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March 1, 2011

The Honorable Shelley Moore Capito
Chair, House Financial Services Subcommittee on Financial Institutions and Consumer Credit
2443 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Capito:

As the Subcommittee considers the impact of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the National Association of REALTORS® (NAR) urges you to take into consideration a very important issue to real estate agents, brokers, their affiliates, and their partners in real estate transactions.

The predatory lending provisions in Dodd-Frank have unintended consequences for real estate brokers, their affiliates, agents, and consumers. The provisions attempt to protect homeowners by prohibiting mortgage lenders and loan originators from receiving hidden payments when they steer homeowners into high-cost loans and will create strong underwriting standards to ensure borrowers have the ability to repay their loans. Ability to repay standards have been viewed favorably and recommended by NAR since NAR's subprime working group completed its work in 2005 and its recommendations were adopted by the association. However, one element of the legislation has unintended consequences for firms with legitimate affiliated business arrangements under the Real Estate Settlement Procedures Act.

The predatory lending provisions include a safe harbor for mortgages that are well underwritten and in particular where "fees and points" are 3% or less than the mortgage amount. The problem arises with the definition of fees and points. Normally, one would associate fees and points with actual charges made by the lender in originating the mortgage. That is how they are generally defined for large lenders and other loan providers not likely to have affiliates involved in the transaction. However, the definition of fees and points in the "ability to repay" safe harbor in Title XIV discriminates against real estate brokerage firms and their affiliates by including in the calculation of fees and points, charges for title insurance and escrow as denoted in the Truth in Lending Act regulations. The House bill included language that would have addressed this problem but it was removed during the conference for unclear reasons.

The effect of the removal of the language is that real estate and other firms with affiliated businesses such as title insurance (the vast majority of which are small businesses) would likely not be able to handle the whole or major elements of the transaction and still have the benefit of the safe harbor from predatory lending scrutiny. It is particularly discriminatory because the charges for title services are regulated heavily by the states, meaning they would not differ greatly whether the firm was affiliated or not. Likewise, escrow is largely made up of property taxes and homeowners insurance, also outside of the control of the lender. Neither charge inures to the benefit of the lender whether one is affiliated with other transaction participants or not.

Ascribing these charges to the affiliated lender is clearly unfair and may in fact lead to greater costs for consumers or at the very least, increased consumer dissatisfaction and decreased consumer choice. Studies show that consumers see a significant benefit to having their real estate agent and broker at the lead in the transaction and using their affiliated businesses for key services such as mortgage and title insurance. In a recent (Dec. 2010) Harris Interactive study buyers said that using affiliates saves them money (78%), makes the home buying process more manageable and efficient (75%), prevent things from falling through the cracks (73%), and is more convenient (73%) than using separate services.

For these reasons, the Congress, in making adjustments or technical corrections to Dodd-Frank or through another appropriate legislative vehicle, should reinstitute the affiliate fix found in the House legislation and re-level the playing field for affiliated lenders and their industry partners and keep the door open for greater consumer choice in the lending industry.

Sincerely,

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

Cc: Members, House Financial Services Subcommittee on Financial Institutions and Consumer Credit