

**Business Issues Policy Committee
2018 Briefing Book**

**Chair John C. Kmiecik
Vice Chair Jeffrey Levine**

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Purpose and Make-up of Committee

Purpose:

To identify, monitor and recommend positions on federal, legislative and regulatory issues that affect the operations of REALTOR® businesses and the ability of NAR to meet REALTOR® needs (i.e., RESPA, money laundering, telecommunications, telemarketing, association volunteer liability, bankruptcy, immigration/visa reform, licensing, and worker classification) and to recommend legislative or regulatory strategies in furtherance of those positions.

Composition:

59 members as follows:

- Chair, Vice Chair and Immediate Past Chair;
- 1 representative from each of the affiliates;
- 1 AEC Representative;
- 44 at-large members (one of which must be a Local Board or State Association Executive and two of which must be Local Board or State Association Government Affairs Directors (GADs)), who have a strong interest in issues which affect member business operations.

Qualifications for Consideration:

- 5 years' experience on an NAR committee
- 7 years' experience as a broker owner
- Understanding of business operations of real estate firms
- Experience on a Business Issues Policy Committee at the local or state level
- Knowledge of telecommunications and/or information systems
- Involvement in other business-related trade associations (National Federation of Independent Business, Chamber of Commerce, etc.)
- Experience as a real estate firm manager

Term of Service: One-year term

Meeting Dates and Times:

- Legislative Meetings and Trade Expo: **Wednesday, May 16, 2018**, 10:00 AM – 12:00 PM (Washington D.C.)
- Annual Conference and Expo: **Friday, November 2, 2018**, 9:00 AM – 11:30 AM (Boston, MA)
- *Additional conference calls and webinars, as scheduled.*

Staff Executives:

- Marcia Huddleston Salkin, Managing Director, Legislative Policy, 202.383.1092, msalkin@realtors.org
- Christie DeSanctis, Regulatory Policy Representative, 202.383.1102, cdesanctis@realtors.org

Roster of 2018 Committee

JOHN C. KMIECIK CRB, SFR (IL)
Chair

JEFFREY J. LEVINE CIPS, CRS, SRES, SFR (FL)
Vice Chair

KEVIN BROWN (CA)
Committee Liaison

CHRISTINE M KUTZKEY GRI (CA)
Immediate Past Chair

BARBARA ASBURY ABR, GRI, EPRO, SFR,
PSAT (CO)
Member: At-Large

MALCOLM BENNETT AHWD (CA)
Member: At-Large

SCOTT CABALLERO ABRM, CRS, GRI,
AHWD, RSPS, SFR (TX)
Member: At-Large

ROBERT D. CLARK EPRO (MN)
Member: At-Large

DIANE B. COOK GRI, PMN (FL)
Member: At-Large

JOSEPH L. CWIKLINSKI CIPS (IL)
Member: At-Large

ELIZABETH C. DUENAS ABR, CRS,
AHWD, EPRO, MRP (GU)
Member: At-Large

TREASURE A. FAIRCLOTH CRS, GRI,
EPRO (NC)
Member: At-Large

NICK FRENCH CRB, CRS, GRI, SRS, PSA
(TN)
Member: Affiliate Representative [REBI]

DENISE FROEMMING (IL)
Member: Affiliate Representative [IREM]

WENDY FURTH ABR, CIPS, CRS, GRI,
GREEN, PMN, SRES, AHWD, EPRO, SFR
(CA)
Member: At-Large

AMY HAIR (AR)
Member: Government Affairs Director

RANDALL HERTZ ALC (IA)
Member: Affiliate Representative [RLI]

MARIE JEBAVY SFR, BPOR (CA)
Member: At-Large

MILAGROS S. KANYAR CIPS, PMN (FL)
Member: At-Large

SARI KINGSLEY CIPS, CRS, GRI, GREEN,
SRES, AHWD (NY)
Member: At-Large

JOHN E. LAZENBY ABR, CIPS, AHWD
(FL)
Member: At-Large

DIANE L. MANNS GRI (CA)
Member: At-Large

KELLY R. MARKS ABR, CRS, GRI (NC)
Member: At-Large

JAMIE MCMILLEN (OH)
Member: Government Affairs Director

RICHARD W. MEGINNIS SIOR (NE)
Member: Affiliate Representative [SIOR]

MICHAEL MENDICINO CRB, CRS, GRI,
BPOR (NY)
Member: At-Large

ALEKSANDR K. MILSHTEYN CRS, GRI
(MI)
Member: At-Large

MARY MINER ABR, CIPS, CRS, GRI,
GREEN, AHWD, EPRO, MRP (TX)
Member: At-Large

ROBERT MORRISON EPRO (OH)
Member: At-Large

CHARLIE L. MURPHY GRI (KY)
Member: At-Large

TRISH FAYE MYATT ABR, CRS, SRES
(TN)
Member: At-Large

ANDREW NELSON (VA)
Member: At-Large

LOUIS H. NIMKOFF CCIM, CPM (FL)
Member: Affiliate Representative [CCIM]

WILLIAM B. OLSON CRS, GRI (AR)
Member: At-Large

DOMINIC L. PALLINI CRS, GRI, AHWD,
EPRO, RSPS, SFR, SRS (FL)
Member: Affiliate Representative [RRC]

MICHAEL PARENT (IL)
Member: At-Large

LISA C. PARENTEAU ABR, CRS (MA)
Member: At-Large

DAVE L. PARKS ABR, CRB, CRS (KY)
Member: At-Large

JEFFREY D. PERRY CRB, SFR (FL)
Member: At-Large

JOHN W. RILEY GRI, RCE, EPRO (SC)
AEC Representative

MARY R. ROBERTS CIPS, GRI, AHWD,
EPRO, SFR (AZ)
Member: At-Large

NATALIE J. ROWE GRI, SFR (MI)
Member: At-Large

AUSTIN SMALLWOOD (SC)
Member: At-Large (AE)

SHEILA STANUSH CRS, GRI, PMN, EPRO
(TX)
Member: Affiliate Representative [WCR]

JOHN C. STARK CIPS, CRB, CRS, GRI (IA)
Member: At-Large

TOM V. STECK GRI, RENE (FL)
Member: At-Large

TERENCE A. SULLIVAN (WA)
Member: At-Large

PATRICIA A. SZEGO AHWD (VA)
Member: At-Large

TERESA K. TRIGAS-PFEFFERLE SFR (NJ)
Member: At-Large

VICKY S. TURNER CRS, SRS (IL)
Member: At-Large

CHARLOTTE M. VANDERWAAG (NY)
Member: At-Large

RAY WADE ABR, CRS, SFR, SRS (TX)
Member: At-Large

DAVID WELCH CRS, GRI (OH)
Member: At-Large

2018 Committee Goals

The following goals were adopted at the start of the 2018 Committee year, at the Annual meeting in Chicago.

1. ***Anti-money Laundering***: Represent the interests of real estate professionals in any efforts to impose onerous anti-money laundering regulations on the real estate industry.
2. ***Real Estate Settlement Procedures Act (RESPA)/Know Before You Owe***: Continue to address issue/concerns arising with the implementation of RESPA and the TRID/Know Before You Owe rules, and improve NAR guidance and outreach on these issues
3. ***Foreign Investment***: Represent the best interests of current and prospective property owners, as well as real estate professionals, should immigration and visa reform be considered.
4. ***Federal Preemption***: Continue NAR's long tradition of ensuring that federal laws do not preempt the ability of the states to determine the appropriate rules governing the real estate sales profession.

Rationale: Federal legislation and regulations of business practices continue to impact and, in some cases, limit the ability of real estate practitioners to conduct their businesses in an efficient and effective manner. While the business of real estate has traditionally been regulated at the state level, NAR represents the interest of its members to ensure that federal legislation and regulations support or do not needlessly hinder the ability of REALTORS[®], realty firms and REALTOR[®] associations to conduct business.

NAR Policy Process - Creation of Formal Policy by Committees

The start of the process begins with a policy committee of NAR making a motion to create a new policy or change existing policy. The motion then moves through a series of venues before being approved as official NAR policy. The venues for approval include:

- 1.) Public Policy Coordinating Committee (PPCC),
- 2.) Executive Committee (Exec), and
- 3.) Board of Directors (BOD).

At each level, several things can happen:

- The Motion can be approved and moves onto the next level without change.
- The Motion can be amended. If the amendment is accepted as a friendly amendment, the amended motion will move on. If the amendment is not accepted as a friendly amendment, both motions will be referred on to the next level.
- The Motion can be opposed by the reviewing committee. Both the originating Committee motion and the motion of disapproval move on to the next level.
- The Motion can be referred back to the original Committee for further review, or be referred to an additional Committee for consideration.

NAR policy is then final if approved by the Board of Directors.

Example: The Committee passed a motion “that NAR support Closing Disclosures being issued on purple paper.” The motion would go to the PPCC Committee. However, PPCC felt that pink paper was also acceptable. This results in two motions moving forward to Exec.

Exec would first hear the Business Issues Policy Committee (BIPC) motion for purple paper, and then it would hear the PPCC motion for purple OR pink paper. Exec could approve either of these motions, edit either, or oppose or refer either or both. Let’s say Exec approved the purple and pink motion. BIPC’s motion would still move forward to BOD; along with the PPCC motion, which would be reported as the “approved motion” from Exec. BOD could pass either of these motions, or develop a new motion from the floor.

Minutes from the 2017 Committee Meetings

NATIONAL ASSOCIATION OF REALTORS®
2017 REALTORS® LEGISLATIVE MEETINGS
BUSINESS ISSUES POLICY COMMITTEE
May 17, 2017, 10:00AM – 12:00PM
Omni Shoreham Hotel, Diplomat Room

MINUTES

CHAIR	Chris Kutzkey (CA)
VICE CHAIR	John Kmiecik (IL)
COMMITTEE LIAISON	Brenda Small (DC)
STAFF EXECUTIVE	Marcia Salkin, Christie DeSanctis, Melanie Wyne (DC)

CALL TO ORDER: Chair Chris Kutzkey called the meeting to order at 10am.

OPENING REMARKS: The Chair welcomed the Committee, introduced Vice Chair John Kmiecik and staff executives, and reminded the group of NAR's Conflict of Interest/Ownership policy.

APPROVAL OF PREVIOUS MEETING MINUTES: The minutes of the Business Issues Policy Committee meeting of November 2016 were approved.

SUMMARY OF ACTIONS TAKEN:

The Committee received the report of the Dodd-Frank/CFPB Work Group from Work Group Chair Anthony Lamacchia (MA), and approved a motion to support the following recommendation of the Work Group. The motion was also subsequently approved by the Public Policy Coordinating Committee, Executive Committee and the Board of Directors during the May meeting.

That NAR continue to support the existence of a federal agency such as the Consumer Financial Protection Bureau (CFPB) designed specifically to protect consumers' interests with regard to financial products and services. Further, it recommends that NAR support policy proposals that restructure the CFPB or similar agency from the current single-director arrangement to a qualified five member board with no more than three members from one political party. The existing independent agency structure and funding sources for an agency such as the CFPB should be preserved.


Rationale: The Dodd-Frank – CFPB Work Group recommends that NAR support the existence of an independent federal agency, like the Consumer Financial Protection Bureau (CFPB), that promotes necessary consumer protection laws and responsible lending practices to advance the pursuit of homeownership. Such an agency is essential to identifying problematic financial services industry practices that harm consumers and is most effective when important procedural safeguards are in place to avoid unwarranted executive overreach.

To best accomplish this role, the CFPB or similar agency should be structured as a five-member board to ensure accountability and policy consistency, while reducing arbitrary decision-making and abuses of power that may occur with a single-director structure. With no more than three members of one political party serving on the board at any given time, the structure would help ensure the agency's authority reins in and protects against egregious or excessive enforcement actions while promoting proper consideration and analysis of formal rules and informal guidance before being issued. Board members should be appointed by the President and confirmed by the Senate, serving initial staggered five-year terms.

Further, maintaining the CFPB's independent agency organization preserves the existing funding sources and only allows for removal of board members based on inefficiency, neglect of duty, or malfeasance in office. Such independence shields the agency from political pressures and bureaucratic impediments that may inhibit protection of consumer homeownership interests.

The Committee also dealt with the following reporting items:

1. The Business Issues Policy Committee received the report of the Federal Technology Policy Advisory Board. The Advisory Board heard two presentations: (1) an overview of the NAR Reach technology incubator and demonstrations by three of the 2017-18 Reach companies (HouseCanary, Notarize, TrustedMail), and (2) a presentation by the Center for REALTOR® Technology (CRT) on the need for robust data security practices and steps that REALTORS® can take to secure their data. That presentation led the Advisory Board to discuss the current definition of personally identifiable information (PII) and the need to monitor the evolution of information that would not be considered personally identifiable information (PII) on its own but may become PII when combined with other readily available information. Finally, the Board received a legislative/regulatory issue update on the following tech policy issues: net neutrality, data privacy/security and patent litigation reform.
2. The Committee then heard a presentation by Lawrence Scheinert, the Director of the Office of Special Measures within the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). Mr. Scheinert talked about the agency's experience with the expanded Geographic Targeting Orders (GTOs) which require title companies to report on the beneficial ownership of business entities making all cash residential real estate purchases in a number of major U.S. metros to combat money laundering.
3. Dan Blair, NAR Senior Legislative Representative, and Christie DeSanctis, NAR Regulatory Representative, briefed the Committee on the legislative and regulatory outlook in the new 115th Congress and Trump Administration.
4. With limited meeting time remaining, the Committee's members were directed to the Committee briefing materials for an update on ongoing federal business issues and invited to contact staff with any questions. Staff will also circulate a brief status overview document with links to the more extensive issue summaries included in the Committee briefing packet. Those issues include: (1) recent Consumer Protection Bureau (CFPB) enforcement activities, (2) status of the *PHH Corp. v. Consumer Financial Protection Bureau* court case, (3) Real Estate Settlement Procedures Act (RESPA) issues, (4) Department of Labor worker



classification guidance, (5) reauthorization of the EB-5 Visa Regional Center Program, (6) repeal and replacement of the Affordable Care Act (ACA), and (7) Association Health Plan (AHP) legislation.

5. When polled, the Committee members indicated interest in holding webinars in the coming months; anticipated topics include data security practices and exploring the development of federal policy on beneficial ownership disclosures as a component of anti-money laundering efforts.

6. Finally, the Committee were made aware of the upcoming NAR E-Summit planned for June in Washington, D.C.

With no further business, the Committee was adjourned at 12:00pm.

MINUTES

CHAIR	Chris Kutzkey (CA)
VICE CHAIR	John C. Kmiecik (IL)
COMMITTEE LIAISON	Brenda Small (DC)
STAFF EXECUTIVE	Marcia Salkin, Christie DeSanctis, Melanie Wyne (DC)

CALL TO ORDER: Chair Chris Kutzkey called the meeting to order at 9:00 am.

OPENING REMARKS: The Chair welcomed the Committee members, introduced Vice Chair John C. Kmiecik of Illinois and Committee staff executives, reviewed the Committee's purpose and agenda for the day's meeting, and congratulated the Committee on successfully meeting the President's RPAC Challenge for 2017. Vice Chair Kmiecik then called the members' attention to NAR's Ownership Disclosure and Conflict of Interest.

APPROVAL OF PREVIOUS MEETING MINUTES: The minutes of the Business Issues Policy Committee meeting of May 17, 2017 were then approved.

SUMMARY OF ACTIONS TAKEN: The Committee reviewed the results of its September conference call and the policy motion approved by unanimous consent by a quorum of members at that time. The motion was subsequently referred to and approved by the Public Policy Coordinating Committee, the Executive Committee and the Board of Directors during the November meeting.

That NAR support the disclosure of beneficial ownership of business entities at the time those entities are registered with the states, with appropriate consideration given to address legitimate business privacy concerns.

Rationale: Anonymous shell companies are increasingly being used by corrupt foreign and domestic interests to launder money via real estate purchases. Currently, there are no federal laws requiring the identification of these companies' "beneficial owners," i.e. the individuals who control and benefit from these companies. This has created obstacles for law enforcement agencies' enforcement of anti-money laundering (AML) laws.

Legislation has been introduced to address this problem by requiring the disclosure of the beneficial owners of a shell company when it is formed and registered with its home state. If a state prefers not to collect this data, it could choose to have Treasury take on the responsibility. The information collected would not be made public, and only would be disclosed to law enforcement, or financial institutions that request it in order to fulfill their AML responsibilities. Allowing law enforcement and financial institutions to have access to such information will improve the tracking of illicit money

laundering schemes, and thereby reduce growing pressures to impose bank-like AML responsibilities on real estate sales professionals.

The Committee also dealt with the following reporting items:

1. The Business Issues Policy Committee received the report of the Federal Technology Policy Advisory Board. At its earlier meeting, the Advisory Board was updated by:
 - Dave Conroy of the Center For REALTOR® Technology on NAR's work in the area of blockchain technology, and its potential to improve property data, increase transaction speeds, establish identity and facilitate contract enforcement;
 - Melanie Wyne on the status of legislative/regulatory issues including net neutrality, data privacy/security and patent litigation reform; and
 - Chloe Hecht of NAR Legal on an issue with the U.S. Copyright Office. Recently, a number of Multiple Listing Services (MLSs) have received notices of inquiry on their applications for compilation copyrights. The Copyright Office does not believe that MLS databases demonstrate the required creativity to continue to receive copyrights. NAR is engaged in negotiations with the Copyright Office to educate them on why they are incorrect and to get guidance on how to show this creativity in the MLS copyright applications.
2. The Committee then heard a presentation by Loretta Salzano, Founding Partner, Franzen & Salzano, P.C. and Brian Levy, Of Counsel, Katten & Temple, LLP on recent developments in the Consumer Financial Protection Bureau's (CFPB) efforts to enforce the Real Estate Settlement Procedures Act (RESPA), in particular activity related to affiliated business arrangements, online co-marketing, and illegal kickbacks.
3. NAR staff briefed the Committee on the ongoing tax reform Call For Action (CFA) and growing Congressional interest in the issue of state oversight of professional licensing boards to avoid potential anticompetitive actions by those boards. Staff will continue to participate in meetings with industry partners, other professional associations and Congressional offices about any ongoing Congressional interest and efforts on this topic.
4. Finally, the leadership of the 2018 Business Issues Policy Committee were announced – John C. Kniecik (IL) will move up and serve as the 2018 Committee Chair and Jeffrey Levine (FL) will serve as the 2018 Vice Chair for the Committee. The Committee then approved Committee goals for 2018 and discussed anticipated committee activities, including the use of the Hub, as communication platform that all committees will use their primary means of communication.
5. Following a reminder of other meetings being held during the November Convention, the meeting was adjourned at 11:30am.

Minutes from the 2016 Committee Meetings

MINUTES

2016 BUSINESS ISSUES POLICY COMMITTEE

NATIONAL ASSOCIATION OF REALTORS®

2016 REALTORS® LEGISLATIVE MEETINGS

05/11/2016

I. Call to Order

The meeting was called to order by Chair Myra Zollinger at 10:03 am.

II. Opening Remarks

Chair Zollinger welcomed the committee members to the committee and introduced Vice Chair Chris Kutzkey and the NAR committee staff. Committee members were asked to introduce themselves.

III. Conflict of Interest Statement

The Committee's attention was directed to the NAR Ownership and Conflict of Interest Statement. Committee members were asked to please honor the statement's terms during the meeting.

IV. RPAC Fundraising Challenge

The Chair called the committee's attention to the 2016 President's RPAC Challenge.

V. Approval of Previous Meeting's Minutes

The minutes of the Business Issues Policy Committee at the 2015 November Convention Meeting in San Diego were approved as presented.

VI. Report of the Federal Technology Policy Advisory Board

Chris Kutzkey, chair of the Federal Technology Policy Advisory Board of the Business Issues Policy Committee, presented the report on the Advisory Board's earlier meeting. At its meeting, the Board agenda included:

- i. A presentation by Nobu Hata, NAR's Director of Member Engagement, on the potential uses of blockchain technology in real estate. Blockchain is the technology that underlies Bitcoin. Possible uses range from the very straightforward, such as creating a database of unique identifiers for each parcel of land to the more complex, such as documenting property sales or mortgage transactions.
- ii. Mark Birschbach, VP of Second Century Ventures gave an overview of the 2016 Reach class of technology companies and NARs technology accelerator program. Three of the eight Reach companies gave brief demos, including Homediary, Truststamp, and Homeselfie.

iii. Committee staff issue updates on the current status of privacy and data security legislation, patent litigation reform and a Commerce Department request for comments on how federal agencies could support the growth of the Internet-of-Things.

VII. Other Legislative/Regulatory Updates

The Committee then discussed the status of other ongoing federal policy matters and had the opportunity to ask questions and raise concerns. These included:

A. RESPA Updates

i. RESPA/TILA Integration (TRID) Rule Implementation: The Committee was updated on the continued implementation of the Consumer Financial Protection Board's (CFPB) Know Before You Owe initiatives, otherwise referred to as "TRID". While the CFPB has provided informal guidance, NAR and other industry trades have pressed the CFPB to provide written guidance. In response, the CFPB has indicated that it will issue a request for comments in the summer. Committee members were asked to share their experiences. Concerns with access to closing disclosure, delayed closings due to last minute events, and the wide variation in lender requirements were mentioned. NAR remains committed to ensuring Realtors® have access to the closing disclosure so they can guide and advise clients through the close.

ii. RESPA Enforcement - Marketing Service Agreements: In the month prior to the meeting, there were significant developments in an appeal filed by PHH in the U.S. Court of Appeals for the District of Columbia of a CFPB ruling on the legality of PHH marketing service agreements. Oral arguments were heard April 12, 2016. The Court questioned the Bureau's interpretations of the RESPA statute, its contention that there is no statute of limitations for RESPA violations, and the constitutionality of the Bureau's single-director structure with little outside oversight. A decision is expected this summer. NAR filed an amicus brief defending the legality of properly implemented MSA's.

iii. Business/Affiliated 3% Cap on Points and Fees: The status of H.R 685, the "Mortgage Choice Act" (Huizenga, R-MI; Meeks, D-NY), an NAR-supported bill to address problems created by the Dodd-Frank 3% affiliate cap, were also addressed by Committee staff. The measure has passed the House, but the Senate has yet to consider the bill. Given the limited number of days remaining in the current session of Congress, there are significant challenges to the measure being considered. However, NAR continues to work with an industry coalition to advance the bill.

B. Anti-Money Laundering – FinCEN Geographic Targeting Order: The Committee was briefed on the Financial Crimes Enforcement Network (FinCEN) "Geographic Targeting Order" (GTO), imposing temporary new data collection and reporting requirements on certain title companies involved in all cash high-end real estate transactions in Manhattan and Miami-Dade County. The pilot arises out of increased concerns that high-end real estate purchases made by shell corporations/partnerships are being used to launder illegal funds by both domestic and international buyers. Committee members working in these markets reported that they were seeing no transactional issues arising from the Order.

VIII. Other Recent Developments of Interest

While the following issues are the purview of other NAR policy committees, the committee received an update from NAR Government Affairs and NAR Legal staffs since the matters have implications for business practices.

A. ADA Compliant Website Demand Letters: Following the viewing of an NAR Legal Window on the Law video, the committee was briefed by Finley Maxson with NAR Legal on the matter of website compliance with the Americans with Disabilities Act (ADA). Some courts have found that websites must be accessible to people with visual and other impairments. More recently, realty firms have received demand letters advising them that their websites are not ADA compliant. A session on what online accessibility means, what steps to take to make a website ADA-compliant and how to handle a demand letter or other legal action pertaining to a website's accessibility is being held on May 11 at 12:15 pm in the Omni Shoreman Hotel, Empire Room.

B. Real Estate Transaction Phishing Schemes: Staff reported on efforts by hackers to access consumers' and real estate professionals' email accounts to get information about upcoming real estate transactions. Using information gained, the hacker poses as the real estate professional or title agent and emails the buyer with "last minute" changes to wiring instructions to an account controlled by hacker. NAR partnered with the FTC to warn of these phishing schemes with a posting on the FTC's blog.

C. HUD Guidance re: Criminal Records and Fair Housing: Finley Maxson with NAR Legal's staff introduced an NAR Window on the Law video and answered questions on recent HUD guidance on the use of criminal background information in vetting potential renters. The Committee was advised of online resources made available by NAR Legal, as well as a session being held on the topic on May 13 at 09:00 am - 10:00 am in the Marriott Wardman Park Hotel, Virginia Suite.

IX. Announcements

There were no additional announcements.

X. Adjournment

Having no further business, the meeting was adjourned by Chair Zollinger at 11:40 am.

**MINUTES
2016 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2016 REALTORS® CONFERENCE
11/04/2016**

I. Call to Order

The meeting was called to order by Chair Myra Zollinger at 9:03 am.

II. Opening Remarks

Chair Zollinger welcomed the Committee members to the meeting and introduced Vice Chair Chris Kutzkey and the NAR Committee staff.

III. Conflict of Interest Statement

The Committee's attention was directed to the NAR Ownership and Conflict of Interest Statement. Committee members were asked to please honor the statement's terms during the meeting.

IV. RPAC Fundraising Challenge

The Chair called the Committee's attention to the 2016 President's RPAC Challenge. The Business Issues Policy Committee successfully met the President's Challenge with 100% of the committee contributing to RPAC.

V. Approval of Previous Meeting's Minutes

The minutes of the Business Issues Policy Committee at the 2016 May Midyear Meeting in Washington, D.C. were approved as presented.

VI. Report of the Federal Technology Policy Advisory Board

Chris Kutzkey, chair of the Federal Technology Policy Advisory Board of the Business Issues Policy Committee, presented the report on the Advisory Board's meeting. At its meeting, the Board agenda included:

- (a) a presentation from Mark Birschbach of the NAR REach program and Andrew Flachner, CEO of RealScout, a technology company that has developed software using artificial intelligence to identify specific home features from photographs, i.e. stainless appliances, patios, etc. to create a richer home search experience and provide agents with information about the kinds of features consumers are looking for.

(b) a discussion following the Real Scout presentation on possible public policy issues that might be raised by the use of artificial intelligence in real estate. Privacy concerns were the most commonly cited concerns.

(c) an update on the Internet of Things (IOT), including a recent Denial of Service (DDOS) attack where it appears networked devices were used in the attack, highlighting the possible security vulnerabilities of the Internet of Things. Also discussed was the National Telecommunications & Information Administration (NTIA) plans to initiate a multi-stakeholder process to develop IOT industry best practices and resources for consumer educational purposes. NAR is taking part in this proceeding. More information will be shared as the process progresses.

VII. Guest Speakers

The Committee then heard from three speakers:

(a) Phil Schulman, a partner of Mayer Brown, LLP discussed a recently released U.S. Circuit Court ruling on PHH Corp. v. CFPB, a suit filed in response to a Consumer Financial Protection (CFPB) enforcement action which ignored long-standing HUD policy. Mr. Schulman also discussed the current state of play on “Know Before You Owe” regulations governing mortgage disclosures and answered questions about the new regulations.

(b) Jennifer Keas, a partner of Foley and Lardner, LLP discussed Real Estate Settlement Procedures Act (RESPA) compliance issues raised by social media practices. She also provided an overview of cyber security practices.

(c) Ken Fears, NAR’s Director of Regional Economics and Housing Finance, presented the results of an NAR survey of REALTORS® one year after the initial implementation of the “Know Before You Owe” regulations.

VIII. Other Legislative/Regulatory Updates

The Committee then discussed the status of other ongoing federal policy matters and had the opportunity to ask questions and raise concerns. These included:

A. Treasury Geographic Targeting Orders

The Committee was also briefed on an expansion of the Treasury’s Geographic Targeting Order (GTO) requiring increased disclosure of beneficial ownership interests by title companies. The initial Order was imposed on all call, high-dollar residential purchases in the borough of Manhattan in New York City and in Miami Dade County Florida. The program arose out of increased concerns that high-end real estate purchases made by shell corporations and/or partnerships are being used to launder illegal funds by both domestic and international buyers. Since the May meetings, eleven additional metropolitan regions have been added to the GTO in an effort to combat money laundering via high-dollar, all cash residential transactions.

B. Americans with Disabilities Act

Finally, the Committee was briefed on NAR's recent comment letter on proposed rules for ensuring website compliance with the American with Disabilities Act (ADA). As was discussed at the May meeting, some courts have found that websites must be accessible to people with visual and other impairments in order to comply with the ADA. More recently, NAR has received reports that realty firms have received demand letters advising them that their websites are not ADA compliant.

IX. New Business

A. 2017 Priority Issue Identification

The Committee members were asked to submit to the Committee staff via email their recommendations for the policy issues that fall under the purview of the Committee that they believe should be priority issues for NAR in 2017. The results of that poll will be used to develop the 2017 Federal Issues Survey instrument that will help to direct NAR's federal legislative activities in the coming year.

B. 2017 Committee Leadership

The 2017 Committee leadership was announced. Chris Kutzkey (CA) will serve as the Chair, and John Kmiecik (IL) will be the Vice-Chair.

X. Announcements

With little time left in the meeting, the Committee members were directed to the meeting agenda item that outlined a number of forums and convention events during the week that focused on issues of importance.

X. Adjournment

Having no further business, the meeting was adjourned by Chair Zollinger at 11:38 am.

History of Policies Passed by the Committee

Policies Adopted by Business Issues Policy Committee (as approved by BOD), since 1994, with most recently passed motions first (includes most recent policy, not any that were superseded):

Arbitration

- That NAR support the enforceability of pre-dispute agreements to resolve contract disputes, including agreements to arbitrate consumer, employer and franchise contract disputes. (*May 2009*)

Bankruptcy

- That the NATIONAL ASSOCIATION OF REALTORS® support changes to section 205 of the Bankruptcy Amendments Act of 1993, as passed by the Senate on April 19, 1994, which protects the landlord's control of shopping center tenant mix in bankruptcy. (*May 1994*)
- That the NATIONAL ASSOCIATION OF REALTORS® support changes to section 365(h) of the Bankruptcy Code, which were included in the Bankruptcy Amendments Act of 1993 (S.540), as passed by the Senate April 19, 1994. (*May 1994*)
- That the NATIONAL ASSOCIATION OF REALTORS® support legislation that would provide that homeowner association dues (including condos, coops, etc.) would be a debt not dischargeable in bankruptcy. In addition, should a debtor remain in possession during pendency of bankruptcy, the trustee/debtor should be obliged to keep homeowner association dues current. (*February 1994*)
- That the NATIONAL ASSOCIATION OF REALTORS® support amendments to the pending bankruptcy bills to prevent elimination of the existing United States Bankruptcy Code provisions which were designed to preserve the integrity of shopping center tenant mix. (*February 1994*)

Beneficial Ownership

- That NAR support the disclosure of beneficial ownership of business entities at the time those entities are registered with the states, with appropriate consideration given to address legitimate business privacy concerns. (*November 2017*)

Consumer Financial Protection Bureau Structure

- That NAR continue to support the existence of a federal agency such as the Consumer Financial Protection Bureau (CFPB) designed specifically to protect consumers' interests with regard to financial products and services. Further, it recommends that NAR support policy proposals that restructure the CFPB or similar agency from the current single-director arrangement to a qualified five member board with no more than three members from one

political party. The existing independent agency structure and funding sources for an agency such as the CFPB should be preserved. (May 2017)

Control of Email Spam

- That NAR strongly supports efforts to control fraudulent, misleading and abusive unsolicited e-mails and e-mailing practices. Such efforts must be carefully considered to balance the elimination of abusive spamming practices with the needs of small business to conduct legitimate business via e-mail without the imposition of significant compliance burdens. (November 2003)

Federal Technology Policy Subcommittee

- A motion carried that a new subcommittee, Federal Technology Policy Subcommittee, be created. (May 2011)

Immigration and Visa Reform

Immigration

- That NAR adopt the Statement of Principles as recommended by NAR's Immigration Presidential Advisory Group:
 - Proposed NAR Statement of Principles for Immigration Reform
NAR believes the interests of its members are best served by stable, prosperous, thriving and secure communities. Accordingly, NAR policy should be guided by the following principles:
 1. We believe NAR should be involved in immigration issues to the extent necessary to support stable, prosperous, thriving and secure communities and to enhance the United States as a destination of choice for those seeking to own, transact, lease and use real property.
 2. We support a timely federal resolution of illegal immigration that includes (A) securing U.S. borders to prevent illegal entry, (B) allowing for the flow of legal immigration to accommodate the labor needs of the U.S. economy, and (C) settling the status of illegal immigrants in a way that acknowledges the reality of their presence, their role in the economy and their historic contributions to U.S. society.
 3. We support the rights of foreign citizens to acquire, own and sell U.S. real property and the right of U.S. citizens to acquire property outside the U.S. We also support the free flow of international capital for real estate and oppose laws and regulations that impede that flow.
 4. We believe all resident owners of U.S. real estate should be subject to the same set of rules under the U.S. tax system. In addition, any unique reporting and disclosure requirements regarding foreign buyers and/or their agents should be kept to a minimum.”

(May 2008)

Visa Reform – Residency Visa for Foreign Nationals Purchasing Real Estate

- A motion carried that NAR approve the report of the Visa Work Group adopting the final recommendations per the following (Exhibit H):

I. The Visa Working Group recommends the following set of principles to serve as a guide for advocacy efforts with respect to any federal efforts to create a non-immigrant residency visa for foreign nationals who purchase real property in the United States.

NAR believes that a visa program designed to encourage the purchase of real property in the United States should:

- a. Be available to citizens of as many countries as possible while recognizing the national security issues, which must be addressed. The determination of how countries are included should be left to Congress;
- b. Provide reciprocity to foreign nationals whose home countries provide favorable treatment to U.S. citizens who own or purchase real estate in those countries;
- c. Acknowledge the potential for additional demands to be placed on local, state and federal services by new international residents and account for additional revenues needed to provide those services. In addition, the financial and economic benefits that may accrue to the nation as the result of allowing more foreign nationals to purchase real property in the U.S. should also be taken into account;
- d. Ensure that the length of time for which a visa is issued is long enough to create the certainty needed for foreign nationals to be confident that they will be able to enjoy property purchased for a time period that justifies the sizeable expenditure made. From a practical perspective, a 5 year timeframe should be the minimum amount of time for which a real-estate related visa should be issued;
- e. Allow visa holders to determine the number of days per year of their stay(s) in the United States up to any legislatively prescribed limit and not mandate a required minimum stay;
- f. Include appropriate thresholds for the value of property purchases to ensure that new visa holders have the financial resources needed to maintain properties purchased and not become a burden on local, state or federal government services;

- g. Use property valuation measures that are appropriate for the purpose intended, which in most cases will be the market-determined sales price;
- h. Avoid imposing arbitrary requirements that would discourage the use of the visa, including the loss of benefits available to foreign nationals from their home countries (e.g. eligibility for home country national health coverage, favorable home country tax treatment, etc.), in order to encourage property purchases; and
- i. Focus on stimulating long term market demand, as opposed to short term market conditions.

2. The Working Group also reaffirms existing NAR policy that:

- a. opposes unduly burdensome visa rules that create unnecessary barriers to tourism, ownership of US real estate by foreign nationals, and the use of those properties; and
- b. states that “all resident owners of U.S. real estate should be subject to the same set of rules under the U.S. tax system. In addition, any unique reporting and disclosure requirements regarding foreign buyers and/or their agents should be kept to a minimum.”

3. The Working Group acknowledges that the complexity of visa issues and the attendant liability that could accrue to a real estate professional who provides incorrect advice will create the need for member education should such a visa program be enacted. (*May 2012*)

- That NAR explore federal legislation to create a retirement residency card for foreign nationals who are over 55 years of age, have documented income and own U.S. real property. (*November 2006*)

Interstate Land Sales Act (ILSA)

- That NAR support legislation to amend the Interstate Land Sales Act (ILSA) to treat large residential condominium projects under construction in the same manner as completed residential condominium projects for purposes of the ILSA. (*November 2013*)

Lobbying

- That NAR support free and unlimited access to government employees and elected officials at the local, state, and national level, by REALTORS® in the course of their personal and business interests. NAR supports registration and full disclosure of activities by professional federal lobbyists and opposes any restrictions or limitations, which would directly or indirectly affect communication by state & local REALTOR® Associations with their

membership regarding legislative and regulatory issues, including grassroots communications. (May 1995)

Occupational Safety

- That the NATIONAL ASSOCIATION OF REALTORS® oppose H.R. 1280, the *Comprehensive Occupational Safety and Health Reform Act* and S. 575 the *Comprehensive Occupational Safety and Health Reform Act*; Construction Safety, Health, and Education Improvements Act of 1993. (April 1994)

Public Policy Coordinating Committee

- That NAR support the retention of the Public Policy Coordinating Committee (PPCC). (May 1995)

Real Estate Settlement Procedures Act

Section 8 Violations

- A motion carried that, in light of the increasing number of requests for funding for lawsuits alleging violations of Section 8 of RESPA, the Leadership Team will create a Workgroup, PAG, or other appropriate group of members to examine current legislative, regulatory, administrative, and judicial interpretations of Section 8 of RESPA, and to investigate specific remedies to eliminate or mitigate any continuing adverse impact on brokers under Section 8. (November 2011)

RESPA/TILA Harmonization

- A motion was carried that the National Association of REALTORS® (NAR) reaffirm items #1-8 of its existing policy on the *Real Estate Settlement Procedures Act* (RESPA) as approved by the Board of Directors in November, 1997, and make clarifying changes to #9.
 - Recommendation #1: That the National Association of REALTORS® support efforts to increase regulatory clarity for both the *Real Estate Settlement Procedures Act* (RESPA) and the *Truth in Lending Act* (TILA) by recommending the following:
 - RESPA and TILA be merged onto one disclosure statute.
 - If they cannot be merged, RESPA and TILA should be written to complement each other.
 - Enforcement authority should be placed with the Department of Housing and Urban Development (HUD) if RESPA and TILA are merged.
 - If merged, maintain the real estate broker exemption from the 3-day right of rescission. (Currently contained in the TILA regulations.)

- Recommendation #2: That NAR codify the exemptions in the 1992 Rule for Section 8 as they relate to employer-employee compensation. The exemptions sought would include:
 - A payment by an employer to its own bona fide employee for generating business for the employer; and
 - In an affiliated business arrangement, a payment by an employer of a bonus to a managerial employee based on criteria relating to performance (such as profitability, capture rate, or other thresholds) of a business entity in the affiliated business arrangement.
 - A payment by an employer to its bona fide employee for the referral of settlement service business to a settlement service provider that has an affiliate relationship with the employer, provided written disclosure is made to and accepted by all clients and customers to the transaction, and there is no required use of these services.
- Recommendation #3: That NAR affirm it's current position on affiliated business arrangements as defined by the RESPA statute, we believe brokers/agents and other staff are entitled to remuneration for the delivery of real estate related services provided that written disclosure is made to and accepted by all clients and customers to the transaction and that there is no required use of these services.
- Recommendation #4: That NAR support disclosure requirements for referrals to affiliated businesses made over the telephone as written in HUD's May 9, 1997, Proposed rule.
- Recommendation #5: Clarify that HUD does not have authority to regulate the rental of office space.
- Recommendation #6: That NAR support maintaining RESPA enforcement authority at HUD.
- Recommendation #7: That NAR seek to remove or limit criminal penalties under RESPA.
- Recommendation #8: That NAR support the concept of consumer discounts and rebates as permitted by state law. However, NAR opposes the current draft federal legislative language that would exempt payments to an "affinity group" from Section 8 of RESPA.
- Recommendation #9: That NAR oppose blind bundling¹ of settlement services as outlined in the Consumer Mortgage Coalition (CMC) proposal. We do support the consumer's right to compare and select from

¹ PAG members characterized the CMC proposal as "blind bundling" since the CMC proposal would offer consumers a bundle of all services necessary to close the mortgage loan without defining the services provided within the bundle, the individual cost for each service, and the lack of disclosure of whom would perform these services.

fully optional and disclosed packages of settlement services, provided the following:

- Anyone, not just lenders, could offer a package of settlement services.
- The consumer would be permitted a choice of whether to buy the package or purchase services separately. In other words, no required use of package the lender cannot require the use of their package to obtain the loan and cannot charge a rate or point differential if the consumer chooses a competitor's package.
- Lenders should be prohibited from rejecting the use of a competitor's package if providers in the package are approved by the secondary market, the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), or any other law governing loan products.
- If consumer is offered an open package at a guaranteed price, there should be no government restrictions or prohibitions on how settlement service providers price their product.
- When consumers choose to use a package, package providers could require use of those services and service providers contained within the package even if they are from affiliated businesses.
- A basic package of settlement services is defined as all settlement services associated with closing the mortgage loan and required by the secondary market, FIRREA, or any other law governing loan products.
- Fully disclose services, the service providers and the price of services within the package, however, in a basic package there is no need to disclose the service providers. In supplemental packages, those requested by the consumer in addition to the basic package, the services and service providers must be disclosed.
(February 1998)

RESPA Advocacy Budget

- That the budget adjustment request for \$295,000 to develop RESPA advocacy and research be approved. (*Change in Budget, February 1997*)

RESPA Affiliated Business Arrangements

- That NAR amend its policy to replace the term “controlled business arrangement” with the term “affiliated business arrangement” where it appears in NAR policy documents.
(February 1997)

Wireless 411 Service Privacy Concerns

- That NAR support efforts to establish federal guidelines for any wireless directory assistance service developed for cellular subscribers' telephone numbers. De minimis standards should

include an opt-in requirement and give subscribers the right to opt-out without incurring any expense to do so. (*November 2004*)

Worker Classification

- A MOTION was carried that the NATIONAL ASSOCIATION OF REALTORS® support the separation of the workers compensation classifications of real estate property managers, site managers, and leasing agents from those of building maintenance and repair people. (*April 1994*)

Note all Federal Technology Policy Motions are now under the new Federal Technology Policy Advisory Committee, such as eSignatures and Net Neutrality.

Summary of Priority Issues under Jurisdiction of the Committee

Below is a brief summary of the issues, followed by more detailed policy background, with links.

Affiliated Business 3% Cap on Fees and Points

The Dodd-Frank Ability to Repay/Qualified Mortgage (QM) rule discriminates against various business models including mortgage bankers, mortgage brokers, and affiliates. Specifically, for a mortgage to be a QM and receive safe harbor protections, the mortgage's fees and points cannot exceed 3 percent of the loan amount. However, mortgage bankers, mortgage brokers, and affiliated companies are required to count more items towards fees and points than large retail financial institutions, putting these smaller firms at a competitive disadvantage.

Immigration Reform

With nearly 12 million undocumented immigrants in the United States, high levels of real estate investment interest on the part of foreign nationals, and the pending expiration of a major visa program for foreign entrepreneurs, immigration and visa reform is an issue with ramifications for the real estate community.

Money Laundering/Terrorism Financing

Real estate professionals should understand their existing legal responsibilities and the current efforts to combat money laundering and the financing of terrorism. Continued partnership with enforcement agencies will help in detecting and addressing the use of real estate in illegal financing activities.

RESPA Marketing Services Agreements (MSAs)

The Real Estate Settlement Procedures Act (RESPA) provides consumers with improved disclosures of settlement costs and to reduce the costs of closing by the elimination of referral fees and kickbacks. Section 8 of RESPA generally prohibits any person from giving or receiving any “thing of value” in exchange for the referral of settlement service business. However, there is an exception under RESPA that allows brokers and agents to exchange reasonable payments in return for goods provided or services performed by other settlement service providers, so long as those arrangements are carefully structured to comply with the law and regulations. The Consumer Financial Protection Bureau (CFPB) has increased scrutiny of settlement service provider relationships and activities under RESPA in the past, resulting in growing uncertainty for the real estate industry and use of Marketing Service Agreements (MSAs).

TRID (TILA-RESPA Integrated Disclosure)

The Consumer Financial Protection Bureau (CFPB) has been working to harmonize the *Real Estate Settlement Procedures Act* (RESPA) and *Truth in Lending Act* (TILA) disclosures and regulations for a number of years. The new integrated disclosures replace the long-standing Good Faith Estimate (GFE) and HUD-1 settlement statement, resulting in a learning curve for the industry since the rule went into effect in October 2015.

Visa—Investors

The EB-5 Investor Visa Regional Center Program was established as a pilot program administered by the U.S. Citizenship and Immigration Service. The regional centers and the

traditional EB-5 visa process provide foreign nationals with a means to obtain a permanent residence visa in the United States by investing a minimum of \$500,000 or \$1 million and creating or preserving 10 or more American jobs. Authority for the regional center pilot program needs to be reauthorized periodically.

Visa—Seasonal Workers

Seasonal workers play an important role in maintaining and keeping resort properties looking good and operating effectively. The H-2B Visa Program allows workers to enter the U.S. on a temporary basis for these kinds of jobs, for example, landscapers, wait staff, lifeguards and ski lift operators.

Visa—Tourism and Retirement

The current visa system does not allow foreign citizens who own a home in the United States to use that home on a full-time basis and/or to enter and exit the U.S. without restriction and no changes have been made in recent years.

Worker Classification (independent contractor v. employee)

The longstanding business arrangement for real estate brokerages includes real estate agents classified as independent contractors rather than employees. While real estate agents have been specifically considered independent contractors for federal taxation purposes since 1984, there have been occasional challenges to that classification in state courts for purposes other than federal taxation, such as overtime pay and other benefits. Calls for federal action to address employer abuses of the independent contractor classification have been ongoing for many years.

Detailed Issue Summaries

NAR Issue Summary

Business / Affiliated Business 3% Cap on Fees and Points

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

The Dodd-Frank Ability to Repay/Qualified Mortgage (QM) rule discriminates against various business models including mortgage bankers, mortgage brokers, and affiliates. Specifically, for a mortgage to be a QM and receive safe harbor protections, the mortgage's fees and points cannot exceed 3% of the loan amount. However, mortgage bankers, mortgage brokers, and affiliated companies are required to count more items towards fees and points than large retail financial institutions. This puts these smaller firms at a competitive disadvantage. Legislation is needed make any changes to the QM rule because of the specificity of the Dodd-Frank statutory language.

I am a real estate professional. What does this mean for my business?

Real estate professionals' clients will have fewer choices in where they can obtain a mortgage or other settlement services and the service they can rely on.

NAR Policy:

NAR supports greater access to mortgage credit and consumer choice. The Dodd-Frank Qualified Mortgage definition of fees and points needs to be fixed in order to ensure continued access to a broad range of lending institutions and options that meet consumer needs.

Opposition Arguments:

Opponents of NAR policy believe consumers do not receive enough protection and need additional protections to control the prices they pay for title insurance, mortgages and other settlement services.

Legislative/Regulatory Status/Outlook

In the 114th Congress, H.R. 685, the "Mortgage Choice Act", introduced by Representatives Bill Huizenga (R-MI) and Gregory Meeks (D-NY) passed the House Financial Services Committee with a bipartisan vote of 43-12 and passed the House 286-140. The measure was not taken up by the Senate.

Representatives Huizenga and Meeks have once again introduced their bill in the 115th Congress as H.R. 1153, the "Mortgage Choice Act of 2017". The bill has also been incorporated into the "Financial CHOICE Act of 2017" introduced by Representative Jeb Hensarling (R-TX). The Financial CHOICE Act was approved by the House Financial Services Committee (HFSC) on April 27, 2017, and passed by the House on June 8, 2017. NAR is also working to get Mortgage Choice Act language included in bills moving through the appropriations process.

NAR continues to work with an industry coalition on efforts to identify a bipartisan set of cosponsors for

NAR Issue Summary

Business / Affiliated Business 3% Cap on Fees and Points

a Senate companion bill.

Current Legislation/Regulation (bill number or regulation)

H.R. 1153, the "Mortgage Choice Act of 2017 (Huizenga, R-MI; Meeks, D-NY)

Legislative Contact(s):

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Regulatory Contact(s):

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NAR Issue Summary

Business / Immigration Reform

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

With nearly 12 million undocumented immigrants in the United States, high levels of real estate investment interest on the part of foreign nationals, and the pending expiration of a major visa program for foreign entrepreneurs, immigration and visa reform is an issue with ramifications for the real estate community. The last major overhaul of immigration laws took place in 1986.

I am a real estate professional. What does this mean for my business?

The real estate industry benefits from a number of current visa programs that allow for tourism and foreign investment in U.S. residential and commercial real estate markets. Stable, prosperous, and secure communities enhance the nation and make it a destination of choice for those seeking to own, transact, lease and use real property.

NAR Policy:

NAR policy supports the rights of foreign citizens to own U.S. real property, opposes laws/regulations that impede that the free flow of capital, urges resolution of the undocumented immigration issue, as well as enactment of visa reforms that encourage investment in U.S. real property for business or personal reasons.

Comprehensive immigration reform has the potential to impact the economy, including commercial and residential real estate markets, in a positive manner. Foreign investors and immigrants who make a capital investment in real property and businesses that may help stimulate, stabilize, and strengthen real estate markets across the nation should be encouraged to invest and allowed to spend longer periods of time in the United States. In addition, some have argued that resolving the status of undocumented residents already in the United States has the potential to boost the national and regional economies as those individuals are able to openly seek work, invest and purchase homes and property.

NAR's "Principles for Immigration Reform" were the work of a 2012 Presidential Advisory Group (PAG). Approved by the NAR Board of Directors at the May 2012 NAR meeting, NAR's immigration policy principles support:

1. The rights of foreign citizens to acquire, own and sell U.S. real property and the right of U.S. citizens to acquire property outside of the U.S.;
2. The free flow of international capital for real estate and opposes laws and regulations that impede that flow;
3. Application of the same set of rules under the U.S. tax system to all resident owners of U.S. real estate;
4. Organized real estate's involvement in the immigration reform debate to the extent necessary to support the creation of thriving communities and enhance the U.S. as a destination of choice for

NAR Issue Summary

Business / Immigration Reform

- those seeking to own, transact, lease and use real property; and
5. Timely federal resolution of undocumented immigration that includes (i) securing U.S. borders to prevent illegal entry, (ii) allowing for the flow of legal immigration to accommodate the labor needs of the US economy, and (iii) settling the status of undocumented immigrants in a way that acknowledges their presence in the U.S., their role in the economy, and their historic contribution to U.S. society.

Opposition Arguments:

Opponents of immigration reform believe that the U.S. must first address concerns with border security before the broader issue of visa or immigration reform are undertaken. Concerns are also raised about the fairness of visa and immigration reforms for American workers amid fears that both high and low skilled workers would be displaced by foreign workers. Additionally, some argue that proposals to create new visas for foreign investors and home purchasers amount to the U.S. incentivizing foreign persons to "buy" a visa to live permanently in the United States.

Legislative/Regulatory Status/Outlook

Immigration reform is a top priority of the Trump Administration and many in Congress. This was also the case in 2013 when the House failed to take up the issue despite Senate approval of a comprehensive immigration reform bill. Without consensus, the outlook for comprehensive reform is unclear.

Most Recent Comprehensive Immigration Reform Legislation

The last concerted effort to enact comprehensive immigration reform was in 2013. Drafted by a bipartisan group of eight Senators, S. 744, "The Border Security, Economic Opportunity, and Immigration Modernization Act", the measure was approved by the full Senate. The so-called "Gang of Eight" included Senators Schumer (D-NY), McCain (R-AZ), Durbin (D-IL), Graham (R-SC), Menendez (D-NJ), Rubio (R-FL), Bennet (D-CO), and Flake (R-AZ).

The bill included number of real estate-related provisions of interest to NAR. These included language that permanently reauthorized the EB-5 immigrant investor regional center pilot program, made changes to the H-2B visa program which is important to the economies of many second home and resort communities, and created two new non-immigrant retiree visas.

The retiree visa provisions were first proposed in 2011/2012 by Senators Schumer (D-NY) and Lee (R-UT) in two bills: S. 1746, "The Visa Improvements to Stimulate International Tourism to the United States of America Act (VISIT-USA Act)", and S. 3199, "The Jobs Originated through Launching Travel Act of 2012 (JOLT Act)."

As a part of S. 744, these provisions would create (1) an non-immigrant Canadian retiree visa that would allow Canadians 55 years and older who have a rental agreement for lodging or own a U.S. home to stay as long as 240 days each year, and (2) an non-immigrant retiree visa for foreign nationals 55 years of age or older who purchase a principal residence (or a personal residence plus other residential properties) valued at \$500,000 or more and who agree to stay in the U.S. for a period of not less than 180 days per year.

NAR Issue Summary

Business / Immigration Reform

The Senate immigration reform bill was sent to the House for consideration but was not taken up. Rather the House Judiciary Committee considered a series of immigration-related single issue bills that did not advance. At this time, the outlook for comprehensive immigration reform is uncertain at best.

Investor Visa Legislation

The EB-5 Investor Visa Regional Center Program is a longstanding pilot program administered by the U.S. Citizenship and Immigration Service. The regional centers and the traditional EB-5 visa process provide foreign nationals with the means to obtain a U.S. permanent residence visa after 5 years by investing a minimum of \$500,000 or \$1 million respectively and creating or preserving 10 or more American jobs. While the traditional EB-5 program is permanently authorized, the regional center program is a pilot that needs to be reauthorized in September 2017.

Bills have routinely been introduced in recent years to make changes to the regional center program to address criticisms of the program, but little progress has been made. As the program has grown in visibility due to press coverage of its role in large scale development projects in major urban markets and questionable marketing efforts abroad, critics have become more vocal. In January 2017, Senators Grassley (R-IA) and Feinstein (D-A), respectively the Chair and Ranking Member of the Senate Judiciary Committee, have introduced S. 232, a bill that terminate the EB-5 regional center program and reallocate the its visas to the other employment-based visa classifications. There are also currently ongoing discussions with other Senate offices on their efforts to develop reforms that could garner the necessary support.

NAR will continue to work in coalition with other organizations and Hill offices to reauthorize the program.

Current Legislation/Regulation (bill number or regulation)

S. 232 (Feinstein, D-CA; Grassley, R-IA)

Legislative Contact(s):

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Regulatory Contact(s):

Christie DeSanctis, CDeSanctis@realtors.org, 202-383-1102

NAR Issue Summary

Business / Money Laundering and Terrorist Financing

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

Real estate professionals should understand their responsibilities in the current efforts being made to combat money laundering.

I am a real estate professional. What does this mean for my business?

The USA PATRIOT Act, the Bank Secrecy Act, and Executive Order 13224 have increased the level of the government's scrutiny of financial transactions in an effort to prevent money laundering and block the financial dealings of terrorists. Under the USA PATRIOT Act, financial institutions are required to create anti-money laundering (AML) and customer identification programs. The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and individuals. OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries collectively called Specially Designated Nationals (SDNs).

The laws impose the following duties on real estate professionals:

1. Real estate brokers and agents must report, using IRS form 8300, any single or series of related transactions in which they receive cash in excess of \$10,000.
2. SDN assets are blocked, and all businesses (including real estate agents and brokers) have a responsibility to ensure that they are not dealing with any SDN by checking the list provided by OFAC. The SDN list can be found at: www.treasury.gov/sdn.

At this time, real estate firms and professionals engaged in brokerage or property management activities are not required to implement formal anti-money laundering or anti-terrorist financing (AML/TF) programs, as do regulated financial institutions. However, the U.S. Department of Treasury has the authority to change this and expand coverage of these requirements. To date, the Department of Treasury implements a risk-based analysis approach, focusing regulation on high-risk entities such as financial institutions rather than non-financial professions.

In 2017, the Financial Crimes Enforcement Network (FinCEN), Treasury's lead agency on AML/TF requirements, issued an [Advisory to Financial Institutions and Real Estate Firms and Professionals](#) to provide information on money laundering risks for real estate transactions. The Advisory provides examples of money laundering in the real estate sector, how shell companies and all-cash purchases may be linked to illicit activity, and ways in which real estate professionals' can voluntarily file suspicious activity reports. FinCEN also continues tracking data reported by title companies involved in certain high-end real estate transactions through [Geographic Targeting Orders](#) (GTOs).

NAR Issue Summary

Business / Money Laundering and Terrorist Financing

NAR Policy:

NAR supports continued efforts to combat money laundering and the financing of terrorism through the regulation of entities using a risk-based analysis. Any risk-based assessment would likely find very little risk of money laundering involving real estate agents or brokers. Regulations that would require real estate agents and brokers to adopt anti-money laundering programs would prove burdensome and unnecessary given the existing AML/TF regulations that already apply to United States financial institutions.

Opposition Arguments:

Some believe that real estate agents and brokers should be required to have specific anti-money laundering plans and procedures in place. NAR believes that such requirements would be overly burdensome compared to the risks. NAR worked with the Department of the Treasury to develop suggested voluntary guidelines for real estate professionals to follow to be on guard for possible money laundering situations and how to report those situations.

Legislative/Regulatory Status/Outlook

In 2003, FinCEN issued an advance notice of proposed rulemaking regarding anti-money laundering program requirements for “person involved in real estate closing and settlements” including real estate agents. NAR submitted comments stating “without evidence suggesting that regulation would substantially benefit the fight against money laundering, the burden on brokers of having to adopt and implement anti-money laundering programs clearly outweighs any perceived benefit.” In proposed rules published in 2010, FinCEN deferred proposing rules for real estate agents and others until it could conduct further research and analysis on business operation and money laundering vulnerabilities. FinCEN released its Final Rule in 2012, which continues to defer on covering real estate brokers and agents pending further study and analysis.

NAR continues to monitor closely and has worked with FinCEN to develop an educational publication informing real estate agents and brokers of their responsibilities under current law. To date, educational items have included a fact sheet, suggested voluntary guidelines, and a FinCEN/NAR podcast. The Association of Real Estate Licensing Law Officials (ARELLO) has published the NAR Fact Sheet, which is now being distributed by many state real estate offices.

Increasingly, Congress and the Administration are focusing on the lack of collection of beneficial ownership information that has allowed anonymous shell companies to fund corrupt domestic and foreign interests, such as laundering money through real estate purchases. To address this issue, legislation has been introduced that would require disclosure of the beneficial owners of a corporation or LLC upon creation to prohibit a shell company from masking the actual ownership interests. There are several bipartisan legislative measures in the House and the Senate that would require beneficial ownership information to be reported to law enforcement agencies - the information would not be publicly available - and would impose no requirements on real estate professionals. For example, the information may be collected by the individual state (S. 1454) or the state could elect to have the Federal Government collect (H.R. 3089; S. 1717).

NAR Issue Summary

Business / Money Laundering and Terrorist Financing

Current Legislation/Regulation (bill number or regulation)

In early 2016, FinCEN began to issue Geographic Targeting Orders (GTOs), imposing new data collection and reporting requirements on specific title companies involved in certain high-end real estate transactions. These GTOs required title companies to identify natural persons with 25 percent or greater ownership interest in a legal entity making an all cash real estate purchase. The first GTOs were specifically directed at all cash real estate purchases in excess of \$3 million dollars and \$1 million dollars in the Borough of Manhattan in New York and Miami-Dade County, Florida, respectively.

FinCEN discovered that a significant portion of the reported covered transactions in the GTOs were linked to possible criminal activity by the individuals revealed to be the beneficial owners of the shell company purchasers. As a result, FinCEN has continued expanding and extending the covered geographic areas where title companies must comply with the GTO's data collection and reporting requirements. The latest GTO, effective until March 20, 2018, covers the following geographic areas and transactions:

- \$500k and above – Bexar County, Texas
- \$1m and above – Miami-Dade, Broward, and Palm Beach Counties, Florida
- \$1.5m and above – New York City Boroughs of Brooklyn, Queens, Bronx, and Staten Island
- \$2m and above – San Diego, Los Angeles, San Francisco, San Mateo, and Santa Clara Counties, California
- \$3m and above – New York City Borough of Manhattan
- \$3m and above - City and County of Honolulu, Hawaii

In accordance with the GTOs, title companies, and their agents, must file a report with FinCEN regarding covered purchases of residential real property meeting the requirements above when such purchases are made without a bank loan or similar external financing and is paid at least in part by using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check, or a money order. Pursuant to the recently passed legislation that directed Treasury to allow investigators to obtain additional records to better target illicit Russian activity, the GTOs will now include wire funds transfers.

The GTOs do not impose any new obligations on real estate professionals. However, it is important for members to be aware of these and the potential impact on real estate sales transactions. In the event a transaction is covered by a GTO, the title company may consult with the real estate professional to obtain information necessary to report in compliance with the order. Such communications should not affect the real estate sales transaction or timeline for closing as title companies are required to report GTO covered transactions to FinCEN within 30 days of the closing.

For more information, visit NAR's Issue Brief on the [Geographic Targeting Orders](#) (GTOs).

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NAR Issue Summary

Business / Money Laundering and Terrorist Financing

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NAR Issue Summary

Business / RESPA Marketing Services Agreements (MSAs)

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

Are marketing agreements legitimate under the Real Estate Settlement Procedures Act (RESPA)? What is the right way to do one?

I am a real estate professional. What does this mean for my business?

Actions by the Consumer Financial Protection Bureau (CFPB) have departed from longstanding prior interpretations of the *Real Estate Settlement Procedures Act* (RESPA), calling into question whether and under what circumstances real estate professionals can receive money for marketing other settlement services and service providers. This has led to much confusion in the industry and numerous lawsuits.

NAR Policy:

NAR believes that real estate professionals and brokers should be able to be compensated for services performed and marketing done. NAR supports improved guidance from the CFPB and specifically rejects the contention that the marketing of settlement services is a mere referral.

Opposition Arguments:

Marketing agreements are a subterfuge for paying real estate professionals and brokers a fee for referrals.

Legislative/Regulatory Status/Outlook

Responsibility for enforcement of RESPA transferred from HUD to the CFPB in 2012. NAR and its industry partners have long disputed a 2010 HUD ruling that the sale of home warranty contracts by real estate agents for compensation was a per se violation of RESPA. NAR believes HUD erroneously limited the ability of real estate professionals to market home warranty products to the detriment of consumers who benefit from such products. Legislation has been introduced over the years to exempt home warranty companies from RESPA, which NAR has supported.

The CFPB has also embarked on a broader effort to prohibit the use of marketing service agreements (MSAs). In addition to engaging in various enforcement actions, on October 8, 2015, the CFPB issued Compliance Bulletin 2015-05 addressing MSAs, which offered little additional guidance on the CFPB's insight for enforcement actions.

On June 4, 2015, the CFPB issued a decision against PHH Corporation and a number of other defendants for violating Section 8 of RESPA by paying for referrals when there is a federally related mortgage. CFPB Director Cordray's decision called into question a number of practices relating to reinsurance arrangements and attempted to expand the agency's statute of limitations authority. As a

NAR Issue Summary

Business / RESPA Marketing Services Agreements (MSAs)

result of the CFPB's action, on July 30, 2015, Wells Fargo and Prospect Mortgage joined a growing number of lending institutions to discontinue participation in MSAs with real estate agents and brokers. The PHH case continues to be litigated at the U.S. Court of Appeals for the District of Columbia and NAR has filed two amicus, or "Friend of the Court," briefs defending properly implemented MSAs in this case.

On October 11, 2016, the D.C. Circuit Court held in favor of PHH and stating that payments for bona fide services provided and made at fair market value do not violate RESPA. The court also held that the unilateral authority of the CFPB vested in a single person (the Director of the CFPB) was unconstitutional. The CFPB appealed the decision (issued by a three-judge panel) to the full bench ("en banc") of the D.C. Circuit, which reheard the case on May 24, 2017. The court's granting of the petition for rehearing en banc wholly vacates the panel's decision, including the conclusion that PHH did not violate Section 8(c)(2) of RESPA, allowing for the possibility that the panel of ten judges reconsider this issue. A decision in this case has yet to be issued.

Following the PHH case, the CFPB has continued enforcement actions with respect to payments tied directly to referrals. In January 2017, the CFPB issued multiple enforcement actions for RESPA violations against a mortgage lender, mortgage servicer, and two real estate brokers for accepting illegal payment for referrals related to lead agreements, marketing service agreements, desk-licensing agreements, and/or steering of consumers to pre-qualify for mortgages. There are also reports that the CFPB is investigating a third party marketing platform for RESPA violations, but details have not been released.

At the end of 2017, CFPB Director Cordray left rather than serving his full term that was set to expire in July 2018, and the President appointed the Office of Management and Budget (OMB) Director, Mick Mulvaney, to serve as acting Director. This resulted in a legal challenge by CFPB Chief of Staff, Leandra English. Cordray appointed English to serve as acting Director before he left, but the U.S. District Court for the District of Columbia has temporarily held in favor of Mulvaney, upholding the President's power to appoint under the Federal Vacancies Reform Act of 1998; this case is still pending. A new Director has not been nominated, but must be confirmed by the Senate before serving. In the meantime, several members of Congress are pushing for agency restructure to a bipartisan commission, which NAR supports as it offers long-term policy stability and compliance certainty, which are vital to the housing economy.

NAR continues to work with the CFPB and industry partners to ensure that appropriate guidance is provided in the absence of clear direction from the agency. NAR published a list of Do's and Don'ts for real estate professionals when engaging in co-marketing activities via social media and other web-based marketing tools. The educational piece is intended to help real estate professionals comply with RESPA when co-marketing. NAR will also work with Congress to ensure that any future legislative changes improve RESPA without imposing undue burdens on NAR members.

For best practices on online co-marketing, see [NAR's Co-Marketing Do's and Don'ts](#)

For a brief overview of the PHH case, see [NAR's Issue Brief](#).

For best practices on MSAs, see [NAR's RESPA Do's & Don'ts for MSAs](#).

NAR Issue Summary

Business / RESPA Marketing Services Agreements (MSAs)

Current Legislation/Regulation (bill number or regulation)

None at this time.

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NAR Issue Summary

Business / RESPA/TILA Harmonization

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

For a number of years, the Consumer Financial Protection Bureau (CFPB) has been working to harmonize the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) disclosures and regulations. While the final rule is an improvement over the 2012 proposed rule, there still have been questions, complications, and costs related to the implementation that began on October 3, 2015.

I am a real estate professional. What does this mean for my business?

The new integrated disclosures replace the long-standing Good Faith Estimate (GFE) and HUD-1 settlement statement. Like any new process, there has been a learning curve with unanticipated hurdles. This uncertainty has generated a degree of risk aversion on the part of lenders that has led to a more tightly lender-controlled closing process. Of concern is a requirement that the Closing Disclosure (CD) be issued three days before closing, what adjustments can be made to the CD after it has been issued, and the potential delays that could result. Additionally, agents have reported a growing reluctance of lenders and title companies to share the CD out of fear of liability for disclosing clients' nonpublic personal information.

NAR Policy:

NAR supports a RESPA/TILA harmonization that adds transparency, simplifies disclosures, and reduces burdens to settlement service providers, including real estate professionals. RESPA and TILA are confusing statutes with sometimes conflicting disclosures and procedures. A single reformed set of rules and initial disclosures could benefit settlement service providers and consumers, ultimately improving the settlement process.

Opposition Arguments:

Opponents of NAR policy believe that each requirement imposed by the RESPA and TILA laws is necessary to ensure that consumers are adequately protected. Some would like to see more efforts to control costs. Some at the other end of the spectrum would simply like to get rid of this rule.

Legislative/Regulatory Status/Outlook

The final Know Before You Owe (KBYO) mortgage disclosure rule was issued November 20, 2013, and went into effect on October 3, 2015.

In the final rule, the CFPB largely addressed NAR's major concerns regarding the proposed 3-day waiting period to close transactions and dropped many provisions including the "all in" APR that would

NAR Issue Summary

Business / RESPA/TILA Harmonization

have been problematic. However, concerns of possible closing delays and how the mortgage transaction interacts with the real estate transaction remained. For instance, real estate agent access to the CD continues to be problematic. Many lenders have argued that the privacy requirements of the Gramm-Leach-Bliley Act (GLBA) or Regulation P prohibit lenders from releasing the CD to the real estate agent. However, an exception to the law and regulation already allows lenders to distribute the CD to third parties, including real estate professionals.

NAR advocated for a period of restrained enforcement and liability for the rule. It was through NAR member efforts during the 2015 REALTOR® Legislative Meetings that almost 300 U.S. Senators and Representatives signed a letter to CFPB Director Richard Cordray asking him to grant a period of restrained enforcement, which the CFPB subsequently granted. In June 2016, NAR sent a letter to the CFPB requesting guidance on several concerning issues still causing problems for consumers and industry, including seeking: clarity on lenders' ability to share the CD with third parties; insight on revising the CD to reflect changes in circumstances (the so-called "black hole"); and extension of post-consummation timelines to correct minor errors to reduce impact on the secondary market.

On July 29, 2016, the CFPB issued a proposed rule addressing some of these concerns. As advocated for by NAR, the CFPB included language acknowledging that sharing the CD with real estate professionals is permitted under existing privacy laws (GLBA and Regulation P). Thus, regardless of when this proposed rule is finalized, KBYO does not impact the existing privacy law exception. As a result, lenders' continued reluctance to share the CD out of fear of liability for disclosing clients' nonpublic personal information remains unwarranted.

On October 18, 2016, NAR sent a comment letter to the CFPB commenting on the proposed rule urging the CFPB to: (1) emphasize that lenders and title agents should share the CD with real estate agents, in accordance with existing privacy law and regulation; (2) ensure lenders are able to revise the CD to reflect valid changes in circumstances; (3) extend post-consummation timelines to correct minor KBYO errors; and (4) implement additional modifications to decrease consumer and industry uncertainty.

On July 7, 2017, the Consumer Financial Protection Bureau (CFPB) released the final rule amending the "Know Before You Owe" (KBYO or TRID) mortgage disclosure rule. As advocated for by NAR, the final rule clarifies the ability to share the Closing Disclosure (CD) with third parties - a victory for real estate professionals nationwide. The final rule was published in the Federal Register on August 11, making it effective on October 10, 2017. Mandatory compliance is required by October 1, 2018.

At the same time as the final rule was released, the CFPB issued a proposed rule looking at the outstanding "black hole" issue related to creditors' ability to use a CD to reflect changes in costs imposed on consumers. On October 10, 2017, NAR sent a letter to the CFPB commenting on the proposed rule. In the comment letter, NAR advocated for adoption of the proposed rule, which allows for lenders' flexibility in being able to reissue a CD to determine if a closing cost was disclosed in good faith, regardless of when the CD is provided relative to consummation. NAR explained the advantages to having information early on in the closing process, which helps facilitate improved communication and an overall more transparent process for the consumer. A final rule is expected in the spring.

[CFPB Press Release](#)

NAR Issue Summary

Business / RESPA/TILA Harmonization

[CFPB Final Rule](#)

[October 19, 2016 - NAR Comment Letter to CFPB](#)

[October 10, 2017 - NAR Comment Letter to CFPB](#)

Current Legislation/Regulation (bill number or regulation)

[CFPB Final Rule](#)

[Public Law 111-203](#) (HR 4173, The Dodd Frank Wall Street Reform and Consumer Protection Act).

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NAR Issue Summary

Business / Visa - Investors

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

The EB-5 Investor Visa Regional Center Program was established as a pilot program administered by the U.S. Citizenship and Immigration Service. The regional centers and the traditional EB-5 visa process provide foreign nationals with a means to obtain a permanent residence visa in the United States by investing a minimum of \$500,000 or \$1 million and creating or preserving 10 or more American jobs. Authority for the regional center pilot program needs to be reauthorized periodically.

I am a real estate professional. What does this mean for my business?

While EB-5 visa seekers may take the traditional route of investing \$1 million and starting a new business that meets the investment criteria of the EB-5 visa category, the EB-5 "regional center" program provides an alternative way for interested foreign nationals to invest less money to create new jobs as a participant in a regional center's investments. Many regional centers focus on or have a significant real estate development component. Increased awareness of this program can help create new investments in real estate, jobs and economic growth.

NAR Policy:

NAR supports the right of foreign investors to acquire U.S. real property as well as the free flow of international finance for real estate, subject to the same laws and regulations that govern U.S. investors. NAR supports the permanent authorization of the EB-5 Regional Center Program.

Opposition Arguments:

Making the EB-5 "regional centers" pilot program permanent will open the door for fly-by-night operations to take investors' money and provide little benefit to the U.S. economy. Additionally, this program communicates the message that, with sufficient resources, it is possible to "buy" citizenship in the United States.

Legislative/Regulatory Status/Outlook

As a pilot program, authority for the EB-5 regional centers has to be extended periodically. NAR continues to work with organizations that support permanent reauthorization for the regional center program as well as for needed reforms to make the program more accountable and transparent.

Recent History

In 2012, NAR successfully lobbied for legislation reauthorizing the EB-5 regional center pilot program for 3 years, through 2015. The program was then extended in late 2015 through September 30, 2016.

NAR Issue Summary

Business / Visa - Investors

Most recently, the regional center program was extended as part of the Continuing Resolution passed by Congress to continue funding the government through January 19, 2018.

Multiple bills have been introduced in 2017 to reform and reauthorize the regional center program either on a short term or permanent basis - NAR supports the reauthorization bills and is working in coalition with other organizations to educate congressional members about the importance of reauthorizing this program.

Current Legislation/Regulation (bill number or regulation)

[H.R. 616 - The American Entrepreneurship and Investment Act - Rep. Jared Polis \(D-CO\) and Rep. Mark Amodei \(R-NV\)](#)

[S. 1501 The American Job Creation and Investment Promotion Reform Act - Sen. Patrick Leahy \(D-VT\) and Sen. Chuck Grassley \(R-IA\)](#)

[H.R. 5992 - The American Job Creation and Investment Promotion Reform Act of 2016 - Rep. Bob Goodlatte \(R-VA\)](#)

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NAR Issue Summary

Business / Visa - Seasonal Workers

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

Seasonal workers play an important role in maintaining and keeping resort properties looking good and operating effectively. The H-2B Visa Program allows workers to enter the U.S. on a temporary basis for these kinds of jobs, for example, landscapers, wait staff, lifeguards and ski lift operators.

I am a real estate professional. What does this mean for my business?

Seasonal workers and the H-2B program have a direct impact on property values in resort and second home communities. If these communities are not well-maintained, and the facility does not operate efficiently and effectively, this will make the community less attractive to buyers.

NAR Policy:

NAR supports a robust H-2B program that expands job opportunities for seasonal, overseas workers without taking jobs away from American workers and unnecessarily burdening employers with onerous and cumbersome regulatory requirements.

The H-2B seasonal worker visa program provides a critical pool of temporary seasonal workers that is essential to the successful operation of resort and second home communities. Seasonal workers and the H-2B program have a direct impact on property values in these communities. While there is always the capacity to reform and improve a program to address changing labor market conditions and economic circumstances, the federal government should not make the H-2B program so difficult and onerous to use that no employer wants to use it.

Opposition Arguments:

Critics of the H-2B program claim employers who use the H-2B program exploit and abuse workers from other countries; some of these workers could pose a threat to national security; and the program takes jobs away from American workers. Additional measures to eliminate employer abuses and mitigate other programmatic concerns are needed and warranted.

Legislative/Regulatory Status/Outlook

There is legislation currently in the Senate to institute significant reforms to the H-2B program. S. 792, the Save Our Small and Seasonal Businesses Act, was introduced in March 2017 by Senators Tillis (NC), King (ME), Collins (ME), Thune (SD), Rounds (SD), Blunt (MO), Cornyn (TX) and Murkowski (AK). This bill would help small businesses navigate the H-2B program and make the program more streamlined, transparent and efficient. It was referred to the Senate Judiciary Committee but no action has occurred at this time.

NAR Issue Summary

Business / Visa - Seasonal Workers

In the House, H.R. 3918, the Strengthen Employment and Seasonal Opportunities Act, sponsored by Reps Chabot (OH) and Goodlatte (VA), encourages similar reforms to the program. The bill has been referred to the House Judiciary Committee.

In the regulatory area, on July 19, 2017, the Departments of Homeland Security and Labor published a rule to allow a one-time increase in the number of H-2B visas available, not to exceed 15,000. This one-time increase expired on September 30, 2017.

Current Legislation/Regulation (bill number or regulation)

Nothing at this time.

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NAR Issue Summary

Business / Visa -Tourism and Retirement

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

The current visa system does not allow foreign citizens who own a home in the United States to use that home on a full-time basis and/or to enter and exit the U.S. without restriction.

I am a real estate professional. What does this mean for my business?

Critics of the current system argue that since the U.S. visa system does not allow citizens of foreign countries who own residences in the U.S. to come and go freely, foreign citizens are less likely to purchase a retirement home in the U.S., thus lessening the demand for housing.

NAR Policy:

NAR believes that any visa program designed to encourage the purchase of real property in the United States should:

- a. Be available to citizens of as many countries as possible while recognizing the national security issues which must be addressed. The determination of how countries are included should be left to Congress;
- b. Provide reciprocity to foreign nationals whose home countries provide favorable treatment to U.S. citizens who own or purchase real estate in those countries;
- c. Acknowledge the potential for additional demands to be placed on local, state and federal services by new international residents and account for additional revenues needed to provide those services. In addition, the financial and economic benefits that may accrue to the nation as the result of allowing more foreign nationals to purchase real property in the U.S should also be taken into account;
- d. Ensure that the length of time for which a visa is issued is long enough to create the certainty needed for foreign nationals to be confident that they will be able to enjoy property purchased for a time period that justifies the sizeable expenditure made. From a practical perspective, a 5 year timeframe should be the minimum amount of time for which a real-estate related visa should be issued;
- e. Allow visa holders to determine the number of days per year of their stay(s) in the United States up to any legislatively prescribed limit and not mandate a required minimum stay;
- f. Include appropriate thresholds for the value of property purchases to ensure that new visa holders have the financial resources needed to maintain properties purchased and not become a burden on local, state or federal government services;
- g. Use property valuation measures that are appropriate for the purpose intended, which in most cases will be the market-determined sales price;

NAR Issue Summary

Business / Visa -Tourism and Retirement

h. Avoid imposing arbitrary requirements that would discourage the use of the visa, including the loss of benefits available to foreign nationals from their home countries (e.g. eligibility for home country national health coverage, favorable home country tax treatment, etc.), in order to encourage property purchases; and

i. Focus on stimulating long term market demand, as opposed to short term market conditions.

In addition, NAR policy:

a. opposes unduly burdensome visa rules that create unnecessary barriers to tourism, ownership of US real estate by foreign nationals, and the use of those properties; and

b. states that all resident owners of U.S. real estate should be subject to the same set of rules under the U.S. tax system. In addition, any unique reporting and disclosure requirements regarding foreign buyers and/or their agents should be kept to a minimum.

Opposition Arguments:

The opposition will argue that individuals who want to live in the U.S. and come and go freely should become U.S. citizens or meet the requirements of one of the nation's more than 80 visa categories.

Legislative/Regulatory Status/Outlook

H.R. 3513, *The Canadian Snowbird Visa Act* (Stefanik, R-NY; Deutch, D-FL), has been introduced in the 115th Congress. The bill would allow Canadian citizens who are 50 years of age or older and their spouses to stay in the U.S for up to 240 days if they own or rent a home in the United States. To be eligible, these individuals must maintain a residence in Canada, refrain from seeking U.S. employment or government benefits. In addition, the bill would exempt these individuals from U.S. income tax or filing obligations.

Similar bipartisan bills were introduced in the Senate in 2011 and 2012 but failed to advance beyond the hearing stage due to concerns raised by members of the Judiciary Committee from both political parties. The outlook for this bill is unclear given that the Administration has indicated its intention to seek comprehensive immigration reforms (border security, undocumented immigrants and the status of young adults brought to this nation as children). To date, the bill has been referred to the Judiciary Committee and the Ways and Means Committee, with no further actions scheduled. With a very short time remaining in the 2017 Congressional session, it is not anticipated that the bill will be taken up this year.

Current Legislation/Regulation (bill number or regulation)

H.R. 3513, *The Canadian Snowbird Visa Act* (Stefanik, R-NY; Deutch, D-FL)

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NAR Issue Summary

Business / Visa -Tourism and Retirement

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NAR Issue Summary

Business / Worker Classification (independent contractor v. employee)

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

The longstanding business arrangement for real estate brokerages includes real estate agents classified as independent contractors rather than employees. While real estate agents have been specifically considered independent contractors for federal taxation purposes since 1984, there have been occasional challenges to that classification in state courts for purposes other than federal taxation, such as overtime pay and other benefits.

Calls for federal action to address employer abuses of the independent contractor classification have been ongoing for many years. In July 2015, an Administrator's Interpretation by the U.S. Department of Labor's Wage and Hour Division Administrator stated that the bias under existing definitions of independent contractor should be in favor of most workers being considered employees for purposes of wage and hour determinations. By expanding the "economic realities" test used to define the term "employee" for purposes of the *Fair Labor Standards Act* (FLSA), the Department was reducing the ability of employers to classify workers as independent contractors. On June 7, 2017, U.S. Department of Labor Secretary Alexander Acosta withdrew the 2015 Administrator's Interpretation.

I am a real estate professional. What does this mean for my business?

Losing the independent contractor status for real estate agents would drastically change the structure of the industry. The Administrator's Interpretation itself did not have the force of law, as it was informal guidance, but illustrates how policy decisions issued by the Wage and Hour Division are impactful and could be cited in legal challenges in state and federal courts.

NAR Policy:

NAR strongly supports the continued right of brokers to choose whether to classify agents as employees or independent contractors. NAR supports actions at the state level to strengthen the rights of brokers to make these determinations and will resist efforts at the federal level to weaken those rights.

Opposition Arguments:

Those calling for a crackdown on improper worker classification believe that many employers classify workers as independent contractors simply to avoid existing requirements of state and federal labor law, *i.e.* overtime pay, employer Social Security contributions, workers compensation requirements, health insurance employer mandate, etc.

Legislative/Regulatory Status/Outlook

On June 7, 2017, U.S. Department of Labor Secretary Alexander Acosta withdrew the 2015 informal

NAR Issue Summary

Business / Worker Classification (independent contractor v. employee)

guidance on independent contractor misclassification that raised the issue of a federal Department of Labor bias in favor of classifying nearly all workers as employees for the purpose of determining wages, hours, and benefits. Removal of this guidance does not change the legal responsibilities of employers under the FLSA and NAR will continue to monitor federal and state action on these issues.

In recent months, Congressional committees with jurisdiction over workplace issues have also been reviewing the use of the independent contractor model in the developing shared ("gig") economy business models, such as Lyft. NAR continues to track and participate in discussions that have the potential to impact the independent contractor model used by real estate brokerages.

Outside of the federal realm, there has been an increase in court cases brought at the state level, notably in California and Massachusetts, contesting the independent contractor status of real estate professionals. For complete information on pending litigation and the legal status of independent contractor designation go to: <http://www.nar.realtor/topics/independent-contractor>.

Current Legislation/Regulation (bill number or regulation)

H.R. 3825, the *Harmonization of Coverage Act of 2017*, sponsored by Reps. Diane Black (R-TN) and Elise Stefanik (R-NY).

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