

**The US Department of Housing and Urban Development's  
Draft FY 2003 – 2008 Strategic Plan  
Comments of the NATIONAL ASSOCIATION of REALTORS®**

The NATIONAL ASSOCIATION of REALTORS® (NAR) appreciated the opportunity to be part of the various meetings the Department conducted this past summer as you began the process of developing the FY 2003 – 2008 Strategic Plan. We welcome the opportunity again to comment as you proceed to finalize the plan that will guide the Department's major activities for the next five years. Our submission below is representative of established NAR policy positions, written comments we have submitted on various legislative and regulatory initiatives and discussions we have had with Administrative and Congressional personnel.

In the area of increasing homeownership opportunities we focus our comments on NAR's Housing Opportunity Program, minority homeownership, RESPA, lending activities, housing choice vouchers and Section 8 homeownership vouchers. In regards to the goal of promoting decent affordable housing, we focus on regulatory barriers, expiring Section 8 contracts and the Rental Housing Integrity Improvement Project. As far as fair housing and equal opportunity is concerned we concentrate our comments on increasing awareness of the fair housing laws, the need to promote educational activities, pressure to settle complaints and our desire to renew the Fair Housing Partnership and the At Home with Diversity: One America agreements with the Department. Finally, in the area of management and accountability we focus on our long-standing working relationship with the Department and the continued use of REALTORS® in the disposition of the HUD-held properties.

**Strategic Goal # 1 – Increasing Homeownership Opportunities**

**Promoting Housing Opportunities**

NAR applauds HUD's efforts in expanding homeownership opportunities. NAR recognizes that in order to thrive, real estate markets require healthy communities and healthy communities require a plentiful supply of affordable housing opportunities for all income levels. Without affordable housing, families are stressed to the breaking point, neighborhoods decline, jobs go unfilled and the quality of life suffers for all of us. Like HUD, we are committed to expanding housing opportunities—rental as well as ownership—for all Americans.

NAR officially began a new comprehensive program in November 2002 called the Housing Opportunity Program that addresses the issue for all income levels and includes rental as well as homeownership. The Housing Opportunity Program takes advantage of the special role REALTORS® play in their communities. The program equips REALTORS® with tools they can use, including training, research, communications tools and opportunities to work in coalition with allied interests. We believe that the program can compliment many of the existing HUD programs as well as offer opportunities for NAR and the Department to work collaboratively to achieve our common objective of providing housing opportunities.

NAR's Housing Opportunity Program includes:

- **Research** to help REALTORS® and policymakers better understand housing concerns and needs in their communities;
- **Training and business development** to educate REALTORS® about the importance of counseling consumers about the full range of housing options and to introduce REALTORS® to business opportunities in affordable housing;
- **Coalition building** activities at the national, state and local levels to develop and advocate new approaches that make housing more affordable;
- **Advocacy** to promote a safe, healthy and affordable housing and viable housing finance options;
- **Communication** activities to encourage housing interests and policymakers to work together to find effective solutions; and
- A “**living Web site**” at [www.realtor.org/housingopportunity](http://www.realtor.org/housingopportunity) that highlights successful affordable housing opportunity programs, provides tools, and shares a wealth of resources that REALTORS® and other activists can use to help promote housing opportunities in their communities.

### **Minority Homeownership**

NAR is proud to be part of the White House minority homeownership initiative and is committed to helping increase minority homeownership by 5.5 million households by the end of the decade. NAR, our state and local associations, and our members are committed to increasing minority homeownership opportunities throughout the United States. REALTORS® are engaged in and will continue to engage in actions to address barriers to minority homeownership.

### **RESPA**

NAR applauds HUD’s efforts to improve the home mortgage transaction for consumers. We appreciate and agree with the stated goals of reform as set forth by the Department in the July 29, 2002 proposed rule to reform RESPA and now in this draft Strategic Plan; 1) to simplify and improve the process of obtaining home mortgages, and 2) to reduce settlement costs for consumers. However, we believe that the goals for reform must also be consistent with RESPA’s original purpose when Congress enacted it in 1974. That purpose is to effect certain changes in the settlement process for residential real estate that will result in-

*(1) more effective advance disclosure to homebuyers and sellers of settlement costs; and (2) the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services.* We believe that HUD must balance the need for reform with the continued need for consumer protection.

We believe that some of the provisions in the proposed rule may achieve this balance while others fall short. Our overall reaction to the proposed RESPA changes is the following:

- The goals of reform can be achieved by improving the current Good Faith Estimate (GFE) regime. While we think the proposed changes must be more carefully constructed, we support further analysis and development of this concept.
- There is not enough evidence of consumer and industry benefit to move forward with the Guaranteed Mortgage Package (GMP) at this time. Additional data collection, research and analysis need to be conducted to provide evidence of significant benefits. There are risks inherent in the proposed changes and until more is known about the likely impacts, HUD should postpone advancing this kind of significant regulatory change.
- Congress should address many of the changes to RESPA that are contained in the proposed rule. To propose a repeal of Section 8 or to require providers to fix their fees requires oversight by the body that created RESPA.

The draft Strategic Plan forecasts the average closing cost of FHA-insured single-family mortgages will decrease by 2006. This decrease is attributed to the proposed changes to RESPA. HUD's Economic Impact Analysis estimates significant cost savings to the borrower. We believe this report to be arbitrary and void of in-depth analysis. While HUD projects cost savings of \$10.3 billion under their GMP proposal, they either dismiss or ignore some of downside risks that are inherent in the GMP proposal.

The draft Strategic Plan contains many analytical studies and research endeavors that the Office of Policy Development and Research intends to embark upon during the FY 2003 – 20008 timeframe. NAR firmly believes that as part of PD& R's agenda they should include a thorough impact analysis of the proposed changes to the Good Faith Estimates, the Guaranteed Mortgage Packaging Plan and whether or not the proposed changes to RESPA will indeed reduce costs to consumers. We believe that HUD has an obligation to the American taxpayer to perform such studies before proceeding to implement such wide-ranging changes that may or may not be of benefit to the consumer.

We believe that HUD's packaging proposal contained in the proposed rule could lead to increased concentration within the industry and reduce competition. Lenders will be provided a financial incentive (section 8 exemption) to package with no obligation to pass along discounts to borrowers and as a result will control the entire mortgage transaction. This will most likely lead to increased market share of the large lenders who already control the lion's share of the mortgage origination and servicing market. Small service providers including real estate brokerages with ancillary services will be at risk. Today the real estate transaction is still very much locally based. Small and mid-size service providers offer competitive choices to borrowers.

We believe that any regulation that moves an industry toward a more concentrated market structure should be viewed with considerable caution. An increased concentration of powers into the hands of a smaller number of large lenders and service providers could lead to higher closing costs—the exact opposite of HUD's stated goals for reform.

Again, not enough is known about the likely impact of the GMP to support advancing this concept at this time. An incremental approach, such as the improved GFE is a more attractive option for satisfying HUD's stated goals for reform. By simplifying the GFE

and clarifying that volume discounts are not violations of RESPA, HUD has created the necessary environment for packaging to occur.

The draft Strategic Plan indicates that the implementation of RESPA regulatory changes will reduce consumer confusion with the mortgage finance process. The proposed rule may appear to simplify the process, however, the details tell a different story. The Guaranteed Mortgage Package is described as a one-fee disclosure when the reality is that there are still several pieces to this disclosure, the interest rate, the GMP, the services outside the package and optional services. The services are not disclosed to the borrower and therefore do not permit comparisons to other loan options.

Finally, one of the most often-quoted consumer complaints about the mortgage transaction is the amount of paper involved. It is our belief that any changes to RESPA, or any other federal regulation will not significantly reduce the amount of paper involved in the transaction. In fact, some pieces of the proposed rule such as the enhanced GFE actually add more disclosures. This is not necessarily bad but the perception that RESPA reform, specifically this proposed rule will eliminate the volume of paper in the mortgage transaction is simply not true.

#### **Predatory Lending, Flipping and Appraiser Watch**

NAR opposes abusive or predatory lending practices. REALTORS® have long-standing wariness about mortgage products that encumber homeowner equity or may create opportunities for abusive lending practices. We are certainly aware of the fact that certain mortgage products can potentially encumber a homeowner's equity or lend themselves to opportunities for abusive lending practices. While NAR understands the Department's desire to proactively address the reported instances of abusive property flipping that have occurred in certain markets, we believe the Department already has in place the necessary enforcement tools to properly penalize abusers. As part of your strategic thinking you should more effectively utilize your existing sanction and penalty methods before subjecting the FHA program to more onerous regulation.

NAR certainly recognizes that flipping includes the participation of an FHA appraiser involved in the transaction, but we also know that HUD already has appraisal regulations in place to deal with those appraisers who collude with unscrupulous investors in such practices. HUD needs to re-inject more control and accountability over its own system. As part of your strategic plan you should develop methods to better enforce the appraisal regulations already in existence as well as institute changes to rein in some of the authority the Department has given to lenders, which could be a cause for the abuse.

We believe that the vast majority of appraisers are competent and ethical, but we also recognize the need for HUD to ensure the competence of their Roster Appraisers and to effectively monitor their performance in order to ensure their competency. NAR supports HUD in the use of a performance-based rating system to evaluate the appraisers on the roster. However, we disagree that defaults and claims should be used as the criteria to evaluate performance.

### **Housing Choice Vouchers**

The Department displays a strong desire to improve the utilization rate of housing choice vouchers. One reason for the deficient supply of available and affordable rental housing is property owners' increasing unwillingness to accept housing vouchers due to the regulatory burdens associated with the program. Participation in the program requires a property owner to sacrifice many private property rights and forces the operator to comply with burdensome government regulations and procedures, which can seriously compromise the performance and financial viability of a property. These disincentives include entering into housing assistance payment contracts; amendments of landlord leases; and compliance with regulations not normally attendant in conventional housing practices. Inconsistencies across housing authorities in the administration of the program further complicate the process.

To encourage broader landlord participation in the Section 8 voucher program, and thus maximize its objective, a number of regulatory changes could be made -- allowing PHAs to approve a landlord's standard lease; requiring timely rental payments from PHAs, and allowing owners to charge the PHA late fees for payments not received on time; payment of reasonable security deposits and tenant accountability for proper care of the unit; quick turn-around of vacant units, and reasonable rent levels for vouchers. Section 8 vouchers give residents choice in where they live. However, the program is fraught with burdens that discourage property owners from accepting voucher residents. Housing Authorities that have implemented any of the above suggestions, or programs similar to them, have found much greater success in the use of vouchers by their residents. Instead of keeping landlords away, as part of your strategic thinking HUD and housing authorities should implement programs that incentivize owner participation, which will result in greater housing options for Section 8 residents.

In the draft Strategic Plan the Department indicates that the Office of Policy Development and Research (PD&R) will undertake a comprehensive analysis of HUD's Fair Market Rent (FMR) policies. We strongly applaud this effort, and would be pleased to assist the Department with any resources we could provide. In most areas of the country, HUD sets the FMR at what they determine to be the 40th percentile of the local rent distribution, or the dollar amount below which 40 percent of standard quality rental housing units' rent. This means, that in HUD's eyes, a "fair" market rent is below the average rent for the area. In other words, 60 percent of the units in the area cost more than the FMR. This is a major reason why people have a hard time finding units. In addition, when surveying area rents, HUD excludes units built within the last two years. If HUD expects properties to be kept in good condition regardless of age, we believe that newer units should be surveyed the same as the older stock. Conversely, HUD should exclude from its survey those units that do not meet their physical condition standards.

### **Section 8 Homeownership Vouchers**

NAR is a strong supporter of the Section 8 homeownership program. This program allows people who may have thought they could never achieve homeownership become homeowners. As indicated in the draft Strategic Plan, we agree with the Department's desire to increase participation in this program. To date, only a small percentage of

housing authorities are offering the program to their residents. We believe this is due to two factors. First, housing authorities have limited resources with which to work. The Section 8 mortgage assistance program offers no additional fees to housing authorities despite an additional workload required to enact the program. While the down payment program provides a fee, the mortgage assistance program does not. We believe that additional responsibilities, administrative and operational, are required for both of these new programs; and therefore, PHAs should not have to shoulder that burden alone. Given the positive policy implications of moving these families to homeownership, we believe PHAs should be compensated for their participation in either the mortgage assistance or down payment programs.

The second reason for a lack of usage of the program relates to a lack of understanding. Many housing authorities have never dealt with homeownership previously, and there is a lack of knowledge about the program. In the draft Strategic Plan, you indicate a desire to publish a handbook on the program. We have published such a handbook (*Section 8 Homeownership: A Guide for REALTORS®*), which has been used by many housing authorities, local HUD offices, and REALTOR® associations nationwide. Rather than reinvent the wheel, we propose a partnership to update and reproduce the book in cooperation with the Department. PD&R has a copy of this booklet as well as other staff at HUD. You can access the handbook online at [www.realtor.org/GAPublic.nsf/pages/seceight?OpenDocument](http://www.realtor.org/GAPublic.nsf/pages/seceight?OpenDocument) or if you need a hard copy please let us know.

## **Strategic Goal # 2 – Promote Decent Affordable Housing**

### **Regulatory Barriers**

We agree with the Department's assessment that state and local regulations can operate as significant barriers to the production of affordable housing. We applaud PD & R's proposed study to understand the nature and effects of these barriers and to develop solutions to overcome them. Housing affordability is directly affected by state and local regulation of the housing industry. Excessive and unnecessary regulation drives up the cost of new housing and ultimately makes homeownership less affordable. As a consequence, government at all levels should be encouraged to eliminate regulatory barriers and fees, which unnecessarily reduce the affordability of housing.

Impact fees and transfer taxes on real estate make housing less affordable. Developers are often charged for off-site improvements such as roads, transit, parks, sewer and schools, which increase the cost of housing. For example, communities in fast growth areas that are having difficulty keeping up with new school construction needs often resort to impact fees for school construction, which adds to the cost of housing. We realize that capital improvements are necessary for communities, but these costs should be shared in a more broad based and consistent fashion in order to reduce overall housing costs.

Transfer taxes represent an additional settlement cost to both the buyers and sellers and these taxes are often earmarked for such purposes as infrastructure and open space needs.

NAR believes that the costs of the benefits to the general public should be borne by the general public. We believe that HUD should incorporate in its research a study on alternatives to infrastructure funding at the local level.

There are also a number of unnecessary government regulations that impede development and consequently increase development costs for affordable rental housing like stringent building codes and zoning regulations. Many local governments abuse their zoning powers by excluding affordable housing through large-lot zoning and restrictions on multifamily housing. As part of your Strategic Plan, HUD should examine the idea of reforming state zoning enabling legislation in order to require communities to plan and zone for affordable housing. Also, HUD should examine the idea of providing federal grants to states to assist them in this reform.

### **Expiration of Section 8 Project-based Contracts**

NAR recognizes the need to maintain the viability of HUD's multi-family housing programs and to increase the availability and affordability of rental housing. Many units have already been lost to owners who have chosen to opt-out of the project-based Section 8 program. NAR encourages the removal of policy and program disincentives that inhibit owner participation in the development of new rental housing or the preservation of existing safe and affordable rental housing. In the draft Strategic Plan, the Department notes the use of incentives to retain the existing project-based stock. We strongly encourage the continued and expanded use of these incentives, where appropriate. There are many localities and populations such as the elderly that cannot afford the loss of one more unit of affordable housing.

With respect to the Mark-to-Market program, HUD should review past deals to make sure the property can be preserved at current rent and debt levels. Deals completed in the first years of the Mark-to-Market program seem to have much tighter constraints on their operating budgets and may not be able to sustain under those conditions very long. As part of your Strategic Plan, we strongly urge HUD to incorporate a review of those early contracts to see if they may need to be renegotiated.

### **Rental Housing Integrity Improvement Project (RHIP)**

NAR strongly commends the Department for its commitment to the RHIP project. We believe that correctly determining tenant rents up front is the best way to concur under and overpayments by residents. However, other than several preliminary meetings in the summer of 2001, the industry has been left out of the loop on this program. Owners, tenants, housing authorities and management agents will have the greatest responsibility for implementing this program, and need to have input in its development. As part of your strategic thinking, we strongly encourage the Department to reconvene meetings with the industry partners before moving forward with this valuable program.

### **Strategic Goal # 3 – Ensuring Equal Opportunity in Housing**

Effective fair housing laws are critical to the success of REALTORS® across the nation. With over 60 percent of new households estimated to be minority or immigrant

households, REALTORS® will be working everyday across cultural lines. Discrimination at any stage of the transaction makes the work of REALTORS® more difficult and endangers not only their profitability but also the strength of our communities.

NAR applauds HUD for its objective to resolve discrimination complaints in a timely basis. The fair housing laws are designed to make it easy for people to file complaints. As an industry we accept the burden this ease places on us to allow reasonable suspicions of discrimination to be investigated and resolved. Lengthy delays hurt everyone involved in the process, particularly innocent respondents to complaints. Quick, professional, and impartial investigations, with early dismissals of complaints not supported by the investigation, leads to broad support for the law and its processes.

NAR urges HUD, in its desire to close complaints, however, to reduce pressure for settlements and conciliation of those complaints when there is little or no evidence to support the complaint. Settlement pressure, particularly without the benefit of seeing the evidence leads to resentment and loss of public support for fair housing laws. For example, when an agency conducts tests and files a complaint based on those tests, the responding party should have the opportunity to review the tests to determine whether there was a violation by an agent of the respondent. NAR has received many reports from respondents who are served with complaints alleging violations based on tests, but who are not allowed to review the test evidence against them before conciliating a complaint.

NAR also applauds HUD for its efforts to increase awareness of fair housing laws among the public. REALTORS® have been community leaders in promoting fair housing to the public through schools and local events. NAR has found it more effective to raise expectations of ethical behavior rather than to warn of unethical behavior. Some HUD advertising seems to communicate that discrimination is to be expected, rather than to say that equal opportunities are to be expected. When communications from HUD or funded by HUD give the message that discrimination will happen, then consumers are dissuaded from pursuing their rights to fair housing. One such ad says "you can afford it, but you'll never see it". Such messages do not raise awareness of fair housing laws and its promises.

As indicated above, NAR believes that some fair housing activities are decreasing public support for fair housing. Zealous prosecution of cases without due process protections for those accused of discrimination leads to opposition to the law from those who support fair housing principles. Whether relying on incomplete investigations and evidence to pressure settlements, to public statements of guilt before there is a hearing, activities by HUD funded agencies that do not protect due process rights often do more harm than good. In the mid 1990's, one state drastically changed its fair housing laws and eliminated the state fair housing agency because of due process issues. An attitude that lawsuits and settlements are victories in fair housing is contradictory. A successful fair housing lawsuit really points to a massive failure in our efforts to promote fair housing - someone was discriminated against. As part of HUD's Strategic Plan, we encourage you to promote the values of fair housing, the positive impact it has not only on minorities, but also on everyone in a community, and that HUD works with many in the community,



including the industry, to assure equal housing opportunities.

Enforcement is necessary but should supplement, not supplant, effective education, particularly of housing industry professionals and private property owners. NAR is proud of its record in developing and delivering fair housing and diversity education nationwide. From its award winning "Fair Housing in the 90's" series to today's "At Home with Diversity" course, we are confident that the vast majority of REALTORS® are not only fully aware of, but are personally committed to, fair housing. Many professionals outside of our 800,000 plus members have taken our courses, but few other organizations have been as effective as NAR in educating real estate professionals. We applaud HUD's efforts to expand fair housing training to include information on accessible housing and in the fair lending arena. Consistency on accessible housing information was finally achieved when HUD approved model-building codes for their accessibility provisions. We believe the best way to ensure compliance with these provisions is to expand education of everyone involved in the construction of housing, including local government officials.

NAR has a long-standing commitment to work in partnership with the Department to promote fair housing and jointly address issues impacting fair housing. Beginning with the Voluntary Affirmative Marketing Agreements of the 1970's and 1980's, through the Fair Housing Partnership and the At Home with Diversity: One America agreements of the 1990's, NAR has worked closely with HUD to foster collaboration and partnership among fair housing agencies and real estate organizations at the local, state and national level. Through these agreements, REALTORS® have led efforts to pass state fair housing laws equivalent to the Fair Housing Act, to mandate fair housing training as part of the real estate licensing process, and providing fair housing education and training. We look forward to working with HUD to craft new models of partnership and cooperation in our diverse, multicultural, real estate environment.

#### **Strategic Goal # 4 – Embrace High Standards of Ethics, Management and Accountability**

##### **Partnership**

As part of the draft Strategic Plan the Department plans to survey its customers and partners to assess programs, policies and monitoring as well HUD's relationship with the stakeholders. NAR strongly supports this initiative and believes that the communication should take place on a consistent basis. NAR is a strong supporter of and major participant in housing and mortgage finance programs administered through the Department. As the largest trade association in the United States, NAR has enjoyed a long – standing partnership with HUD in providing access to safe and decent housing, building strong communities and increasing the efficiency and effectiveness of the real estate industry on behalf of consumers nationwide. Through collaborative initiatives and a strong working partnership, NAR and HUD have achieved considerable gains in addressing the key challenges confronting the housing needs of American citizens.

**HUD REO Oversight**

NAR strongly supports HUD's use of private contractors to dispose of its REO inventory. The involvement of local REALTORS®, provides opportunity for consumers, and is ultimately the most cost-efficient means of disposing of government-owned properties. However, we propose a number of reforms to the program to make it work more proficiently. We urge the Department to set minimum standards for the condition of the property at close; maintenance of the property during marketing, delivery of existing reports to buyers and their agents, access to properties by buyers and their agents, and performance and responsibilities of the listing agent/M&M contractor. We understand the Department intends to implement some changes to the program in the near future, and we advise you to take these recommendations under consideration at that time.