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December 27, 2010

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410

Re: Docket No. FR-5246-P-02, RIN 2506-AC30 Housing Trust Fund
Proposed Rule

Dear Sir or Madame:

I am writing on behalf of the 1.1 million members of the National Association of REALTORS® (NAR) to provide written comments on the U.S. Department of Housing and Urban Development's (HUD) proposed rule that submits the regulations that will govern the Housing Trust Fund as created by the Housing and Economic Recovery Act of 2008.

The National Association of REALTORS® 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®. NAR has approximately 30,000 appraiser members from across the country and approximately 750 have earned our Residential Accredited Appraiser (RAA) and General Accredited Appraiser (GAA) designations.

NAR is generally supportive of the Housing Trust Fund and its goals of (1) increasing and preserving the supply of rental housing for extremely low-income (ELI) and very-low income (VLI) families, and (2) increasing homeownership for ELI and VLI families. NAR recommends that HUD place an emphasis on the second goal of increasing homeownership. Most families build wealth through homeownership and the financial benefits are well documented. However, there are many social benefits as well. A recent paper by NAR's research department shows homeownership as positive impacts on educational achievement, civic participation, health, crime, public assistance, and property maintenance.

There are several ways the Housing Trust Fund might emphasize homeownership for ELI and VLI families. For example, the funds allocated to the states could be dedicated to state housing finance agencies to use for down payment assistance programs. Often, a major barrier to homeownership for ELI and VLI families is the down payment. This is true even for borrowers utilizing mortgages insured by the Federal Housing Administration (FHA), which requires a 3.5 percent down payment.



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NAR has a concern with the proposed rule related to wetlands. As written, the rule adopts a new and different definition of the term “wetlands” which will create confusion and unintended consequences for the HTF program. In the proposed rule, HUD has created its own, new, definition for wetlands, 75 Fed. Reg. at 66,997, rather than utilize the well-recognized definition of wetlands contained in regulations adopted by the U.S. Army Corps of Engineers’ (“Corps”) and the Environmental Protection Agency’s (“EPA”) (jointly, the “Agencies”) pursuant to the CWA. *See* 33 C.F.R. 328.3(b); 40 C.F.R. § 232.2. HUD specifically states that “[t]his definition is independent of the definition of jurisdictional wetlands used by the [Corps]...,” *id.*, but provides no explanation why it has chosen to depart from that widely utilized definition. While the Agencies’ regulations are certainly not the epitome of clarity, adopting a different definition of wetlands for purposes of this program will only create practical and legal confusion. NAR believes that creating a new definition of wetlands will do nothing more than create more uncertainty in an already uncertain regulatory arena.

Indeed, in other parts of the proposed rule, rather than create a new definition, HUD has deferred to the standards or definitions already established by the agencies that administer those specific programs and, thus, have expertise to define the terms. For example, with respect to historic preservation, the proposed rule states that the “project activities must not be performed on properties that are either listed in or determined eligible for listing in the National Register of Historic Places,” 75 Fed. Reg. at 66,997, and “must meet the Secretary of the Interior’s Standards for Rehabilitation, as verified by someone that meets the Secretary of the Interior’s Professional Qualification Standards.” *Id.* Similarly, HUD adopts the definitions for floodplains as set forth at 24 C.F.R. part 55, and defers to the Federal Emergency Management Agency’s Flood Insurance Rate Maps and designations. HUD should do the same here and utilize the definition of wetlands that the Corps and EPA have adopted in their regulations implementing the CWA rather than create its own definition for the limited purposes of this program.

Thank you for your time and consideration of this matter. If you have any questions or concerns, or if we may be of service to you, please do not hesitate to contact us or our NAR’s Senior Regulatory Policy Representative, Jerry Nagy, at 202.383.1233 or jnagy@realtors.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Phipps". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ron Phipps, ABR, CRS, GRI, GREEN, e-PRO
2011 President, National Association of REALTORS®