



# 2011

NAR Legislative & Regulatory  
Year in Review



NATIONAL  
ASSOCIATION *of*  
REALTORS®

As the largest professional trade association in the United States, the NATIONAL ASSOCIATION OF REALTORS® represents nearly 1.1 million members involved in all facets of residential and commercial real estate as brokers, salespeople, property managers, appraisers and counselors. NAR advocates policy initiatives that will result in the return of a fundamentally sound and dynamic U.S. real estate market fostering vibrant communities in which to live and work.

During 2011, the REALTOR® Legislative and Regulatory Agenda has focused on ensuring the continued flow of capital into the real estate market, preserving residential and commercial property ownership, and protecting the business interests of its members. NAR has made significant progress on all fronts. The issues highlighted here represent just a portion of the advocacy activity conducted on behalf of REALTORS®. To view the full list of issues NAR is working on, please visit [www.realtor.org/politicaladvocacy](http://www.realtor.org/politicaladvocacy).



Located just one block from the U.S. Capitol, the headquarters of the NATIONAL ASSOCIATION OF REALTORS® is perfectly positioned to make REALTORS®' voices heard in Washington, D.C.

NAR's staff uses this physical proximity and its long-standing relationships with legislators to work closely with Congress and regulatory agencies to push forward issues that benefit REALTORS®, the real estate industry and consumers.

*\*Note that items in this brochure were current as of October 2011.*





## ENSURING THE FLOW OF CAPITAL INTO THE REAL ESTATE MARKET

### RESTRUCTURING THE SECONDARY MORTGAGE MARKET

#### (FANNIE MAE/FREDDIE MAC — THE GSEs)

Building upon the recommendations developed by NAR's GSE Presidential Advisory Group (PAG), NAR has strongly advocated for an ongoing level of government participation in any efforts to enact comprehensive secondary mortgage market reform. Legislative reform proposals introduced in 2010, however, had primarily focused on full privatization. In 2011, two comprehensive bills that include some level of government participation in the secondary mortgage market were introduced. H.R. 1859, the "Housing Finance Reform Act of 2011," sponsored by Reps. John Campbell (R-CA) and Gary Peters (D-MI), was introduced in June 2011; H.R. 2413, the "Secondary Market Facility for Residential Mortgages Act of 2011," sponsored by Reps. Gary Miller (R-CA) and Carolyn McCarthy (D-NY), was introduced in July 2011. While NAR worked with both bill authors and supports both bills, H.R. 2413 was directly derived from the principles and recommendations developed by the NAR GSE PAG. Perhaps most importantly, with the introduction of these two measures, the debate over reform of the secondary market has shifted away from one focused on rapid and total privatization of the GSEs to a more careful conversation on the need for continued government involvement. NAR continues to diligently advocate for the REALTOR® recommendations to the Obama Administration, and our Industry Partners via face-to-face meetings, participation in housing finance symposiums and responses to request for input from the government.

### COVERED BONDS

On June 22, 2011, the U.S. House Financial Services Committee passed H.R. 940, the "United States Covered Bond Act of 2011" (Reps. Garrett (R-NJ) and Maloney (D-NY)). The bill would create a framework to establish a covered bond market in the United States. NAR sent a letter in support of the bill and signed a letter with 13 other organizations supporting passage of the legislation. The creation of a covered bond market could provide an additional source of capital and improve liquidity for the commercial and residential real estate industries.

### FHA CONDOMINIUM RULES

On May 6, 2011, a coalition put together by NAR, including the Community Associations Institute (CAI), the Institute for Real Estate Management (IREM), and the National Association of Home Builders (NAHB), sent a letter to acting Federal Housing Administration (FHA) Commissioner, Bob Ryan. The coalition recommends changes to FHA's condominium rules to provide greater liquidity to this sector of the real estate market without causing additional risk to the FHA insurance fund. In a meeting with the Acting Commissioner, the Coalition outlined support for enhancements to the rules and limits relating to (1) owner-occupancy, (2) FHA concentration, (3) investor ownership, (4) presale, (5) delinquent HOA assessments and (6) commercial space.

On July 1, 2011, new condominium rules were implemented for mortgages insured by FHA. The temporary measures on owner-occupancy, FHA concentration and presale were made permanent, which NAR and the Coalition believes are good first steps in addressing the lack of liquidity available for condominiums. NAR is working with the Coalition for more enhancements to the condominium rules.



## FHA, FANNIE AND FREDDIE LOAN LIMITS

NAR successfully fought proposals to roll the Fannie and Freddie conforming loan limits back to a single \$417,000 nationwide standard. This proposal would have reduced loan limits in 124 counties in 21 states. Additionally, a House proposal to eliminate the floor (the low cost limit) for Federal Housing Administration-insured FHA mortgages did not advance. This proposal would have decreased limits in 257 counties in 34 states. Although the housing industry efforts to further extend the temporary higher loan limits for FHA, Fannie and Freddie were not successful, NAR and housing industry advocacy efforts continue to seek to reinstate the high cost limits and safeguard against further challenges.

## FHA REFORM

NAR worked with Congress and the Obama Administration to protect the affordability and availability of Federal Housing Administration (FHA) mortgage insurance. Specifically, NAR successfully fought proposals to increase FHA's downpayment requirement to 5 percent. FHA estimates that such an increase would have eliminated 345,000 borrowers in the last year alone.

## RISK RETENTION/QRM PROPOSED RULE

NAR spearheaded a coalition of nearly 50 members to oppose a rule proposed by six Federal regulators that would implement the risk retention requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Act requires entities that securitize mortgage loans to retain 5 percent of the credit risk unless the mortgage is a qualified residential mortgage (QRM) or is otherwise exempt (GSE loans [while in conservatorship] and FHA loans would be exempt). NAR's comment letter asks the six federal regulators to withdraw, revise and republish the rule for public comment because the rule:

- Is inconsistent with the standards set forth for risk retention in the Dodd-Frank Act and violates congressional intent.
- Unnecessarily defines the QRM exemption from the risk retention requirements to include only a narrow slice of the mortgage market. REALTORS® believe that imposing a minimum 20 percent downpayment, stringent debt-to-income ratio requirements, and rigid credit standards will deny millions of creditworthy Americans access to the lowest cost and safest mortgages.
- Jeopardizes the fragile housing market and general economic recovery.
- Reduces liquidity for commercial real estate.

[www.realtor.org/topics/qrm](http://www.realtor.org/topics/qrm)



# Advocate

## ABILITY TO REPAY (QM) RULE

NAR raised REALTOR® concerns about the pending ability-to-repay proposed rule (referred to as the QM rule) implementing new Truth in Lending Act (TILA) requirements added by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The rule would prohibit any creditor from providing a mortgage loan without making a reasonable and good faith determination that the borrower has the ability to repay the loan. The *NAR comment letter* urges the Consumer Financial Protection Bureau (CFPB) to retain the proposed exemption for seller financing from the ability-to-repay requirements to the extent it is exempt from the TILA regulatory definition of creditor that only covers persons extending consumer credit more than five times in the pertinent calendar year. In addition, the definition of QM should include stronger consumer protections than proposed, promote liquidity, incorporate ability-to-repay standards, and offer lenders a safe harbor that reduces litigation exposure.

## SELLER FINANCING RULE

In response to NAR comments, HUD published a final rule under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE) Act that provides relief for those who occasionally provide seller financing. The final rule narrows the requirement to be licensed to apply only to individuals who, 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. In July 2011, Consumer Financial Protection Board (CFPB) assumed responsibility for the rule. NAR expects CFPB to defer to reasonable state laws on the number of seller financing transactions that would trigger licensing.

NAR continues to seek relief for seller financing in the context of the “ability to repay” QM proposed rule. NAR is urging CFPB to retain the proposed exemption for seller financing from the ability-to-repay requirements to the extent it is exempt from the definition of creditor, which only covers persons extending consumer credit more than five times in the pertinent calendar year.

[www.realtor.org/government\\_affairs/seller\\_financing](http://www.realtor.org/government_affairs/seller_financing)

## SBA COMMERCIAL PROPERTY REFINANCING PROGRAM

The U.S. Small Business Administration (SBA) announced in February 2011 that it would start accepting refinancing applications for commercial real estate mortgages maturing by the end of 2012. In response to an NAR letter and those from other small business groups, the program was expanded to loans maturing after the end of 2012. For the first time, small businesses can refinance certain owner-occupied commercial real estate mortgages into long-term, fixed rate loans under the existing SBA 504 program. The new refinance program provides an SBA loan up to 40 percent of the appraised property value with no less than 10 percent of the remaining amount to be contributed by the borrower. This program will provide credit relief for property owners and help stabilize the commercial real estate and small business sectors.

## LEASE ACCOUNTING RULES

After the submission of NAR’s comment letter along with several coalition letters with real estate-related organizations, the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB) announced that they would invite additional public comments on their proposed lease accounting changes. The NAR letter had asked the Boards to take that action due to changes in the most recent draft that would force businesses to bring leased assets onto their books as liabilities. NAR disagrees with this approach to real estate lease accounting, which would significantly reduce liquidity for both commercial real estate lessees and lessors.

# Sustain

## ★ PRESERVING THE VALUE OF PROPERTY OWNERSHIP

### MORTGAGE INTEREST DEDUCTION, DEFICIT REDUCTION AND TAX REFORM

Given the near certainty that an effort will be made to cut back on the mortgage interest deduction, NAR has been meeting with Members of Congress and senior staff in preparation for future tax reform and deficit reduction debates. As no single proposal has yet emerged as the basis for reforms, these meetings have focused on building an understanding of the concerns that arise in the context of mortgage interest deduction (MID) reform and identifying those issues that require further discussion and education. In addition, NAR has engaged consultants to (1) devise the means to evaluate and compare reform proposals when they are formally proposed and (2) develop the extensive data needed on the impact of changes to the limits on home equity deductions, reduced caps on mortgage deductions and limitations on second home deductions. In anticipation of future advocacy efforts, NAR has also conducted voter focus groups and national polling on MID-related issues.

### NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

With NAR's support, the House passed H.R. 1309 (Biggert, IL-R; Waters, D-CA) that includes a 5-year extension of the National Flood Insurance Program (NFIP). While the bill includes tough premium rate reforms, NAR successfully worked to minimize the negative impact of those reforms and defeated several privatization efforts, including one to terminate the NFIP. Thanks to REALTORS®, this effort failed on a 38-384 vote. While the Senate continues to work on its version of the 5-year reform bill, NAR has secured another short-term extension until November 18, 2011 and is working to ensure that Congress finishes the 5-year reform bill in the interim.

[www.realtor.org/topics/nfip](http://www.realtor.org/topics/nfip)

### VOLUNTARY RESIDENTIAL ENERGY USE LABEL PROGRAM

NAR successfully delayed the implementation of a national voluntary home energy labeling program developed by the federal Department of Energy (DOE). DOE agreed to pilot test the program and include changes in the scoring system that reduce the market disadvantage to older homes and an emphasis on the fixed features of the home, rather than on how owners use the home. At NAR's request, DOE clarified in written materials the purely voluntary nature of the program for homeowners.

### ENVIRONMENTAL REGULATIONS

NAR successfully advocated for the addition of provisions to House appropriation bills that would bar the Environmental Protection Agency from (1) enforcing lead paint standards before accurate test kits are approved; (2) regulating CO<sub>2</sub> from office and apartment buildings when the Clean Air Act was not designed for global greenhouse gases; and (3) issuing "voluntary" guidance that would expand the number of waters and properties subject to Clean Water Act regulations. While the Senate has yet to act on any of these bills, adding these provisions sends an important message to federal agencies not to overregulate the buying and selling of real estate.

### LEAD TESTING REQUIREMENTS

At NAR's urging, the Environmental Protection Agency (EPA) withdrew a proposed rule to add further expensive testing requirements to the existing residential lead paint renovation, repair and painting rule. This proposal, had it gone into effect, would have required contractors to take additional steps to demonstrate that dust-lead levels in areas where work was performed were safe. These steps would have increased the costs of making repairs to a home and would have increased REALTOR® liability related to disclosure of lead paint.



## ★ PROTECTING REALTORS®' BUSINESS INTERESTS AND ACTIVITIES

### DODD-FRANK TREATMENT OF MORTGAGE FIRMS WITH REALTY AFFILIATES

The Dodd-Frank Wall Street Reform and Consumer Protection Act's antipredatory lending provisions discriminate against mortgage firms with affiliates involved in real estate sales transactions by forcing them to count affiliate charges when calculating fees and points to meet safe harbor provisions. NAR commented on the proposed rule seeking to remove this discriminatory element. At the same time, NAR has been working to advance legislation throughout 2011 that would also correct the problem.

### MORTGAGE ASSISTANCE RELIEF SERVICES RULE (MARS)

After continued efforts to urge reinterpretation or amendment of the rule, including a July 7 meeting between President Phipps and Federal Trade Commission (FTC) Chairman Jon Leibowitz, the FTC announced on July 15 that it will forbear from enforcing most provisions of its MARS Rule against real estate professionals who assist consumers in obtaining short sale approval from their lenders or servicers. Starting July 15, 2011, real estate professionals acting in their licensed capacity no longer needed to comply with most of the Rule's requirements, including the required disclosures, advance fee ban and recordkeeping requirements.

[www.realtor.org/topics/mars](http://www.realtor.org/topics/mars)

# Protect



## MORTGAGE LOAN ORIGINATOR LICENSING

NAR won relief from an overly narrow interpretation of the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE) Act as it applies to real estate brokerage activities compensated by a lender, mortgage broker or other loan originator (or their agent). In cases where a real estate broker/agent receives a commission from the lender for the sale of a REO, individuals must only be licensed if they meet the definition of “engaging in the business of a loan originator.” Brokers/agents rarely, if ever, take an application or offer to negotiate terms of a residential mortgage loan for REO transactions and typically would not have to be licensed as loan originators.

## RESPA GOOD FAITH ESTIMATE (GFE) AND THE TRUTH IN LENDING ACT DISCLOSURE (TILA)

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau (CFPB) must unify the disclosures required under the Real Estate Settlement Services Procedures Act (RESPA) and the Truth in Lending Act (TILA). NAR has long supported simplification of mortgage disclosure forms and has been regularly meeting with CFPB since the spring of 2011 to ensure this effort provides useful disclosure and a proper and efficient regulatory framework that is in keeping with the letter of RESPA and the Truth in Lending Act. NAR is also a major participant in an industry coalition working on this effort. The process for developing new forms has been refreshingly open and collaborative into the fall of 2011, but major work on the underlying framework lies ahead and will be a significant test for the CFPB.

## HOME WARRANTY

After three years of effort to get the Department of Housing and Urban Development to withdraw an informal letter calling the sale of home warranty contracts by real estate agents and brokers a likely Real Estate Settlement Procedures Act (RESPA) violation, NAR began a legislative effort to get the guidance reversed. The topic was a major issue in a spring broker fly-in. NAR, working with industry partners, secured a hearing on the issue in the House Financial Services Committee in July 2011. Legislation to address the problem, H.R. 2446, has been offered by Representatives Biggert (R-IL) and Clay (D-MO). NAR is working to secure cosponsors for the House bill as well as securing support for a similar measure in the Senate.

## NETWORK NEUTRALITY

On November 20, 2011, network neutrality rules established by the Federal Communications Commission go into effect. Net neutrality is the concept that all users, devices and websites should have equal access to the Web. NAR supported the net neutrality rules recognizing that the business of real estate is increasingly conducted online. Streaming video, virtual tours and voice-over-Internet-protocol are just some of the technologies that are commonly used by REALTORS® today. In the future, new technologies will be adopted, which will no doubt require unencumbered network access.

## PATENT REFORM

On September 16, 2011, President Obama signed into law the America Invents Act. This comprehensive reform of the nation’s patent laws is the most sweeping reform of the patent system in more than 60 years. The Act creates greater transparency in the patent application process and a more streamlined and effective process for challenging patents outside the judicial system. NAR successfully advocated for these reforms in order to reduce the burden of patent litigation, like the recent CIVIX lawsuit, on REALTOR® associations and members.

# *Reform*





### **APPRAISAL INDEPENDENCE**

In April, NAR released a statement regarding appraisers and appraiser independence on its appraisal Web page. In the statement, NAR expresses concerns about recent attempts to interfere with the appraisal process and the independence of the appraiser. Over the last 18-36 months, a host of rules, regulations and laws have been announced to further protect appraiser independence, but appraisers continue to be pressured. NAR believes this pressure unnecessarily adds risk to the mortgage transaction for lenders and consumers.

### **APPRAISAL MANAGEMENT COMPANY INDEMNIFICATION**

On August 11, 2011, NAR sent a letter to federal regulators calling for a ban on the use of indemnification clauses used by appraisal management companies (AMCs). The letter was sent to Federal Financial Institutions Examination Council (FFIEC), the U.S. Department of Housing and Urban Development, the Federal Housing Finance Agency, and the U.S. Department of Veterans Affairs.

Indemnification clauses are becoming more common in service contracts used to engage AMC panel appraisers. In many cases, appraisers are asked to sign contracts that include language to indemnify and hold harmless the AMC against any suit, threat or claim on any work product or service provided as part of the contract agreement. In some instances, the appraiser is even required to indemnify the lender and the AMC for amounts equal to their costs in repurchasing a mortgage loan, regardless of any proof of culpability on the part of the appraiser. The AMC is free from any legal obligation and the appraiser bears all responsibility.

## APPRAISER FIDUCIARY RESPONSIBILITIES

NAR submitted comments on a proposed Labor Department rule that would require appraisers to have a fiduciary responsibility to retirement plans in cases where the plan is involved in the purchase or investment of real property. NAR argued that appraisers are required to be independent and should not be considered a fiduciary.

On September 19, 2011, in response to comments submitted, the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) announced it will re-propose its rule on the definition of a fiduciary. The announcement states that the agency is revising provisions of the rule including the application of the regulation to appraisers. The rule was proposed to protect business owners who offer retirement plans and those who invest in these retirement plans and IRAs. The proposed rule defined a fiduciary as giving investment advice to an employee benefit plan or a plan's participants and imposed a number of duties "including a duty of undivided loyalty, a duty to act for the exclusive purposes of providing plan benefits and defraying reasonable expenses of administering the plan, and a stringent duty of care."

## HUD REO CLOSING ISSUES

In June, members reported issues in several states with closings on REO property owned by the U.S. Department of Housing and Urban Development (HUD). NAR sent a letter to HUD asking for a quick solution to this problem, which was delaying or denying the dream of homeownership to families across the country. HUD contracts with attorneys for closings in the disposition of their REO property, and there was an unexpected issue with these contracts. After working closely with senior staff and HUD's REO Department, the issue was resolved and closings for HUD REO properties now occur on a normal schedule.

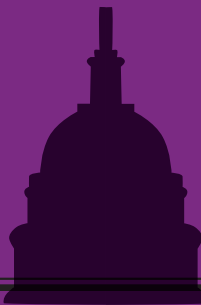
## SHORT SALES

REALTORS® continue to inform NAR about issues that their clients have when trying to get an answer on the approval of a short sale. To bring relief to distressed homeowners that want to execute a short sale in lieu of a foreclosure, NAR supports H.R. 1498, the "Prompt Decision for Qualification of Short Sale Act of 2011" that requires servicers to decide whether to approve a short sale within 45 days of completion of the file. This legislation, developed based on direct NAR input, was originally introduced in the 111th Congress. Based on continuing need expressed by REALTORS®, NAR encouraged the sponsors to reintroduce the bill in this Congress, the 112th. NAR is pleased that there is an effort afoot to have a companion bill introduced in the Senate, thus increasing the visibility of the issue and placing additional pressure on lenders to streamline the short sales process.

[www.realtor.org/shortsales](http://www.realtor.org/shortsales)

## TREASURY DEPARTMENT HAFA OUTREACH EVENT

In an effort to increase participation in the Home Affordable Foreclosure Alternatives (HAFA) program to expedite short sales, NAR encouraged the Treasury Department to engage real estate professionals at Making Home Affordable community outreach events. On October 12, the Treasury Department, in collaboration with the Arizona Association of REALTORS® and NAR, held a Making Home Affordable "Help for Homeowners" outreach event in Phoenix, Ariz. and piloted a session for real estate agents wanting to learn more about the Treasury Department's HAFA program. In addition to informational sessions for real estate professionals wanting to learn more about the program, agents and brokers had the opportunity to work on solutions to difficult HAFA transactions with loan servicers face-to-face. NAR continues to collaborate with the Treasury Department on HAFA improvements and promoting the development of a streamlined short sale process beyond the expiration of the program scheduled for the end of 2012.



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