

NAR Regulatory Report

April 2015

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"> • In August 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 prohibits mortgagees from charging borrowers interest on their home mortgages for days or weeks after a principal balance pay-off. • The final rule went into effect on January 21, 2015 	(+)
<p>Dual Agency for FHA Pre-Foreclosure Sales (PFS)</p> <ul style="list-style-type: none"> • In the summer of 2013, 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 On July 10, 2014, at NAR's urging, HUD rescinded the provision and issued revised Mortgagee Letter 2014-15.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"> • In June 2014, NAR provided comments to FHA in support of on HAWK, a proposed four-year, two-phase housing counseling pilot that will provide FHA pricing incentives to first-time homebuyers. • Unfortunately, the omnibus spending measure explicitly prohibits implementation funding for HAWK, so it will not be implemented in 2015. 	(+)
<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"> • In January 2015, President Obama announced that FHA would reduce FHA annual mortgage insurance premiums (MIP) by 50 basis points. This reduction is a victory for the National Association of REALTORS® whose members have called for lower fees on FHA loans since early 2014. NAR estimates that this could result in 90,000 to 140,000 new home purchases. 	(-)

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, FHA is able to lower its annual mortgage insurance premiums. 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 as well as a coalition letter in early January urging FHA to make these changes. Other groups encouraging a premium reduction include CHLA and MBA. 	<p>(-)</p>
<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>(+/-)</p>
<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>(+)</p>
<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>(+)</p>
<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>(+/-)</p>
<p>RHS Proposed QM Rule</p> <ul style="list-style-type: none"> • RHS issued a proposed rule to make RHS guaranteed loans QM loans if they meet requirements set forth in CFPB QM rule • Offers principal reduction options after the lender has exhausted all traditional loss mitigation options • Seeks to expand its lender indemnification to be more in line with FHA guidelines 	<p>(+)</p>
<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>(+/-)</p>

<p>FHA Handbook</p> <ul style="list-style-type: none"> FHA is in the process of consolidating more than 900 mortgagee letters and other policy guidance into a single document for all Single Family program. The new Handbook will become effective for case numbers assigned on or after June 15, 2015. NAR has provided comments to FHA on sections including Application through Endorsement, Appraisals, 203(k) and Servicing. 	<p>(+)</p>
<p>CONVENTIONAL FINANCING – DODD FRANK LAW</p>	
<p>QM/QRM/3% Cap</p> <ul style="list-style-type: none"> Several rules have been proposed or finalized. QM/Ability to Repay – dodged a bullet. <ul style="list-style-type: none"> Most Fannie, Freddie, FHA, VA, RHS loans have a safe harbor. Loans with 43% DTI or less also get safe harbor. QRM rule was finalized in October 2014. <ul style="list-style-type: none"> Eliminates 20% downpayment and tight DTI ratios. Tracks broad QM. Exempts FHA and GSEs from risk retention. 3% Cap on fees and points for QM. <ul style="list-style-type: none"> Things counted towards the cap: title charges, escrow for taxes and insurance, mortgage broker compensation, GSE LLPAs. 	<p>(+)</p> <p>(+)</p> <p>(-)</p>
<p>GSE Affordable Housing Goals</p> <ul style="list-style-type: none"> The Federal Housing Finance Agency (FHFA) issued a proposed rule to establish housing goals for the GSEs for 2015-2017. On October 28, 2014, NAR submitted comments: <ul style="list-style-type: none"> NAR supports, ambitious, but reasonable, affordable housing goals and flexibility for the Enterprises to meet those goals. FHFA should examine policies at the GSEs and their lender customers that are contributing to reduced market forecasts. NAR supports a dual test wherein a GSE is considered to be in compliance if its performance meets or exceeds either (1) the share of the actual market that qualifies for the particular goal, or (2) the benchmark level for that goal. NAR supports the dual test for goals compliance since market conditions can erode and make achieving the goals with sustainable mortgages impossible. 	<p>(+/-)</p>
<p>RESPA/TILA Harmonization</p> <ul style="list-style-type: none"> CFPB listened to NAR in producing the new RESPA/TILA Rule which goes into effect in August 2015 NAR had argued for nearly three years that CFPB should focus on: <ul style="list-style-type: none"> Harmonizing the upfront disclosures, the Good Faith Estimate (GFE) and the Truth in Lending disclosure (TIL), and Not fundamentally change the settlement process by implementing a broad 3 day waiting period when there are changes to the closing disclosure CFPB essentially maintained the TILA aspects of the three day waiting period- requiring a new disclosure and tolling period if the APR changed by one eighth of a point, if the loan type changes, or other significant changes to the loan itself like if a prepayment penalty is added. This is a major change from what was proposed. However there is potential for issues with closings nonetheless and NAR is working with CFPB and industry to try to address these issues and has proposed that CFPB could “beta test” the rule from August 1 to January 1 and use the time to make adjustments. NAR is also working to educate members on these changes. 	<p>(+/-)</p>

<p>Federal Housing Finance Agency (FHFA) - Guarantee and loan level pricing fees</p> <ul style="list-style-type: none"> • In June 2014, FHFA announced that it was requesting input on the guarantee fees (g-fees) that Fannie Mae and Freddie Mac charge lenders. FHFA’s Request for Input includes questions related to g-fee policy and implementation regarding the optimum level of g-fees required to protect taxpayers and implications for mortgage credit availability. Input must be received no later than September 8, 2014. • 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>(-)</p>
<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>(+)</p>
<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 	<p>(+/-)</p>

<p>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>	
<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, 2014 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. • FEMA has already implemented several critical provisions of the GW14, including the “assumability” provision, and new rate tables and refunds for homeowners who overpaid for flood insurance. • Additional provisions will be implemented on April 1, 2015, including the gradual phase-out of subsidized rates and the application of a surcharge on policies. • FEMA has appointed an Interim Flood Insurance Advocate, who will assist consumers and property owners with concerns and questions about flood insurance. However, NAR is encouraging FEMA to expand these responsibilities so the Advocate has teeth and can really help property owners reduce their flood insurance costs. 	<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 includes many waters now excluded from the CWA – this will result in more bureaucracy, time-consuming and expensive permits and less development. • Proposed regulation was published in March; comments were due on Nov. 14, 2014. Over 800,000 comments were received and will need to be reviewed before the rule is finalized. • EPA’s cost benefit analysis is very weak and dramatically underestimates the economic EPA’s cost benefit analysis is very weak and dramatically underestimates the economic impact on many industry sectors. • NAR submitted extensive comments opposing the rule as part of an on-going, broad-based coalition of regulated stakeholders. NAR also helped NAR members to submit individual comments on how this rule would impact their business. • Rule is scheduled to be finalized in April, 2015. NAR, as part of the Coalition, is also working on a legislative strategy that would strip EPA’s funding to implement this regulation. 	<p>(-)</p>
<p>Lead Paint Hazards in Renovating and Remodeling Commercial Buildings</p> <ul style="list-style-type: none"> • EPA is in the process of proposing new rules on renovation, repair and painting activities in commercial buildings that would address lead paint hazards. The purpose of these rules is to control hazards 	<p>(+/-)</p>

<p>stemming from lead paint in commercial buildings when these RRP activities are conducted.</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. • In the interim, NAR will participate in a panel that will assess the economic impacts of this proposed rulemaking on small businesses. This panel will begin meeting in late 2014 and be finalized by the summer of 2015 • NAR, as part of a broad coalition of regulated stakeholders, has submitted comments on various EPA documents and approaches related to this issue. In general the comments have focused on the many data gaps in the science and flawed cost-benefit analysis. 	
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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. A 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.
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<p>Unmanned Aerial Vehicles (Drones)</p> <ul style="list-style-type: none"> • 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. • 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. • In February 2015, the FAA released proposed rules governing the commercial use of UAVs. NAR will submit a comment letter. • In February 2015, the National Telecommunications Information Administration (NTIA) released a call for public comment regarding privacy challenges with the commercial use of UAVs. NAR will submit a comment letter.

<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 final rule from the FASB will be released in summer 2015.
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<p>Crowdfunding</p> <ul style="list-style-type: none"> • The Jumpstart Our Business Startups (JOBS) Act of 2012 charged the Securities and Exchange Commission (SEC) with writing regulation that would permit crowdfunding, which is the practice of funding a project or venture by raising many small amounts of money from a large number of people, typically via the Internet. • The SEC put forth final rules for Title IV of the JOBS Act, known as Regulation A+, which will allow capital to be raised up to \$50 million. • The rules will become effective 60 days after publication in the Federal Register, sometime in June 2015.
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Basel III	
<ul style="list-style-type: none"> • In March 2015 the Basel Committee on Banking Supervision released a Consultative Document addressing Revisions to the Standardised Approach for Credit Risk • The proposal included several changes that could harm banking and especially commercial lending. • NAR signed onto a comment letter with several industry partners criticizing the proposal and calling on the authors to rethink the proposal 	
APPRAISAL	
Appraisal Management Companies (AMC) Proposed Rule	(+/-)
<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. 	
Fannie Mae Collateral Underwriter (CU)	(+/-)
<ul style="list-style-type: none"> • At the end of January 2015, Fannie Mae Collateral Underwriter (CU), an appraisal risk-assessment tool became available to lenders. • NAR members are concerned that this could add time to the appraisal process and force appraisers to use lower-value, lower-quality comps. Fannie Mae, however, hopes that the tool will be superior to current lender check-lists and engagement letters and feels it will prevent some of the call-backs appraisers receive from underwriters for additional or lower comps. 	
BUSINESS	
Affordable Care Act	(+)
<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. 	(+)
Net Neutrality	(-)
<ul style="list-style-type: none"> • On May 15, 2014 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. • On February 26, 2015 the FCC issued its Open Internet Order. The order implements strong net neutrality protections that prohibit discrimination against, blocking, throttling or paid prioritization of legal content by Internet Service Providers on wired and wireless networks. • Several ISPs and their trade associations have filed lawsuits to challenge the FCC’s authority to issue this order. As part of the suits, they are seeking a stay of the implementation of the Order. The court has not yet ruled on this request. • Congress has weighed in with some Republican’s supporting a Resolution of Disapproval and other 	

<p>members considering legislation to address the open internet—but nothing has gained momentum at this point.</p>	
<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. 	<p>(+/-)</p>

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