May 23, 2023

Dear Representative:

The undersigned national real estate associations represent a broad coalition of housing providers that are committed to working together with policymakers and the Administration to address America's housing affordability crisis. We write today to urge Congress to work with the Biden Administration, housing providers, lenders, and other stakeholders to pursue bipartisan solutions to increase the supply of housing in all markets and at all price points. We applaud the Biden Administration for recognizing the nation's critical shortage of affordable housing and for offering innovative solutions such as the Housing Supply Action Plan and more recently significant investments as part of its Fiscal Year (FY) 2024 Federal Budget proposal.

Today, in more and more communities, hard-working Americans are unable to rent or buy homes due to increased housing costs. These rising costs are driven by a lack of supply created by barriers to development that increasingly make it extremely challenging, if not impossible, to build housing at almost any price point—particularly a price affordable to low- and middle-class families. The total share of cost-burdened households (those paying more than 30 percent of their income on housing) increased steadily from 28.0 percent in 1985 to 36.9 percent in 2021, while other households have been priced out of communities altogether in their search for affordable housing[1]. This is not sustainable, particularly in a period of high inflation. It is critical that we start now to enact policies that will incentivize new housing production. We, therefore, recommend that policymakers immediately take action on the following measures that would have a positive impact on the housing affordability crisis and help increase the nation's housing supply:

- **Yes In My Back Yard (YIMBY) Act:** Bipartisan legislation sponsored by Sens. Todd Young (R-IN) and Brian Schatz (D-HI) in the Senate (S. 1688) and Reps. Derek Kilmer (D-WA) and Mike Flood (R-NE) in the House of Representatives (H.R. 3507) that would help eliminate discriminatory land use policies and remove barriers that depress production of housing in the United States. By requiring Community Development Block Grant (CDBG) recipients to report periodically on the extent to which they are removing discriminatory land use policies, and promoting inclusive and affordable housing, the *YIMBY Act* will increase transparency and encourage more thoughtful and inclusive development practices.

- **Eliminate Exclusionary Zoning and Harmful Land Use Policies:** For decades, exclusionary zoning laws – like minimum lot sizes, mandatory parking requirements, and prohibitions on multifamily and manufactured housing – have inflated housing and

[1] NMHC tabulations of 1985 American Housing Survey microdata, U.S. Census Bureau; 2021 American Housing Survey, U.S. Census Bureau.

construction costs and locked families out of areas with more opportunities. President Biden included an innovative, new competitive grant program in his Housing Supply Action plan called the Unlocking Possibilities Program that would award flexible and attractive funding to jurisdictions that take concrete steps to eliminate such needless barriers to producing affordable housing.

- **Promote Affordable Housing Near Transit Act**: Sponsored by Rep. Adam Smith (D-WA), the bill would permit transit agencies to convey land at zero cost to non-profit affordable housing developers or other eligible third-party entities, such as multifamily developers, to produce affordable and mixed-income housing. The bill has yet to be reintroduced in the 118th Congress.

- **Build More Housing Near Transit Act:** Bipartisan legislation led by Reps. Scott Peters (D-CA) and McMorris Rodgers (R-WA) that would better leverage federal transportation dollars to support housing development. The bill has not been reintroduced in the 118th Congress.

- **The Choice in Affordable Housing Act:** Bipartisan and bicameral legislation introduced by Sen. Chris Coons (D-DE) and Kevin Cramer (R-ND) and soon to be introduced by Rep. Emmanuel Cleaver, II (D-MO), this bill enjoys the backing from both housing advocates and housing providers, and would address many overlapping and redundant programmatic procedures that have deterred professional owners and operators from participating in the Section 8 Housing Choice Voucher Program.

- **Housing Supply and Affordability Act:** Legislation sponsored by Sen. Amy Klobuchar (D-MN) in the Senate and Rep. Lisa Blunt Rochester (D-DE) in the House that would create a new Local Housing Policy Grant (LHPG) program at HUD to provide grants to local governments to support efforts to expand housing supply. The bill has not been reintroduced in the 118th Congress.

We also encourage Congress to consider the following tax proposals that all have a significant influence on addressing housing affordability.

- **Low-Income Housing Tax Credit (LIHTC):** Expanding and enhancing the LIHTC will enable greater production of affordable housing. We support the bipartisan and bicameral *Affordable Housing Credit Improvement Act* (H.R. 3238 and S. 1557), which was introduced under the leadership of Sens. Cantwell (D-WA), Young (R-IN), Wyden (D-OR), and Blackburn (R-TN), and Reps. LaHood (R-IL), DelBene (D-WA), Wenstrup (R-OH), Beyer (D-VA), Tenney (R-NY), and Panetta (D-CA).

- **Enact the Middle-Income Housing Tax Credit (MIHTC) to Support Workforce Housing:** Housing affordability impacts the financial well-being of middle-income households in addition to low-income families. Congress should enact the Middle-Income Housing Tax Credit as included in the *Decent, Affordable, Safe Housing for All Act (DASH Act)* (S. 680) to address the shortage of workforce housing available to American households. Modeled on LIHTC, MIHTC takes over where LIHTC leaves off and is designed to benefit populations earning below 100 percent of area median income.

- **Incentivize Adaptive Reuse of Underutilized Commercial Properties:** Given the nation's shortage of affordable rental housing, many are considering turning unused and underutilized commercial real estate structures, including offices, hotels, and retail spaces into housing. Not only would such repurposing help address the nation's housing supply challenge, but it would also create jobs and boost local property tax revenues.

  Sen. Stabenow, joined by Sen. Brown as a cosponsor, last Congress introduced the *Revitalizing Downtowns Act* (S. 2511) that would provide a 20 percent tax credit to convert office buildings into other uses, including residential use. This Congress, Rep. Gomez has introduced this legislation (H.R. 419) in the House of Representatives. The real estate industry is interested in working with Congress on this type of proposal but would like to see it modified to, among other things, enable other types of commercial properties (e.g., shopping centers and hotels) to qualify for the tax incentive; ensure REITs could utilize the benefit; and clarify that the credit does not reduce other tax benefits including the Low-Income Housing Tax Credit.

- **Enhance Opportunity Zones to Incentivize Rehabilitation of Housing Units*:*** While we expect the Opportunity Zones program to be beneficial in spurring the production of new multifamily housing, it could be improved to also incentivize the rehabilitation of existing multifamily units. Statutory modifications could be made to reduce the basis increase necessary to qualify a multifamily rehabilitation project for Opportunity Zone purposes.

- **Revitalizing Economies, Housing, and Businesses (REHAB) Act:** Introduced last Congress by Rep. Earl Blumenauer (D-OR) and Rep. Darren LaHood (R-IL), this proposal would create incentives to encourage community development and neighborhood revitalization, as well as promote greater affordability in high-demand markets, through new private investment in multifamily buildings located near transit. The bill has not been reintroduced in the 118th Congress.

- **Energy Efficient Qualified Improvement Property (E-QUIP) Act:** Introduced last Congress by Reps. Brad Schneider (D-IL) and Tom Rice (R-SC), this Act would spur the replacement of aging building components that most impact building energy consumption, including heating and cooling systems; lighting; and building envelope components like roofs and windows by permitting accelerated depreciation of certain qualifying assets. The bill has not been reintroduced in the 118th Congress.

Background

More recent economic instability poses a serious threat to the ability of housing providers to leverage the private-market capital necessary to generate needed housing. The Federal Reserve's rate increases have contributed to a period of economic volatility, which is driving up the already expensive cost of building new housing and discouraging new investment as the cost to maintain existing properties increases. NAHB and NMHC estimate that regulations alone account for an average of 40.6 percent of the cost of a new multifamily development.

There are various estimates regarding the extent of the housing shortage, but all agree that housing construction has not kept pace with demand for quite some time. This shortage remains despite historic levels of housing construction during the past few years. While we are seeing pullbacks in demand for apartments and home purchases in recent months, we caution that this is a result of the combined effects of economic uncertainty and elevated costs of financing given Federal Reserve rate hikes and thus rising mortgage rates. We note that this trend is largely occurring at the higher income levels. In contrast, demand for rental and ownership units at the low- and middle-income levels remains high. We simply do not have enough homes to meet this long-term demand—this housing shortage is immense, widespread, and enduring.

The undersigned organizations stand ready to help meet the rising need for attainably priced housing, but we cannot do it alone. It requires a strong partnership between the private and public sectors. First and foremost, we must seek solutions that support increased supply—at all price points. Without investment in our nation's housing, we will face housing instability and affordability challenges now and in the future. In addition to increased supply for all types of housing, we must also deliver short-term solutions to renter populations that need support.

Increased subsidies and emergency housing support for those of modest means are critical to keeping struggling families afloat. Policies which shift the full burden of increased costs onto housing providers, on the other hand, will only exacerbate the lack of available and affordable rental housing for that population, as it stalls new development and causes existing housing providers – especially those "mom-and-pop" providers who own just a few units – to leave the market entirely.

The Biden Administration's Housing Supply Action Plan is a thoughtful proposal that rightly acknowledges that there is no single solution to our housing shortage. The comprehensive package of regulatory and legislative measures would go a long way toward addressing the supply shortage, and we urge Congress to work with the Administration to enact policies included in the plan. We are particularly encouraged that the plan includes a proposal to reward jurisdictions that have reformed zoning and land-use policies with higher scores in certain federal grant processes, for the first time at scale. The plan would also deploy new financing mechanisms to build and preserve more housing where financing gaps currently exist. We urge the Congress to work with the Administration to continue to execute the goals included in the plan.

Additionally, we were encouraged by several proposals included in the President's FY24 Federal Budget proposal. The Budget proposes to expand and enhance the Low-Income Housing Tax Credit (LIHTC), which provides critical support to the nation's affordable housing production but could be made even more impactful. Between its inception in 1986 and 2021, the LIHTC program has, according to the A Call To Invest in Our Neighborhoods (ACTION) Campaign, developed or preserved 3.74 million apartments, served 8.06 million low-income households, supported 6.08 million jobs for one year, generated $239 billion in tax revenue, and produced $688.5 billion in wages and income[2]. It is also a critically important program for those in the seniors housing space who are dedicated to developing and operating affordable communities with supportive services but challenged by the high costs of serving a low- or middle-income, older adult population.

The President's FY24 Budget also proposes a new allocated tax credit (called the Neighborhood Homes Credit in the FY24 Budget), which would support building or renovating affordable owner-occupied housing. The purpose of this proposed program, which seems to be very similar to the bipartisan *Neighborhood Homes Investment Act* (S. 657), is to encourage new construction or rehabilitation of homes for sale and the rehabilitation of existing homes by their current owners who will remain in the neighborhoods. Because this could result in as many as 500,000 more affordable homes for moderate- and middle-income families in now-distressed but improved neighborhoods, we believe this proposal deserves consideration.

Additionally, the President's Budget proposes grant funding to incentivize state and local governments to expand housing supply by reducing barriers to development. It would increase funding for the HOME Investment Partnerships Program (HOME), which is an important tool to support building, buying, and rehabilitating affordable housing. It includes an expansion of the Housing Choice Voucher (HVC) program, which would expand assistance to another 130,000 households. These types of investments will have a meaningful impact on the supply of housing and provide assistance to populations that need support now. Increased subsidies and emergency housing support for those who need it are critical to keeping struggling renters and their families afloat.

While we are encouraged by the Administration's support for proposals to increase the supply of housing, we are concerned about certain revenue-raising proposals included in the FY24 Budget that would negatively impact the housing industry and ultimately could limit the supply of housing. Specifically, we urge Congress to reject proposals included in the budget to:

- Increase the top marginal income and capital gains tax rates;
- Tax carried interest as ordinary income;

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[2] https://rentalhousingaction.org/wp-content/uploads/2022/12/ACTION-NATIONAL-2022-NEW-LOGO_01.pdf

- Expand the net investment income tax to encompass active business income;
- Require 100 percent recapture of depreciation deductions as ordinary income for real estate; and
- Limit deferral of taxable gain from a like-kind exchange.

These types of proposals would directly impact the operations of housing providers, as most are structured as "flow-through" entities where earnings are passed through to owners who pay taxes at the individual level. The tax increases under consideration would reduce real estate investment and inhibit the capital flows that are so critical to the development and preservation of critically needed housing.

Lastly, we support the Administration's Housing Supply Action Plan and increased funding for programs to assist those in need; however, we are concerned the recently released White House "Blueprint for A Renters Bill of Rights" will create potentially duplicative and confusing federal regulations that interfere with state and local laws meant to govern the housing provider and resident relationship. Policymakers, at all levels of government, should resist pressure to take actions that while well-intended, unnecessarily complicate the provision of housing and do nothing to address the underlying supply shortage. Additional complexity will not help households that are struggling to find affordable housing and could, in fact, discourage much-needed private-market investment in new housing construction.

Conclusion

Housing has always been a bipartisan issue. Policymakers at every level of government have a role to play in removing obstacles to housing production and preservation and in addressing the housing affordability challenges that have faced this country for decades.

Across all markets, the supply of housing at a variety of price points will play a vital role in promoting economic growth, attracting and retaining talent, and encouraging household stability for all American families. Using a combination of incentive-based programs, streamlined regulatory burdens and innovative solutions, we stand ready to work with Congress and the Administration to address the housing affordability challenges faced by communities across the nation.

Sincerely,

American Seniors Housing Association
Building Owners and Managers Association
Commercial Real Estate Finance Council
Council for Affordable and Rural Housing
ICSC
Institute of Real Estate Management
Leading Builders of America
Mortgage Bankers Association
Manufactured Housing Institute
NAIOP, the Commercial Real Estate Development Association
National Affordable Housing Management Association
National Apartment Association
National Association of Home Builders
National Association of REALTORS®
National Association of Residential Property Managers
National Leased Housing Association
National Multifamily Housing Council
The Real Estate Roundtable
Up for Growth Action

Copy: President Joe Biden