ORAL STATEMENT OF WALT MCDONALD, PRESIDENT-ELECT
NATIONAL ASSOCIATION of REALTORS®
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Introduction

Good afternoon Congressman Schrock and members of the Subcommittee. My name is Walt McDonald and I am the 2003 President- elect of THE NATIONAL ASSOCIATION of REALTORS® (NAR). I thank you for the invitation and appreciate the opportunity to be with you today to discuss some of the regulatory burdens facing the real estate industry. NAR represents over 880,000 members involved in all aspects of the residential and commercial real estate industries.

The typical real estate brokerage is small, operating just a single office, serving a local market. In fact my company **(describe company**). Sixty-seven percent of residential brokerages have a sales force of five or fewer agents, while three percent have more than fifty agents.

While there are numerous issues the industry has been struggling with, I will focus my comments on the most pressing ones facing us today in the regulatory arena. Some are current regulations and others are still under regulatory review. Some require immediate attention and others I merely want to bring to your attention for future involvement if necessary.

The Real Estate Settlement Procedures Act (RESPA)

As you know HUD Secretary Martinez issued a proposed rule last year to reform the Real Estate Settlement Procedures Act (RESPA). The goal of reform was to simplify the home buying process and to reduce costs to borrowers. This proposal sets out to do this by introducing 2 new methods for disclosing the cost of obtaining a mortgage to borrowers, an enhanced Good Faith Estimate (GFE) and a Guaranteed Mortgage Package (GMP). Rather than spend too much time explaining these two methods, I will impress upon you the concern our members have regarding one of those options, the GMP, and why small businesses and consumers will be at risk.

While being characterized as an improvement to the process, the GMP is a radical change to RESPA and removes the most basic consumer protection provision in RESPA, Section 8, the prohibition against kickbacks and unearned fees. This proposal could produce unintended consequences for the consumer, the lending and entire settlement service industry. The proposal assumes an increase in competition will result from the packaging scheme and this competition will drive down prices and benefit consumers. However, we believe there is also the possibility that this proposal could increase concentration, reduce transparency, reduce the quality of services, and ultimately lead to higher closing costs.

The GMP limits packaging to lenders, borrowers will shop for a loan based on an interest rate and a “black box” of settlement costs, consumers will no longer have a choice of service providers, the removal of section 8 grants lenders the ability to charge borrowers whatever they want. Under this scenario, there is a likelihood costs will increase for consumers. Only the largest lenders will thrive in this environment. The small to mid size players will not be able to compete.

The GMP if enacted, will undoubtedly alter the lending and settlement services industries. What amounts to broad relief for one segment of the industry (Section 8 safe harbor) without evidence of consumer benefit or continued consumer protections represents a flawed approach to reform and should be revisited.

Telemarketing Sales Rule and the National Do-Not-Call Registry

The Federal Trade Commission (FTC) recently finalized amendments to the Telemarketing Sales Rule (TSR). Key among the changes is the development of a national do-not call registry. As a result consumers will be able to have their name added to the registry and telemarketers prohibited from calling anyone whose name is on the list unless they meet certain criteria.

While it would be hard to find anyone today who would admit they like getting telemarketing calls at home, the changes adopted by the FTC go beyond the purpose of the Telemarketing Sales Act which was to prohibit abusive, deceptive and fraudulent telemarketing acts and practices. Calls made to provide general real estate information to consumers and offers to provide services to consumers who may have a present need for or interest in real estate services are clearly not the targets of the Act. In these types of calls, there is very little opportunity for abuse, deception or fraud.

In fact, under current law, the FTC grants an exemption to the rule for calls made in which the sale is completed until after a face-to-face presentation. Most real estate professionals would meet the conditions of this exemption and argued the exemption should be maintained in this amended rule. Unfortunately the FTC withdrew this exemption for purposes of the National Do Not Call registry. This will affect small businesses that utilize cold calling techniques as an inexpensive marketing tool to farm for clients. Large companies with big budgets will find other ways to advertise their services and/or products.

As you probably know a couple of telemarketing groups as well as the Direct Marketing Association have challenged the FTC's final rule and we encourage Congress to monitor this activity as well as the implementation of the national registry for small business impact.

INS Foreign Visitor Rules

Another issue that is posing an immediate threat to our members in states with resort and retirement communities such as Florida and California is a proposal by the Immigration and Naturalization Service (INS) to reduce the period of time visitors may remain in the U.S. While a well-meaning effort to enhance homeland security and control immigration in the US, these changes can have a devastating effect on the real estate industry. This proposal eliminates the minimum stay of 6 months and replaces it with a length of time that is determined fair and reasonable to complete the purpose of the visit. When the time needed cannot be determined, INS will grant a 30-day period of admission. In addition, the maximum time will be reduced from 1 year to 6 months.

Foreign homeowners purchase property in the U.S. because they know with certainty that they can visit these properties. To restrict visitation, or to create the perception that visitation may be limited will have a negative impact on the ability of the real estate professional to sell these properties. We are very concerned this new proposed rule will negatively impact the travel and tourism industry, the real estate market in resort areas like Florida, and the millions of jobs and small businesses that represent 90% of this sector, while doing little to substantially address concerns about terrorism and visa overstayers. The proposed rule would render the U.S. less attractive to potential investors. We have encouraged the INS to maintain the current rules if the foreigner owns property in the U.S., which the INS already recognizes as a reason for granting an extension in their proposal.

Many Members of Congress have expressed concern to the INS over this proposal for which

we are very appreciative. We understand the INS and DOJ finalized the rule and it is currently pending OMB review.

Isolated Wetlands

The Clean Water Act grants authority to the U.S. Army Corps of Engineers to regulate wetlands. However, in 2001, the US Supreme Court ruled that it does not have authority to regulate isolated wetlands. This was considered a victory for real estate professionals who were otherwise prohibited from developing on property that contains isolated wetlands. However, the current rules do not clearly define what constitutes an isolated wetland. Consequently the Corps has continued to maintain regulatory control over sites that may be true isolated wetlands. The real estate and development industry needs clear rules and definitions on what constitutes an isolated wetland. The current situation significantly hinders development and economic growth opportunities whenever wetlands are found on a property. The Corps and the EPA have recently published an Advanced Notice of Proposed Rulemaking that describes the situation and what issues need to be addressed to clarify isolated wetlands and appropriate Corps jurisdiction.

NAR urges the Subcommittee to encourage the Corps and the EPA to expedite this rulemaking so the real estate and development industries have clear and consistent rules, definitions and guidelines under which to operate.

The Endangered Species Act

Enacted in 1973, the Endangered Species Act (ESA) established a process whereby the Departments of Interior and Commerce can designate a plant, fish or animal as being in danger of extinction and develop a plan for its recovery. The law made it illegal to kill, harm, capture, harass or otherwise "take" an endangered or threatened species. It also directs federal agencies to ensure that their actions (e.g., road construction) do not jeopardize designated species or their habitat.

In recent years, the law has been criticized over the rate of species recovery. Of the more than 1,000 species that have been designated since 1973, only a few have been successfully recovered. Critics also argue that the law is often implemented in an extreme fashion, severely prohibiting property owners from otherwise lawful economic uses of their land.

Increasingly, designation and protection of endangered plants and animals are impacting individual property owners and local economies. For example, protection of the spotted owl in the Pacific Northwest has led to a curtailment of timber harvesting, which has resulted in lost jobs in logging communities and increased timber prices.

NAR encourages Congress to reform the Endangered Species Act in the following ways: (1) the Endangered Species Act should take into account the socio-economic impacts on a community when designating and recovering endangered species; (2) the ESA should encourage species protection, as opposed to restrictions and penalties which force compliance; (3) the ESA should pay compensation to private property owners when they have been wholly or substantially deprived of the economic value of their property by species protection and recovery efforts.

Banks In Real Estate

NAR achieved a major victory early in 2003 in its ongoing battle against the banks. Language inserted into the FY2003 omnibus budget bill will bar federal regulators from allowing banks to engage in property management and real estate brokerage until at least October 1, 2003, the start of the new fiscal year. NAR also continues to push for passage of a bill, which would permanently prohibit federal banks from offering new real estate related services. Legislation

(H.R. 111, and S. 98) has been introduced again this year to prevent the mixing of banking and commerce and already has close to 184 co-sponsors in the House and 10 in the Senate.

This is an issue we have always believed was and should be addressed by Congress and not the regulators. We appreciate the actions of Congress and will continue to seek your help on getting this legislation passed this year.

I thank you for your time and look forward to working with the Subcommittee on these and other issues in the future.

Related Issues: Summaries

RESPA Reform
Telemarketing
INS Foreign Visitor Rules
Isolated Wetlands
The Endangered Species Act
Banks in Real Estate