Provide a Safe and Affordable Path to Homeownership for American Families

Congressional Action Needed:

Congress needs to ensure that qualified borrowers have access to safe and affordable mortgage financing, that the 30-year fixed-rate mortgage be preserved, and that federal mortgage programs providing American families nationwide a path to homeownership be safeguarded.

Congressional Actions To Date:

- No legislation has been introduced in the 114th Congress that would significantly reform or change the structure of the Federal Housing Administration (FHA) mortgage insurance program. However, many in Congress remain concerned that FHA has not met its required excess reserves level, and would like to limit FHA to first-time/low income borrowers.
- Several members of Congress have proposed legislation to reform the secondary mortgage market. Though details on the ultimate impact on consumers' costs need to be examined, these bills attempt to protect the affordable 30-year fixed-rate mortgage, shield taxpayers from bailouts, and ensure the availability of mortgage capital in all markets and under all economic conditions.
- Last year, the PATH Act would have removed the government guarantee from the secondary mortgage market, thus jeopardizing the 30-year fixed-rate mortgage. It would have also dramatically restricted the mission of the FHA mortgage insurance program. Similar legislation may be introduced in this Congress.

What To Tell Your Representatives And Senators:

- FHA remains an important resource in mortgage markets nationwide. FHA continues to fulfill its mission of serving those who are not served by the private market. Many qualified credit-worthy borrowers remain shut out of the private mortgage market, either due to high mortgage costs or unnecessarily high credit standards.
- NAR strongly believes that reform of the nation's housing finance system is required, as the current conservatorship of Fannie Mae and Freddie Mac is unsustainable. However, reform must create a viable replacement for the entities and include a government guarantee to ensure that qualified borrowers can access affordable mortgages.

Issue Background:

While mortgage markets are improving, access to safe, affordable credit remains very tight. Millions of creditworthy families remain unable to obtain their part of the American dream.

FHA Was a Critical Factor That Helped Move the Nation Out of the Great Recession

- During the crisis, FHA was one of the primary sources of mortgage financing available to American families.
- FHA helped stabilize housing prices in thousands of communities by providing access to home financing when few others would.
- FHA has been a leader in providing low-downpayment, safe, affordable mortgages for qualified buyers.
- Changing its mission would have a very negative impact in nearly every real estate market nationwide.

Housing Finance Reform is Critical to Moving Forward

- The government's support of Fannie Mae and Freddie Mac has played a key role in the secondary mortgage market, which is crucial in providing capital for mortgage lending.
- Without a secondary market and FHA-insured loans, which currently constitute nearly 83 percent of the market, there would be almost no capital available for mortgage lending.
- It is imperative that the private mortgage market has a viable replacement and a sufficient transition period before the existing secondary market is eliminated. Without a secondary market, home sales and any supporting ancillary home sales services would be severely restricted, if not curtailed.

Opposing Viewpoints:

- Critics argue that Fannie Mae's, Freddie Mac's, and FHA's prominence in the market have pushed private investors out of the market, leaving the federal government as the sole source of mortgage financing. In response, supporters argue that the private market is not meeting the needs of borrowers.
- These critics maintain that the mission and role of FHA should be strictly limited to lower income and first-time homebuyer households. Lastly, critics argue that FHA's downpayment requirements are too low and should be risk-based to protect taxpayers. Supporters say that strong underwriting and ability to pay are the most important considerations.
- Opponents believe the government should not be involved in the mortgage market. Rather, they believe free market competition will provide better pricing and access to credit for consumers and businesses. However, supporters say that without a government guarantee, the 30-year fixed-rate mortgage will not be available.

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Real Estate-Related Tax Policies are Vital to the Economy

Congressional Action Needed:

- Though tax reform is not likely to be enacted in 2015, lawmakers and their staffs must be educated about the vital role that real estate tax provisions play in the nation's housing markets and economy. Congress should oppose proposals that would weaken or repeal them. Tax reform is important, but should first do no harm.
- The Mortgage Forgiveness Tax Relief Act expired on December 31, 2014, and needs to be extended.

Congressional Actions To Date:

- No viable comprehensive tax reform legislation has been introduced, but leaders of the tax committees (House Ways and Means and Senate Finance) are looking for opportunities to move tax reform bills this year.
- NAR-supported legislation to extend mortgage debt relief provisions for two years was introduced as H.R. 1002 (Reed, R-NY; Rangel, D-NY) and S. 608 (Stabenow, D-MI; Heller, R-NV), the "Mortgage Forgiveness Tax Relief Act of 2015."

What To Tell Your Representatives And Senators:

- **Mortgage Interest Deduction (MID)**: Since 1913, the MID has helped make homeownership more affordable for families of moderate means, strengthening our communities. Oppose efforts to eliminate or weaken the mortgage interest deduction for primary and second homes.
- **Property Tax Deduction:** Property taxes paid are not properly considered "income" for income tax purposes. Eliminating the deduction would result in double taxation. Stand firm in opposing the repeal of property tax deductions.
- **Mortgage Debt Forgiveness Tax Relief:** A provision that exempts from income tax the amount of mortgage debt forgiven in a principal residence short sale or a workout expired at the end of 2014. If distressed homeowners have to pay tax on "phantom income" from forgiven debt, many will not go through with short sales or workouts and will go into foreclosure. This is not only unfair but harms families, neighborhoods and communities. Ask Representatives to cosponsor H.R. 1002 (Reed, R-NY; Rangel, D-NY) and Senators to cosponsor S. 608 (Stabenow, D-MI; Heller, R-NV).
- **Like-Kind Exchanges:** Since 1921, the Section 1031 provision has allowed investment real estate to be exchanged for property of a like-kind on a tax-deferred basis. Exchanges are essential in investment and commercial real estate transactions; if repealed, fewer redevelopment projects will go forward, resulting in fewer new jobs. The like-kind exchange provision provides liquidity to an illiquid asset. Repealing it would harm economic growth.

Issue Background:

While enactment of tax reform has little chance this year, the ideas promoted by House and Senate tax leaders will be on the table when Congress gets serious about moving tax reform. Members of Congress need to understand now that tax proposals that harm real estate are nonstarters. In the meantime, there is an urgent real estate tax provision that has expired that Congress should extend now.

Housing Tax Incentives Must Be Preserved

- More than 75 percent of homeowners utilize the mortgage interest deduction at some point over the period they own a home.
- For many homeowners, the property tax deduction is substantial, and one that continues long after a mortgage is paid off.
- The value of both mortgage interest and property tax deductions is imbedded into house prices. Eliminating the MID alone would cause on average an 11 percent drop in home values; decreasing the deduction, even for a limited group, would compress the value of all homes.

Like-Kind Exchanges Must Be Retained

- Repealing the like-kind exchange provision would be counterproductive and result in the loss of jobs and economic growth with little gain in revenue.
- Two separate tax reform plans last year (Baucus and Camp) included repeal of Section 1031, and the President's budget this year again proposed a major cutback. Tax reform plans that include repeal of like-kind exchanges weaken the provision by making it more likely Congress will go along when tax reform becomes more serious.

Expired Provision On Tax Relief For Mortgage Debt Forgiven Must Be Reinstated

- Despite the recent recovery, 10 percent of all homeowners with a mortgage are still "under water."
- Today, there are still nearly 1 million homes in the process of foreclosure. This is down from the high point of over 2 million, but still far above the 430,000 average of before the housing crisis.
- Mortgage debt forgiveness tax relief is vital for these families.

Opposing Viewpoints:

- Critics will argue that a simpler tax code with lower rates is better for housing than the current system, and the MID most benefits high-income homeowners who do not need help buying a home. Supporters will respond that limiting or repealing current housing tax incentives would hurt the housing sector and unfairly harm homeowners, who already pay 80–90 percent of all federal income tax.
- Deductions for property taxes subsidize high taxes and encourage bloated governments. In response, supporters will say repealing property taxes would cause double taxation.
- The mortgage debt forgiveness tax relief provision was to be a temporary provision and has outlived its purpose. However, proponents will point out that when millions of homeowners are still at risk of having to pay tax on phantom income, not extending this provision would be very poor policy.
- The like-kind exchange provision is a loophole that needlessly benefits those fortunate enough to own investment property. However, NAR and other real estate advocates point out that repeal or cutback of the provision would harm economic growth and job creation.

Protecting the Operations of REALTOR® Businesses

Congressional Action Needed:

Congress needs to act to address issues that negatively affect the real estate industry, the business of real estate and the consumers they serve every day. It needs to provide relief from patent trolls who game the system to extract money from real estate firms and other small businesses and address needed patent litigation reforms. Congress also needs to enact data security legislation that does not create onerous burdens for small businesses. Finally, Congress needs to end discrimination against affiliate businesses in the Qualified Mortgage (QM) rule.

Congressional Actions To Date:

- **Patent Reform:** H.R. 9, "The Innovation Act" was introduced by the chairman of the House Judiciary Committee, Robert Goodlatte (R-VA), and Representative Peter DeFazio (D-OR) on February 5, 2015. The bill makes needed reforms to the patent litigation process. At the same time, the House Judiciary and House Energy & Commerce Committees are considering needed demand letter reforms. A comprehensive Senate patent reform bill was expected to be introduced in April.
- **Data Security:** The House Commerce Committee's Subcommittee on Commerce, Manufacturing and Trade passed H.R.1770, "The Data Security and Breach Notification Act" (Blackburn, R-TN; Welch, D-VT) on March 24, 2015. Drafting of a Senate bill is underway.
- **Affiliate 3% Cap:** H.R. 685, "The Mortgage Choice Act" (Huizenga, R-MI; Meeks, D-NY) was passed by the House of Representatives on April 14, 2015, by a vote of 286-140.

What To Tell Your Representatives And Senators:

- **H.R. 9, "The Innovation Act":** NAR is supportive of H.R. 9's patent litigation reforms. The patent troll problem continues to grow and amounts to extortion for REALTORS® and other Main Street businesses. Congress must pass comprehensive patent litigation reform legislation to address the abusive use of demand letters by patent trolls and to reform patent infringement claims.
- **H.R. 1770, "The Data Security and Breach Notification Act":** While H.R. 1770 clarifies the rules for data protection and breaches, any final legislation must ensure that small businesses and entities are not unnecessarily burdened.
- **H.R. 685, "The Mortgage Choice Act":** The Senate needs to take up and pass H.R. 685, "The Mortgage Choice Act." The bill restores choices for low and moderate income consumers by fixing discrimination against affiliate lenders in the calculation of fees and points under the Qualified Mortgage (QM) rule.

Issue Background:

Patent Reform

- Patent trolls buy questionable, overly broad patents and use them to demand companies pay licensing fees turning common business practices into potential lawsuits.
- REALTORS® have been targeted by patent trolls for the use of common technologies such as website drop-down menus, map search function, copier scanners and new listing search alerts.
- NAR has joined the United for Patent Reform Coalition to pursue comprehensive solutions to abusive patent litigation.
- Without comprehensive patent litigation reform, REALTORS® and other small businesses will remain targets of extortion by unscrupulous entities that demand licensing fees or threaten frivolous litigation under the guise of patent infringement.

Data Security

- Data breaches are a growing problem as American consumers conduct more and more activities online. Data breach costs consumers tens of billions of dollars each year and can have a longstanding impact on consumer credit reports.
- Forty-seven (47) states have data breach notification laws on the books. Consequently, anyone doing business across state lines must comply with a patchwork of state laws.
- The House's "Data Security and Breach Notification Act" would simplify breach notification burdens for businesses and provide consistency for consumers.

Mortgage Choice Act

- NAR survey data shows consumers like to have the option of one-stop shopping.
- The QM rule prevents buyers/borrowers from using in-house services, especially on loans under $200,000 because it requires that affiliate charges be counted toward fees and points in the mortgage when unaffiliated charges are not.
- "The Mortgage Choice Act" would treat unaffiliated and affiliated title and insurance equally, giving consumers the choice to use affiliated services that comply with the Real Estate Settlement Procedures Act (RESPA).

Opposing Viewpoints:

Patent Reform

- Opponents argue that the 2011 America Invents Act and recent Supreme Court decisions have solved the patent troll problem and no additional legislation is needed. The real estate sector's experience with growing litigation shows this view to be false.
- Universities and some small inventors claim that litigation reform will chill innovation. Balanced patent reform can both protect true innovation and prevent patent trolls from engaging in abusive litigation.

Data Security

- Consumer advocates claim the House's "Data Security and Breach Notification Act's" definition of personally identifiable information is too narrow, and limiting breach notification to instances where a significant risk of financial harm or identity theft is present is too narrow. However, the bill is targeted to address the most critical instances of potential consumer harm.

Mortgage Choice Act

- Critics of "The Mortgage Choice Act" claim the Qualified Mortgage (QM) 3 percent cap prevents "steering" by discriminating against affiliates. However, other rules, including RESPA, which bans unearned charges and referral fees, already prevent steering.
- Critics also claim that title insurance is too expensive. However, the QM rule's purpose is to ensure that borrowers have the ability to repay the loan they are given; it was never intended to regulate title insurance, which is already regulated at the state level.

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Protecting Commercial Real Estate-Related Tax Provisions

Congressional Action Needed:

Though comprehensive tax reform is not likely to be enacted in 2015, key Members of Congress are still exploring the possibility of agreement on business-only tax reform with the Obama Administration. Lawmakers and their staffs must be educated about the vital role that commercial real estate tax provisions play in the nation's economy. Congress should oppose proposals that would repeal like-kind exchanges or extend depreciable lives of real estate.

Congressional Actions To Date:

- No viable comprehensive tax reform legislation has been introduced, but leaders of the tax committees (House Ways and Means and Senate Finance) have begun laying the groundwork for reform.

What To Tell Your Representatives And Senators:

- **Like-Kind Exchanges:** Since 1921, the Section 1031 provision has allowed investment real estate to be exchanged for property of a like-kind on a tax-deferred basis. Exchanges are essential in investment and commercial real estate transactions; if repealed, fewer redevelopment projects will go forward, resulting in fewer new jobs. The like-kind exchange provision provides liquidity to an illiquid asset. Repealing it would harm economic growth.
- **Leasehold Improvements:** A temporary provision permitting the cost of leasehold improvements to be recovered over 15 years has been in place for many years. Unfortunately, this provision expired at the end of 2014. Unless Congress extends the provision on a retroactive basis, all the costs of leasehold improvements placed in service on or after January 1, 2015, will need to be recovered over a 39-year period. This will make such investments less attractive and harm economic growth.

Issue Background:

While enactment of tax reform has little chance this year, the ideas promoted by House and Senate tax leaders will be on the table when Congress gets serious about moving tax reform. Members of Congress need to understand now that tax proposals that harm real estate are nonstarters.

Like-Kind Exchanges Must Be Retained

- Repealing the like-kind exchange provision would be counterproductive and result in the loss of jobs and economic growth with little gain in revenue.
- Two separate tax reform plans last year (Baucus and Camp) included repeal of Section 1031, and the President's budget this year again proposed a major cutback. Tax reform plans that include repeal of like-kind exchanges weaken the provision by making it more likely Congress will go along when tax reform becomes more serious.

Make Permanent the 15-year Depreciation Period for Leasehold Improvements

- Providing a shorter and more realistic depreciation period for tenant improvements allows for necessary upgrades in technology and property modernization.
- A shorter and more realistic depreciation period assures that nonresidential buildings will be adequately maintained and modernized.
- Shorter depreciation periods better reflect the natural wear and tear on improvements, along with technological obsolescence that can occur more quickly than physical wear and tear.
- Updated and well-maintained properties are more readily bought and sold.

Opposing Viewpoints:

- The like-kind exchange provision is a loophole that needlessly benefits those fortunate enough to own investment property. However, NAR and other real estate advocates point out that repeal or cutback of the provision would harm economic growth and job creation.
- The 15-year depreciation period needs an offset to make up the loss of dollars to the Treasury. However, most believe keeping long-standing tax policies in place should not have to be offset.

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