REJECT NEW TAX INCREASES ON AMERICA'S REAL ESTATE

March 26, 2019

Dear Representative:

The undersigned organizations, which represent the broad spectrum of America's real estate, urge you to reject The *Carried Interest Fairness Act* (H.R. 1735). This misguided legislation would result in a huge tax increase on countless Americans who use partnerships in businesses of all types and sizes. It would discourage individuals from pursuing their business vision, encourage debt rather than equity financing, tax sweat equity invested in businesses and slow economic growth. These results would be particularly harmful to the nearly 8 million partners in U.S. real estate partnerships.

The false narrative surrounding the carried interest issue is that it targets only a handful of hedge fund billionaires and Wall Street executives. The carried interest legislation is far broader and would apply to real estate partnerships of all sizes—from two friends owning and leasing a townhome to a large private real estate fund with institutional investors.

Much of the real estate investment that takes place today uses the partnership choice of entity. According to the IRS, real estate partnerships represent nearly 50 percent of the 3.7 million partnerships in the United States. Those real estate partnerships owned $5.9 trillion in assets, earned over $90 billion in net income, and recognized roughly $50 billion in long-term capital gain in 2015. Most partnerships, in all businesses, reward the general partner with a share of the ultimate capital gain that reflects the risk they have taken—equity capital, assumption of business risk, or through good old-fashioned sweat equity. Reward for these latter forms of risk is "carried interest."

In real estate, success is measured largely by the capital appreciation of the property. Under current law, this capital appreciation is long-term capital gain for all partners. The carried interest is not compensation for services. General partners receive fees for routine services like leasing and property management. Those fees are taxed at ordinary tax rates. The carried interest is granted for the value the general partner adds to the venture *beyond* routine services, such as business acumen, experience, and relationships. It is also recognition of the risks the general partner takes with respect to the general partnership's liabilities. These risks can include funding predevelopment costs, guaranteeing construction budgets and financing, and exposure to potential litigation over countless possibilities.

H.R. 1735 would limit capital gain treatment only to taxpayers who have cash to invest. Those who invest entrepreneurial innovation, risk taking, and sweat equity would no longer receive capital gain treatment.

Taxing carried interest at ordinary income rates would discourage the risk taking that drives job creation and economic growth. It would reduce economic mobility by increasing the tax burden on cash-poor entrepreneurs who want to retain an ownership interest in their business. It would have profound unintended consequences for main streets of cities all across our country. A 2013 study by Douglas Holtz-Eakin, former director of the nonpartisan Congressional Budget Office, found that carried interest legislation could result in reduced construction activity, lower property values, and decreased wages in the real estate industry. Perversely, it would encourage real estate owners to borrow more money to avoid taking on equity partners.

Moreover, the legislation would apply retroactively to partnership agreements executed years—often decades—earlier. These negotiated agreements between the partners were based on well-established tax law as it existed at the time. By changing the tax results years later, H.R. 1735 undermines the predictability of the tax system and discourages the long-term, patient investment that moves our economy forward.

In short, H.R. 1735 would make it more expensive to build or improve real estate and infrastructure, including workforce housing, assisted living communities, and industrial properties, to name just a few. Some development simply won't happen, especially in long-neglected neighborhoods or on land with potential environmental contamination.

Achieving tax fairness is complicated. Simple solutions often are not solutions at all. We urge you to reject the misnamed *Carried Interest Fairness Act*.

Sincerely,

The Real Estate Roundtable
American Hotel & Lodging Association
American Resort Development Association
American Seniors Housing Association
CCIM Institute
Institute of Real Estate Management
International Council of Shopping Centers
Mortgage Bankers Association
NAIOP, Commercial Real Estate Development Association
National Apartment Association
National Association of Home Builders
National Association of REALTORS®
National Multifamily Housing Council
REALTORS® Land Institute