November 2, 2016

The Honorable Jacob J. Lew
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Lew:

The undersigned organizations write to share their strong concerns with the Treasury Department's Proposed Regulations regarding the valuation of interests in family-controlled businesses for estate, gift, and generation-skipping tax purposes (*REG-163113-02: Restrictions on Liquidation of an Interest*).

Family-owned real estate businesses support job creation, economic growth, and strong communities throughout the country. In 2012, the 5.33 million family-owned businesses in the United States included more than one million real estate and construction companies.[1] Family-owned businesses employ nearly 22 million workers with a total payroll in excess of $784 billion. The owners of family businesses are deeply involved in the civic life and economic development of their communities, large and small, and they are often the first to respond to critical local needs. Family-owned businesses embrace responsible labor and environmental practices and maintain strong relationships with suppliers and customers.

At a time of economic uncertainty, when economic growth remains tepid and job creation is a top priority, the Proposed Regulations are a step in the wrong direction. The rules would prevent family businesses from successfully transitioning from one generation to the next. They run counter to the job-creating policies the country needs.

The Proposed Regulations go beyond potential tax abuses and capture ordinary situations that arise in active, family-owned real estate businesses, including those that own and operate commercial buildings, shopping centers and multifamily housing. Family members often inherit real estate interests that have no discernable value in the secondary market and cannot be liquidated on demand. The rules unfairly and incorrectly assume coordination/collusion on the part of all surviving family members. Restrictions on the liquidation and control of family-owned real estate businesses serve an important non-tax purpose—the preservation of the business as an ongoing concern. In short, the Proposed Regulations disregard the realities of intergenerational transfers of property

[1] U.S. Census Bureau, *2012 Survey of Business Owners* (Sept. 2015), *available at:* http://census.gov/data/developers/data-sets/business-owners.html.

interests. By applying the new rules to operating companies and illiquid assets, such as real estate, the Proposed Regulations will disrupt businesses that employ hundreds of thousands of workers.

Finally, the Proposed Regulations go well beyond Congress' original intent. Congress did not grant Treasury the authority to promulgate legislative regulations under section 2704. The three-year bright-line test in Prop. Reg. § 25.2704-1(c)(1) and the extension of the rules to business entities other than corporations and partnerships in Prop. Regs. §§ 25.2701-2(b)(5)(i) and (iv), for example, are clearly the types of changes that require legislative regulations.

For all of these reasons, the undersigned organizations respectfully request that you withdraw the Proposed Regulations.

Sincerely,

American Seniors Housing Association
Building Owners and Managers Association International
International Council of Shopping Centers
NAIOP, Commercial Real Estate Development Association
National Apartment Association
National Multifamily Housing Council
The Real Estate Roundtable