MORTGAGE FINANCE REFORM PENDING FEDERAL FINANCIAL REGULATIONS

As of May 8, 2013

Federal regulations too often impose a regulatory burden on the real estate industry, inhibit economic growth in real estate markets across the country and prevent too many consumers from realizing the American dream of homeownership. The two-year old Dodd-Frank Wall Street Reform and Consumer Protection Act has unleashed a flurry of new regulations that affect housing, mortgage finance, and homeownership. Considering the vast number and scope of the changes, even well-intentioned, are likely to make recovery of the housing industry and mortgage lending even more challenging. The following matrix identifies a dozen regulations (a majority as a result of the Dodd-Frank Act) that NAR is actively involved in.

Analysts are having a difficult time estimating the costs of Dodd-Frank because until the big ticket rules are finalized there are too many variables. Few believe there will not be significant compliance costs imposed on the real estate industry. Even the RESPA/TILA harmonization could cost tens of millions as software systems will need to be changed, employees will require training, and new forms and processes would have to be implemented. A rule like QRM could cost consumers billions of dollars if the standards are too tight and they must pay a much higher rate for their mortgages. That is not to mention lost opportunities if any of these rules cause significant reductions in access to credit.

Bottom Line: While additional regulation to address well-known abuses is needed, NAR is urging regulators to avoid adopting burdensome and unrealistic requirements that will raise costs on both the industry and consumer and could cause significant harm to the U.S. economy.

FINALIZED			
Regulation	**Summary/Comments**	**Date/Status**	**NAR Action**
Qualified Mortgage (QM)/Ability to Repay	The Dodd-Frank Act requires that no creditor may make a mortgage loan without making a reasonable and good faith determination that the borrower has the ability to repay the loan. A creditor that issues a Qualified Mortgage is presumed to comply with the general ability to repay standard.	03/12/13 - The CFPB issued a final rule which created a broad QM with a safe harbor but neglected to fix discrimination against affiliates in the 3% cap on fees and points. HR 1077 was introduced on 3/12/13 to address the 3% cap.	NAR supported a definition of QM that establishes strong consumer protections, promotes mortgage liquidity, and offers lenders a safe harbor to reduce litigation. NAR is supporting HR 1077 to fix the 3% cap on fees and points. See NAR's 7/22/11 comment letter. www.realtor.org/articles/summary-of-new-qualified-mortgage-qm-rule
Appraisals for Higher Priced Mortgage Loans (HPML)	For higher-priced loans secured by a borrower's home and bearing interest rates higher than the average prime offer rate (APOR) for comparable properties and mortgages, creditors are now required to use a licensed or certified appraiser who prepares a complete report based on a physical inspection of the property. Certain HPML loans are exempt from this rule including qualified mortgages. To prevent fraudulent property flipping, the rule requires creditors to obtain an additional appraisal if the property has been acquired within a certain time frame. Some exemptions apply.	OCC, FRB, NCUA, CFPB and FHFA published the final rule on 1/18/2013. The rule will take effect on January 18, 2014.	On 10/16/12, NAR submitted comments on the proposed rule. NAR recommended an exemption for rural areas from the second appraisal requirement for certain HPML loans. This exemption was included in the final rule. See NAR's 10/15/12 comment letter. See NAR's weekly report on the final rule.

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Loan Originator Compensation (including impact on seller financing)	The Dodd-Frank Act amended TILA with respect to loan originator compensation rules, including new restrictions on upfront discount points, origination points, and various consumer fees. It also added new restrictions on proper qualification and registration or licensing for loan originators, mandatory arbitration, and financing of credit insurance premiums. The proposal addresses the extent to which the new requirements apply to seller financing.	CFPB published the final rule on 1/20/13.	On 10/16/12, NAR submitted comments to the CFPB requesting that the CFPB align rules pertaining to seller financing including standardization of definitions in the QM rule, and an additional exemption for individuals providing seller financing who are exempt from licensing under the SAFE Act (which lets state decide who should be required to obtain a mortgage originator license). Additionally, NAR expressed concerns over restrictions on mandatory arbitration clauses and the disparate treatment of lenders with affiliates.
			
			See NAR's 10/16/12 comment on CFPB's proposed loan officer compensation rule.
			
			The final rule followed much of the legislation as it related to seller financing by providing an exemption from the rules for persons providing financing the sale of 3 or fewer properties in any 12-month period if:
			• Each property is owned by the seller and serves as security for the financing
			• The person has not acted as the builder or contractor of the property in the ordinary course of business
			• The financing meets the following requirements
			    ○ The financing is fully amortizing (no balloon or negative amortization)
			    ○ Determine in good faith that the consumer has the reasonable ability to repay.
			    ○ The financing has a fixed rate or adjustable interest rate that is adjustable after 5 or more years and has reasonable annual and lifetime limits on rate increases.

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Seller Financing: SAFE Act	The SAFE Act requires state licensing of individuals who engage in the business of a loan originator. To be covered, individuals must, in a commercial context and habitually or repeatedly, take a residential mortgage loan application and offer or negotiate terms of a residential mortgage loan for compensation or gain.	HUD published the final rule on 6/30/11. Responsibility for the rule transferred to CFPB on 7/21/11. The final rule took effect 8/29/11.	NAR submitted a strong objection to the proposed rule, urging HUD to exempt seller financing, or at least limit its coverage. The final rule took a different approach, but has the effect of exempting those who only occasionally engage in seller financing. See NAR's 2/12/10 comment letter. See also the seller financing page at www.realtor.org/topics/seller-financing
Mortgage Servicing	The Dodd-Frank Act added new requirements governing mortgage servicing under both RESPA and TILA. **RESPA.** The proposed RESPA rule invites comments on the following 7 servicer obligations: to correct errors asserted by borrowers, to provide information requested by borrowers, to ensure a reasonable basis exists to obtain force-placed insurance, to establish reasonable management policies and procedures, to provide information about mortgage loss mitigation options, to provide delinquent borrowers access to servicer personnel with continuity of contract, and to evaluate borrowers' applications for loss mitigation. **TILA.** The proposed TILA rule invites comments on initial rate adjustment notices for ARMS, periodic statements for residential mortgage loans, and prompt crediting of mortgage payment and response to requests for payoff amounts.	CFPB released its proposed Mortgage Servicing Rules on 8/10/12. The proposed rule was published on 9/17/12. The final rule was published on 1/17/2013	On 7/9/12, NAR submitted comments to the CFPB on its outline of proposals under consideration for the mortgage servicing rulemaking. NAR's comments followed the 6/19/12 meeting with CFPB Director Richard Cordray during which NAR expressed support for the implementation of servicing standards that will lead to improvements in servicer outreach to families that are at risk of losing their homes. NAR submitted comments to the CFPB on 10/9/12 commending the efforts of the CFPB to offer fixes to problems in mortgage servicing including limits on force-placed insurance, contact with delinquent borrowers within 30 days of a missed payment, establishment of a single point of contact and firm deadlines for delivery of payoff statements. The CFPB implemented many of the NAR's recommendations, including early contact with delinquent borrowers, prompt response timelines for borrowers requesting loan modification and short sale request, and limits on force-placed insurance. See NAR's 7/9/12 comment on the preliminary outline of proposals under consideration. See NAR's 10/9/12 comment on CFPB's proposed mortgage servicing rule.

PROPOSED & COMMENTED			
Regulation	**Summary**	**Status**	**NAR Action**
Qualified Residential Mortgage (QRM)/Risk Retention	The Dodd-Frank Act requires lenders that securitize mortgage loans to retain 5% of the credit risk unless the mortgage is a Qualified Residential Mortgage (QRM) or is otherwise exempt.	Six federal financial regulators issued a proposed rule on 4/29/11 that would narrowly define a QRM mortgage to require a 20% down payment, stringent debt-to-income ratios, and rigid credit standards. Most observers think the QRM rule will not be issued until after the QM final rule. The final QRM rule will take effect one year after its eventual publication.	NAR and its 47 partners in the Coalition for Sensible Housing Policy are asking the regulators to honor congressional intent by crafting a QRM exemption that includes a wide variety of traditionally safe, well-documented, and properly underwritten products and tracks the CFPB's QM rule. See NAR's 8/1/11 individual comment letter. See the Coalition's 8/1/11 joint comment letter.
Integrated Mortgage Disclosures under RESPA and TILA	The Dodd-Frank Act directs the CFPB to combine certain disclosures in connection with applying for and closing a mortgage under RESPA and TILA. A new Loan Estimate form would replace HUD's Good Faith Estimate and the Fed's "early" Truth in Lending disclosure. A new Closing Disclosure form would replace the HUD-1 (the current form used to close the loan), designed by HUD under RESPA. It would also replace the revised Truth in Lending disclosure designed by the Fed under TILA.	The Consumer Financial Protection Bureau (CFPB)) published the proposed rule on 8/23/12. The CFPB has expressed its intentions to wait to finalize the RESPA/TILA rule until other relevant rules are finalized (such as QM and QRM).	On 8/31/12, NAR submitted comments to CFPB on the part of proposed rule seeking to change the annual percentage rate (APR) calculation. NAR commented on the broad RESPA/TILA rule on 11/9/12 advising the CFPB to not fundamentally change the settlement process, not implement a three day waiting period, and instead focus on improving the combined TILA/RESPA up front disclosure. NAR also recommended that the CFPB break out appraisal charges on the HUD-1 when an appraisal management company is involved in the transaction. See NAR's 8/31/12 comment letter to CFPB. See NAR's 11/9/12 comment letter to CFPB.

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Basel III	The three bank regulators (the Fed, OCC, and FDIC) have engaged in a multi-year effort to strengthen capital standards for banks. The current round is known as Basel III, which refers to an international agreement that updates capital and liquidity requirements for banks and other financial institutions. These regulations will likely make it more difficult for businesses to raise capital and increase their costs of borrowing, but reduce their risk of failure. As proposed, Basel III would amend risk weighting for various categories of mortgage products depending on the issuer, the loan-to-value ratio (LTV), and other factors. FHA loans are the most favored (i.e., would require the least capital among mortgages) because of their explicit federal guarantee. GSE loans would not receive such favorable treatment even though GSE activities are currently backed by the government. As a general rule, for non-FHA mortgages, banks will have to hold greater capital reserves for mortgages with 95% LTVs than loans with lower LTVs. This will likely translate into less high LTV lending or even greater costs to consumers who borrow with smaller down payments.	The bank regulators published the proposed rule on June 12, 2012.	NAR submitted comments on 10/22/12 expressing concerns that the Basel III proposal will impose harsh new capital requirements on residential mortgages, whether held in portfolio or sold into a private label securitization. The proposal would also increase the costs of funding certain commercial real estate projects. As a result, the proposal has the potential to harm home purchasers, particularly first-time home buyers, minorities, and other disadvantaged groups. As proposed, mortgage costs are sure to increase, and access would be limited, for the vast number of qualified and credit-worthy consumers unable to afford a 20 percent down payment on top of closing costs and other fees. NAR suggested that capital regulations should not be promulgated in a vacuum, but regulators must consider the entire regulatory and market framework affecting the industry (QM, QRM, Gfee increases, etc.). See NAR's 10/22/2012 comments on the proposed Basel III capital standards.

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Use of Eminent Domain to Acquire Underwater Mortgages	A private mortgage company (Mortgage Resolution Partners) has proposed that local governments could help borrowers by using eminent domain authority to take from investors the mortgages of underwater borrowers who are current on their payments. Investors would be compensated, but at an amount less than what is owed on the loan. Local governments could then restructure the loan reflecting the current market value of the home. The proposal is aimed at non-GSE mortgage-backed securities (private label securities). Some local governments have considered using this approach.	On 8/9/12, FHFA expressed significant concern with such use of eminent domain because it could have a chilling effect on mortgage lending and invited public comment. (The GSEs hold some non-GSE mortgage backed securities.) It is not clear whether any jurisdictions will seek to use eminent domain to acquire mortgages. Lenders are likely to strongly resist any such effort and argue that eminent domain is not available for this purpose and even if it were, it would inappropriately relieve borrowers of their contractual obligations and result in higher rates and fees for virtually all future mortgages.	On 9/7/12, NAR wrote to FHFA agreeing with its concerns about using eminent domain to acquire underwater mortgages where the borrowers are not in default. The value of mortgage backed securities would take a significant hit if eminent domain were used to acquire mortgages, resulting in higher interest rates and probably less capital available for residential lending. See NAR's 9/7/12 letter.
PACE (Property Assessed Clean Energy) Programs	PACE programs provide for financing home energy-related home improvements projects, such as solar panels, insulation, and energy efficient windows. Homeowners repay the amount borrowers, with interest, through an assessment added to their property tax bill. PACE loans typically stand in first position, even ahead of first mortgages. FHFA believes PACE loans raise safety and soundness concerns for the GSEs since they reduce the security for the mortgage loans owned or guaranteed by the GSEs. Accordingly, FHFA published a proposed rule to minimize the risk of PACE loans by forbidding PACE loans with a first lien, except where the requirements of one of three risk-mitigation alternatives are met.	FHFA published the proposed rule on 6/15/12. Comments were due 9/13/12.	NAR supports the proposed general rule that the GSEs may not accept a loan where the PACE loan is a first lien. NAR recommends that FHFA not allow the three risk-mitigation alternatives since they could open the door to unacceptable abuse and risk that could harm the housing recovery. First-lien PACE loans could also reduce credit and mortgage availability and secondary mortgage market liquidity. NAR is also concerned that buyers may not understand that they must assume responsibility for paying the PACE loan attached to the property. Finally, PACE loans could limit the ability of owners to refinance. See NAR's 9/13/12 comment letter.

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GSE Reform	On 10/04/2012 FHFA released a white paper on the creation of a common secondary market securitization platform. This infrastructure is being developed as part of FHFA's strategic plan. In addition, FHFA is creating a model pooling and servicing agreement that will dictate the responsibility of mortgage loan originators once it becomes effective. These changes are intended to set the framework of the secondary market while GSE reform continues to be worked out in congress. On 5/14/12, the Federal Housing Finance Agency (FHFA), the conservator of Fannie Mae and Freddie Mac (the GSEs), released a draft strategic plan for fiscal years 2013-17, including its plan for the conservatorships of the GSEs. On 8/17/12, the Treasury Department announced amendments to the agreement between the Treasury Department and FHFA, as conservator of the GSEs, highlighting the following changes: • The GSEs must wind down their investment portfolios at an annual rate of 15% instead of 10%. • Each GSE must submit a plan to FHFA for reducing taxpayer exposure to mortgage credit risk. • Instead of a 10% dividend payable on the Treasury's cash infusions, the GSEs must pay every dollar of earnings to Treasury, to assure they will be "wound down" and not be allowed to retain profits, rebuild capital, or recover.	Congress has deferred its decision on secondary mortgage market reform until after the presidential election. NAR submitted comments to FHFA on the secondary market infrastructure on 12/3/12.	NAR submitted several suggestions to FHFA on its strategic plan, including: • FHFA should promote the continued availability of mortgage finance. • The GSEs should keep families in their homes, where possible. • Increasing foreclosure alternatives will minimize need for taxpayer subsidy. • FHFA should not overly contract the role of GSEs. • Providing creditworthy consumers reasonable access to mortgage capital, bolstering foreclosure alternatives, and ensuring that the future of housing finance includes a robust secondary mortgage marketplace will significantly improve the agency's success in achieving its goals. See NAR's 6/13/12 comment letter on FHFA's strategic plan. NAR provided comments on the proposed securitization platform supportive of a self-sufficient infrastructure whereby safe, sound, transparent, and insured MBS may be packaged and sold. Additionally, NAR recommended the improvement of loan level and mortgage pool disclosures to market participants to enhance opportunities for private capital participation. NAR believes this data is an essential foundation for investors to efficiently analyze and price mortgage credit risk.

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State Level Guarantee-Fee (g-fees) Pricing	The Federal Housing Finance Agency (FHFA) announced a revised approach to guarantee fee (g-fees) that Fannie Mae and Freddie Mac charge lenders. Under the new approach, higher g-fees would be charged in states that FHFA has determined have exceptionally high foreclosure costs. In the notice, FHFA identified five states that would be immediately affected: Illinois, Florida, Connecticut, New Jersey, and New York. Additionally, FHFA stated that the approach could be modified to take into account other factors including state laws on the disposition of REO assets.	The notice was published in Federal Register on 9/25/12.	NAR's comments state that the changes are a reactionary response to extended foreclosure timelines in the 5 states that were in fact brought on by the deficiencies and illegal actions of banks servicing GSEs loans. Additionally, NAR commented that the continued increases to g-fees will further restrict consumer access to mortgage credit. See NAR's 11/26/12 comment letter to FHFA.
TO BE DETERMINED			
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Appraisal Reform	The Dodd-Frank Act imposed additional changes to rules governing appraisals, in addition to the major changes that the Fed issued in 2011. Rules are expected to establish minimum requirements to be applied by States in the registration of appraisal management companies.	A proposed rule is expected "soon."	NAR will review the rule and submit any appropriate comments.
Lease Accounting	The Financial Accounting Standards Board (FASB) and International Accounting Standards Board (IASB) proposed lease accounting changes that may be detrimental to our nation's economy by reducing the overall borrowing capacity of many commercial real estate lessees and lessors. Under the boards' most recent lease proposal, businesses would be required to capitalize over $1.1 trillion in leased real estate assets onto their balance sheets. For businesses leasing space, especially small businesses, this will change these leases into a major liability. Among other things, this proposal may jeopardize income property fundamentals, loan structures, property valuations, financing covenants, and the underlying economics of commercial real estate. Currently, accounting rules allow many businesses to classify leases as operating expenses, which do not appear on their balance sheets. Both FASB and IASB believe these changes would improve transparency as well as provide investors with more consistent and concise financial reporting.	FASB/IASB will likely release a revised proposal by spring 2013 and provide the public with a 120 day comment period. Both organizations expect to have their joint proposal finalized by 2015. The effective date of this proposal would likely be in 2018, when virtually all new and outstanding leases would be subject to the new accounting standard.	NAR continues to work with FASB/IASB and other stakeholders to ensure that any modifications to lease accounting rules will not hurt commercial real estate practitioners.