NATIONAL ASSOCIATION OF REALTORS®

March 24, 2023

The Honorable Janet Yellen
Secretary
US Department Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220, United States

Dear Madam Secretary:

On behalf of the more than 1.5 million members of the National Association of REALTORS® (NAR), we appreciate the Administration's continued efforts to steer the economy through the rocky shoals of rising interest rates, uneasiness in the banking system, and growing deficits. We understand the delicate balance we must find in order to preserve economic prosperity for all Americans, however, we believe that several tax provisions in the President's fiscal year 2024 budget could result in great damage to the real estate sector and to the economy and job creation as a whole.

More specifically, as the commercial real estate sector works to find its footing, we are wary of policies that would further weaken the commercial space rather than support it in its time of need. . The policy proposals we find to be of most concern are the following: limitation on the use of like-kind exchanges, the increase in the capital gains tax rate, and the proposal to tax unrealized capital gains at death for owners of properties with assets over certain level. These proposals would impact the health of the commercial real estate market and, in turn, could negatively impact affordable rental housing. Further damage to the sector could come from the proposal to tax carried interests in real estate partnerships as ordinary income instead of long-term capital gains, expand and increase the net investment income tax to all non-wage income, and tax depreciation recapture on real property at ordinary income rates.

Elimination of 1031 Like-Kind Exchanges: By allowing property owners to defer capital gain 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. Additionally, like-kind exchanges will accelerate the recovery of the commercial sector and also create jobs 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. Ensuring taxpayers have access to this valuable tool is essential for the well-being of the commercial industry.

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 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 those 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: Treating transfers of property upon gift or death as realization events for higher-income earners 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. This proposal would disrupt lives, harm growth, and goes against the principles that have guided tax policy in America for over a century.

These concerns stem from our deep understanding of how such provisions would impact the real estate sector and the economy as a whole. However, at the same time, we are heartened to see the Administration's support for bolstering the Low Income Housing Tax Credit and for creating a set of incentives such as the ones proposed in the Neighborhood Homes Investment Act. We look forward to working with you and Members of Congress to address the critical shortage of available inventory of homes to purchase and affordable rental housing. The number of housing units for sale is at near-record levels. 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, especially for minorities and millennials and other first-time buyers, and stymies economic growth and job creation for the Nation.

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

Sincerely,

Kenny Parcell
2023 President, National Association of REALTORS®