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430 North Michigan Avenue
Chicago, Illinois 60611-4087
312.329.8411 Fax 312.329.5962
Visit us at *www.REALTOR.org.*

Coldwell Banker AJS Schmidt
4488 Cascade Road, SE
Grand Rapids, MI 49546
616.559.7241 Fax 616.559.7242
E-mail: pvredevoogd@realtors.org

Pat Vredevoogd Combs, ABR, CRS, GRI, PMN
President

July 17, 2007

The Honorable Robert Couch
General Counsel
U.S. Department of Housing and Urban Development
451 7th Street S.W.,
Room 10276
Washington, DC 20410

Re: Standards for Mortgagor's Investment in Mortgaged Property, 72 *Federal Register 91*, 27048-27051 (May 11, 2007)

Dear Mr. Couch:

On behalf of more than 1.3 million members of the National Association of REALTORS® (NAR), I am writing to comment on the regulatory changes to the FHA program regarding downpayment assistance.

The National Association of REALTORS®, "The Voice for Real Estate," is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®. REALTORS® therefore have a significant interest in the outcome of this rulemaking process.

The National Association of REALTORS® strongly supports downpayment assistance programs. The ability to afford the downpayment and settlement costs associated with buying a home remains the most challenging hurdle for many homebuyers. Providing homebuyers with this kind of assistance can be paramount to allowing them to purchase a home. However, NAR generally supports the efforts of the Department of Housing and Urban Development (HUD) and the Federal Housing Administration to harmonize its rules regarding downpayment assistance with recent IRS rulings.

The National Association of REALTORS® shares HUD's concerns about home price inflation, and the associated risks for increased delinquency and foreclosure. When a borrower takes out a mortgage on a home with an inflated price, not only are they at greater risk for foreclosure, but the resulting inflated price can have ramifications to the housing market in that community. Home sales prices are used as comparables to determine the price of other homes. Inflated prices overstate the market demand and can lead to exaggerated home sales prices in the neighborhood. This can magnify what housing affordability problems already exist in these communities. In addition, inflated home prices impact the risk to the FHA fund.

Compounding the problems created by artificially inflated home prices for communities, individual homebuyers are likely unaware of the additional risks they are placing on themselves for delinquency and foreclosure. With record numbers of foreclosures in the current market, REALTORS® believe that financial education is an important defense to preventing consumers from getting drawn into abusive mortgages that can be financially destructive.

NAR does, however, strongly urge HUD to construe the limits on non-profit downpayment assistance as narrowly as possible. Many non-profits do an excellent job of providing downpayment assistance, counseling, and other services to first time homebuyers within the scope of current HUD regulations. Should new regulations constrict this ability too greatly, many potential homeowners could be hurt. Therefore, we ask that HUD use surgical precision in drawing the lines between productive downpayment assistance and unproductive downpayment assistance.

NAR believes that a finely tuned rule will help ensure the soundness of the FHA insurance fund, permit FHA to soundly manage the program, and ensure that homebuyers have access to downpayment assistance. NAR also believes that such regulation would leave FHA well-positioned to implement proposed legislative changes that NAR supports such as expanded loan limits, risk-based pricing, and the creation of a “zero downpayment” option. We believe a well crafted “zero downpayment” option will also abrogate the need/demand for seller “pass-through” downpayment assistance through non-profits by providing a viable and sounder alternative.

NAR is also concerned that the proposed rule’s breadth may foreclose real estate agents from using their commission to fund the downpayment and/or closing costs in a transaction where the real estate agent is the buyer/mortgagor. Since the real estate agent’s commission is earned, it is not a “seller contribution” or gift and should not be treated as such. To illustrate, if a real estate agent sold a home and earned a commission and then used that commission as a downpayment to purchase another home, obtaining an FHA-insured mortgage, the transaction would be permissible. However, if the real estate agent buys a home where that agent is eligible to earn all or a portion of the commission on that home, it appears the regulation would prevent the agent from using that money toward downpayment and/or closing costs.

We believe this scenario is wholly different from the activity described in the proposed regulation which targets pass-through transactions designed to circumvent prohibitions on seller contributions/gifts to the required downpayment. In this case, the real estate agent is not receiving a gift, but rather earning a commission on the sale of a property which they happen to be purchasing. Though the agent “financially benefits,” that benefit is immediately reinvested in the purchase of the property. The commission would be earned whether the funds were used for a downpayment or not. Therefore, we ask that you carefully consider this scenario when drafting the final rule and not unreasonably foreclose such transactions. We believe such clarification will be valuable in those relatively limited instances when a licensed real estate agent is purchasing a home using an FHA mortgage and their earned commission as downpayment.

Thank you for your time and consideration. If I may be of any assistance to you, please do not hesitate to contact me or our Regulatory Policy Representative, Jerry Nagy, at (202) 383-1233 or jnagy@realtors.org.

Yours Truly,

Pat V. Combs

Pat V. Combs, ABR, CRS, GRI, PMN
2007 President, National Association of REALTORS®