



NATIONAL  
ASSOCIATION of  
REALTORS®

Maurice "Moe" Veissi  
2012 President

Dale A. Stinton  
Chief Executive Officer

**GOVERNMENT AFFAIRS DIVISION**

Jerry Giovaniello, Senior Vice President  
Gary Weaver, Vice President  
Joe Ventrone, Vice President  
Jamie Gregory, Deputy Chief Lobbyist

500 New Jersey Ave., NW  
Washington, DC 20001-2020  
Ph. 202-383-1194 Fax 202-3837580  
www.REALTOR.org

March 5, 2012

Research, Markets & Regulations Division  
Bureau of Consumer Financial Protection  
1500 Pennsylvania Avenue NW (Attn: 1801 L Street)  
Washington, DC 20220

Re: Streamlining Inherited Regulations  
Docket No. CFPB-2011-0039

Dear Sir or Madam:

On behalf of the more than one million members of the National Association of REALTORS®, I write to provide comments on the Bureau of Consumer Financial Protection's request for information on inherited regulations that the Bureau should update, modify, or eliminate. Our comment relates specifically to the Mortgage Assistance Relief Services (MARS) rule, specifically Regulation O, inherited by CFPB from the Federal Trade Commission as we believe that the CFPB should streamline the MARS rule by incorporating the enforcement forbearance described below into the CFPB's final rule. CFPB issued an interim final rule adopting the FTC rule on December 16, 2011 and NAR has provided a similar comment in response to that rule.

The National Association of REALTORS® (NAR) is America's largest trade association, including NAR's eight affiliated institutes, Societies and Councils, five of which focus on commercial transactions. 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®. We believe that the MARS rule should be modified to exempt real estate professionals engaged in their normal practice of assisting real estate transactions. This modification will simplify administration of the rule by obviating the formal forbearance notice issued by the FTC in July of 2011.

The final Mortgage Assistance Relief Services ("MARS Rule") from the FTC was published December 1, 2010. During the rulemaking, NAR filed a comment letter on March 29, 2010 seeking an exemption from the Rule's requirements for real estate professionals. The FTC acknowledged NAR's comments in footnote 126 of the commentary accompanying the Rule but concluded that an exemption was not needed because "the Commission is aware that real estate agents may perform these functions when properties are bought or sold through a short sale transaction, **but does not consider these services to be MARS.**"

However, the Rule defined MARS services as including individuals who were "negotiating, obtaining, or arranging . . . a short sale of a dwelling". Since real estate professionals do have contact with seller's mortgage holder during the course of a short sale transaction, they fell within the definition of a MARS



REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

provider and so real estate professionals attempted to comply with the Rule's provisions. However, many of the Rule's requirements were not applicable to a real estate transaction because the FTC had intended for real estate professionals to be outside the scope of the Rule when providing their licensed real estate services to consumers. In particular, the required disclosures did not make sense in a real estate transaction, as assisting sellers with a short sale was just one of many services that a real estate professional provides to clients. NAR conveyed the concerns of its members to the FTC.

Upon the FTC's recognition of the problems with the Rule when applied to real estate professionals, FTC officials issued a formal forbearance of enforcement action against real estate professionals for violating the MARS Rule, except for the Rule's prohibition against misrepresentations in Section 1015.3(b). This forbearance of enforcement applies only "to real estate brokers (and real estate agents under their direction and control) who are:

1. licensed and maintain good standing pursuant to any applicable state law requirements;
2. in compliance with state laws governing the practices of real estate professionals; and
3. assisting or attempting to assist a consumer in negotiating, obtaining or arranging a short sale of a dwelling in the course of securing the sale of a consumer's home."<sup>1</sup>

NAR appreciates the statement of the Bureau of Consumer Financial Protection that it will abide by the "official commentary, guidance, and policy statements" of the FTC with respect to the MARS Rule and other rules being transferred to CFPB jurisdiction. (July 21, 2011 Federal Register Final List of Identification of Enforceable Rules and Orders) We feel, however, that a specific exemption for real estate professionals should be written into the final version of the CFPB MARS Rule as a way to streamline the Rule by recognizing that the current enforcement forbearance already serves as a de facto exemption for real estate professionals. In fact, the Rule includes a specific exemption for attorneys at Section §1015.7, with language that closely tracks the forbearance of enforcement action issued by the FTC with respect to real estate professionals.

NAR strongly suggests therefore that language from the official forbearance of enforcement action be incorporated as an exemption for real estate professionals as a part of the CFPB's final republication of the MARS Rule. The exemption language would read as follows:

A real estate professional is exempt from this part, with the exception of §1015.3(b), if the real estate professional is engaged in obtaining short sales for consumers and is:

- [1] licensed and in good standing under state licensing requirements;
- [2] complying with state laws governing the practices of real estate professionals; and
- [3] assisting or attempting to assist consumers in obtaining short sales in the course of securing the sales of their homes.

Once again, NAR strongly supports efforts to ensure that people who provide counseling, advice and other services to troubled homeowners are indeed providing a benefit for the fees they charge. However, we also strongly believe that our members, when acting in their capacity as real estate agents and brokers, should be explicitly exempted from this regulation. In the spirit of streamlining regulations inherited from other federal regulatory agencies, we believe CFPB should modify the MARS rule to ensure clarity and efficient implementation of the rule.

Thank you for your consideration of this comment and suggestion. Should you or CFPB staff have any questions or concerns please do not hesitate to contact our Senior Policy Advisor, William Gilmartin at (202) 383-1102.

Sincerely,



Maurice "Moe" Veissi  
2012 President, National Association of REALTORS®

---

<sup>1</sup> FTC Statement on Forbearance of Enforcement Action, July 15, 2011