

# NAR Government Affairs

## Regulatory Relief Issues

(May 23, 2011)

### **Introduction**

Federal regulations impose a regulatory burden on the real estate industry, inhibit economic growth in real estate markets across the country and prevent too many consumers from realizing the American dream of homeownership.

Although there are many regulations that hurt real estate, a serious problem especially in this fragile economic environment, the National Association of REALTORS® (NAR) has identified several rules that, if rescinded or modified, would help markets grow and consumers purchase homes, an economic activity that is at the very heart of the American economy.

The regulations, along with the relevant federal agency, include:

- 1. RESPA/TILA Harmonization—HUD and Consumer Financial Protection Bureau (CFPB)**
- 2. Mortgage Assistance Relief Services (MARS)—FTC and CFPB**
- 3. Qualified Residential Mortgage (QRM) Exemption From Risk Retention Requirements of the Dodd-Frank Act—6 Financial Regulators**
- 4. Restrictions on Condominium Financing—HUD/Federal Housing Administration (FHA)**
- 5. Restrictions on Condominium Financing—Federal Housing Finance Agency (FHFA)**
- 6. Seller Financing—HUD and CFPB**
- 7. The Lead-paint Renovation, Repair and Painting (RRP) Rule—EPA**
- 8. 3% Affiliate Cap in the Dodd-Frank Act—CFPB**
- 9. Home Warranty Guidance Provisions—HUD**
- 10. Seller Concessions—HUD/FHA**
- 11. 10% Dividend Imposed on GSEs—Treasury and FHFA**

### **1. RESPA/TILA Harmonization—HUD and CFPB**

The Dodd-Frank Act requires the harmonization and simplification of the Truth in Lending Statement under TILA and the Good Faith Estimate under RESPA. NAR supports the underlying concept but is working with industry and consumer partners to ensure that the outcome benefits consumers, remains faithful to both statutes, results in true simplification and clarification, and is not an undue burden to the industry. CFPB released draft versions of the new forms on May 18, 2011 and announced a collaborative process for review and modification culminating in a rule proposal in the fall.

NAR Recommendation: NAR encourages the CFPB in its efforts to achieve its stated goal of reviewing, consolidating and simplifying the Truth in Lending Statement and the Good Faith Estimate.

### **2. Mortgage Assistance Relief Services (MARS)—FTC and CFPB**

As the number of homeowners experiencing financial difficulties increases due to the prolonged recession, many look for alternative options to foreclosure including selling their homes. In some cases, the sale is for less than what is owed on the mortgage, normally called a “short sale.” At the end of 2010, the FTC published the Mortgage Assistance Relief Services (MARS) final rule. While the intent of the rule is to protect distressed homeowners from mortgage relief scams that have sprung up during the mortgage crisis, the rule is written so broadly that it also requires real estate brokers and agents to comply with a number of burdensome

disclosures when they negotiate with the lender on the terms of a short sale. This rule adds an unnecessary additional layer of regulatory “red tape” on real estate agents and brokers, acting in their capacity as licensed real estate professionals, who already are regulated and subject to enforcement under individual state licensing law and act as trusted advisors to their clients on both the purchase and sale of their homes. The cost in terms of time and money of more than two million licensed real estate brokers and agents complying with the MARS rule far exceeds any potential consumer benefit.

**NAR Recommendation:** NAR recommends that the FTC (or the CFPB when it assumes responsibility on July 21, 2011) exempt licensed real estate professionals from the MARS rule when performing normal real estate functions in a short sale transaction, including communicating and negotiating with the lender to obtain approval of the short sale.

### **3. Qualified Residential Mortgage (QRM) Exemption From Risk Retention Requirements of the Dodd-Frank Act—6 Financial Regulators**

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) became law on July 21, 2010. Section 941 of the Act requires lenders that securitize mortgage loans to retain 5% of the credit risk unless the mortgage is a qualified residential mortgage or is otherwise exempt (for example, FHA mortgages are also exempt). The regulators have proposed a tight QRM requiring a 20%+ downpayment, truly pristine credit, and very tight qualifying debt-to-income ratios. The downpayment requirement would likely exclude millions of otherwise qualified buyers from obtaining a QRM eligible loan. Congress intended to create a broad QRM exemption from the 5% risk retention requirement, and NAR is working with nearly the entire industry and numerous consumer groups to force regulators to honor the intent of the QRM.

**NAR Recommendation:** NAR wants federal regulators to honor Congressional intent by crafting a QRM exemption that includes a wide variety of traditionally safe, well underwritten products such as 30-, 15-, and 10-year fixed rate loans, 7-1 and 5-1 ARMs, and loans with low downpayments (consistent with current lending practices) with mortgage insurance, where required, and with other features found in low risk loans such as no prepayment penalties or balloon payments.

### **4. Restrictions on Condominium Financing—HUD/FHA**

In 2009, FHA announced new rules for condominium financing. NAR believes these rules are too restrictive and contributing to a shortage of available liquidity for financing condominium purchases. NAR recommended enhancements to the condominium program and reiterated the need to ensure adequate liquidity in the condominium mortgage market. The temporary guidance in Mortgagee Letter 2009-46 A, Temporary Guidance for Condominium Policy, is effective through June 30, 2011.

Condominium loans are performing better than other purchase loans in FHA’s Mortgage Mutual Insurance Fund (MMIF). According to recent Neighborhood Watch data, condominium purchases had a delinquent/claims rate of 1.18 percent, which is more than 50 percent lower than the overall claims rate.

**NAR Recommendation:** NAR, along with a coalition that includes the National Association of Home Builders, the Community Associations Institute, and the Institute for Real Estate Management believes FHA should loosen restrictions on purchase condominiums, which for many families remain the most affordable homeownership option. Mortgagee Letter 2009-46 A, which impacts owner-occupancy requirements, concentration requirements, and pre-sale requirements, should be made permanent. NAR recommends further enhancements to investor ownership requirements and flexibility on delinquent homeowner association fees.

## 5. Restrictions on Condominium Financing—Federal Housing Finance Agency (FHFA)

Fannie Mae and Freddie Mac (the government sponsored enterprises, or GSEs) are under the conservatorship of FHFA. Both of the GSEs have adopted underwriting rules that make it hard to qualify for a loan to purchase a condominium.

NAR Recommendations: FHFA and the GSEs should work together to reassess the condominium underwriting rules to identify ways to make them more flexible and more uniform, without undue risk. For example, Fannie Mae limits the number of mortgages an investor may have to 10, but the Freddie limit is 4. Allowing more investor loans will speed the recovery of the housing market by helping to clear excess inventories of unsold homes.

## 6. Seller Financing—HUD and CFPB

Seller financing plays an important role in financing the sale of real estate, especially when credit is tight. Two federal statutes affect the ability of property owners to sell with seller financing: the Secure and Fair Enforcement for Mortgage Licensing Act (the SAFE Act) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). The SAFE Act requires licensing or registration of loan originators. The Dodd-Frank Act restructures the oversight of financial regulation and includes amendments to the Truth in Lending Act (TILA). Both of these laws will affect seller financing, except where an exemption applies. While the intent of these restrictions on seller financing was to protect consumers from unscrupulous predatory lenders, they have tainted a legitimate tool for purchasing property and hampered most seller financing for residential properties.

NAR Recommendation: NAR recommends that HUD's upcoming final SAFE Act rule exempt seller financing. When the CFPB implements the Dodd-Frank Act, it should exempt seller financing to the maximum extent possible. If total exemption is not possible, much broader exemptions should be adopted, such as an exemption for property owners providing financing for the sale of up to 10 properties in any 12 month period.

## 7. The Lead-paint Renovation, Repair and Painting (RRP) Rule—EPA

The RRP Rule, which took effect April 22, 2010, requires renovation work that disturbs more than six square feet on the interior of a pre-1978 home to follow new lead safe work practices supervised by an EPA-certified renovator and performed by an EPA-certified renovation firm. Poor development and implementation of the RRP Rule has resulted in:

- Inadequate training opportunities for renovators to become certified;
- Inadequate lead test kits producing unnecessary compliance costs;
- ineffective and insufficient consumer awareness programs; and
- Underestimated costs for compliance with the LRRP Rule, particularly for small businesses.

This rule impacts Realtors and property managers through increased training and paperwork costs, and increased liability. The rule has resulted in contractors facing considerable costs to comply with the rule and has hindered job creation in the already depressed construction market. EPA's inability to produce any meaningful consumer education on the LRRP Rule has also resulted in consumers hiring uncertified contractors due to the increased costs of hiring certified renovators. Property owners may also decide to do the renovation work themselves, thereby increasing their exposure to lead hazards.

NAR Recommendation: The residential lead paint RRP rule should be rescinded. If the rule is not rescinded, EPA should restore the opt-out provision that allowed certain categories of homeowners to "opt-out" of the rule.

### **8. 3% Affiliate Cap in the Dodd-Frank Act —CFPB**

The Dodd-Frank Act created a safe harbor from the “ability to repay” requirement that limits the total points and fees collected by lenders and their affiliates to 3 points (3% of the loan amount). This provision was included over NAR’s strenuous and repeated objection. NAR believes there is some regulatory flexibility in this provision including flexibility for smaller loan amounts (“smaller” is not defined).

NAR Recommendation: Congress should restore an exemption for affiliates duly constituted under RESPA. If Congress does not act, CFPB should minimize the impact of the cap when it issues the final rule.

### **9. Home Warranty Guidance Provisions—HUD**

HUD issued guidance on the appropriate circumstances under which brokers and agents can be compensated on a per transaction basis for selling home warranties. An earlier interpretive letter raised concerns for real estate professionals and their partners in the home warranty industry and led to class action lawsuits. The new HUD guidance is unduly restrictive and not supported by the statutory language. The inclusion of home warranties as a settlement service stretches the meaning of RESPA, since home warranties are not required to close a mortgage or a transaction.

NAR Recommendation: Congress or HUD should explicitly remove home warranties from coverage under RESPA. Their quality and the services provided are already covered by other federal and state consumer protection statutes.

### **10. Seller Concessions—HUD/FHA**

FHA currently permits seller concessions up to 6 percent of the purchase price of the home. FHA proposes to reduce permitted seller concessions to 3 percent. NAR believes that reducing permitted seller concessions will be detrimental for the recovery of the real estate market. We believe there is a distinction between seller concessions for existing homes and seller concessions offered with new construction homes. In existing home transactions the seller is more often offering concessions to ensure the sale occurs. In newly constructed homes, the concessions are often offered to offset higher home prices.

NAR Recommendation: HUD should retain the 6% permitted seller concessions.

### **11. 10% Dividend Imposed on GSEs—Treasury and FHFA**

When the GSEs were placed into conservatorship by the FHFA, the Treasury Department and each GSE entered into a contract providing for the Treasury Department to provide capital to each GSE to maintain a positive net worth in exchange for preferred stock that pays a 10% dividend. This is twice the amount charged to banks that received TARP assistance.

NAR Recommendation: The Treasury Department should renegotiate its agreement with each GSE and significantly reduce the current punitive dividend rate, retroactively.