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November 23, 2015

The Honorable Mike Rounds
United States Senate
502 Hart Senate Office Building
Washington, DC 20510

Dear Senator Rounds:

On behalf of the 1.1 million members of the National Association of REALTORS®, thank you for leading the effort to assess the impact of federal regulations on businesses across the country and identify ways to streamline or delete individual regulations entirely. While some regulations are important for protecting consumers and health, safety and the environment, the current regulatory process has become onerous, time-consuming and expensive.

Federal regulations cost the American economy billions of dollars every year according to studies by the National Association of Manufacturers and the U.S. Chamber of Commerce (for example, see “The Cost of Federal Regulation”, Crain and Crain). Small business, such as real estate agents and brokers, are especially burdened by perpetually expanding regulations — one of the key sectors that is needed to drive job creation and economic growth.

In recent years, a cascade of regulations has impacted even more Americans and the fragile and embattled U.S. economy. Over the last decade alone, more than 37,000 federal regulations have been imposed on the American people and their businesses.

NAR has identified the following rules and regulations as ones that impact the real estate sector, impose significant costs on economic development and require either deletion or significant reform so as not to impede the American dream of homeownership.

Please note that this is a brief snapshot of the issues of concern to the real estate sector. NAR staff would be happy to meet with your staff to discuss these issues in greater detail and provide additional information if necessary.

1. The “Waters of the United States” regulation should be withdrawn.

This rule finalized by the U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers (the agencies) should concern Congress. The agencies’ stated purpose is to provide clarity and certainty regarding federal jurisdiction over water. Instead, the final rule uses undefined terms and new definitions that create confusion and uncertainty, while providing the agencies with almost unlimited authority to regulate at their discretion.

The rule will adversely impact the nation’s construction, real estate, mining, agriculture, transportation, forestry, manufacturing and energy sectors as well as wildlife conservation and recreation. Increased permitting requirements and costs, potential for delayed decisions and third party litigation, will burden the economy and raise consumer costs without advancing the objectives of the Clean Water Act.



EPA asserts that the proposed rule will not have significant economic impacts, but EPA underestimates permitting and compliance costs, the impacts on state and local programs, and the chilling effect on economic activity that the rule will cause. The agencies promise they will fix many of the concerns identified by stakeholders during the public comment period, even as EPA has repeatedly asserted those concerns are spurious.

NAR supports legislation now in Congress that would require the EPA to withdraw this rule and start over. In addition, EPA should streamline the permit process and provide guidance on the full list of activities that don't trigger the need for a permit.

2. FHA eases rules on financing for condos but more reforms are needed.

Condominiums continue to be the most affordable homeownership option for many first time buyers, small families, single people, and older Americans. NAR believes that loosening the Federal Housing Administration's (FHA) condominium rules will allow more homeowners to sell their units, and homebuyers will have more opportunities to buy affordable properties.

While the FHA has loosened its condominium approval requirements recently, many properties continue to struggle to meet overly stringent criteria and the majority of condo properties are being denied. As a result, buyers and sellers of condominiums may find the property is ineligible for FHA financing, thereby restricting the pool of buyers for that property.

The challenge for condo purchasers in the past several years has been finding a condo project that is certified by FHA as qualified for mortgages on individual units. Because of the restrictions, the number of certified projects has plunged, with 20 percent of previously eligible condo communities now open to FHA loans. Through August of this year, condos represented 2.8 percent of total FHA loan volume.

The FHA has responded to NAR concerns related to the condo financing issues by simplifying some of its condo certification procedures, easing restrictions on condo association insurance and changing its requirements on non-occupant residency in projects.

While NAR is supportive of these changes, there is much more the FHA can do to encourage the purchase of condos. Some of these additional reforms could include:

- **Spot loans** – The FHA should allow permitted lenders to make loans on single units in non-certified communities with certain restrictions. FHA's announcement on November 12th did not address spot loans.
- **Transfer fee restrictions** – Some condo associations collect a small fee whenever a unit sells. FHA objects to these as restrictions on the free transferability of properties and refuses to approve them. As a consequence, some large associations are no longer eligible for FHA financing. The new changes are silent on the subject.
- **Owner occupancy** – FHA should eliminate the 50 percent owner occupancy ratio requirement. Fannie Mae and Freddie Mac do not have an owner occupancy requirement. FHA's high ratio requirement greatly limits the number of condominium buildings who are eligible for FHA certification and potential homebuyers are forced to look at properties in locations or communities that don't meet their needs.

3. CFPB Needs to clarify rules on real estate transactions.

Regulatory enforcement of the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) has passed from the Federal Reserve and the Department of Housing and Urban Development to the Consumer Financial Protection Bureau (CFPB). In putting forth new regulations to integrate TILA and RESPA for purposes of mortgage closing rules and disclosures, the CFPB has created several areas of ambiguity that would benefit from official clarification.

For example, appraisal fees for properties being purchased can often vary widely depending on special circumstances of the property. The new regulations seem to require lenders to prohibit any adjustment from the initial estimate of an appraisal fee for a given property. CFPB needs to clarify what circumstances would permit an adjustment in the originally quoted fee. CFPB should also provide more information and flexibility on "bona fide financial emergency" and waivers that will allow home buyers to waive their three-day period for reviewing a Closing Disclosure.

Similarly, under its broader RESPA enforcement, CFPB has yet to clarify ways in which marketing services agreements (MSA's) between and among real estate service providers qualify as legal agreements.

4. The EPA should follow the statutory process for moving forward with a proposal to regulate renovation, repair and painting activities in commercial buildings.

The EPA is seeking to regulate renovation, repair and painting (RRP) activities in commercial buildings, if these activities can be shown to create lead-based paint hazards in children and adults. However, there are significant challenges and concerns that EPA must acknowledge and address before moving forward with a proposed rule. This proposal would impact all commercial buildings, subjecting them to burdensome and costly regulations that would have limited value in reducing risk of exposure to lead paint hazards.

EPA acknowledges that, compared to target housing and child occupied facilities, public and commercial buildings have: (1) much greater variety in potential exposure times, (2) wide diversity in size, shape, and room configurations, (3) short-term RRP activities that vary in type, and (4) differing use and occupancy patterns and cleaning frequencies.

The EPA's proposal sets forth a good understanding of the important differences between commercial building RRP activities and those in other types of properties. But EPA's plan to undertake hazard identification and evaluation at the same time along with other "steps" in the process – or skip certain steps altogether – is misguided. Further, the proposal's scientific and technical aspects are untested and significant research gaps exist, as admitted by the EPA's own Science Advisory Board.

Congress should ensure that the EPA follows the prescribed statutory process, by identifying whether a hazard exists, subjecting its proposal methodology to peer review, and only after completion of these essential steps move to develop proposed regulations to address any hazards that have been found to exist.

Thank you again for your leadership on reducing costly and burdensome regulations on the real estate sector. NAR stands ready to work with you to move forward legislation that eliminate or reform these rules so that small businesses and the economy can thrive unimpeded by unnecessary regulations.

Sincerely,



Tom Salomone
2016 President, National Association of REALTORS®