale of partnership assets.

Simply put, increasing the tax on carried interest will hurt entrepreneurship, investment in communities and job creation in commercial real estate at a time when the economy is still struggling under the weight of a 9.1 percent unemployment rate. As you and your fellow Committee members continue the negotiation process to a final product, we implore you to reject consideration of the proposed tax increase on carried interest because of the unintended consequences associated with this policy

Sincerely,

American Hotel & Lodging Association
American Resort Development Association
American Seniors Housing Association
Building Owners and Managers Association International
CCIM Institute
Council for Affordable and Rural Housing
CRE Finance Council
Institute of Real Estate Management
International Council of Shopping Centers
NAIOP, The Commercial Real Estate Development Assn.
National Apartment Association
National Association of Home Builders
National Association of REALTORS®
National Leased Housing Association
National Multi Housing Council
Society of Industrial and Office Realtors
Realtors Land Institute
The Real Estate Roundtable