NATIONAL ASSOCIATION OF REALTORS®

Charlie Oppler
2021 President

Bob Goldberg
Chief Executive Officer

ADVOCACY GROUP

Shannon McGahn
Chief Advocacy Officer

September 7, 2021

The Honorable Richard Neal
Chairman
House Committee on Ways and Means
372 Cannon House Office Building
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member
House Committee on Ways and Means
1011 Longworth House Office Building
Washington, DC 20515

The Honorable Ron Wyden
Chairman
Senate Committee on Finance
221 Dirksen Senate Office Building
Washington, D.C., 20510

The Honorable Mike Crapo
Ranking Member
Senate Committee on Finance
239 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairs Neal and Wyden and Ranking Members Brady and Crapo:

Last week, the Biden Administration announced a joint effort by the Department of Housing and Urban Development (HUD), the Federal Housing Finance Agency (FHFA), and the Department of Treasury to increase entry-level and affordable housing unit production with a goal of creating, preserving, and selling to homeowners and non-profits as many as 100,000 residential units over the next three years. While NAR is encouraged by the Administration's plan, 100,000 new homes is just a small fraction of the units needed to fill our Nation's current gap in housing supply. NAR issued a landmark report this summer that shows that the U.S. is in the midst of an "underbuilding gap" of around 6 million housing units dating back to 2001. Not surprisingly, the report, Housing is Critical Infrastructure, has taken center stage in national conversations on housing policy and we are seeing an increased focus by policy makers on solutions to housing supply shortages.

As you develop and consider budget reconciliation legislation, and particularly the offsets to pay for new spending, we urge you to take into consideration the current housing supply crisis, especially as our nation recovers from the COVID-19 pandemic. The current state of the real estate market does not afford many Americans from low- and middle-income households the opportunity to purchase and own a home. In many parts of our Nation, some struggle to find decent and affordable rental housing. These conditions suppress the true growth potential of individuals, families, and our economy.

We are concerned about proposals that could limit real estate investment at a time when our country desperately needs more housing. Especially troublesome are proposed limitations on the use of like-kind exchanges, a proposed increase in the capital gains tax rate and a proposal to tax unrealized capital gains at death for owners of properties with

500 New Jersey Ave, NW
Washington, DC 20001-2020
(800) 874-6500
www.nar.realtor

assets over certain levels, all of which would negatively impact the health of the commercial real estate market and could also limit the production of much-needed affordable rental housing and even result in higher rent costs.

Limitation on 1031 Like-Kind Exchanges

By allowing property owners to defer capital gains when one property is exchanged for another, like kind exchanges help get real estate into the hands of new owners with the time, resources, and desire to restore and improve them. Like-kind exchanges increase the supply of affordable rental housing by filling gaps in housing supply not covered by other incentives. Multifamily housing transactions represent an estimate 40 percent of like-kind exchanges. The need for more workforce housing will require significant investment of private capital. However, tax incentives such as the low-income housing tax credit are not available for land acquisition costs. Thus, section 1031 is a key tool used in the development of new affordable housing. New limits on like-kind exchanges would increase the cost of rental housing. A landmark study on section 1031 concluded that its repeal would result in significantly higher rents for tenants. It stands to reason that any limitation on the ability to use this critical tool would yield the same result. Moreover, like-kind exchanges are key to our economic recovery from the pandemic by preventing real properties from languishing, underutilized and underinvested. Curtailing this vital tool, particularly at this critical time, seems very unwise.

Capital Gains Tax Rate Increases

Lower capital gains tax rates reflect an incentive to invest capital, which increases economic growth and creates jobs. Selling of capital assets is usually voluntary and imposing a much higher, almost punitive rate on such gains will limit such sales and could have the effect of freezing portions of the market, resulting in lower growth and far fewer jobs. High capital gains taxes on real property will also negatively impact the after-tax return of larger real estate investment projects, including affordable housing, meaning that fewer will move forward. It can be easy to overlook the fundamental fact that the production of new homes or apartments requires the voluntary investment of capital by those who own it. But if the after-tax expected yield on such an investment does not meet a certain hurdle rate, the project will not go forward, frustrating the needs of those waiting for those residential units. We believe punitive capital gains rates will prove to be counterproductive in many ways and urge you to preserve the current law.

Taxing Unrealized Capital Gains at Death

Proposals to tax the unrealized gains of owners of capital assets above a certain level upon their death would penalize many hardworking and enterprising Americans who have spent their lives saving and building equity in their properties and businesses so they can provide security for themselves, their families, their employees, and others. Some of these properties are affordable housing units, which have increased in value over the years and accrued unrealized gains largely due to inflation. Owners of such properties who could face such a new tax could very well have incomes far below the $400,000 level that President Biden indicated was a threshold for any tax increases in his infrastructure plan. This proposal would create a second estate tax, with much lower thresholds, that could unfairly destroy family succession plans and result in many properties needing to be sold in order to pay the tax. Such a change disrupts lives, harms growth, and flies in the face of principles that have guided tax policy in America for over a century. Moreover, it would do nothing to help alleviate the need to produce more residential housing units for our country. We urge you to not turn to this proposal.

The Administration's announced efforts to provide more affordable housing at this critical time offer a ray of hope for millions who earnestly desire to find the pathway to homeownership or who are simply desperate for adequate places to live at a price they can afford. It would be a tragedy if the efforts to move the nation in a positive direction as to affordable housing production were unwittingly negated by tax offsets that end up harming the ability to do just that.

Sincerely,

Charlie Oppler
2021 President, National Association of REALTORS®