



BUSINESS ISSUES POLICY COMMITTEE

2021 Briefing Book

Ray Wade, Chair

Terence Sullivan, Vice Chair

BUSINESS ISSUES POLICY COMMITTEE 2021 Briefing Book

Meeting Dates and Times

Legislative Meetings and Trade Expo:

Tuesday, May 11, 2021: 10 a.m. – 12 p.m. ET*

Annual Conference and Expo:

Thursday, November 11, 2021: 1:30 p.m.- 4:00 p.m. ET*

* Specific meeting dates are subject to change as decisions on whether these meetings will take place in person or virtually are still pending, but we will keep you updated.

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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 of those positions.

Composition

54 members, as follows:

- Chair, Vice Chair, and Immediate Past Chair;
- 1 representative from each of the affiliates;
- 1 AEC Representative;
- 45 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 a 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 Federal 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: Tuesday, May 11, 2021, 10:00 a.m. - 12:00 p.m.
- Annual Conference & Expo: Thursday, November 11, 2021, 1:30 p.m.- 4:00 p.m.
- Additional conference calls and webinars, as scheduled.

Staff Executives:

- **Christie DeSanctis**, Director of Federal Banking, Lending & Housing Finance Policy, 202-383-1102, CDesanctis@NAR.REALTOR.
- **Nia Duggins**, Senior Business Issues Policy Representative, 202-383-1085, NDuggins@NAR.REALTOR



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Roster of 2021 Committee

KIMBERLY A ALLARD ABR, CRS, GRI, AHWD, EPRO, PSA (MA)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

MICHELLE ARNOLD SRS (NJ)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

ADRIAN ARRIAGA CCIM, CPM, SIOR (TX)

Member: Affiliate Representative [CCIM]

Term: 12/01/2020 - 11/30/2021

BRADLEY JAMES BOLAND (VA)

Member: Affiliate Representative [SIOR]

Term: 12/01/2020 - 11/30/2021

YAZCARA CORRALES BRADLEY CIPS, MRP, C2EX (FL)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

C. LAMONT BRELAND (KY)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

JEN BURKAMPER CRS, C2EX (IA)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

CONNIE J BURLEIGH SFR (NE)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

KIMBERLY J CAMERON CRS, C2EX (MO)

Member: At-Large

Term: 12/01/2020 - 11/30/2021



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CHRISTIE DESANCTIS (IL)

Staff Executive

Term: 12/01/2020 - 11/30/2021

NIA DUGGINS AHWD, C2EX (IL)

Staff Executive

Term: 12/01/2020 - 11/30/2021

RICHARD T FRYER ABR, GREEN, SRES, AHWD, RSPS, SFR, MRP (FL)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

CAROL GARZA CRS, GRI, AHWD, C2EX (TX)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

MINDY ANN GRONBECK CPM (ID)

Member: Affiliate Representative [IREM]

Term: 12/01/2020 - 11/30/2021

BERTON K HAMAMOTO ABR, CRB, CRS (HI)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

SPENCER E HAYNES SFR (FL)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

CHARLES HINDERLITER (MO)

Member: Government Affairs Director

Term: 12/01/2020 - 11/30/2021

KEITH KELLEY ABR (AL)

Member: At-Large

Term: 12/01/2020 - 11/30/2021



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JO KENNEY CRS, GRI, PMN, SRES, EPRO, PSA, C2EX (GA)

Member: Affiliate Representative [WCR]

Term: 12/01/2020 - 11/30/2021

SARI KINGSLEY CIPS, CRS, GRI, GREEN, SRES, AHWD (NY)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

BEV G LARSON ABR, CCIM, CIPS, CRS, SFR, BPOR, PSA (FL)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

KELLY LIBERATORE EPRO, SFR (HI)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

DAVID LONG ABR, GRI, GREEN, SFR, C2EX (TX)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

JOHN MANGAS SFR (OH)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

DIANE L MANNS GRI (CA)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

ALDO M MARTINEZ ABRM, GRI (NV)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

COREY R MCCLOSKEY CRB, AHWD, C2EX (FL)

Member: At-Large

Term: 12/01/2020 - 11/30/2021



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JOHN W MCKENZIE GRI (KS)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

CHER MICULKA CRS, GRI, EPRO, C2EX (TX)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

MARY MINER ABR, CRS, GRI, AHWD, EPRO, MRP, C2EX (TX)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

NATALIE MOYER ABR, CRS, C2EX (KS)

Member: Affiliate Representative [RRC]

Term: 12/01/2020 - 11/30/2021

MAURA C NEILL ABR, CRS, AHWD, EPRO, MRP, PSA, C2EX (GA)

Committee Liaison

Term: 12/01/2020 - 11/30/2021

RYAN J OGLE (MI)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

BRENDA OLIVER GRI, PMN, C2EX (MO)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

DOMINIC L PALLINI CRS, GRI, AHWD, EPRO, RSPS, SFR, SRS, C2EX (FL)

Member: Immediate Past Chair

Term: 12/01/2020 - 11/30/2021

LISA C PARENTEAU ABR, CRS, GREEN, RSPS, MRP, RENE, C2EX (MA)

Member: At-Large

Term: 12/01/2020 - 11/30/2021



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PATRICK M PAULSON AHWD, SFR (MN)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

JEFFREY D PERRY CRB, SFR (FL)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

DAVID J POPE PSA (MN)

Member: Affiliate Representative [RLI]

Term: 12/01/2020 - 11/30/2021

VANESSA L. REALE-JONES RCE (NJ)

AEC Representative

Term: 12/01/2020 - 11/30/2021

SUSAN M RENFREW GRI (MA)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

TAYLOR SHANAMAN (OR)

Member: Government Affairs Director

Term: 12/01/2020 - 11/30/2021

PAUL L SIGURDSON GRI, AHWD, EPRO, C2EX (MN)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

SHEILA STANUSH CRS, GRI, PMN, EPRO, C2EX (TX)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

TOM V STECK ABR, CIPS, GRI, SRES, SFR, SRS, RENE, C2EX (FL)

Member: At-Large

Term: 12/01/2020 - 11/30/2021



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TERENCE A SULLIVAN (WA)

Vice Chair

Term: 12/01/2020 - 11/30/2021

JOSH SUMMERS C2EX (FL)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

BETTY A TAISCH CRB, CRS, PMN (CA)

Member: Affiliate Representative [REBI]

Term: 12/01/2020 - 11/30/2021

TERESA K TRIGAS-PFEFFERLE SFR (NJ)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

VICKY S TURNER ABR, CRS, GRI, EPRO, SRS, C2EX (IL)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

CHARLOTTE M VANDERWAAG (NY)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

GIUSEPPE VENEZIANO CIPS, GREEN, BPOR, C2EX (CA)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

RAY WADE ABR, CRS, SFR, SRS, C2EX (TX)

Chair

Term: 12/01/2020 - 11/30/2021

DANIEL D WAGNER CRS, GRI, AHWD, EPRO (MT)

Member: At-Large

Term: 12/01/2020 - 11/30/2021



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DUANE E WASHKOWIAK CRS, GRI, EPRO, SFR, C2EX (AZ)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

JACK WOODCOCK CCIM, CRS, GRI, SRES (NV)

Member: At-Large

Term: 12/01/2020 - 11/30/2021

2021 Committee Goals

The following goals were adopted at the start of the 2021 Committee year, at the 2020 REALTORS® Annual Conference & Expo.

1. *To monitor the change in leadership at the Consumer Financial Protection Bureau (CFPB) in light of the June 2020 Supreme Court decision that made the Director removable “at will” and in light of the change in the Administration.*
2. *To ensure money laundering regulations are risk-based and that real estate professionals are not subject to additional or unnecessary federal regulatory burdens.*
3. *To safeguard real estate professionals’ ability to be classified as independent contractors and to protect against any unreasonable federal involvement that may jeopardize that status, which is especially important in the changing political landscape.*
4. *To identify business operational concerns and threats, such real estate fraud, including wire fraud and title fraud and other issues that may derail a real estate transaction.*
5. *To collaborate with other NAR committees and industry groups to enhance committee members’ knowledge of issues related to the business of real estate including infrastructure, transportation, commercial, and urban, and regional growth.*

Rationale: Federal legislation and regulations of business practices continue to impact and in some cases, to 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 arbitrarily hinder the ability of REALTORS®, realty firms, and REALTOR® associations to conduct business.



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NAR POLICY PROCESS:

Creation of Formal Policy by Committees

The state 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 reviewing the 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 like 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.



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Minutes From the 2020 Committee Meetings



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NATIONAL ASSOCIATION OF REALTORS®
2020 REALTORS® CONFERENCE AND TRADE EXPO
BUSINESS ISSUES POLICY COMMITTEE
November 5, 2020, 1:00-2:00 CT
(2:00-3:00 p.m. ET/12:00-1:00 p.m. MT/11:00 a.m.-12:00 p.m. PT)

MINUTES

CHAIR	Dominic Pallini (WV)
VICE CHAIR	Ray Wade (TX)
COMMITTEE LIAISON	Nate Johnson (MO)
STAFF EXECUTIVE	Christie DeSanctis (DC)/ Nia Duggins (DC)

CALL TO ORDER:

The meeting was called to order at 1:00 p.m. central time by Chair Dominic Pallini.

OPENING REMARKS:

Chair Dominic Pallini opened the meeting by welcoming the Committee and Vice Chair, Ray Wade explained the Ownership Disclosure and Conflict of Interest Policy.

APPROVAL OF PREVIOUS MEETING MINUTES:

Chair Dominic Pallini asked for approval of the 2020 REALTORS® Legislative Meetings minutes, which were approved unanimously without modification.

SUMMARY OF ACTIONS TAKEN:

After opening remarks, Vice Chair Ray Wade provided an update on the RPAC Challenge.

Chair Dominic Pallini provided updates on the 2020 Committee goals and the work of the Committee during the past year. The Committee goals included monitoring the change in leadership at the Consumer Financial Protection Bureau (CFPB); ensuring that money laundering regulations are risk-based and that real estate professionals are not subject to additional or unnecessary regulatory burdens in addition to increasing anti-money laundering education for members and the regulatory agencies; increasing education and awareness on the importance of the 2020 Census; identifying current and future business models to enhance REALTORS® business operations against any unreasonable federal involvement; and to explore, identify, and research new business operational concerns, disrupters, and threats such as wire fraud, title fraud, and identity theft.

In terms of updates regarding the first goal of changes at the CFPB, the Committee discussed various NAR staff participation and feedback provided in meetings and briefings with Bureau staff and the Director. Committee members were also briefed on a call that members were able to participate in with

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Director Kraninger and other NAR leadership members, to discuss the ongoing work to help consumers and businesses protect their financial futures.

Updates relating to the second goal, included NAR's efforts in advocating in favor of risk-based anti-money laundering reforms related to the collection of beneficial ownership information and the impact on businesses. Additionally, the Committee previewed two new anti-money laundering infographics that explain the FinCEN Geographic Targeting Orders (GTOs) and the risk factors and risk mitigation tools for real estate professionals when managing transactions.

The Committee also heard updates on the third goal regarding work for 2020 census awareness that included NAR's partnership with the U.S. Census Bureau. This also included NAR's census awareness campaign that created infographics, videos, outreach to state and local associations, and advocacy in Congress to promote a complete and accurate census count.

Danielle Scoggins, the Vice President of Public Policy for the Florida REALTORS®, and Staff Executive, Christie DeSanctis, provided updates and led a discussion of the group relating to the fourth goal of identifying current and future business models. Specifically, the discussion focused on worker classification issues, including efforts at the state and federal levels to ensure the real estate professionals can maintain their status as independent contractors. An update was also provided regarding NAR's comment on a recently proposed rule regarding independent contractor status under the Fair Labor Standards Act. Danielle also discussed ongoing advocacy efforts in Florida to protect the business interests of members, including the ability to be classified as independent contractors, and what the association has done to protect independent contractors during the pandemic.

The Committee was also updated on NAR's progress regarding business operational concerns and disrupters, including engagement on the issue of wire fraud, and broader real estate fraud that impacts consumers and the real estate transaction. During the meeting, committee members also viewed the NAR industry co-branded infographic on wire fraud.

The Committee also heard from Joe Ventrone, NAR Vice President of Federal Policy and Industry Relations. Joe provided a post-election update, including his outlook for the industry pending the outcome of the election and potential changes in Congress that may impact the policy interests of the Committee.

The meeting finished with a presentation by the Vice Chair and 2021 Incoming Chair, Ray Wade, regarding the 2021 goals, which include: (1) regulatory reform and monitoring the action and changes out of the Consumer Financial Protection Bureau; (2) anti-money laundering developments and updates to ensure any reforms are risk-based and that real estate professionals are not subject to additional or unnecessary federal regulatory burdens; (3) protecting the independent contractor status by safeguarding real estate professionals' ability to be classified as independent contractors and to prevent against any unreasonable federal involvement that may jeopardize that status; (4) monitoring real estate fraud issues by identifying business operational concerns and threats, such as wire and title fraud, that may impact a real estate sales transaction; and (5) collaboration—to work with other NAR committees

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and industry groups to enhance committee members' knowledge of issues related to the business of real estate, such as infrastructure, commercial matters, transportation, and urban and regional growth.

At 2:15 p.m. central time, Chair Dominic Pallini provided closing remarks and adjourned the meeting.

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NATIONAL ASSOCIATION OF REALTORS®
2020 REALTORS® LEGISLATIVE MEETINGS
Business Issues Policy Committee
Thursday, May 7, 2020, 3:00 p.m. – 4:00 p.m. CT
(4:00-5:00 p.m. ET. 2:00-3:00 p.m. MT. 1:00-2:00 p.m. PT)

MINUTES

CHAIR	Dominic Pallini (FL)
VICE CHAIR	Ray Wade (TX)
COMMITTEE LIAISON	Nate Johnson (MO)
STAFF EXECUTIVE	Christie DeSanctis & Nia Duggins (DC)

CALL TO ORDER:

The meeting was called to order at 3:00 p.m. central time by Chair Dominic Pallini.

OPENING REMARKS:

Chair Dominic Pallini opened the meeting by welcoming the Committee and Vice Chair Ray Wade explained the Ownership Disclosure and Conflict of Interest policy.

APPROVAL OF PREVIOUS MEETING MINUTES:

Chair Dominic Pallini asked for approval of the 2019 REALTORS Conference and Trade Expo minutes; the motion was seconded and the minutes were approved.

SUMMARY OF ACTIONS TAKEN:

After opening remarks, Vice Chair Ray Wade provided an update on the RPAC Challenge.

Chair Dominic Pallini then provided updates and solicited feedback on the 2020 Committee goals, which include monitoring the change in leadership at the Consumer Financial Protection Bureau (CFPB); ensuring that money laundering regulations are risk-based and that real estate professionals are not subject to additional or unnecessary regulatory burdens; increasing education and awareness on the importance of the 2020 Census; identifying current and future business models to enhance REALTORS®' business operations against any unreasonable federal involvement; and to explore, identify, and research new business operational concerns, disrupters, and threats such as wire fraud, title fraud, and identity theft.

To further the Committee Goal of monitoring the change in leadership at the Consumer Financial Protection Bureau, Chair Dominic Pallini provided updates on his recent call with NAR staff and CFPB Director, Kathy Kraninger.

The Committee then heard from Dr. Jessica Lautz, NAR Vice President of Demographics and Behavioral Insights who provided an economic impact update and forecast amid the COVID-19 pandemic. She provided insight regarding economic activity and trends that we will likely begin to see as states and businesses begin reopening. Jessica updated the Committee on recent survey data that NAR has been collecting on the impact of the pandemic on real estate transactions, including the current activity of buyers and sellers.

To further the Committee goal on identifying current and future business models to enhance REALTORS®' business operations, Phil Schulman, Partner at Mayer Brown, Phil presented updates regarding the Real Estate Settlement Procedures Act (RESPA) and best practices for REALTORS® marketing strategies in light of many

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business closures. Phil also reminded the Committee of the importance of RESPA compliance, and highlighted the types of strategic alliances among real estate industry stakeholders during and after the pandemic.

Next, the Committee held an open discussion on relevant topics including the newly created Paycheck Protection Program (PPP) and the Pandemic Unemployment Assistance (PUA) Program under the CARES Act, and other COVID-19 related issues.

At 4:00 p.m. central time, Chair Dominic Pallini provided closing remarks and adjourned the meeting.

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Minutes from the 2019 Committee Meetings



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NATIONAL ASSOCIATION OF REALTORS®
2019 REALTORS® CONFERENCE AND EXPO
BUSINESS ISSUES POLICY COMMITTEE
Thursday, November 7, 1:30 – 3:30 PM
Moscone West • Room 2004, 2nd Level

MINUTES

CHAIR	Jeffrey Levine (FL)
VICE CHAIR	Dominic Pallini (FL)
COMMITTEE LIAISON	Melanie Barker (CA)
STAFF EXECUTIVE	Nia Duggins, Christie DeSanctis (DC)

CALL TO ORDER:

The meeting was called to order at 1:30 PM by Chair Jeffrey Levine.

OPENING REMARKS:

Chair Jeffrey Levine opened the meeting by welcoming the Committee and Vice Chair Dominic Pallini explained the Ownership Disclosure and Conflict of Interest policy.

APPROVAL OF PREVIOUS MEETING MINUTES:

Chair Jeffrey Levine asked for approval of the 2019 REALTORS® Legislative Meetings and Trade Expo minutes; the motion was seconded and the minutes were approved.

SUMMARY OF ACTIONS TAKEN:

After opening remarks, Vice Chair Dominic Pallini provided an update on the RPAC Challenge.

Chair Jeffrey Levine then provided updates and solicited feedback on the 2019 Committee goals, which included two work groups conducted over the summer and fall. The first work group focused on a joint trade association effort to update guidance for the industry related to the *Real Estate Settlement Procedures Act* (RESPA), where work group members provided useful comments on educational materials. The second work group helped staff develop new resources related to anti-money laundering information in the real estate sector, including Geographic Targeting Orders, risk awareness and mitigation, beneficial ownership disclosure, and triggers of suspicious activity including cryptocurrency and all-cash industries.

To further the Committee goal on anti-money laundering and the impact on the real estate industry, the Committee next heard from Melanie Griswold, a Deputy District Attorney in the Real Estate Fraud Unit of the Santa Clara District Attorney's Office. Melanie, a licensed real estate broker and a Planning Commissioner for the City of San Jose, addressed the Committee about wire fraud concerns and other money laundering matters to educate members with real life examples and how they can play a role in prevention. Members asked thoughtful questions about reporting and her experiences investigating these crimes.

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The Committee then heard from Mark Hayward, the Chief Executive of NAEA Propertymark in the UK. Mark discussed the history and evolution of the regulatory landscape in the UK for real estate professionals as it relates to money laundering, including the registration of beneficial ownership interests. There continues to be increasing international and domestic pressure for U.S. real estate professionals to be regulated to combat money laundering schemes, and Mark's presentation discussed how the UK's regime could potentially shape the future of the industry in America. Members questioned Mark about real estate professionals' role in the UK, and the differences in practices compared to U.S. agents.

Next, Chair Jeffery Levine led a discussion that required Committee members to report their work from their service on other committees. The discussion enlightened all members on the work beyond the Committee and how the Committee's efforts are useful to others.

Vice Chair Dominic Pallini closed out the meeting with a discussion on the 2020 goals, which include a focus on the 2020 Census and plans to increase awareness of the survey to members and consumers.

At 3:30 PM, Chair Jeffrey Levine provided closing remarks and adjourned the meeting.

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NATIONAL ASSOCIATION OF REALTORS®
2019 REALTORS® LEGISLATIVE MEETINGS
BUSINESS ISSUES POLICY COMMITTEE
Tuesday, May 14, 2019, 10:00 a.m. – 12:00 p.m.
Omni Shoreham Hotel, Empire Ballroom

MINUTES

CHAIR	Jeffrey Levine (FL)
VICE CHAIR	Dominic Pallini (FL)
COMMITTEE LIAISON	Melanie Barker (CA)
STAFF EXECUTIVE	Christie DeSanctis & Nia Duggins (DC)

CALL TO ORDER: Committee Chair, Jeffrey Levine, called the meeting to order at 10:00 a.m. and welcomed members of the Committee.

OPENING REMARKS: Committee Chair, Jeffrey Levine provided opening remarks and welcomed everyone to the meeting. Vice Chair, Dominic Pallini referred members to the Ownership Disclosure and Conflict of Interest Statement, and asked that Committee members recuse themselves from discussions that were approved by general consent.

APPROVAL OF PREVIOUS MEETING MINUTES: Committee Chair, Jeffrey Levine asked the Committee if there were any amendments to the minutes from the November 2018 meetings. There were no changes and the minutes were approved by general consent.

SUMMARY OF ACTIONS TAKEN:

1. The Committee heard from Priya Roy, an associate with Ballard Spahr in Philadelphia, and expert on counseling clients in anti-money laundering and Bank Secrecy Act matters, as well as other fraud and regulatory offenses. During the presentation, the Committee discussed the latest federal efforts to expand regulations on anti-money laundering, including a renewed interest in regulating the real estate industry by FinCEN, Treasury's lead agency in the fight to combat money laundering and terrorist financing. The Committee also explored ways in which all cash transactions are occurring in different markets, the relationship of these transactions to money laundering criminal practices, and FinCEN's Geographic Targeting Orders that impose reporting requirements on title companies in certain transactions.
2. The Committee was also briefed by staff on legislative and regulatory policy issues within the Committee's jurisdiction including new proposals to expand retirement benefits to independent contractors and updates to operations at the Consumer Financial Protection Bureau (CFPB), such

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as whether the Bureau should be issuing new guidance to help with compliance under the *Real Estate Settlement Procedures Act* (RESPA). These updates followed recent webinars that provided insight to members on the background of the federal agencies in charge of these policy proposals, and the potential impact of the changes to REALTORS® business needs, such as tools to attract new agents. Committee members were also asked to volunteer for informal work groups to help review NAR's anti-money laundering guidelines and RESPA compliance tools, in furtherance of the Committee goals.

3. The Committee approved the minutes from the 2019 annual meeting, heard about NAR's engagement with other real estate trade associations, and began brainstorming ways to share Committee materials relevant to the policy issues discussed.

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Histories 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)*



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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



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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):
 1. 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;



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- 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)*



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- 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



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- 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 its 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.



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- **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 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

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.



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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.



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Summary of Priority Issues Under Jurisdiction of the Committee

Below are links to brief summaries of the issues.

[Affiliated Business 3% Cap on Fees and Points](#)

[Immigration Reform](#)

[Anti-Money Laundering/Terrorism Financing \(AML/TF\)](#)

[RESPA Marketing Services Agreements \(MSAS\)](#)

[TRID \(TILA-RESPA Integrated Disclosure\)](#)

[Visa-Investors](#)

[Visa-Seasonal Workers](#)

[Visa-Tourism and Retirement](#)

[Worker Classification \(independent contractor v. employee\)](#)



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Detailed Issue Summaries

DETAILED ISSUE SUMMARY

Affiliated Business 3% Cap on Fees and Points

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 three 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. 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 introduced the bill again 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 also is pushing for inclusion of Mortgage Choice Act language in bills moving through the appropriations process.



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NAR continues to work with an industry coalition on efforts to identify a bipartisan set of cosponsors for a Senate companion bill and exploring potential regulatory fixes with the Bureau of Consumer Financial Protection (CFPB).

Current Legislation/Regulation (bill number or regulation)

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

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DETAILED ISSUE SUMMARY

Immigration Reform

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



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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:

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.;

The free flow of international capital for real estate and opposes laws and regulations that impede that flow;

Application of the same set of rules under the U.S. tax system to all resident owners of U.S. real estate;

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 those seeking to own, transact, lease and use real property; and

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



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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.

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. The most recent reauthorization extended the program until September 30, 2020.

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



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Committee, introduced S. 232, a bill that would have terminated the EB-5 regional center program and reallocated its visas to the other employment-based visa classifications. Most recently, on September 24, 2019, Senator Chuck Grassley (R-IA) and Senator Patrick Leahy (D-VT) introduced the EB-5 Reform and Integrity Act of 2019, which includes reform and long-term reauthorization of the the EB-5 Regional Center Program. There are also currently ongoing discussions with other Senate offices on their efforts to develop reforms that could garner the necessary support.

In late December, 2019, Congress passed and President Trump signed into law two appropriations bills that fund the federal government through FY 2020, thereby extending the EB-5 Regional Center Program until September 30, 2020.

On 4/22/20, Pres. Trump signed an Executive Order - in response to the novel coronavirus epidemic - to halt all immigration and visa programs for a limited time period. The EO specifically exempted the EB-5 program and allowed it to continue unhindered.

Investor Visa Regulation

On July 24, 2019, a Final Rule to reform and modernize the EB-5 program was published in the Federal Register:

The Department of Homeland Security (DHS) is issuing this rule to codify existing policies and reform parts of the EB-5 program. This rule provides priority date retention to certain EB-5 investors, increases the required minimum investment amounts and reforms targeted employment area (TEA) designations.

Current Legislation/Regulation (bill number or regulation)

Final Rule: EB-5 Immigrant Investor Program Modernization

Draft Bill: The EB-5 Reform and Integrity Act of 2019

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DETAILED ISSUE SUMMARY

Money Laundering and Terrorist Financing

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 \(GTOs\)](#).



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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.

As anonymous shell companies are increasingly being used by corrupt foreign and domestic interests to launder money via real estate purchases, the lack of identification of “beneficial owners” of these companies has also created obstacles for law enforcement agencies’ enforcement of AML laws. NAR therefore supports 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. Allowing law enforcement to have access to such information will improve tracking of illicit money laundering schemes, and also reduce growing pressures to impose bank-like AML responsibilities on real estate professionals.

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

Congress is 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 will likely be introduced this session that would require disclosure of the beneficial owners of a corporation or limited liability companies (LLC) upon creation to prohibit a shell company from masking the actual ownership interests. In the past, there have been several bipartisan legislative measures in the House and the Senate that would require beneficial ownership information to be reported to law enforcement agencies, like FinCEN - the information would not be publicly available - and would impose no requirements on real estate professionals. For example, state registered corporations or LLCs may be required to report specific information about their beneficial owners to FinCEN.

Other current legislative proposals include expanding the Geographic Target Orders (GTOs) to include commercial, all-cash real estate transactions and making GTOs



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permanent. This proposal would require title companies to report to FinCEN on all-cash commercial transactions. It is currently unclear if the GTOs are expanded to include commercial transactions whether the threshold amount for reporting will follow the current GTO and remain at \$300k, similar to reporting for residential real estate transactions, or whether the amount will be increased. A separate legislative proposal would make GTOs permanent, eliminating the need for FinCEN to extend the orders every six months under the current framework. There are still many questions regarding the scope and implementation of these proposals, if passed by Congress.

NAR continues to monitor closely and has worked with FinCEN to develop educational materials informing real estate agents and brokers of their responsibilities under current law. The Association of Real Estate Licensing Law Officials (ARELLO) also shares NAR's resources on anti-money laundering practices, which are distributed by many state real estate offices.

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 November 6, 2020 until May 4, 2021, covers the following geographic areas and all-cash transactions of \$300k or more:

- Texas: Bexar, Tarrant, or Dallas Counties
- Florida: Miami-Dade, Broward, or Palm Beach Counties
- New York: Boroughs-- Brooklyn, Queens, Bronx, Staten Island, or Manhattan
- California; San Diego, Los Angeles, San Francisco, San Mateo, or Santa Clara
- Hawaii: City and County of Honolulu
- Nevada: Clark County
- Washington: King County



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- Massachusetts: Suffolk or Middlesex Counties
- Illinois: Cook County

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 legislation that directed Treasury to allow investigators to obtain additional records to better target illicit Russian activity, the GTOs also 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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DETAILED ISSUE SUMMARY

RESPA-CFPB

What is the fundamental issue?

Recent regulatory actions have called into question whether marketing agreements are legitimate under the *Real Estate Settlement Procedures Act* (RESPA), and if so, 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.



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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 previously 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. NAR strongly advocated for removal of this problematic guidance, including most recently sending a [letter](#) on September 11, 2020, along with industry partners. On October 7, 2020, the CFPB rescinded the problematic 2015 Compliance Bulletin and updated their Frequently Asked Questions (FAQs), recognizing industry best practices and focusing on a facts and circumstances analysis for determining RESPA compliance. The updated guidance includes common scenarios and examples that address RESPA compliance questions related to MSAs, as well as gifts and promotional activities.

Another noteworthy action by the CFPB came on June 4, 2015, when 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. Former CFPB Director Cordray's decision in this instance called into question practices relating to reinsurance arrangements and attempted to expand the agency's statute of limitations authority. As a result of the CFPB's action, Wells Fargo, Prospect Mortgage, and other lending institutions discontinued participation in MSAs with real estate agents and brokers. The PHH case was subsequently litigated at the U.S. Court of Appeals for the District of Columbia, which NAR filed two amici, or "Friend of the Court," briefs defending properly implemented MSAs in this case.



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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 en banc court issued a decision on January 31, 2018, reinstating the panel’s decision that PHH did not violate Section 8(c)(2) of RESPA. The court also held the CFPB’s structure was constitutional, where the for-cause removal by the President gave the CFPB director independence while also giving the President ample oversight authority.

Following the PHH litigation, the CFPB 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. The CFPB was also investigating a third-party marketing platform for RESPA violations, but did not result in an enforcement action, ending the investigation.

At the end of 2017, CFPB Director Cordray left his position rather than serving his full term that was set to expire in July 2018, and the President appointed an acting Director. This resulted in a legal challenge under the Federal Vacancies Reform Act of 1998 by CFPB Chief of Staff, which was dropped when the President announced a nominee for the permanent director position. In December 2018, Kathy Kraninger was confirmed as the new Director of the CFPB for a five-year term. NAR supported Ms. Kraninger’s confirmation, which included spearheading a coalition letter to the full Senate prior to her confirmation vote. In another case, *Seila Law LLC v. CFPB*, the Supreme Court ruled on June 29, 2020, that the Director’s “for-cause” removal protections (removal only for “inefficiency, neglect of duty, or malfeasance in office”) under Dodd-Frank are unconstitutional. As a result, the CFPB Director is now serving at the discretion of the president and can be removed at will. NAR submitted an [amicus brief](#) in this case, along with other industry partners, advocating for the least possible disruption to the Bureau and the housing market.

Also, in 2019, the CFPB announced a revised “No Action Letter” (NAL) policy designed to provide regulatory certainty, facilitate compliance, and promote innovation without fear of supervisory or enforcement actions for products or services offered subject to certain facts and circumstances. The Department of Housing and Urban Development (HUD) filed for No-Action Letter application with the Bureau on behalf of housing counseling agencies that expressed RESPA concerns about the agencies entering in arrangements with mortgage lenders for housing counseling services for consumers. In September



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2019, the Bureau issued its first No-Action Letter under the new policy to HUD, explaining that it would not take any supervisory or enforcement action under RESPA Section 8 against the housing counseling agencies, if the arrangements with the mortgage lenders for counseling services met specified conditions. In January 2020, the CFPB issued another No-Action Letter to a mortgage lender interested in pursuing funding arrangements with housing counseling agencies to provide counseling services to consumers.

NAR continues to work with the CFPB and industry partners to ensure that helpful RESPA guidance is provided to practitioners. NAR published a list of Do's and Don'ts for real estate professionals when engaging in MSA's and co-marketing activities via social media and other web-based marketing tools (found under the References tab). These educational resources are intended to help real estate professionals comply with RESPA when co-marketing with other settlement service providers. NAR will also work with Congress to ensure that any future legislative changes improve RESPA without imposing undue burdens on real estate professionals.

Current Legislation/Regulation (bill number or regulation)

None at this time.

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DETAILED ISSUE SUMMARY

TRID (RESPA/TILA Harmonization)

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. The final Know Before You Owe (KBYO or TRID) rule has helped clarify real estate sales transactions, but initially faced many questions, complications, and costs related to the implementation that began on October 3, 2015.



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

The new KBYO 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 reluctance by lenders and title companies to share the CD out of fear of liability for disclosing clients' nonpublic personal information. The CFPB has been working to address these outstanding concerns through subsequent rulemakings since 2015.

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 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 continued to be problematic as lenders argued that the privacy requirements of the Gramm-Leach-Bliley Act (GLBA) or Regulation P prohibited them 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, which was eventually clarified by the Bureau thanks to advocacy efforts by NAR.

Upon the proposal stages of the rule, NAR strongly advocated for a period of restrained enforcement and liability for the rule. It was through NAR member efforts during the



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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 explicit language acknowledging that sharing the CD with real estate professionals is permitted under existing privacy laws (GLBA and Regulation P). Thus, the KBYO rule did not impact the existing privacy law exception that allowed for CD sharing. Therefore, lenders that continue to show reluctance in sharing the CD out of fear of liability for disclosing clients' nonpublic personal information remains unwarranted.

On October 18, 2016, NAR sent a letter to the CFPB commenting on the latest 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 BCFP released the final rule amending the "Know Before You Owe" (KBYO or TRID) mortgage disclosure rule and clarified the ability to share the CD with third parties - a victory for real estate professionals nationwide. The final rule was became effective on October 10, 2017, with mandatory compliance 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, advocating 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 was issued on April 26, 2018, and became effective June 1, 2018. Since that time, the CFPB has updated its ["TILA-RESPA Integrated Disclosure Frequently Asked Questions \(FAQs\)"](#), which provides guidance to help ensure compliance with TRID-RESPA Integrate Disclosure Rule.



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In the fall of 2019, the CFPB began its five-year assessment of the TRID rule, as mandated by law, to examine the implementation costs and regulatory benefits since the rule was enacted. A Request for Information (RFI) was issued, which NAR provided [comments](#) following extensive outreach to members on the effect of the rule on consumers and their businesses. For example, there continues to be frustration with the mandatory three business-day waiting period that occurs when there are certain changes made after an initial disclosure has been provided. NAR advocated for more flexibility for consumer waivers to protect against unnecessary delays and frustrations with this waiting period. The Bureau issued the [five-year lookback assessment](#) on October 1, 2020, which reported how the TRID rule improved consumers' experience to locate key mortgage information and compare mortgage offers. The CFPB also published a [Data Point](#) that examined changes consumers face regarding terms and costs of a mortgage loan throughout the transaction. There, the CFPB reported that almost 90 percent of mortgage loans involved at least one revision, 62 percent received at least one revised LE, and 49 percent received at least one corrected CD. The Bureau will use this information in determining future changes to the rule, which NAR will continue to provide feedback.

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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DETAILED ISSUE SUMMARY

Visa - Investors

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 a path to citizenship in the United States by investing a minimum of \$900,000 and creating 10 or more American jobs. Authority for the regional center pilot program needs to be reauthorized periodically.



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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 \$1.8 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.

EB-5 investments provide opportunities for the real estate sector by the construction of new commercial and multi-use developments, and by job creation and resulting property purchases.

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, anyone can "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 late December, 2019, Congress passed and President Trump signed into law two appropriations bills that fund the federal government through FY 2020, thereby extending the EB-5 Regional Center Program until September 30, 2020.

Several bills have been introduced in 2019 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 reforming and reauthorizing this program.

On September 24, 2019, Senator Chuck Grassley (R-IA) and Senator Patrick Leahy (D-VT) introduced the [EB-5 Reform and Integrity Act of 2019](#), which includes reform and long-term reauthorization of the EB-5 Regional Center Program.



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In addition, Senators Cornyn, Graham, Rounds and Minority Leader Schumer have recently introduced and co-sponsored the “Immigrant Investor Program Relief Act” (S.2778) to reauthorize and reform the EB-5 visa program.

On July 24, 2019, a Final Rule to reform and modernize the EB-5 program was published in the Federal Register at <https://www.federalregister.gov/documents/2019/07/24/2019-15000/eb-5-immigrant-investor-program-modernization>.

The Department of Homeland Security (DHS) is issuing this rule to codify existing policies and reform parts of the EB-5 program. This rule provides priority date retention to certain EB-5 investors, increases the required minimum investment amounts and reforms targeted employment area (TEA) designations.

NAR signed onto to a broader Coalition comment letter on May 17, 2019, expressing concern that some of these changes, especially the higher required minimum investment amounts, would make the program more difficult to use, thereby making less capital available for real estate development projects. We anticipate another opportunity will be available to sign onto a stakeholder letter to urge comprehensive Congressional reform of the program, in lieu of piecemeal regulatory changes, by EB-5's September 30, 2019 expiration date.

On 4/22/20, Pres. Trump signed an Executive Order - in response to the novel coronavirus epidemic - to halt all immigration and visa programs for a limited time period. The EO specifically exempted the EB-5 program and allowed it to continue unhindered.

Current Legislation/Regulation (bill number or regulation)

[Final Rule: EB-5 Immigrant Investor Program Modernization](#)

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DETAILED ISSUE SUMMARY

Visa - Seasonal Workers

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



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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.

At the 2019 NAR Annual Conference, new language to the H-2B policy was approved that encouraged employers who use the H-2B program to ensure they are in compliance with all relevant rules and regulations related to the H-2B program.

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

Although no comprehensive H-2B reform legislation has been introduced in the 116th Congress, NAR is looking forward to working with members of Congress to institute significant reforms to the H-2B program, help small businesses navigate the H-2B program and make the program more streamlined, transparent and efficient.

In the regulatory area, in Feb. 2020, the Departments of Homeland Security and Labor published a rule to allow a one-time increase of 36,000 H-2B visas available for this summer, on top of the 66,000 already authorized.



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Current Legislation/Regulation (bill number or regulation)

No current legislation at this time.

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DETAILED ISSUE SUMMARY

Visa - Tourism and Retirement

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



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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.

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), was 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.



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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.

Current Legislation/Regulation (bill number or regulation)

No actions at this time.

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DETAILED ISSUE SUMMARY

Worker Classification (Independent Contractor v. Employee)

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 dramatically 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.



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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 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: <https://www.nar.realtor/independent-contractor-status>.

Current Legislation/Regulation (bill number or regulation)

None at this time.

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