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September 21, 2011

The Honorable Spencer Bachus
Chairman
Committee on Financial Services
U.S. House of Representatives
2246 Rayburn House Office Building
Washington, DC 20515

The Honorable Barney Frank
Ranking Member
Committee on Financial Services
U.S. House of Representatives
2252 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Bachus and Ranking Member Frank:

On behalf of the 1.1 million members of the National Association of REALTORS® (NAR), I urge you to cosponsor H.R. 2446, The RESPA Home Warranty Clarification Act of 2011. This legislation, introduced by Representatives Judy Biggert (R-IL) and Lacy Clay (D-MO), clarifies that home warranties fall outside the scope of the Real Estate Settlement Procedures Act (RESPA).

NAR believes that the provision of a home warranty policy is not a settlement service subject to RESPA. After nearly 20 years of RESPA enforcement keeping with this view, the regulators now have chosen to interpret the statute differently, an action that has resulted in numerous lawsuits that have severely impacted long-standing business practices. In the original enabling legislation from 1974, Congress defined "settlement services" by providing a list of examples of such services. Home warranty services are not among the services listed. The fact that a particular service is not included among those enumerated by Congress indicates that Congress did not intend for RESPA to govern that type of service. Indeed, each item in the statutory definition of settlement services shares a common purpose, namely that each is necessary for the closing of the transaction. Home warranties, however, are different from services necessary to the closing because (1) they are not required to close the transaction, and (2) a homeowner can purchase such a policy independent of a real estate transaction at any time. That they are most often paid for at closing is simply a matter of convenience and ensuring the warranty covers the property from the moment the buyer takes possession.

The lack of clarity on this matter has had a chilling effect on the business practices of real estate brokerages and agents across the country, as many are no longer able to do business with home warranty companies as they do not want to risk being in violation of the statute. The result could have been prevented had the regulators rightly clarified that home warranties fall outside the scope of RESPA. Therefore we are asking that Congress take action to address this matter and remove them from the purview of RESPA. It is important to note that warranties would still be regulated under federal and state consumer protection laws.

The National Association of REALTORS® is happy to provide any further information regarding home warranties, RESPA and their impact on the residential real estate business and looks forward to working with you to address the need for clarification of this issue.

Sincerely,

Ron Phipps, ABR, CRS, GRI, GREEN, e-PRO, SFR
2011 President, National Association of REALTORS®



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cc: Members, House Committee on Financial Services