

NAR Regulatory Report

November 2014

NAR tracks numerous regulatory issues impacting consumers and REALTORS®. This is a highlight of the issues being addressed that have the potential of seeing government action.

*The Regulatory Rating column on the right is an informal way to grade the issue at this point in time regarding the impact of regulatory action on consumers and REALTORS®.

FEDERAL HOUSING POLICY	*Regulatory Rating
<p>FHA Eliminates Prepayment Penalty</p> <ul style="list-style-type: none"> On March 13, 2014, the Department of Housing and Urban Development issued a proposed rule to eliminate Federal Housing Administration (FHA) post-payment interest charges. The National Association of REALTORS® (NAR) is thrilled with this change. NAR has urged FHA and Ginnie Mae to remove this prepayment penalty for more than ten years. The policy change would prohibit mortgagees from charging borrowers interest on their home mortgages for days or weeks after a principal balance pay-off. The proposed rule will align HUD policy with the Consumer Financial Protection Bureau's Final Qualified Mortgage Rule. NAR submitted comments on May 9, 2014. 	(+)
<p>Dual Agency for FHA Pre-Foreclosure Sales (PFS)</p> <ul style="list-style-type: none"> Last summer, HUD put out a Mortgagee Letter that eliminated dual agency for FHA short sales. On July 10, 2014, at NAR's urging, HUD rescinded the provision and issued revised Mortgagee Letter 2014-15. The new guidance will preserve dual agency agreements in FHA short sales, but require PFS properties to be listed for at least 15 calendar days before any offers are evaluated. After the 15-day period, offers may be evaluated as they are received. If multiple offers are received, the listing agent or broker must forward the offer that provides the highest net return to HUD and meets HUD's criteria for bid requirements. 	(+)
<p>Homeowners Armed with Knowledge (HAWK)</p> <ul style="list-style-type: none"> FHA issued a notice soliciting feedback on a proposed four-year, two-phase housing counseling pilot that will provide FHA pricing incentives to first-time homebuyers. NAR provided comments to FHA on June 30, 2014. HAWK is a step in the right direction and NAR hopes that enough homebuyers will be able to take advantage of the program. NAR is concerned about the many qualified homebuyers who need help now, but are being shut out of the market due to record high annual premiums and mortgage insurance for the life of the loan. 	(+)
<p>Condo Proposed Rule</p> <ul style="list-style-type: none"> FHA plans to issue a proposed rule on condos in 2015. FHA has indicated that the rule may reinstate spot loans for condos on a limited basis. NAR has urged HUD to ease the onerous certification process that is making it difficult for properties to gain FHA certification. 	(+)
<p>Federal Housing Administration (FHA) Premium Reduction</p> <ul style="list-style-type: none"> NAR is concerned about the Federal Housing Administration's (FHA) high annual mortgage insurance premiums and mortgage insurance that is required for the life of the loan. Home purchases are becoming increasingly out of reach for many qualified borrowers who rely on FHA financing. 	(-)

LEGEND	(+) PRO	(-) CON	(+/-) PROS & CONS
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<p>Federal Housing Administration (FHA) Premium Reduction (Cont'd)</p> <ul style="list-style-type: none"> • The FY 2014 Actuarial Review shows that FHA's insurance fund has gained \$6 billion over the past year and the current economic net worth has improved to a positive \$4.8 billion. • Now that the Fund is on a path to recovery, NAR urges FHA to lower its annual mortgage insurance premiums and eliminate the requirement that mortgage insurance be held for the life of the loan. This policy change will increase the volume of borrowers acquiring FHA-backed loans and contribute to the solvency of the Fund. • NAR sent a letter to HUD in the beginning of April urging FHA to make these changes. Other groups encouraging a premium reduction include CHLA and MBA. 	(-)
<p>FHA Seller Concessions</p> <ul style="list-style-type: none"> • A final rule on seller concessions has cleared OMB and is anticipated to be released soon. • In February 2012, HUD issued a notice proposing reduced closing costs a seller may pay on behalf of the borrower to the greater of 3 percent or \$6,000. NAR recommends allowing higher seller concession in areas of the country with higher closing costs, and recommends that payments of homeowners association (HOA) fees not be prohibited in the final rule. 	(+/-)
<p>FHA Supplemental Performance Metric</p> <ul style="list-style-type: none"> • FHA released a proposed performance metric to be used in addition to the existing Lender Compare Ratio. This will allow FHA to provide a more comprehensive assessment of lender performance. • NAR submitted comments to FHA on June 5, 2014 supporting the metric. NAR hopes this new tool will encourage lenders to loosen credit overlays and ease the fear of back-end enforcement actions by FHA. 	(+)
<p>VA Allowable Fees</p> <ul style="list-style-type: none"> • The Department of Veterans Affairs announced that it would be issuing a new circular to allow veterans to pay wood destroying insect inspection fees in select south and western states. • NAR has worked closely with VA to find ways to make the veteran loan process less cumbersome. NAR has urged VA to allow buyers to pay certain fees, such as pest inspections. While pest inspection fee payments will not be allowed in all states, this policy change is a step in the right direction. NAR will continue to work with the VA on a larger rule affecting Veterans' ability to negotiate fees and charges. 	(+)
<p>RHS Rural in Character Designations</p> <ul style="list-style-type: none"> • In September 2014, USDA Secretary Vilsack suspended work on determinations and any designations that would make a place ineligible based solely on "rural in character" criteria until the end of September 2015 • NAR send a letter to Vilsack urging RHS to implement a consistent and transparent process across states that allows communities to request re-designation if they disagree with their respective state office's eligibility determinations. 	(+/-)
<p>RHS Loan Application Backlog</p> <ul style="list-style-type: none"> • RHS is experiencing loan processing delays in several states due to budget constraints • RHS has authorized overtime for staff to tackle backlogs and will allow offices to work across state lines to help each other to manage workflow. 	(+/-)
<p>Private Transfer Fees</p> <ul style="list-style-type: none"> • On April 23, 2014, NAR signed onto a coalition letter urging FHA to harmonize its regulatory treatment of transfer fee covenants with the Federal Housing Finance Agency's (FHFA) policy. • FHFA's final rule on transfer fee covenants establishes a clear, national standard to protect homeowners from equity-stripping private transfer fees while preserving the preeminence of state and local governments over land use standards. Fees that increase the costs of housing can disenfranchise those who wish to obtain the American dream; however, fees that provide a direct benefit to homeowners and improve the property are legitimate and should be permitted. 	(+/-)

<p>implications for mortgage credit availability. Input must be received no later than September 8, 2014.</p> <ul style="list-style-type: none"> • Following up on a September 2013 letter, NAR sent a letter on September 8, 2014 to FHFA opposing a proposed increase in fees charged to lenders for loan sold to the GSEs: <ul style="list-style-type: none"> ▪ Opposes policies that raise fees so high that it directly impacts the cost and, ultimately, the eligibility of many homebuyers. ▪ Opposes policies that raise fees so high that may make many homebuyers ineligible for loans. ▪ Opposes FHFA policies that will result in billions of dollars of profits for the Enterprises at the expense of home buying taxpayers. Guarantee fees should protect taxpayers against losses, not increase profits. • Raising the costs of homeownership through increased g-fees and high LLPAs will not bring back the PLS market more quickly. Instead, it is likely to simply drive borrowers either to FHA or out of the market entirely. • An analysis of just what it would take to achieve bringing private capital back is crucial, especially if the policies do not achieve the intended and possibly unattainable goal of increasing private sector lending in the mortgage market in the current environment. 	
<p>Federal Housing Finance Agency (FHFA) – Conforming loan limits</p> <ul style="list-style-type: none"> • In a speech in May 2014, FHFA Director Mel Watt announced that as part of an effort to make credit more available to individuals, he would direct the Enterprises to leave the loan limits at the current floor of \$417,000 and high cost cap \$625,500. • Based on regulatory comment deadline, it does not appear there will be a limit reduction in 2014. • FHFA published a request for information on reducing the loan limit floor from \$417,000 to \$400,000 and high cost cap from \$625,500 to \$600,000. NAR provided comments to NAR on March 20, 2014: <ul style="list-style-type: none"> ▪ In the Housing and Economic Recovery Act of 2008 (HERA), Congress made ensuring the Enterprises serve as a reliable source of liquidity and funding for housing finance and community investment a principal duty of the Director and therefore a policy to reduce the loan limits is contrary to this principal. ▪ Private capital has still not returned in any significant way. Even those who may be able to qualify for private financing would not have access to a 30 year mortgage since banks are hesitant to offer the loans to any but the most affluent borrowers. ▪ While Congress granted FHFA, as conservator, broad authority as part of HERA, we believe that it was to be exercised within the law granting that authority which made the policy not to reduce loan limits permanent in section 1124. • If pursuing a reduction in loan limits is an important policy objective, FHFA should not override congressional policy that loan limits not be reduced and alternatively, request that Congress address the issue again. 	(+)
<p>Federal Housing Finance Agency (FHFA) – Private mortgage insurer capital requirements</p> <ul style="list-style-type: none"> • FHFA released proposed capital requirements for mortgage insurance companies that provide credit protection coverage for low down payment loans sold and guaranteed by the GSEs. Much like other capital requirements rules, increased mortgage costs are likely to come with the new requirements. In being mindful of the impact these rules will have on borrowers, and ultimately, our members' businesses, we have drafted brief comments focused on three points: <ul style="list-style-type: none"> ▪ FHFA should ensure that the requirements have minimal impact on creditworthy borrowers and analyze the likelihood of mortgage insurance premium increases on insured loans. ▪ Should private investors continue to expect MI companies to achieve substantial return on equity, FHFA should monitor the market impact on mortgage insurance rates and monthly mortgage payments. ▪ The PMIERS asset and liquidity requirements should be based on the performance of traditionally underwritten mortgage products and normal housing economics, not solely on economics that were dictated by the performance of risky mortgages that led to dramatic swings in prices during the previous decades housing boom. 	(+/-)

<p>The Treasury Department published a request for Public Input on Development of Responsible Private Label Securities (PLS) Market.</p> <ul style="list-style-type: none"> • NAR believes that the federal government must clearly, and explicitly, offer a guarantee of mortgage securities. • Full privatization is not an effective option for a secondary market because private firms' business strategies will focus on optimizing their revenues and profits'; • Finalizing the QRM rule will provide the certainty of a regulatory framework for securitization; • NAR is generally supportive of the Consumer Finance Protection Bureau's (CFPB's) Qualified Mortgage (QM) rule and believe this standard should be used to define the Qualified Residential Mortgage (QRM) in any future housing finance system; • Private industry participants must address the lack of trust in the PLS space as it still remains and is hard to quantify as a cost that can be made up with arbitrary fee increases at the GSEs; • A uniform securitization platform should be required for issuers of government guaranteed securities and be open to use by issuers of private label securities. Transparency and uniformity in the mortgage securities market will go a long way to minimizing conflict and confusion and promoting stability. 	<p>(+)</p>
<p>ENVIRONMENTAL POLICY</p>	
<p>FEMA's Implementation of New Changes to the National Flood Insurance Program</p> <ul style="list-style-type: none"> • In March, the Grimm-Waters Homeowners Flood Insurance Affordability Act was signed into law • This bill slows down premium increases for flood insurance, making flood insurance more affordable for homeowners. • It also puts the NFIP on a gradual glide path to fiscal solvency and actuarial responsibility. • However, to be effective, FEMA must begin to implement the provisions immediately, otherwise homeowners will still facing dramatic increases in their flood insurance in the months ahead. • NAR is pressing FEMA to implement quickly, appointed a PAG to assess and review all of these issues • In addition NAR is encouraging FEMA to quickly appoint a Flood Insurance Advocate, who will assist consumers and property owners with concerns and questions about flood insurance. • FEMA has already implemented several critical provisions of the GW14, including the "assumability" provision and new rate tables. Beginning October 1, 2014, insurance companies will begin to issue refunds for homeowners who have overpaid for their Flood Insurance Policy 	<p>(+)</p>
<p>Waters of the U.S. – Clean Water Act</p> <ul style="list-style-type: none"> • The Clean Water Act (CWA) regulates "Navigable" waters – EPA/Corps want to regulate more waters – all waters! • Proposed regulation was published in March; comments are due on October 20. • Includes many waters now excluded from the CWA. • EPA's SAB Report – Many gradations of "connection" – EPA has chosen to ignore this report. • EPA's cost benefit analysis is very weak and dramatically underestimates the economic impact on many industry sectors. • NAR is working with Coalition of Regulated Stakeholders. • NAR is very concerned and will oppose this rulemaking. 	<p>(-)</p>
<p>Lead Paint Hazards in Renovating and Remodeling Commercial Buildings</p> <ul style="list-style-type: none"> • EPA has recently announced that a proposed rule in this area has been delayed until the Agency can collect additional information and data, and a revised timeline for the regulatory process can be developed. At this time, EPA has not issued any information as to when this process will resume. • NAR has been invited to participate in a panel, sponsored by the EPA and the Small Business Administration that will assess the economic impacts of this type of proposed rulemaking on small businesses. This panel will begin meeting in late 2014 and be finalized by the summer of 2015 • EPA is in the process of proposing new rules on renovation, repair and painting activities in commercial buildings that would address lead paint hazards. 	<p>(+/-)</p>

<ul style="list-style-type: none"> • The purpose of these rules is to control hazards stemming from lead paint in commercial buildings when these RRP activities are conducted. • NAR, as part of a broad coalition of regulated stakeholders, submitted comments on a recent EPA document, which described how the EPA would determine if these activities created lead hazards in commercial buildings. • The comments focused on the many data gaps in the science and flawed cost-benefit analysis. • EPA is tentatively scheduled to issue proposed regulations in late 2015, if they determine that lead hazards are created by these activities in commercial buildings. • The coalition met with the EPA and OIRA to discuss challenges to the EPA’s proposed regulation • NAR joined on to two coalition letters and sent one individual letters to the EPA in response to the proposed rules 	
COMMERCIAL	
<p>FAA Building Height Restriction Proposal</p> <ul style="list-style-type: none"> • Current FAA rules, along with local zoning ordinances, restrict building height near airports. • New proposal from FAA would limit building height near airports. • The proposed rule does not follow the required administrative procedures, and the rule would have a negative impact on buildings within the defined zone near airports. • NAR is working with a coalition to oppose both the rule and the way the FAA is introducing it. • The coalition submitted its comments to the FAA and will continue to monitor the issue 	(–)
<p>Unmanned Aerial Vehicles (Drones)</p> <ul style="list-style-type: none"> • Unmanned aerial vehicles (UAVs) are currently being used for a variety of uses by law enforcement, scientists, national security and hobbyists. • Real estate professionals have expressed an interest in using them to take pictures and videos of property for marketing purposes to sell the property. • Current policy under the Federal Aviation Administration (FAA) prohibits the use of UAVs for any commercial purpose, such taking pictures or creating videos to sell property. • In 2012, Congress directed the FAA to develop a regulatory framework by 2015 that would integrate UAVs into the national airspace, while ensuring safety, privacy and national security. • The FAA is on track to develop these regulations within the statutory timeframe. Current NAR policy is • NAR submitted comments in response to an FAA statement about the regulations to ensure that safety, privacy and national security concerns are addressed, but also making sure that the rules are not overly cumbersome, burdensome and expensive for REALTORS® to use and market the property if they choose to do so. • NAR has been invited by the FAA to participate in an UAV use rules working group • NAR has met with FAA officials and NAR staff is now working with members to determine next steps. • The NAR Risk Management Committee adopted a member policy at the November 2014 NAR Board of Directors Meeting. 	(+/-)
<p>Lease Accounting/FASB 13</p> <ul style="list-style-type: none"> • The current method for accounting for leases in a business balance sheet is up for review by the Financial Accounting Standards Board (FASB), which is the designated, private sector organization for standards set in accounting. The FASB is overseen by the SEC. • NAR is working with a coalition that includes industry partners such as the Real Estate Roundtable and NAIOP to work with the SEC and the relevant Members of Congress on the issue. • A new proposal would have caused significant changes to the way companies account for leases, but it appears that the FASB will retain the status quo accounting methods. • A final rule from the FASB will be released in late 2014 or early 2015. 	(+)

APPRAISAL	
<p>Appraisal Management Companies (AMC) Proposed Rule</p> <ul style="list-style-type: none"> • Six federal regulatory agencies has issued a proposed rule on minimum state registration requirements for Appraisal Management Companies • Participating States must require that AMCs: (1) Register with and be supervised by the State appraiser certifying and licensing agency in the State or States in which such company operates; (2) verify that only State-certified or State-licensed appraisers are used for Federally related transactions; (3) require that appraisals comply with the Uniform Standards of Professional Appraisal Practice (USPAP); and (4) require that appraisals are conducted in accordance with the appraisal independence standards under the Truth in Lending Act (TILA). • NAR Submitted comments on June 6, 2014. 	(+/-)
BUSINESS	
<p>Affordable Care Act</p> <ul style="list-style-type: none"> • Final IRS regulations issued under the Affordable Care Act (ACA) recognize “qualified real estate agents” as “non-employees” for purposes of the ACA employer mandate. • The ACA employer mandate requires employers with 50 or more employees to offer health insurance benefits to employees working 30 hours or more, or pay a penalty. • When first proposed, the draft regulation was silent on how firms were to treat independent contractors when determining how many full-time equivalent employees it had. • This left some doubt as to whether brokerages might have to count agents working as independent contractors as employee for purposes of the ACA. • The need for clarification was first raised by NAR in a comment letter sent to the IRS in March 2013. • As a result, brokerage firms that contract the services of “qualified real estate agents” will not have to be concerned whether such agents might be construed as employees under a common law test. 	(+)
<p>Net Neutrality</p> <ul style="list-style-type: none"> • On May 15, the Federal Communications Commission (FCC) voted 3-2 to open for public comment new rules that would abandon the policy of net neutrality and allow internet service providers (ISP) to charge content providers for faster delivery speeds. • Some opponents of the plan argue that allowing some content to be sent along a fast lane would essentially discriminate against other content. • NAR is concerned with this “fast lanes” proposal and is working to make sure that the FCC’s final rule will treat all content on the Internet the same. 	(-)
<p>Big Data</p> <ul style="list-style-type: none"> • The U.S. Commerce Department’s National Telecommunications and Information Administration (NTIA) is seeking public comment on how developments related to “big data” impact consumer privacy. • “Big data” is defined as “large, diverse, complex, longitudinal, and/or distributed datasets generated from instruments, sensors, Internet transactions, email, video, click streams, and/or all other digital sources available today and in the future.” • Specifically NTIA is: <ul style="list-style-type: none"> ▪ Seeking opinions on how to reconcile privacy principles with the benefits of data collection. ▪ Asking whether data brokers pose a significant risk and, if so, whether legislation is needed. 	(+/-)

NAR Government Affairs

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