NATIONAL ASSOCIATION OF REALTORS®

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September 18, 2020

The Honorable James Comer
Ranking Member
House Oversight and Government Reform Committee
1037 Longworth House Office Building
Washington, DC 20515

Dear Ranking Member Comer:

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), thank you for the opportunity to provide our perspectives on regulatory reform and how administrative actions impact consumers and the real estate industry.

Regulations at the federal level can either help or hinder efforts to create vibrant real estate markets. To that end, NAR members are actively engaged in the federal regulatory process made available through the *Administrative Procedures Act* (APA), providing critical feedback on formal and informal rulemakings and guidance impacting real estate businesses. Stakeholder input can prevent poorly designed regulations from stifling innovation, growth, and job creation; wasting limited resources; undermining sustainable development; or eroding the public's confidence in the government. If done correctly, smart and innovative regulatory approaches can create the right environment for growth by fairly enforcing standards and allowing for flexibility when needed.

Sensible, evidence-based regulations that respect the fundamental role of free-markets can provide vital public benefits – such as protecting the environment, public health and safety, civil rights, consumers, and investors. Likewise, periodically reviewing existing regulations and eliminating those rules that are outdated, ineffective, insufficient, or excessively burdensome, will streamline and enhance compliance, ensuring modifications match what has been learned through the assessment.

NAR offers the following general principles to ensure regulations and guidance are truly efficient, cost effective, and have an actual impact on the problems they are intended to solve. These principles, if integrated into the development, review, and assessment process, will help create only tailored, essential regulations and uncover those that do more harm than good, preventing unintended consequences that impair economic development and job growth.

1. Comprehensive Cost/Benefit Analysis

Any creation or review of regulations must collect data on how much the rule will and has already cost the private sector to implement, as well as the purported financial and economic benefits. Unreasonable compliance burdens in the form of capital investments, labor, and on-going paperwork can stifle innovation, and reduce productivity, all to the detriment of consumers.

To the extent possible, regulations should integrate a market-based analysis during development and implementation to incentivize and maximize compliance. Competitive markets are very efficient at allocating scarce resources and in encouraging entrepreneurial activity and innovation. Calibrating regulations to address market failures can ensure that government interventions achieve the intended goals while minimizing adverse consequences. For example, two financial regulators recently proposed comprehensive changes impacting the primary and secondary mortgage markets, where each would have greatly benefited from corresponding cost-benefit analyses on the consumer, market, and economic impact of each proposal.[1]

In order to distinguish between regulations that provide more public benefit rather than impose undue costs, there must be careful assessment and thorough evaluation of all impacted parties. Such analysis can also often be used to redesign harmful regulations to ensure more net benefits. This occurred with the Environmental Protection Agency's review of the *Clean Water Act* in which the agencies revised the definition of "waters of the United States" (WOTUS) that resulted in a more consistent permitting and development process to protect private property rights. In this case, the regulatory review yielded much needed clarity that enhanced regulatory certainty.[2]

2. Inherent Flexibility

When crafting and reviewing regulations, agencies must provide states, localities, and the private sector with flexibility to implement and maintain compliance based on changing economic, market, or technological circumstances. The U.S. Department of Housing and Urban Development (HUD) recognized this when finalizing the long-awaited rule for project approval of single-family condominiums insured by the Federal Housing Agency (FHA). This updated rule incorporated elements to enable more buyers to use FHA-insured financing for purchasing a condominium.[3]

Allowing regulated entities to adapt their implementation and compliance methods to changing conditions results in better, more cost-effective rules that do not require frequent modifications. Such regulatory modifications, and in many cases, entire overhauls to meet previously lacking cost-benefit analyses, result in severe disruption to regulated industries and increase the likelihood of non-compliance. However, this flexibility can only be appreciated when the regulations are finalized, rather than living in procedural limbo. For example, regulated entities continue to wait for the final Federal Aviation Administration (FAA) regulation allowing the use of unmanned aerial systems (UAS) for beyond-visual-line-of-sight flights.[4] For the real estate industry, having the flexibility brought by this final rule would help property managers assess damages on rooftops and out of reach areas following storms, and also help with property surveys and inspections.

Regulatory flexibility is also essential when it comes to dealing with crises such as the sudden onset of the current COVID-19 pandemic. NAR has provided numerous comments on administrative and legislative changes that would better help homeowners, homebuyers, and the real estate industry weather the ongoing challenges posed by the pandemic. This feedback has ranged from advocating for the Department of Labor's expansion of unemployment benefits to independent contractors to requesting clarity from HUD on the treatment of loans in forbearance.[5] Including flexibility during regulatory development and review would expedite government response time in emergency circumstances.

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[1] See NAR's comment on the Consumer Financial Protection Bureau's proposed qualified mortgage rule at https://narfocus.com/billdatabase/clientfiles/172/3/4142.pdf/ and NAR's comment on the Federal Housing Finance Agency's proposed enterprise capital rule at https://www.nar.realtor/washington-report/nar-comments-on-proposed-enterprise-capital-rule.
[2] See NAR's comment on the Environmental Protection Agency's proposed revised definition under the Clean Water Act at https://narfocus.com/billdatabase/clientfiles/172/3/3355.pdf.
[3] See NAR's comments to HUD on the FHA condo rules at https://www.nar.realtor/washington-report/nar-urges-hud-to-release-condo-rules.
[4] See NAR's comments to the FAA proposed rule at https://www.nar.realtor/washington-report/faa-proposes-new-drone-rules.
[5] See NAR's advocacy efforts towards COVID-19 relief at https://www.nar.realtor/political-advocacy/nars-advocacy-work-towards-covid-19-relief.

3. Maximize Transparency

Important regulatory decisions should be based on statutory objectives and be transparent to the public. Agencies should disclose early to the public the underlying specific statutory authority, important data, models, and other key information used in the rulemaking, as well as provide a meaningful opportunity for public input. Court settlements between regulators and interest groups to require rulemakings should also be published and reviewed by the Office of Information and Regulatory Affairs, before they are final.

The APA's formal notice and comment procedures provide critical checks on agencies' regulatory powers and ensure maximum transparency for the public benefiting from the rules. When transparency is absent, regulations lack critical feedback from impacted industries and could be ripe for legal challenges, stopping implementation all together. A recent example of this is the Centers for Disease Control and Prevention (CDC) agency order halting residential evictions through December 31, 2020, for all rental units within the United States, with the exception of American Samoa.[6] This order, issued on September 4, was made pursuant to an executive order issued on August 8, but failed to follow APA notice and comment procedures.[7] Had the CDC followed APA notice and comment requirements seeking public feedback in the period immediately following the executive order, the harmful effects of the eviction moratorium on the millions of property owners across the country and the rental housing market would have been recognized and prevented.[8]

Conclusion

Federal regulations must be developed and implemented in a way that is beneficial to growth and prosperity while not placing unnecessary or duplicative burdens on regulated entities. Now more than ever, regulatory reform is essential for both the economic and the political well-being of the nation. On behalf the entire membership of the National Association of REALTORS®, thank you for providing us with the opportunity to share our views on efforts to improve the regulatory process.

Sincerely,

Vince Malta
2020 President, National Association of REALTORS®

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[6] Centers for Disease Control and Prevention, "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," 85 FR 55292, (Sept. 4, 2020).
[7] Exec. Order No. 13,945, 85 FR 49935, (Aug. 8, 2020).
[8] See NAR's comments to Congressional Leaders advocating for emergency rental assistance at https://narfocus.com/billdatabase/clientfiles/172/2/4136.pdf.