NATIONAL ASSOCIATION OF REALTORS®

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April 29, 2021

The Honorable Janet Yellen
Secretary
US Department Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Madam Secretary:

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), we appreciate the Administration's efforts to lead our nation on a path to economic recovery after the COVID-19 health pandemic and also your recent proposals to address our nation's long-standing infrastructure and transportation challenges. We look forward to working with you, especially on solutions that address the serious shortage of available inventory of homes to purchase and affordable rental housing, as well as the challenges faced by the commercial real estate sector as a result of the pandemic. The number of housing units for sale is at its lowest level in almost 50 years. The shortage makes buying a home much more expensive and out of reach to many credit-worthy Americans. This lack of affordable housing supply limits intergenerational wealth building, economic growth and job creation, especially for minorities and millennials.

In the American Families Plan, released this week, the Administration outlines several proposals to amend the tax code that NAR believes will negatively impact economic growth and depress the commercial real estate sector's recovery efforts, in particular. We cannot afford to further weaken the commercial real estate sector, which has been hit hard by the effects of the on-going health pandemic. Especially troublesome are the proposed limitation on the use of like-kind exchanges, the increase in the capital gains tax rate and what appears to be a proposal to tax unrealized capital gains at death for owners of properties with assets over certain levels, all of which would negatively impact the health of the commercial real estate market and could also negatively impact affordable rental housing.

Limitation to 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. Like-kind exchanges will accelerate our economic recovery from the pandemic by preventing real properties from languishing, underutilized and underinvested. While a $500,000 limitation of deferred gain may allow a large number of smaller exchanges to still go forward, the larger trades that exceed this cap provide the greatest potential for job creation and economic growth. Cutting them off, 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, meaning that fewer will move forward, again reducing growth and jobs. It could also have the effect of lowering property values of all existing properties, not just properties owned by those facing the higher rates. Moreover, the proposal could also sweep in those whose normal levels of income are far below the threshold, since selling a property in one year could catapult the seller's income above the threshold and nearly double their capital gains tax rate.

Taxing Unrealized Capital Gains at Death

While the American Families Plan fact sheet refers to the "step-up" basis issue as the target of this change, the description indicates that this proposal would instead tax owners of capital assets above a certain level upon their death. Such a change 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. The proposal indicates there would be protections for certain enterprises where heirs continue to run the business, but outside these narrow confines, many decedent's estates will likely have to sell property 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.

We appreciate the opportunity to share our concerns about these proposed changes to the tax law that would negatively impact the real estate industry. We look forward to continuing to work with you and the Biden-Harris Administration to ensure that the real estate industry can flourish and continue contributing to our Nation's economic recovery.

Sincerely,

Charlie Oppler
2021 President, National Association of REALTORS®