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ABR, CRS, GRI, GREEN, e-PRO, SFR
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GOVERNMENT AFFAIRS
Jerry Giovaniello, Senior Vice President
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Joe Ventrone, Vice President
Jamie Gregory, Deputy Chief Lobbyist

500 New Jersey Avenue, N.W.
Washington, DC 20001-2020
202.383.1194 Fax 202.383.7580
www.realtors.org/governmentaffairs

STATEMENT OF THE

NATIONAL ASSOCIATION OF REALTORS®

SUBMITTED FOR THE RECORD TO THE

UNITED STATES SMALL BUSINESS ADMINISTRATION OFFICE OF THE NATIONAL OMBUDSMAN

HEARING REGARDING

NATIONAL REGULATORY FAIRNESS FOR SMALL BUSINESS

MAY 24, 2011

On behalf of the 1.1 million members of the National Association of REALTORS® (NAR), we thank you for the opportunity to provide comments about the impact federal regulatory enforcement and compliance actions have on real estate agents and the real estate industry. The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

Call for Regulatory Review and Effect of Regulatory Compliance

The National Association of REALTORS® is the leading advocate of the right to own, use, and transfer real property. REALTORS® not only help make the dream of homeownership a reality, but also help build better communities for the millions of homeowners nationwide. In Executive Order 1356, signed on January 18, 2011, President Obama requested that, with regard to regulations, the Federal government: "promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements." To this end, NAR appreciates the Small Business Administration's efforts to reduce the increasingly burdensome effects of regulation. Although there are many regulations that impact real estate, the National Association of REALTORS® (NAR) is concerned that several rules directly impact real estate agents and brokers by imposing significant compliance and enforcement burdens. In some cases, compliance required by these regulations create a disincentive for real estate professionals to provide advisory assistance, leaving the consumer without a valuable and knowledgeable resource from a trusted advisor.

Regulations Impacting REALTORS®

NAR supports the efforts of regulatory agencies to protect consumers however several rules that directly impact real estate agents and brokers impose burdensome compliance requirements that unfairly cover real estate professional working within their licensed capacity:

<u>Mortgage Assistance Relief Services (MARS)—Federal Trade Commission (FTC)</u>

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." While the intent of the recently published MARS 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 lenders on the terms of a short sale. Real estate professionals often provide advice to troubled homeowners but do not hold themselves out as providing MARS services or collect fees for such advice and services, except to the extent it may be part of real estate services covered by the traditional commission paid at closing. This overly broad application of rule adds an unnecessary additional layer of regulatory "red tape" on real estate agents and brokers who already are regulated and subject to enforcement under individual state licensing law while acting in their capacity as licensed real estate professionals. 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 of having real estate professionals covered. NAR recommends that the FTC 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.

Seller Financing—HUD and Consumer Financial Protection Bureau

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 by imposing the requirements for loan originator registration on the sellers. In effect, sellers would be unable to provide the financing, a result we do not believe Congress intended. This type of financing is crucial in certain markets, especially in times of economic stress. Sellers providing financing for their own property are not routinely engaged in lending, yet under the new requirements they are being required to take initial and continuing education courses, submit fingerprints for criminal investigations, demonstrate financial capacity, and otherwise comply with the burdens of the SAFE Act. NAR recommends that HUD's upcoming final SAFE Act rule exempt seller financing. When the Consumer Financial Protection Bureau implements the Dodd-Frank Act, NAR recommends that 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.

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. The residential lead paint RRP rule should be fully 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.

<u>Home Warranty Guidance Provisions—HUD</u>

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. 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.

Conclusion

As one of the largest sectors of the economy, the recovery of the housing market will be a key contributor to a broader economic recovery. Though these are just a few examples, the cumulative effects of additional layers of regulatory compliance are detrimental to both the housing industry and consumers. NAR supports regulatory efforts to protect consumers and curb abuses but the growing regulatory compliance required of real estate professionals will have an adverse impact on the ability of real estate agents to operate in an efficient manner as trusted advisors to their clients on both the purchase and sale of their homes.

Again, we thank you for the opportunity to comment on these issues. If you would like additional information or an opportunity to further discuss our concerns, please contact Jeff Lischer, NAR's Managing Director for Regulatory Policy, at jlischer@realtors.org or 202.383.1117.