WESTERN GOVERNORS' ASSOCIATION

MARK GORDON
GOVERNOR OF WYOMING
CHAIR

MICHELLE LUJAN GRISHAM
GOVERNOR OF NEW MEXICO
VICE CHAIR

JACK WALDORF
EXECUTIVE DIRECTOR

November 21, 2023

The Honorable Jason Smith
Chairman
Committee on Ways and Means
House of Representatives
1139 Longworth House Office Building
Washington, DC 20515

The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
House of Representatives
1129 Longworth House Office Building
Washington, DC 20515

Dear Chairman Smith and Ranking Member Neal:

On behalf of Western Governors, we are writing to express our support for certain provisions in H.R. 3238, the Affordable Housing Credit Improvement Act (AHCIA) of 2023. The bipartisan legislation and its Senate companion (S. 1557) seek to address the nation's affordable housing shortage by expanding and strengthening the Low-Income Housing Tax Credit (LIHTC).

LIHTC is a vital tool to encourage the development and rehabilitation of affordable housing. As the need for affordable housing has grown, state Housing Credit allocations have not kept pace. As stated in Policy Resolution 2023-04, Housing is Foundational to the Success of the West (attached), Western Governors support expansion of the 9 percent Housing Credit through the reauthorization of a 12.5 percent cap increase in state Housing Credit allocations with a further 50 percent increase moving forward. The AHCIA of 2023 aligns with these priorities by reauthorizing the 12.5 percent cap increase that expired in 2021 and increasing allocations by 50 percent over two years.

Western Governors also support changes to allow states to better leverage their bond authority for housing. The 4 percent Housing Credit can only be awarded if at least 50 percent of a project is financed with Private Activity Bonds (PABs). State authority to issue PABs is limited by an annual volume cap. Many western states routinely reach their PAB cap under the current bond financing model, constraining their ability to access the 4 percent Housing Credit and consequently, their ability to implement housing solutions and maximize state and local funds. By lowering the PAB financing threshold from 50 percent to 25 percent, the AHCIA of 2023 will allow states to support more affordable housing projects.

In addition, Western Governors applaud efforts to make the LIHTC Program work more effectively for underserved communities, including rural, tribal, high-poverty, and high-cost communities, as well as extremely low-income and formerly homeless tenants.

We appreciate the Committee's leadership in refining tax policies to boost the affordable housing supply in western states. Please let us know how Western Governors may be of assistance as you consider H.R. 3238 and seek to develop strategies to improve access to affordable housing.

Sincerely,

Mark Gordon
Governor of Wyoming
Chair, WGA

Michelle Lujan Grisham
Governor of New Mexico
Vice Chair, WGA

Attachment

Policy Resolution 2023-04
Housing is Foundational to the Success of the West

A. <u>BACKGROUND</u>

1. The West has undergone extraordinary growth in recent years. According to the 2020 U.S. Census, the region has experienced population growth of 9.2 percent from 2010 to 2020, the second highest rate nationally, with more than 78 million new residents. The three fastest growing states by percentage – Utah, Idaho, and Colorado – are all western states. In addition, towns with less than 5,000 people in the Rocky Mountain and coastal areas of the West have experienced the highest nationwide population growth rates at 13.3 percent.

2. The COVID-19 pandemic accelerated and spurred several noteworthy trends. Over the past ten years, moves to large and expensive cities have plateaued in favor of smaller cities and suburbs. The U.S. Census reports that while overall moving rates continued to decline, starting in 2021, the West began to see a dramatic increase in net migration to the region. During the public health crisis, people fled big cities at increased rates for less dense areas that offered warmer weather, more outdoor recreation activities, and greater opportunities to safely social distance as telework became the new normal and employees were no longer tethered to a physical office. The Pew Research Center estimated that 1 in 5 adults, especially young professionals, relocated during the pandemic or know someone who did.

3. This growth in the West has led to housing shortages in communities large and small. Shortages have been exacerbated by Great Recession development delays and stops and a lack of workforce, which have resulted in a housing slump and left communities across the West struggling to keep up with demand and a near-record rise in the number of American homeowners. As the market began to recover, the spread of COVID-19 hit builders with similar issues, including supply chain delays and a workforce deficit.

4. According to the Federal Reserve, while home sales have boomed, the number of active housing listings in January 2022 dropped to its lowest in at least five years – 60 percent below the number on the market just two years previously – causing home sale prices to skyrocket. Nationally, prices have increased by nearly 20 percent, with the West seeing some of the greatest increases.

5. The West's natural beauty brings people from across the nation and globe. While western states welcome the growth in remote workers and visitors to tourism and outdoor recreation-based economies such as resort towns and gateway communities, unmanaged growth has caused "big city" issues for some areas. Additionally, many residences have been converted into temporary rental units through services like Airbnb and VRBO. The unchecked proliferation of these rentals can heighten housing shortages, drive costs higher, and diminish the availability of places for residents and workers to call home. Long-time community residents and workers are often forced to move out of the communities they grew up in and are culturally connected to, exacerbating disparities and making it difficult for social services, businesses and government to retain and attract employees from within

the community. Rapid population influxes also strain existing infrastructure and resources in areas that already have limited planning capacities.

6. Rural communities face unique challenges when addressing housing issues. Construction costs in rural areas are often higher than in urban areas and are further compounded by a lack of critical infrastructure. There are limited numbers of investors and contractors who are willing to mobilize or invest in small communities, making the cost of new or improved housing too high for middle-income residents. Rural areas can also lack access to lenders and credit, which reduces funding for the production of new units and the maintenance of existing housing stock. As a result, a disproportionate amount of the nation's occupied substandard housing is in rural communities. According to the U.S. Department of Agriculture (USDA), approximately half a million of its multifamily housing properties will need a total of $5.6 billion in investments to maintain suitable living conditions for residents.

7. Despite a recognized need for more housing and housing of different types, existing homeowners often oppose increasing the housing supply in their communities, especially the construction of denser housing. This opposition, and the signal it sends to city leaders, zoning boards, and planning commissions, represents a significant impediment to addressing the housing shortage and can lead to restrictive local land use regulations. Some western communities are addressing these challenges in part through the development of communities that combine housing of different types and sizes with commercial properties in ways that promote affordability, walkability, diversity of homeowner type, and a higher quality of life.

8. In downtown submarkets and dense neighborhoods, apartment absorption rates show that landlords are quickly leasing vacant apartment units, driving strong rent costs. From October 2020 to October 2021, rental costs increased 15.9 percent, with the median cost of advertised rentals rising to above $2,000 for the first time. Rental occupancy, new lease signings, and lease renewal rates show strong growth, indicating an increase in rental demand across the market. The West plays a strong role in this growth, with half of the top twenty predicted strongest markets in 2022.

9. All available data suggests that homelessness, including among families with children, has risen during the current housing crisis, likely attributed to surging rents, which compound personal and societal causes of homelessness. Homelessness and housing instability make it harder to find and keep a job, treat or manage medical conditions, and learn in school. It destabilizes communities and lowers outcomes across public systems. No one institution can end this issue on its own.

10. Housing is foundational to economic development and community vitality. In the long run, it is more cost effective for public systems to house those in need with wrap around service. Models like permanent supportive housing or transitional housing with supportive services keep residents off the streets and provide upstream interventions that lessen costs for justice and health systems. The need for a greater diversity of housing options goes beyond the obligation to treat people with dignity, as it is also cost effective for governments.

11. The HOME Investment Partnerships Program (HOME) and the Housing Trust Fund are federal housing programs administered by the Department of Housing and Urban Development (HUD). HOME is the largest federal block grant to state and local

governments for affordable housing. It provides formula grants for building, buying, and rehabilitating affordable housing or direct rental assistance to low-income households. The Housing Trust Fund provides grants to states to develop and preserve affordable housing for extremely low-income households. Although both programs are administered by the same agency, they have separate environmental review requirements. Some projects utilize both programs, resulting in a taxing process that can yield conflicting results.

12. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) requires recipients of HUD funding to direct employment, training, and contracting opportunities to low-income individuals and the businesses that employ these persons. Davis-Bacon and related acts require federal government construction contractors on covered public buildings and public works to pay the "prevailing wage" to laborers. Applying Section 3 or Davis-Bacon to multifamily projects significantly increases the administrative burden of projects. In tight construction markets in the West, affordable multifamily projects often struggle to find contractors willing to accept the regulatory burden. These projects receive far fewer bids than non-federal projects and frequently face higher construction costs. An Oregon affordable housing cost driver study found that prevailing wage determinations, some related to Davis-Bacon, increased costs by 9 percent when controlling for other factors.

13. The Federal Housing Administration (FHA) insures mortgages on single family homes, multifamily properties, residential care facilities, and hospitals and is critical to sustaining and financing affordable housing across the nation. However, it has become increasingly arduous to work with FHA and its third-party contractor. A significant amount of time and effort is expended on delinquency reporting, filing claims, and the foreclosures process due to a lack of guidance, staffing shortages, and antiquated technology. Applicants must navigate multiple systems for delinquency reporting and filing claims and interpret handbooks if they have questions, as FHA no longer has state staff to consult and is frequently unresponsive to requests for guidance.

14. FHA determines lending limits annually based on median house prices, a percentage of the national conforming limit, and the county in which the property is located. In rural areas and non-disclosure states, there may not be current sales data or information may not be public, which generally means loan limits are not raised in spite of the fact that prices have increased.

15. Private Activity Bonds (PAB) are used to develop affordable housing and provide mortgages to low- and moderate-income homebuyers, allocated from the federal government with Congressionally set caps. Many states in the West have hit their PAB cap, meaning their ability to advance housing solutions and leverage state and local funds is limited. Additionally, the PAB cap restricts the use of the 4 percent Low Income Housing Tax Credit (LIHTC) because 50 percent of these developments must be funded with PAB. States that invest state and local resources in housing development are unable to fully leverage federal funds, creating the perverse disincentive of limiting how much state and local partners invest in housing.

16. The Community Development Block Grant (CDBG) Program, administered by HUD, provides flexible resources to states and localities to fund housing and economic development opportunities for low- and moderate-income communities. For single-family residential projects, HUD requires states and localities to identify all properties for funding upfront and

to work on them as a single project, but this is an obstacle for small, rural communities. These communities struggle with getting contractors and finding the workforce to do everything at once. The burden of administration is also extremely high and there is a tremendous amount of risk involved with the cost of compliance for CDBG. Audits may occur years after funding has been disbursed and projects have begun, and states and localities must bear the costs if projects are not compliant.

17. Federal formulas for funding do not always function effectively for states. While costs for projects have grown significantly and federal funds are often crucially important to offsetting these extreme per unit costs for affordable units, minimum allocations have stayed relatively constant. In addition, some programs utilize formulas that have been designed for other programs. For example, the traditional Emergency Solutions Grants (ESG) Program uses the CDBG formula despite the vast differences between their program goals. Although the traditional ESG formula is effective at making allocations quickly, it does not adequately serve places with homelessness needs because it is designed to address more general community development needs. The ESG formula used for the second wave of Coronavirus Aid, Relief, and Economic Security (CARES) Act funding was more aligned with program goals and led to more targeted investments to drive improved outcomes.

18. Rural states often receive the minimum allocation of federal grant funds. Consequently, they receive a much smaller administrative allocation even though every project must follow the same steps and requires the same administrative responsibilities as more populous states. Insufficient administrative funding makes it difficult for these states to leverage federal housing programs.

19. Across the West, wildfires and other natural disasters are devastating communities and creating real and persistent impacts on the lives of Americans. Federal Emergency Management Agency (FEMA) resources do a poor job of supporting those in need, particularly renters and communities with little trust in government. The federal process requires extensive documentation – which is often lost, especially in fires – and multiple rounds of applications and appeals. CDBG-Disaster Recovery (CDBG-DR) funds require Congressional allocation, which delays implementation of recovery activities. In addition, the program is not well suited to support the immediate needs of wildfire recovery. Homes are a total loss in wildfires, unlike floods or hurricanes, and infrastructure needs are beyond what CDBG-DR can support.

20. Manufactured and modular homes could help address the housing shortage in the West. These prefabricated structures are partially or fully constructed in off-site factories, which makes them affordable housing options because they are significantly less expensive and faster to build. Manufactured homes are built to HUD standards and are moveable, while modular homes are held to local, state, and regional building codes for on-site homes. While there is a huge opportunity for growth in this industry, regulatory barriers threaten to dampen or halt their expansion. A recent Department of Labor (DOL) proposal to expand the "site of work" definition for Davis-Bacon could drive up costs for manufactured and modular housing, making it harder for Americans to access affordable housing.

21. Affordable and quality housing is essential for an effective military and the recruitment and retention of military personnel and civilians. On military bases, the government provides single and unaccompanied military installation housing rent-free. There are also houses on bases, which are commonly privately-owned. The federal government provides military

personnel with a Basic Allowance for Housing (BAH) to offset the costs of renting these houses or renting or buying off-base housing. Civilians do not receive a BAH, but they are allowed to utilize base housing if it is available. BAH rates are set by surveying the cost of rental properties in each geographic location. However, the Government Accountability Office (GAO) has noted that these rates do not always accurately reflect the cost of suitable housing for service members. Furthermore, GAO has reported that remote military bases typically lack critical services and amenities, prompting personnel and civilians to search for housing in communities that are farther away or to commute long distances to access them.

B. GOVERNORS' POLICY STATEMENT

1. Western Governors urge Congress to pass legislation lowering the threshold of PAB financing from 50 percent to 25 percent to infuse equity into local economies, which would result in an immediate increase in affordable housing opportunities and hundreds of thousands of additional homes being built or preserved.

2. Inflation, increased material costs, and labor shortages are already constraining affordable housing development. Western Governors urge the federal government to reduce the administrative burden associated with federal housing programs to better facilitate and expedite affordable housing development, using the U.S. Department of the Treasury's (USDT) administration of the Emergency Rental Assistance (ERA) Program as a model. Reducing administrative burdens would enable affordable housing to compete on a more even field. Specifically, Western Governors support subsidy layering review and efforts to streamline the National Environmental Policy Act or use other environmental reviews in its place and urge HUD to streamline environmental review requirements for the HOME and Housing Trust Fund Programs so that projects utilizing both programs only have to complete one review. The Governors also encourage DOL to consider providing Davis-Bacon waivers for multifamily projects in small and rural communities, which often have a limited pool of contractors.

3. Western Governors request that HUD change provisions of 24 CFR 92.241(b) requiring property rehabilitation to adhere to strict minimum property standards for the HOME Program. Flexibility and discretion for rehabilitation funding would allow states to make critical improvements to the housing stock without projects dying due to the identification of other, less critical problems during HOME assessments.

4. Western Governors urge Congress to appropriate funding to FHA to upgrade their technology and processing systems. We recommend that FHA streamline its cumbersome claim filing process by creating one efficient, centralized, and modern claim system. In addition, FHA should provide ongoing and up-to-date guidance to state and local housing authorities or authorize and train its third-party contractor to provide guidance to state and local housing authorities to avoid costly consequences that hinder housing improvements in states. Western Governors also encourage FHA to consider having designated state staff again to improve communication and coordination between states and the federal government.

5. Western Governors request that the federal government support state housing finance and public housing agencies and explore ways to improve the services and resources provided to them.

6. Western Governors encourage HUD to review and allow for alternative processes in non-disclosure states to address the increasing price of housing and adjust loan limits accordingly.

7. The federal government should enable the LIHTC Program to work more effectively for underserved communities, including rural, tribal, high-poverty, and high-cost communities, as well as extremely low-income and formerly homeless tenants. Western Governors encourage the USDT and HUD to ensure that they better preserve the nation's existing affordable housing inventory by simplifying and aligning program rules. In addition, we recommend that the federal government reauthorize the expansion of 9 percent low-income housing tax credits that expired at the end of the 2021 and move forward by increasing Housing Credit allocations by 50 percent to help meet the need for affordable housing.

8. The federal government should review and adjust the formulas that determine minimum allocations granted to states for housing programs, including the Housing Trust Fund, the LIHTC Program, and the HOME Program, to account for the high administrative and regulatory costs associated with these programs. Increased allocations would allow the states to produce more impactful projects in our states. In addition, federal formulas should include data elements that directly relate to program goals, especially for the ESG Program, to ensure federal funding serves those who need it most.

9. Western Governors call for HUD to add a flat administrative fee for minimum allocation states in addition to the percentage amount for administration that is granted to them. Although projects in these states tend to be smaller, the administrative costs are the same as they are for larger projects and the administrative funds determined by the percentage formula is insufficient to cover these costs.

10. Western Governors request flexibility from HUD when utilizing CDBG funds for housing, which will ensure necessary adaptability in challenging rural markets. We encourage HUD to implement a similar approach to USDA and allow grantees to identify properties over the course of a project, instead of identifying all properties before a project begins. Focusing on one or a few properties at a time will open opportunities to grow and improve the housing stock, especially in rural areas. We also request ongoing guidance and communication from HUD to ensure that states are in compliance and are not surprised by updated guidance and penalized when projects are already underway or finished.

11. Western Governors recommend that the federal government make FEMA programs and CDBG-DR funds better tools for disaster relief. FEMA resources should require less documentation requirements after wildfires, given that many records are destroyed with little time for households to evacuate a fire zone. For CDBG-DR, HUD allocations should consider infrastructure needs and include additional resources to support rebuilding costs in the West.

12. Western Governors urge Congress to pass legislation facilitating the purchase of federal land by state or local governments at a reduced price for the purpose of increasing the supply of residential housing. We also request that the federal government honor existing commitments to transfer land to state or local governments in a reasonable amount of time.

13. Western Governors support manufactured and modular housing and recognize the important role they play in providing affordable housing for communities, particularly in rural areas. We encourage DOL not to expand the “site of work” definition to factory-built housing for Davis-Bacon wages, as it would significantly impact the affordability of these housing options.

14. Western Governors urge Congress and the Department of Defense to consider how housing costs affect recruiting, retention, and quality of life for military personnel and civilians, and solutions to the challenge. This should include adjusting the formula and process for determining the cost of housing on and near military installations; the process and frequency of adjusting locality pay, housing allowance, and remote site pay; the formula for deciding which services and amenities should be offered to personnel living on remote military installations; and other adjustments that could improve the affordability of housing and quality of life for both civilian and uniformed personnel.

C. <u>GOVERNORS’ MANAGEMENT DIRECTIVE</u>

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.

2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in December 2025. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult http://www.westgov.org/resolutions for the most current copy of a resolution and a list of all current WGA policy resolutions.