BUSINESS ISSUES POLICY COMMITTEE

Thursday, November 1, 2018

1:30PM – 3:30PM

Hynes Convention Center

Ballroom A, Third Level

AGENDA

CHAIR	John C. Kmiecik (IL)
VICE CHAIR	Jeffrey Levine (FL)
COMMITTEE LIAISON	Kevin Brown (CA)
STAFF EXECUTIVE	Christie DeSanctis (DC)

PURPOSE
To identify, monitor and recommend positions on federal legislative and regulatory issues that affect the operations of REALTORS® businesses and the ability of NAR to meet REALTOR® needs (i.e., RESPA, telecommunications, telemarketing, data security/privacy, visa reform, electronic signatures/closings, etc.) and to recommend federal legislative or regulatory strategies in furtherance of those positions.

1:30pm – 1:45pm	I.	Call to Order: John C. Kmiecik, Chair a) Welcome Remarks b) NAR Updates: Commitment to Excellence; Financial Wellness Program
1:45pm – 1:50pm	II.	Ownership Disclosure and Conflict of Interest Statement: Jeffrey Levine, Vice Chair
	III.	Approval of the 2018 REALTORS® Mid-Year Meeting Committee Minutes: John C. Kmiecik, Chair
1:50pm – 1:55pm	IV.	Poll Everywhere – Member Engagement: Christie DeSanctis, Staff Executive
1:55pm – 2:55pm	V.	Business Issues Policy & Compliance Presentation a) Guest speaker: Loretta Salzano, Founding Partner, Franzen and Salzano b) Regulatory & Legislative update: Christie DeSanctis, Staff Executive c) Open discussion of issues
2:55pm – 3:15pm	VI.	2019 Committee Goals: John C. Kmiecik, Chair a) Overview of legislative and regulatory policy issues under the Committee's jurisdiction relevant to the Committee's purpose
3:15pm – 3:20pm	VII.	Presidential RPAC Challenge: Jeffrey Levine, Vice-Chair
3:20pm – 3:30pm	VIII.	Closing Remarks & Adjournment: John C. Kmiecik, Chair

OWNERSHIP DISCLOSURE AND CONFLICT OF INTEREST POLICY

Ownership Disclosure Policy

1. When NAR has an ownership interest in an entity and a member has an ownership interest* in that same entity, such member must disclose the existence of his or her ownership interest prior to speaking to a decision making body on any matter involving that entity.

2. If a member has personal knowledge that NAR is considering doing business with an entity in which a member has any financial interest**, or with an entity in which the member serves in a decision-making capacity, then such member must disclose the existence of his or her financial interest or decision making role prior to speaking to a decision making body about the entity.

3. If a member has a financial interest in, or serves in a decision-making capacity for, any entity that the member knows is offering competing products and services as those offered by NAR, then such member must disclose the existence of his or her financial interest or decision-making role prior to speaking to a decision making body about an issue involving those competing products and services.

After making the necessary disclosure, a member may participate in the discussion and vote on the matter unless that member has a conflict of interest as defined below.

Conflict of Interest Policy

A member of any of NAR's decision making bodies will be considered to have a conflict of interest whenever that member:

1. Is a principal, partner or corporate officer of a business providing products or services to NAR or in a business being considered as a provider of products or services ("Business:); or

2. Holds a seat on the board of directors of the Business unless the person's only relationship to the Business is service on such board of directors as NAR's representative; or

3. Holds an ownership interest of more than 1 percent of the Business.

   Members with a conflict of interest must immediately disclose their interest at the outset of any discussions by a decision making body pertaining to the Business or any of its products or services. Such members may not participate in the discussion relating to that Business other than to respond to questions asked of them by other members of the body. Furthermore, no member with a conflict of interest may vote on any matter in which the member has a conflict of interest, including votes to block or alter the actions of the body in order to benefit the Business in which they have an interest.

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*Ownership interest is defined as the cumulative holdings of the member, the member's spouse, children, siblings and to any trust, corporation or partnership in which any of the foregoing individuals is an officer or director, or owns, in the aggregate, at least 50% of the (a) beneficial interest (if a trust), (b) stock (if a corporation) or (c) partnership interests (if a partnership).

**Financial interest means any interest involving money, investments, credit or contractual rights.

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Purpose and Make-up of Committee

Purpose:
To identify, monitor and recommend positions on federal, legislative and regulatory issues that affect the operations of REALTOR® businesses and the ability of NAR to meet REALTOR® needs (i.e., RESPA, money laundering, telecommunications, telemarketing, association volunteer liability, bankruptcy, immigration/visa reform, licensing, and worker classification) and to recommend legislative or regulatory strategies in furtherance of those positions.

Composition:
59 members as follows:

- Chair, Vice Chair and Immediate Past Chair;
- 1 representative from each of the affiliates;
- 1 AEC Representative;
- 44 at-large members (one of which must be a Local Board or State Association Executive and two of which must be Local Board or State Association Government Affairs Directors (GADs)), who have a strong interest in issues which affect member business operations.

Qualifications for Consideration:

- 5 years' experience on an NAR committee
- 7 years' experience as a broker owner
- Understanding of business operations of real estate firms
- Experience on a Business Issues Policy Committee at the local or state level
- Knowledge of telecommunications and/or information systems
- Involvement in other business-related trade associations (National Federation of Independent Business, Chamber of Commerce, etc.)
- Experience as a real estate firm manager

Term of Service: One-year term

Meeting Dates and Times:

- Legislative Meetings and Trade Expo: **Wednesday, May 16, 2018**, 10:00 AM – 12:00 PM (Washington D.C.)
- Annual Conference and Expo: **Friday, November 2, 2018**, 9:00 AM – 11:30 AM (Boston, MA)
- *Additional conference calls and webinars, as scheduled.*

Staff Executives:

- Marcia Huddleston Salkin, Managing Director, Legislative Policy, 202.383.1092, msalkin@realtors.org
- Christie DeSanctis, Regulatory Policy Representative, 202.383.1102, cdesanctis@realtors.org

Roster of 2018 Committee

JOHN C. KMIECIK CRB, SFR (IL)
Chair

JEFFREY J. LEVINE CIPS, CRS, SRES, SFR (FL)
Vice Chair

KEVIN BROWN (CA)
Committee Liaison

CHRISTINE M KUTZKEY GRI (CA)
Immediate Past Chair

BARBARA ASBURY ABR, GRI, EPRO, SFR, PSAT (CO)
Member: At-Large

MALCOLM BENNETT AHWD (CA)
Member: At-Large

SCOTT CABALLERO ABRM, CRS, GRI, AHWD, RSPS, SFR (TX)
Member: At-Large

ROBERT D. CLARK EPRO (MN)
Member: At-Large

DIANE B. COOK GRI, PMN (FL)
Member: At-Large

JOSEPH L. CWIKLINSKI CIPS (IL)
Member: At-Large

ELIZABETH C. DUENAS ABR, CRS, AHWD, EPRO, MRP (GU)
Member: At-Large

TREASURE A. FAIRCLOTH CRS, GRI, EPRO (NC)
Member: At-Large

NICK FRENCH CRB, CRS, GRI, SRS, PSA (TN)
Member: Affiliate Representative [REBI]

DENISE FROEMMING (IL)
Member: Affiliate Representative [IREM]

WENDY FURTH ABR, CIPS, CRS, GRI, GREEN, PMN, SRES, AHWD, EPRO, SFR (CA)
Member: At-Large

AMY HAIR (AR)
Member: Government Affairs Director

RANDALL HERTZ ALC (IA)
Member: Affiliate Representative [RLI]

MARIE JEBAVY SFR, BPOR (CA)
Member: At-Large

MILAGROS S. KANYAR CIPS, PMN (FL)
Member: At-Large

SARI KINGSLEY CIPS, CRS, GRI, GREEN, SRES, AHWD (NY)
Member: At-Large

JOHN E. LAZENBY ABR, CIPS, AHWD (FL)
Member: At-Large

DIANE L. MANNS GRI (CA)
Member: At-Large

KELLY R. MARKS ABR, CRS, GRI (NC)
Member: At-Large

JAMIE MCMILLEN (OH)
Member: Government Affairs Director

RICHARD W. MEGINNIS SIOR (NE)
Member: Affiliate Representative [SIOR]

MICHAEL MENDICINO CRB, CRS, GRI, BPOR (NY)
Member: At-Large

ALEKSANDR K. MILSHTEYN CRS, GRI (MI)
Member: At-Large

MARY MINER ABR, CIPS, CRS, GRI, GREEN, AHWD, EPRO, MRP (TX)
Member: At-Large

ROBERT MORRISON EPRO (OH)
Member: At-Large

CHARLIE L. MURPHY GRI (KY)
Member: At-Large

TRISH FAYE MYATT ABR, CRS, SRES (TN)
Member: At-Large

ANDREW NELSON (VA)
Member: At-Large

LOUIS H. NIMKOFF CCIM, CPM (FL)
Member: Affiliate Representative [CCIM]

WILLIAM B. OLSON CRS, GRI (AR)
Member: At-Large

DOMINIC L. PALLINI CRS, GRI, AHWD, EPRO, RSPS, SFR, SRS (FL)
Member: Affiliate Representative [RRC]

MICHAEL PARENT (IL)
Member: At-Large

LISA C. PARENTEAU ABR, CRS (MA)
Member: At-Large

DAVE L. PARKS ABR, CRB, CRS (KY)
Member: At-Large

JEFFREY D. PERRY CRB, SFR (FL)
Member: At-Large

JOHN W. RILEY GRI, RCE, EPRO (SC)
AEC Representative

MARY R. ROBERTS CIPS, GRI, AHWD, EPRO, SFR (AZ)
Member: At-Large

NATALIE J. ROWE GRI, SFR (MI)
Member: At-Large

AUSTIN SMALLWOOD (SC)
Member: At-Large (AE)

SHEILA STANUSH CRS, GRI, PMN, EPRO (TX)
Member: Affiliate Representative [WCR]

JOHN C. STARK CIPS, CRB, CRS, GRI (IA)
Member: At-Large

TOM V. STECK GRI, RENE (FL)
Member: At-Large

TERENCE A. SULLIVAN (WA)
Member: At-Large

PATRICIA A. SZEGO AHWD (VA)
Member: At-Large

TERESA K. TRIGAS-PFEFFERLE SFR (NJ)
Member: At-Large

VICKY S. TURNER CRS, SRS (IL)
Member: At-Large

CHARLOTTE M. VANDERWAAG (NY)
Member: At-Large

RAY WADE ABR, CRS, SFR, SRS (TX)
Member: At-Large

DAVID WELCH CRS, GRI (OH)
Member: At-Large

MINUTES

CHAIR	John C. Kmiecik (IL)
VICE CHAIR	Jeffrey Levine (FL)
COMMITTEE LIAISON	Kevin Brown (CA)
STAFF EXECUTIVE	Marcia Salkin, Christie DeSanctis (DC)

CALL TO ORDER:
Chair John C. Kmiecik called the meeting to order at 10:00 am.

OPENING REMARKS:
The Chair welcomed the Committee members, introduced Vice Chair Jeffrey Levine of Florida and Committee staff executives, and reviewed the Committee's purpose and agenda for the day's meeting.

APPROVAL OF PREVIOUS MEETING MINUTES:
The minutes of the Business Issues Policy Committee meeting of Annual Conference and Trade Expo were approved.

SUMMARY OF ACTIONS TAKEN:

1) The Chair asked the members of the Committee to introduce themselves and talk about what it was that led them to apply for a position on the Committee. The members' attention was directed to the NAR Conflict of Interest statement.

2) The Business Issues Policy Committee then heard a presentation by Phil Schulman, Partner, Mayer Brown, on recent developments out of the Bureau of Consumer Financial Protection (CFPB) under the new leadership of Acting Director Mick Mulvaney. Mr. Schulman also explained efforts to enforce the *Real Estate Settlement Procedures Act* (RESPA) and provided compliance guidance on select activities related to affiliated business arrangements, online co-marketing agreements, and illegal kickbacks under RESPA.

3) The Committee also received an update from NAR Senior Policy Representative Russell Riggs on the current status of federal infrastructure discussions. Mr. Riggs provided an update on NAR's activities and how helpful federal policy would be given the intersection of infrastructure with local community development efforts and the health of real estate markets.

4) The Committee then discussed how to best utilize the HUB and make better use of this communication tool. Staff also called attention to the committee briefing book developed for the Committee and posted to the HUB that includes a wealth of information on issues and policy positions recommended by the Committee and adopted by the NAR Board of Directors.

5) Due to the shortened time frame of the meeting, the Committee postponed an update on NAR's ongoing business policy agenda that fall within the Committee's jurisdiction, such as anti-money laundering, *Americans with Disabilities Act* (ADA) website compliance issues, and Congressional interest in state oversight of professional licensing boards. A webinar following the meetings in June to provide for those updates and discussions on issues was scheduled.

6) The meeting was adjourned at 12:00pm.

Guest Speaker

Loretta Salzano

Founding Partner
Franzen and Salzano

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(770) 248-2881

Loretta Salzano advises banks, mortgage lenders, real estate brokers, title agents, and other settlement service providers on how to increase their business while remaining within the confines of the laws of all 50 states and federal law including, but not limited to, TILA, RESPA, ECOA and HMDA. Loretta advises her clients regarding fair lending, compensation, marketing, licensure, fees, disclosures, reporting, and other matters related to their products and services. She drafts and negotiates contracts, including service agreements, compensation agreements, loan purchase and sale agreements and warehouse financing agreements. Loretta also assists clients in responding to regulatory examinations and actions.

In 2008, Loretta founded ComplyShare, LLC to provide non-legal compliance and quality control services to financial institutions. Loretta was named a Top Compliance Lawyer by *Mortgage Compliance* Magazine, is a Fellow of the American College of Consumer Financial Services Attorneys, and serves as Legal Counsel to the Mortgage Bankers Association of Georgia and to Rainbow Village, a transitional housing program. She is active in many industry, professional, and civic associations and frequently speaks on mortgage issues. Loretta received her B.A. with High Distinction from the University of Michigan and her J.D. from the University of Michigan Law School.

Summary of Priority Issues under Jurisdiction of the Committee

Below is a brief summary of the issues, followed by more detailed policy background, with links.

Affiliated Business 3% Cap on Fees and Points

The Dodd-Frank Ability to Repay/Qualified Mortgage (QM) rule discriminates against various business models including mortgage bankers, mortgage brokers, and affiliates. Specifically, for a mortgage to be a QM and receive safe harbor protections, the mortgage's fees and points cannot exceed 3 percent of the loan amount. However, mortgage bankers, mortgage brokers, and affiliated companies are required to count more items towards fees and points than large retail financial institutions, putting these smaller firms at a competitive disadvantage.

Immigration Reform

With nearly 12 million undocumented immigrants in the United States, high levels of real estate investment interest on the part of foreign nationals, and the pending expiration of a major visa program for foreign entrepreneurs, immigration and visa reform is an issue with ramifications for the real estate community.

Money Laundering/Terrorism Financing

Real estate professionals should understand their existing legal responsibilities and the current efforts to combat money laundering and the financing of terrorism. Continued partnership with enforcement agencies will help in detecting and addressing the use of real estate in illegal financing activities.

RESPA Marketing Services Agreements (MSAs)

The Real Estate Settlement Procedures Act (RESPA) provides consumers with improved disclosures of settlement costs and to reduce the costs of closing by the elimination of referral fees and kickbacks. Section 8 of RESPA generally prohibits any person from giving or receiving any "thing of value" in exchange for the referral of settlement service business. However, there is an exception under RESPA that allows brokers and agents to exchange reasonable payments in return for goods provided or services performed by other settlement service providers, so long as those arrangements are carefully structured to comply with the law and regulations. The Consumer Financial Protection Bureau (CFPB) has increased scrutiny of settlement service provider relationships and activities under RESPA in the past, resulting in growing uncertainty for the real estate industry and use of Marketing Service Agreements (MSAs).

TRID (TILA-RESPA Integrated Disclosure)

The Consumer Financial Protection Bureau (CFPB) has been working to harmonize the *Real Estate Settlement Procedures Act* (RESPA) and *Truth in Lending Act* (TILA) disclosures and regulations for a number of years. The new integrated disclosures replace the long-standing Good Faith Estimate (GFE) and HUD-1 settlement statement, resulting in a learning curve for the industry since the rule went into effect in October 2015.

Visa—Investors

The EB-5 Investor Visa Regional Center Program was established as a pilot program administered by the U.S. Citizenship and Immigration Service. The regional centers and the

traditional EB-5 visa process provide foreign nationals with a means to obtain a permanent residence visa in the United States by investing a minimum of $500,000 or $1 million and creating or preserving 10 or more American jobs. Authority for the regional center pilot program needs to be reauthorized periodically.

Visa—Seasonal Workers

Seasonal workers play an important role in maintaining and keeping resort properties looking good and operating effectively. The H-2B Visa Program allows workers to enter the U.S. on a temporary basis for these kinds of jobs, for example, landscapers, wait staff, lifeguards and ski lift operators.

Visa—Tourism and Retirement

The current visa system does not allow foreign citizens who own a home in the United States to use that home on a full-time basis and/or to enter and exit the U.S. without restriction and no changes have been made in recent years.

Worker Classification (independent contractor v. employee)

The longstanding business arrangement for real estate brokerages includes real estate agents classified as independent contractors rather than employees. While real estate agents have been specifically considered independent contractors for federal taxation purposes since 1984, there have been occasional challenges to that classification in state courts for purposes other than federal taxation, such as overtime pay and other benefits. Calls for federal action to address employer abuses of the independent contractor classification have been ongoing for many years.

NAR Issue Summary
Business / RESPA-CFPB

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

Recent regulatory actions have called into question whether marketing agreements are legitimate under the Real Estate Settlement Procedures Act (RESPA), and if so, what is the right way to do one.

I am a real estate professional. What does this mean for my business?

Actions by the Bureau of Consumer Financial Protection (CFPB) have departed from longstanding prior interpretations of the *Real Estate Settlement Procedures Act* (RESPA), calling into question whether and under what circumstances real estate professionals can receive money for marketing other settlement services and service providers. This has led to much confusion in the industry and numerous lawsuits.

NAR Policy:

NAR believes that real estate professionals and brokers should be able to be compensated for services performed and marketing done. NAR supports improved guidance from the CFPB and specifically rejects the contention that the marketing of settlement services is a mere referral.

Opposition Arguments:

Marketing agreements are a subterfuge for paying real estate professionals and brokers a fee for referrals.

Legislative/Regulatory Status/Outlook

Responsibility for enforcement of RESPA transferred from HUD to the CFPB in 2012. NAR and its industry partners have long disputed a 2010 HUD ruling that the sale of home warranty contracts by real estate agents for compensation was a per se violation of RESPA. NAR believes HUD erroneously limited the ability of real estate professionals to market home warranty products to the detriment of consumers who benefit from such products. Legislation has been introduced over the years to exempt home warranty companies from RESPA, which NAR has supported.

The CFPB has also previously embarked on a broader effort to prohibit the use of marketing service agreements (MSAs). In addition to engaging in various enforcement actions, on October 8, 2015, the CFPB issued Compliance Bulletin 2015-05 addressing MSAs, which offered little additional guidance on the CFPB's insight for enforcement actions.

On June 4, 2015, the CFPB issued a decision against PHH Corporation and a number of other defendants for violating Section 8 of RESPA by paying for referrals when there is a federally related mortgage. CFPB Director Cordray's decision called into question a number of practices relating to reinsurance arrangements and attempted to expand the agency's statute of limitations authority. As a

result of the CFPB's action, on July 30, 2015, Wells Fargo and Prospect Mortgage joined a growing number of lending institutions to discontinue participation in MSAs with real estate agents and brokers. The PHH case was litigated at the U.S. Court of Appeals for the District of Columbia, which NAR filed two amicus, or "Friend of the Court," briefs defending properly implemented MSAs in this case.

On October 11, 2016, the D.C. Circuit Court held in favor of PHH and stating that payments for bona fide services provided and made at fair market value do not violate RESPA. The court also held that the unilateral authority of the CFPB vested in a single person (the Director of the CFPB) was unconstitutional. The CFPB appealed the decision (issued by a three-judge panel) to the full bench ("en banc") of the D.C. Circuit, which reheard the case on May 24, 2017. The en banc court issued a decision on January 31, 2018, reinstating the panel's decision that PHH did not violate Section 8(c)(2) of RESPA. The court also held the CFPB's structure was consitutitional, where the for-cause removal by the President gave the CFPB director independence while also giving the President ample oversight authority.

Following the PHH litigation, the CFPB has continued enforcement actions with respect to payments tied directly to referrals. In January 2017, the CFPB issued multiple enforcement actions for RESPA violations against a mortgage lender, mortgage servicer, and two real estate brokers for accepting illegal payment for referrals related to lead agreements, marketing service agreements, desk-licensing agreements, and/or steering of consumers to pre-qualify for mortgages. The CFPB was also investigating a third party marketing platform for RESPA violations, but did not result in an enforcement action.

At the end of 2017, CFPB Director Cordray left rather than serving his full term that was set to expire in July 2018, and the President appointed the Office of Management and Budget (OMB) Director, Mick Mulvaney, to serve as acting Director. This resulted in a legal challenge under the Federal Vacancies Reform Act of 1998 by CFPB Chief of Staff, Leandra English. Cordray appointed English to serve as acting Director before he left. The legal challenge was recently dropped when the President announced a nominee for the permanent director position and English resigned.

A permanent replacement must be nominated and confirmed by the Senate before serving. The President has nominated Kathleen Kraninger, associate director at the Office of Managment and Budget, for the position. Ms. Kraninger is still waiting for consideration by the full Senate. In the meantime, there is interest from Congress to restructure the Bureau into a bipartisan commission, which NAR supports as it offers long-term policy stability and compliance certainty, which are vital to the housing economy.

NAR continues to work with the CFPB and industry partners to ensure that appropriate guidance is provided in the absence of clear direction from the agency. NAR recently weighed in on a series of Requests for Information (RFIs) and has participated in industry roundtables advocating for such changes. NAR also published a list of Do's and Don'ts for real estate professionals when engaging in co-marketing activities via social media and other web-based marketing tools. The educational piece is intended to help real estate professionals comply with RESPA when co-marketing. NAR will also work with Congress to ensure that any future legislative changes improve RESPA without imposing undue burdens on NAR members.

For best practices on online co-marketing, see NAR's Co-Marketing Do's and Don'ts

For a brief overview of the PHH case, see NAR's Issue Brief.

For best practices on MSAs, see NAR's RESPA Do's & Don'ts for MSAs.

Current Legislation/Regulation (bill number or regulation)

None at this time.

Legislative Contact(s):

Christie DeSanctis, CDeSanctis@realtors.org, 202-383-1102

Daniel Blair, dblair@realtors.org, 202-383-1089

Regulatory Contact(s):

Christie DeSanctis, CDeSanctis@realtors.org, 202-383-1102

NATIONAL ASSOCIATION of REALTORS®

Washington Report

NAR Offers Comments on BCFP Operations

July 30, 2018

Real Estate Settlement Procedures Act (RESPA)

By: Christie DeSanctis

The Bureau of Consumer Financial Protection (BCFP) issued a series of Requests for Information (RFIs) on various agency practices seeking input from the public and outside stakeholders. The goal of the RFIs is to assess the efficiency and effectiveness of the Bureau to prioritize necessary changes with the input of feedback from the comments provided. NAR has submitted comments on many of the Bureau activities including:

Comment on Consumer Investigative Demands

Comment on Adjudication Proceedings

Comment on External Engagements

Comment on Rulemaking Processes

Comment on Adopted and New Rules

Comment on Inherited Rules

Comment on Bureau Guidance and Implementation Support

Comment on Consumer Financial Education Programs

For more on the CFPB's RFI efforts, please visit this page on the BCFP website.

Search Washington Report

NATIONAL ASSOCIATION of REALTORS®

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Chief Executive Officer

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April 26, 2018

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Submitted via: https://www.regulations.gov/comment?D=CFPB-2018-0001-0028

Re: Request for Information Regarding Bureau Civil Investigative Demands and Associated Processes; Docket No. CFPB-2018-0001

Dear Acting Director Mulvaney:

On behalf of the 1.3 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the Request for Information Regarding Bureau Civil Investigative Demands and Associated Processes. As one of the many ways the Bureau investigates and enforces Federal consumer financial protection laws, the procedures for Civil Investigative Demands (CIDs) must be consistent, reasonable, and straightforward to promote fairness and certainty for covered entities.

The National Association of REALTORS® (NAR) 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 residential and commercial real estate transactions and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations. REALTORS® are subject to Bureau enforcement along with many other industries in the real estate sales transaction chain. As a result, NAR advocates for thorough evaluation of CID processes to reduce unnecessary confusion and eliminate preventable costs in support of a more robust real estate industry.

NAR appreciates the ability to provide feedback through the series of Requests for Information (RFIs) to advance the Bureau's goals to protect consumers' financial interests. As discussed in further detail below, CID processes must be narrowly tailored, in line the Bureau's authority and statutory and regulatory objectives, and include necessary flexibility to address covered entities' concerns. Such changes, combined with improved communication by the Bureau, will promote better overall compliance with the CID process.

The Initiation, Issuance, and Understanding of CIDs Should be Clarified.

A typical CID recipient may not have the means to navigate the CID process or understand the ongoing demands, such as implementing a legal hold to preserve documents, without adequate legal assistance. The initial communication between the Bureau and the CID recipient has been described as "immediately adversarial," where the involvement of attorneys is the recipient's only way to

facilitate communication during the process and understand the Bureau's objectives for the CID. Oftentimes, the attorneys involved are also educating enforcement staff on the underlying financial laws at issue, which further illustrates the difficulty in understanding the CID from the recipients' perspective and the need to better identify the Bureau's basis for initiation.

In order to make the beginning stages of the CID process more fruitful, the Bureau must be familiar with the business practices being investigated, the complexity of the underlying laws including the associated civil and criminal penalties, and be readily available when questions arise. If the Bureau has a better understanding of the broader environment under which the CID is sought, provides additional information such as clear objective standards outlining the entire process, and establishes open communication channels for inquiries or concerns, the recipient may have a better and more cordial understanding of how to respond. Changes such as this will also make for a smoother, more transparent process for the Bureau.

The Nature and Scope of Requests Should Be Limited.

CID recipients in the real estate industry may be independent contractors or small business owners who lack teams of compliance personnel or complex risk management systems that are often necessary to produce every document and record required by a broadly defined CID. As a result, when a CID is unclear and wide reaching, the burdens imposed on these entities can be extremely arduous.

For example, a CID recipient was required to provide payment documentation for every operating account expense dating back to the opening of the firm, well over a decade worth of transactional records. Another recipient reported buying additional servers and contracting technology personnel to accommodate CID data requests, which involved reviewing and preserving thousands of electronic records and emails, costing valuable time and money.

Not only do these requests require extensive due diligence to track down such records, but it may be vastly complicated due to document retention policies that result in destruction or deletion of such accountings after a specified period. These types of broad requests may also inadvertently put on hold other concerns that need to be addressed by the CID recipient to facilitate a timely real estate sales transaction or ensure sustainability of business operations. With the substantial costs imposed through the investigation phase, businesses may still end up shutting their doors, even without a resulting Bureau enforcement action.

In every case, there are also considerable legal costs associated with quantifying the burdens imposed by a broad CID in an attempt to seek modifications of the CID, such as through an extension of deadlines or narrowing the scope of information sought. Data submission standards must then be met, privilege claims asserted, and witnesses deposed – all under the guidance of legal professionals. Recipients must also ensure the documents and answers produced in response to the CID do not result in broader liability exposure.

The Bureau must better understand CID recipients' business policies and the burdens imposed through an ill-defined CID. The recipients are devoting substantial time and resources to complying and protecting against a broad CID, including expending significant means to cover indispensable legal teams to manage the entire process. The broad CIDs with drawn-out investigations subjecting businesses to onerous requests that result in no findings to justify further Bureau activity should serve as examples to narrow future activities. If there was improved communication and transparency earlier in the CID process, to pinpoint exactly what is necessary to further the Bureau's investigation rather than pursuing a "fishing expedition," then the burdens imposed on recipients would be more reasonable and Bureau time would be less wasteful.

The Bureau's Communications Should Be Improved.

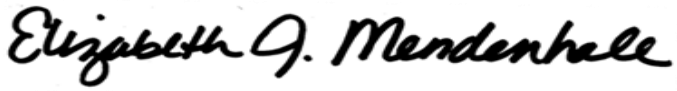
One common theme with Bureau investigations has been ineffective communication throughout the entire CID process, where recipients are left facing arbitrary timelines with limited communications during and after complying with the often overly burdensome CID requests as described above. With the initiation of the CID being immediately adversarial, setting the tone for the entire process, the Bureau is severely limiting necessary feedback to implement a more effective investigation. The lack of clarity on the purpose and scope of the CID also results in inefficient and duplicative efforts to communicate to multiple Bureau staff, increasing confusion and causing delays.

There must be more concise direction by the Bureau during the CID process so that a recipient can properly defend against allegations down the road if needed. Tight timeframes for responding combined with a vague and far-reaching CID require extensions that can only be achieved by effective communication from all parties involved. Clear communication channels would resolve issues associated with timeframes for responding, meeting and conferring expectations, negotiations over modifications or to set aside a CID, and other requests during the processes. Well-defined points of contact would also facilitate timely responses, reduce the likelihood of inexact discovery, and enable flexibility when necessitating circumstances arise.

Conclusion

In assessing the efficiency and effectiveness of CID processes, the Bureau must thoroughly weigh these substantial costs against the perceived outcome of the investigation. NAR appreciates the Bureau's incorporation of feedback through the RFI when making this assessment and implementing future changes to CID procedures. The Bureau's actions illustrates transparency and willingness to improve through meaningful burden reduction. We look forward to continuing to work together on these important issues for the broader benefit of the real estate industry.

Sincerely,



Elizabeth Mendenhall
2018 President, National Association of REALTORS®

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May 7, 2018

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Submitted via: https://www.regulations.gov/comment?D=CFPB-2018-0002-0010

Re: Request for Information Regarding Bureau Rules of Practice for Adjudication Proceedings; Docket No. CFPB-2018-0002

Dear Acting Director Mulvaney:

On behalf of the 1.3 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the Request for Information Regarding Bureau Rules for Practice of Adjudication Proceedings. Any proceeding that has the potential to result in civil or criminal penalties should be managed in a fair and impartial manner. As a result, the Bureau of Consumer Financial Protection's focus on ensuring such practices are conducted in accordance with statutory and regulatory objectives is greatly welcomed by the real estate industry.

The National Association of REALTORS® (NAR) 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 residential and commercial real estate transactions and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations. The activities of NAR members are regulated by many statutes, including the *Real Estate Settlement Procedures Act* (RESPA) and therefore NAR has a vested interest in the Bureau's management of administrative adjudications.

NAR appreciates the ability to provide feedback through the series of Requests for Information (RFIs) to advance the Bureau's goals to protect consumers' financial interests. The Bureau's thorough assessment of how administrative adjudications are carried out should focus on maximizing transparency of Bureau processes, not unduly burdening affected parties with irrational timelines, and most importantly, ensuring the Bureau's actions are fair and reasonable.

The recent case of *PHH v. CFPB* illustrates the importance of ensuring that fair and reasonable practices are followed. In this case, the CFPB filed an administrative claim against PHH and the administrative law judge (ALJ) held that mortgage reinsurance premiums received by PHH were illegal

kickbacks paid in exchange for the referral of mortgage insurance business in violation of RESPA. As a result, the ALJ found that disgorgement of the kickbacks was best remedy, where the appropriate penalty would be the net amount received by PHH from the reinsurance premiums, totaling $6.4 million.

Upon appeal to the Director of the Bureau, Richard Cordray, the disgorgement penalty was increased to $109 million. Even more concerning was Cordray's broadened interpretation of RESPA, which was substantially different from prior interpretations long relied upon by industry. The Bureau's new direction included: no statute of limitations for RESPA administrative actions; accrual of RESPA claims upon payment or receipt of kickbacks; indirect referrals being actionable under RESPA; and section 8(c)(2) not automatically shielding fair market value payments made to other settlement service providers. With this interpretation, Director Cordray went well beyond the ALJ's decision and focus, calling into question lawful marketing practices being used by real estate professionals.

In this case, NAR argued that the Directors' decision on RESPA was an "unprecedented departure from substantial, uniform precedent and agency guidance," which was ultimately supported by the U.S. Court of Appeals for the D.C. Circuit.[1] How the Director was able to issue such a decision, departing from the ALJ's recommendations, without a reasonable basis for support, had a profound impact on practitioners in the industry and continues to cause confusion for those still fearful of broad Bureau authority. As the Bureau examines its processes for administrative adjudications, lessons learned from this case should be heeded so that future adjudications are conducted fairly and justly.

Additionally, as the Bureau examines timelines for responses, extensions, hearings, and decisions, NAR advocates for increased flexibility, improved communication, and a better recognition of the demands imposed on affected parties. REALTORS®, for example, are primarily independent contractors or small business owners who may not have legal compliance teams or substantial resources to navigate the unclear procedural hurdles of Bureau adjudications. The costs associated with complying with Bureau demands, in addition to, the costs for putting business operations essentially on hold during the process, should be considered when evaluating these steps in favor of more friendly timetables. The Bureau must further understand the business practices being questioned and how those function with the underlying laws, regulations, and guidance at issue, to ensure an effective proceeding is carried out with necessary due process and not just to expedite timing.

NAR, and the real estate industry as a whole, have a strong interest in the proper and consistent application of Bureau administrative adjudications. In assessing the efficiency and effectiveness of administrative adjudications, the Bureau should review past cases that substantially affected the way in which real estate business practices are conducted. NAR appreciates the Bureau's incorporation of feedback through the RFI when making this assessment and implementing future changes to administrative adjudications that are in the best interests of consumers and the industry.

Sincerely,

Elizabeth J. Mendenhall

Elizabeth Mendenhall
2018 President, National Association of REALTORS®

[1] Brief for the Nat'l Assn. of REALTORS®, as Amici Curiae Supporting Petitioners, PHH Corporation v. Consumer Financial Protection Bureau, 839 F.3d 1 (2016).

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May 29, 2018

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Re: Request for Information Regarding Bureau External Engagements; Docket No. CFPB-2018-0005 submitted electronically via:
https://www.regulations.gov/comment?D=CFPB-2018-0005-0001

Dear Acting Director Mulvaney,

On behalf of over 1.3 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the Request for Information (RFI) Regarding Bureau External Engagements. The Bureau of Consumer Financial Protection (Bureau) has been engaged externally with the real estate community in a variety of forums over the years, providing helpful perspective and useful information on important issues affecting consumers and the industry. As the Bureau reviews priorities under the new leadership, ensuring future external engagements offer necessary transparency with thoughtful exchange of ideas is key to developing and implementing significant changes that are mutually beneficial to all affected parties. Such external engagements should focus on high priority issues as the qualified mortgage (QM) rule and the *Real Estate Settlement Procedures Act* (RESPA) falling under the Bureau's jurisdiction that greatly impact business sustainability and economic stability.

The National Association of REALTORS® (NAR) 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 residential and commercial real estate transactions and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations. As one of many populations directly affected by Bureau activities, the real estate industry greatly values external engagement opportunities providing insight and feedback to help develop Bureau actions.

As the Bureau continues its assessment of the QM rule, NAR advocates for continued external engagement to ensure the availability of affordable mortgages for responsible consumers while obligating lenders to make good faith determinations that consumers will have the reasonable ability to repay the loan. As reiterated by NAR to the Bureau through formal comments and at stakeholder meetings, the Bureau's engagement with industry representatives will guarantee that any changes to the QM rule are based on sound public policy to support homeownership without unnecessarily restricting mortgage credit to qualified borrowers. As the expiration of the "QM patch" nears, which allows for a loan to qualify as a QM when eligible for purchase by Fannie Mae or Freddie Mac, the Bureau must ensure that each step in the review is thoroughly vetted by all players in the primary and secondary markets to avoid undue adverse effects on consumers and the broader economy.

NAR also appreciates the Bureau's willingness to be featured as keynote speakers at many NAR events, including most recently at the Regulatory Issues Forum occurring

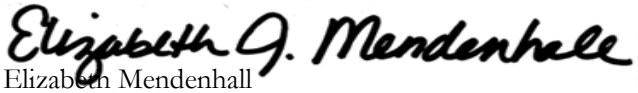
during the 2018 REALTORS® Legislative Meetings and Trade Expo in Washington D.C. These meetings bring together nearly 10,000 members to play an active role in advancing real estate public policy initiatives, including those stemming from Bureau activities. When the Bureau participates in the Regulatory Issues Forum, it is always a highly attended event that gives members an opportunity to hear first-hand enforcement strategies and legal interpretations on matters specific to REALTORS®' businesses. When audience question and answer segments are possible, such as the case with this event, the Bureau's engagement is especially beneficial in providing instantaneous insight on member inquires. Questions nearly always address confusion about RESPA, so as the Bureau evaluates future topics for external events, guidance and clarity on RESPA matters would be greatly welcomed.

The roundtables hosted by the Bureau also afford a platform for industry and consumer groups to join together with Bureau staff, to dialogue on particular policy issues, explain strategies for compliance, and create recommendations for actions to further specific goals. These cross sector meetings have been a great tool for constructive input from both sides of the table, while offering vital transparency into the priorities of the various representatives. It is important for the Bureau to utilize this feedback and provide regulatory relief, especially when there is a consensus on a particular issue. For example, the real estate industry continues to be united on Bureau changes related to clarity within the QM rule on the three percent cap on points and fees that poses ongoing problems for affiliated businesses. The Bureau must take such unified perspectives derived from external engagements into consideration when prioritizing action items in the future.

Staff at the Bureau, including from Financial Institution External Affairs, Regulations, Supervision Policy, and Mortgage Markets, continue to be available and thoroughly engaged in meetings hosted by NAR. We greatly appreciate these opportunities and the candid conversations that develop. In the past, members of NAR have also been involved in various field hearings and town hall events, and look forward to continued engagement through these forums at the local level. Such meetings are useful for offering a unique understanding of the need for definitive Bureau actions, like guidance on compliance with RESPA related to co-marketing practices in light of changing judicial interpretations and updated marketplace technology. The Bureau's interest in obtaining on-the-ground perspectives from the REALTOR® community dealing with complicated business decisions must be followed by a willingness to make changes in response to the feedback provided.

NAR appreciates the ability to give feedback to the Bureau through the RFI process to further the Bureau's examination of its operations. External engagements are a vital instrument for gaining public comments necessary for the Bureau to act in the best interests of consumers. NAR looks forward to the Bureau's continued transparency through such engagements and meaningful changes made as a result of the feedback provided during these interactions.

Sincerely,



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June 7, 2018

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Re: Request for Information Regarding Bureau Rulemaking Processes; Docket No. CFPB-2018-0009 submitted electronically via:
https://www.regulations.gov/comment?D=CFPB-2018-0009-0001

Dear Acting Director Mulvaney,

On behalf of over 1.3 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the Request for Information (RFI) Regarding Bureau Rulemaking Processes. The Bureau of Consumer Financial Protection (Bureau) has issued many rules through formal notice and comment procedures as well as non-rule guidance through informal processes, each affecting the real estate industry and consumers in different ways. As the Bureau reviews these procedures, it is important to maintain focus on necessary feedback and adequate transparency, to ensure the benefits of a resulting regulation outweigh any potential burdens imposed to achieve compliance.

The National Association of REALTORS® (NAR) 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 residential and commercial real estate transactions and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations. NAR is encouraged by the Bureau's interest in assessing the overall efficiency and effectiveness of its rulemaking processes and incorporating meaningful changes as offered through the RFI.

Formal Rulemakings - Initial Outreach, Information Gathering, Notice of Proposed Rulemaking, Final Rules

The Bureau's rulemaking procedures follow the *Administrative Procedures Act* (APA), the *Regulatory Flexibility Act* (RFA), and the *Dodd-Frank Act*, which outline necessary requirements for formulating, amending, or repealing a regulation. These laws impose important steps for the Bureau to adhere to when disclosing relevant information in the Notice of Proposed Rulemaking (NPRM), conducting significant economic impact analyses (such as the Small Business Review Process or SBREFA panels), and obtaining imperative public feedback. Each of these procedures, as well as requirements for reporting to Congress and other Federal regulators, are necessary protections to ensure Bureau rules are lawfully designed and reflective of public policy needs.

NAR appreciates the Bureau's increased willingness to engage outside stakeholders on feedback through the RFI and NPRM process and supports continuation of this outreach to gather information necessary to implement specific rulemakings. RFIs not only provide industry with the opportunity to preview the Bureau's perspective on a particular issue, but it also allows for necessary feedback on market and business impact as a result – all in an effort to design the potential rule in a more careful manner. NPRMs following RFIs should reflect the feedback provided during the RFI comment

period with explanations on interpretations. The inclusion of appendices, model or sample forms, examples or illustrations, in an NPRM are also useful to explain the Bureau's reasoning and goals of a particular rule.

Transparency is key and the more information and detail the Bureau can provide about a new regulation or amendment to a regulation in advance and during the rulemaking, including posting online and in the Federal Register, will facilitate a more robust and productive process. To this effect, longer comment periods, extensions of comment periods, and "reply periods" for the public to provide feedback will produce more thoughtful and deliberative regulations. Additionally, increased communication from the Bureau on the feedback submitted through the open comment periods and external engagements, such as stakeholder meetings, will offer beneficial advice on the practical implications of formal rules.

NAR has always been willing to provide the Bureau with research and analysis on issues under consideration and would recommend even further outreach by the Bureau to solicit such information. Oftentimes under previous leadership, the Bureau pursued an action with little foundational corroboration to justify a decision that could have been bolstered by additional outside market research. Such outreach is especially important as the Bureau looks at updating existing regulations, where regulated entities can provide anecdotal and objective evidence based on practical experience or research to supplement the Bureau's review. When soliciting such feedback, the Bureau must be specific in the requests for information and also explain how such data was interpreted when incorporated in future proposed and final rules.

It is important that the Bureau continue consulting with other Federal agencies prior to proposing a rule and before issuing a final rule to ensure consistency with the objectives of those other agencies. This is especially important as regulations impacting the broader financial and housing market participants are implemented or reviewed, such as the qualified mortgage (QM) rule. Rules crossing the jurisdiction of multiple agencies must be properly vetted to reduce any potential compliance uncertainty. The Bureau should also communicate any and all public feedback solicited on such rules to those agency partners, particularly in the broader context of housing finance reform efforts.

Informal Rulemakings

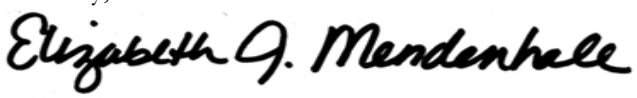
While the subject of a subsequent RFI on Bureau Guidance and Implementation Support, it is important to note the interplay between formal rules issued by the Bureau and non-rule guidance, supplementing APA final regulations. Oftentimes, final rules are accompanied by informal guidance, which may be supportive of the final rule and useful for regulated entities to follow in their business practices. However, sometimes informal guidance or implementation support is contradictory to a final rule, offering minimal insight and instead only confusing regulated entities regarding their compliance obligations. This is typically the case when a final rule is extremely complex, such as the Know Before You Owe (KBYO) mortgage disclosure rule, which resulted in substantial uncertainty for the real estate industry, some of which remains today.

NAR applauds the Bureau's efforts to reduce the confusion stemming from the KBYO rulemaking, including the clarity on the ability to share the Closing Disclosure (CD) with third parties and the recent final rule addressing the so-called "blackhole" impacting timing of CDs being issued. However, as the Bureau evaluates formal rulemaking procedures, proper consideration must be given to how a final rule and supplementary guidance will achieve the overall goal of reducing ambiguity and confusion to ensure regulatory compliance across the industry.

Conclusion

NAR is hopeful the Bureau will make appropriate changes to its rulemaking procedures as a result of the comments provided through the RFI and appreciates the ability to offer such feedback. Ensuring rulemaking procedures follow all applicable laws, including the APA, is instrumental in driving effective change. NAR will continue to provide feedback to the Bureau on these processes and specifically through the RFIs to ensure the needs of REALTORS® and consumers are adequately protected.

Sincerely,



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June 19, 2018

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Re: Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities; Docket No. CFPB-2018-0011 submitted electronically via: https://www.regulations.gov/comment?D=CFPB-2018-0011-0001

Dear Acting Director Mulvaney,

On behalf of over 1.3 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the Request for Information (RFI) Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities. There have been numerous regulations issued by the Bureau of Consumer Financial Protection (Bureau) impacting the real estate industry, many of which have been necessary and helpful, but some continue to need attention to maximize compliance, benefits, and important consumer protections.

The National Association of REALTORS® (NAR) 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 residential and commercial real estate transactions and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations. REALTORS®' businesses are regulated by many statutes, such as the *Real Estate Settlement Procedures Act* (RESPA), and are greatly impacted by the laws under the Bureau's authority related to home purchases transactions. As a result, NAR has a vested interest in providing feedback on the Bureau's actions encompassed in the RFI.

As the Bureau reviews adopted regulations and contemplates new rulemakings following the review of the RFI, the focus should be on continuing to provide clarity and remedy outstanding uncertainty while promoting necessary flexibility for regulated entities. Such changes are critical to incorporating public feedback, maintaining transparency, and reducing unnecessary regulatory burdens, to promote compliance for the real estate industry.

Maintaining Consumer Transparency and Lender Flexibility

Know Before You Owe

The "Know Before You Owe" (KBYO) mortgage disclosure rule that harmonizes the *Truth in Lending Act* (TILA, Regulation Z) and the *Real Estate Settlement Procedures Act* (RESPA, Regulation X) drastically changed the settlement process for consumers and the real estate industry. Through this rulemaking, the Bureau focused on increasing consumer protections and financial transparency, all in an effort to simplify mortgage disclosures. Since enactment in 2015, there have been several updates to the original rule and NAR greatly appreciates the clarity provided specifically on the sharing of the Closing Disclosure (CD) with third parties, including real estate professionals, and the

recent final rule remedying the so-called "black hole." NAR is encouraged by the Bureau's continued interest in fixing problematic KBYO provisions, which is necessary as some industry uncertainty remains.

For example, there continue to be issues with the small window to correct minor KBYO errors, which impacts loan salability to investors. NAR is aware of the intense examination by investors and due diligence firms on minor Know Before You Owe errors that jeopardizes overall market liquidity. Some investors are refusing to buy loans with minor errors, even if the error does not negatively impact a consumer or lead to material liability. As a result, lenders can incur huge losses if they sell these loans in the scratch and dent market. This is compounded by the fact that investors are not accepting cures past 60 days, even though investors can take more than 60 days to review and return loans to the lender. NAR is concerned that the increased cost of manufacturing these loans will ultimately trickle down to the consumer and impact access to credit, especially for lower-income and first-time homebuyers.

As the Bureau continues to assess the impact of the updated disclosures and the impact on consumers, providing necessary rules or guidance to adjust to changing circumstances is crucial for maximizing liquidity. NAR urges the Bureau to extend post-consummation timelines to correct minor Know Before You Owe errors and urges continued work with due diligence firms and investors to educate them about loan salability and technical errors. Through the streamlining of valuable information and money saving comparison-shopping, KBYO has made the home loan process a more manageable experience for consumers; however, the Bureau must continue to provide regulatory clarity for the industry for the benefit of home buyers and sellers.

Maintaining Mortgage Credit Liquidity and Availability

Ability to Repay/Qualified Mortgage Rule

The final Ability to Repay/Qualified Mortgage (ATR/QM) rule requires creditors to make a reasonable, good faith determination of a consumer's ability to repay their mortgage. For mortgages qualifying for QM status, creditors receive certain protections from liability in connection with their ability-to-repay determinations. One way to qualify as a QM is to (1) comply with prohibitions on certain risky features, (2) come within limits on points and fees, and (3) be eligible for purchase or guarantee by Fannie Mae or Freddie Mac (the government sponsored enterprises, or GSEs) while under conservatorship. This provision (or 'patch') simplifying qualification of QM status sunsets when the conservatorship ends and no later than January 10, 2021.

The QM exemption was created to ensure the ongoing availability of mortgage credit while lenders transitioned their underwriting standards to meet the provisions in the final rule. By providing for most of the conventional market to continue to originate higher debt-to-income loans as QM loans, the Bureau has allowed the market to originate well-underwritten loans to responsible consumers. As the Bureau examines the 'patch', and focuses on the 43 percent debt-to-income (DTI) threshold, NAR recommends that it assess data about the number of consumer loans purchased or guaranteed by the GSEs that exceed the DTI threshold, take into account rising student loan debt levels discussed further below, and ensure continuation of necessary flexibility for certainty and liquidity in the market.

NAR continues to support and encourage innovation and responsible lending but it is important to avoid constriction of credit to otherwise qualified borrowers. Therefore, careful consideration of available data and thoughtful analysis of anticipated market response is imperative as the Bureau evaluates the expiration of this particular provision.

Appendix Q, Standards for Determining Monthly Debt and Income

The large majority of NAR's members are self-employed independent contractors working in association with brokers and are not classified as employees. NAR continues to advocate for additional flexibility for creditors when establishing a self-employed consumer's earnings trend. It is critical that the availability of credit for self-employed borrowers is measured to assure that Appendix Q underwriting guidelines are not inadvertently leaving these borrowers with fewer options than salaried employees.

There may be an unspecified quantity of GSE or government-eligible loans that meet agency underwriting guidelines but fail to meet Appendix Q requirements on documentation and calculation of income and debt. Assessing how many of such loans exist and what characteristics made these loans ineligible should provide insight on how to improve underwriting requirements while still maintaining consumer protection goals.

Student Loan Debt

Recognizing that student loan debt is different from other debt is an important step in addressing the effect of student loan debt on potential homebuyers. As the Bureau evaluates financial education resources, future rulemakings, and necessary supplementary guidance, it must assess and incorporate how student loan debt holders are treated in the market, especially first-time homebuyers. For example, how a borrower making monthly student loan payments impacts debt-to-income ratio must be carefully evaluated under QM.

A significant aspect of the QM standard is a requirement that borrower payments on all debts, including those for their mortgage, car, and student loan payments, be 43 percent or less of their total income. Though it may be a reasonable standard in many instances, the continued rise in student debt and a weak labor market may have a long-term impact on the ability of many first time homebuyers to qualify under this standard, particularly lower income consumers. Many of these potential borrowers may find their student loan payments are a significant portion of their total monthly debt burden.

As a result, many community banks and lenders may choose not to approve mortgage loans to a large number of these responsible and otherwise qualified borrowers. This scenario impacts not only those hoping to purchase their first home, but also homeowners looking to trade up to larger homes or refinance their existing mortgages. Thus, any new mortgage finance rules put forward by the Bureau could have the effect of reducing homeownership opportunities for many responsible young Americans if the impact of student loan debt is not considered. As rising monthly student debt payments continue to limit consumers' ability to save for down payments, the Bureau must think through how such circumstances will play out under future regulatory changes.

Points and Fees Definitions under the ATR/QM Rule

In order to meet ATR/QM rule safe harbor, the total points and fees payable in connection with a QM Loan must not exceed three percent for most loans. For example, conforming loans must satisfy the points and fees test in order to receive QM status. As the Bureau reviews adopted regulations, it must consider consumer sentiments in working with affiliated companies and what impact the cap on points and fees has on their ability to use these services.

NAR and other industry partners have collected survey and other data demonstrating the impact of the discrimination against affiliates under the three percent cap on fees and point in the QM rule. An NAR survey of affiliated mortgage lenders revealed that almost half experienced problems with ATR/QM rule. In nearly half those instances where the three percent cap was cited as the cause, consumers either were not able to complete the transaction or not able to complete the transaction with their preferred settlement services provider. Where services were outsourced and charges known to the lender, nearly half of loans reported higher fees.

In addition to such data, there are numerous reports of increased costs when affiliate services were not an option. For instance, in one case, a buyer wound up paying $600 more a year for their homeowner's insurance because they could not use the real estate affiliate. Another real estate company reported that deals where outside services are used, the additional costs are up to $500 more per transaction. In a state where title fees were fixed according to law, a real estate company reported that borrowers were forced to use outside title because it was impossible to adjust the affiliate title rate to comply with the three percent cap. Such situations are limiting choices for consumers, rather than providing additional flexibility and cost-saving options.

NAR urges the Bureau to remove or significantly reduce this discrimination to level the playing field for non-affiliated and affiliated companies. As previous research indicates, the use of affiliates often results in important consumer savings, makes the home buying process more manageable and convenient, and is overall more efficient and less likely to have transaction

delays. Additionally, the title industry is already heavily regulated and competitive, and the likelihood that consumers would pay a non-market rate to an affiliate title company, as opposed to an unaffiliated firm, is slim. As the Bureau reviews adopted regulations, it is important that it consider all insights into consumer preferences and, in doing so, how the ATR/QM rule's cap on points and fees may remove preferred options with incremental, if any, benefit. Enhancing competition to allow for a wide array of options will enable consumers to choose the providers best suited for their needs without unfairly disadvantaging any segments of the market.

Evaluation of Potential New Rulemakings/Guidance

Alternative Credit Scoring and Score Transparency

A borrower's credit score is a critical access factor when trying to enter the housing market; with a poor score, or none at all, a borrower stands little to no chance of obtaining a loan. Yet millions of Americans, particularly minorities, immigrants, and people with modest incomes, come from backgrounds that avoid debt, leading many to have little to no credit history. By clearing the way for utility, telecommunication companies and rental histories to be reported for on-time payments to the credit reporting agencies, many of these "thin file" individuals would be able to obtain credit and enter the housing market.

As the Bureau has previously noted, nearly 45 million Americans are underserved and have trouble accessing affordable credit. With new credit scoring models that incorporate additional predictive metrics and payment history, many of these "thin file" individuals would be able to obtain credit and enter the housing market. These new models would help many households, especially minorities and potential first-time homebuyers, achieve housing security by responsibly boosting consumer access to mortgage credit.

In the development and use of alternative credit data, it is imperative to provide consumers the ability to fully understand their credit score and seek correction of any errors based on the "warning flags" a score can raise. Such consumer financial education is key to improving transparency and promoting responsible borrowing practices. As lenders remain stringent in their underwriting, credit scores continue to be increasingly important in the mortgage transaction. And consumers who are not able to fully understand their credit situation may be denied the opportunity to purchase a home.

NAR believes that homeownership is an integral part of the American Dream that should not be out of reach for individuals and families that lack access to traditional forms of credit or lack the foundational understanding of such credit circumstances. Thus, NAR supports the Bureau's assessment of alternative credit scoring models designed to responsibly expand mortgage credit for millions of hardworking families.

RESPA

There is a need for additional clarity on acceptable ways in which settlement service providers can enter into agreements to provide marketing services under RESPA. In 2014, NAR worked with leading RESPA experts to construct "Dos and Don'ts" for marketing services agreements that represent more than a decade's worth of industry best practices. Recent Bureau consent orders and state enforcement authorities implementing Federal interpretations have caused outstanding uncertainty for practicing professionals, resulting in an essential need for updated guidance.

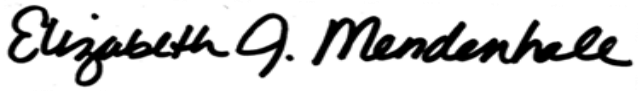
Last year, NAR issued best practices for online co-marketing as digital technology platforms develop unique advertising opportunities for the real estate industry. As online platforms continue to evolve, a lack of guidance and oversight of online co-marketing practices could harm consumers. The Bureau should ratify NAR's best practices to ensure that those who have complied with RESPA do not face unnecessary regulatory burdens and potential lawsuits.

Conclusion

NAR commends the Bureau's efforts to assess the impact of adopted rulemakings and the feedback sought through the RFI process. Ensuring that the Bureau's rules continue to promote responsible homeownership for consumers and important legal compliance by industry are necessary steps to improving consumer financial protection in America and safeguarding a vital

sector of the economy. NAR looks forward to continue working with the Bureau to protect the American Dream of homeownership through responsible and fair regulations.

Sincerely,



Elizabeth Mendenhall
2018 President, National Association of REALTORS®

NATIONAL ASSOCIATION of REALTORS®

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June 25, 2018

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Re: Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities; Docket No. CFPB-2018-0012 submitted electronically via: https://www.regulations.gov/docket?D=CFPB-2018-0012.

Dear Acting Director Mulvaney,

On behalf of over 1.3 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the Request for Information (RFI) Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities. In accordance with the Dodd-Frank Act, the Bureau of Consumer Financial Protection (the Bureau) obtained jurisdiction over consumer financial protection functions previously vested in certain Federal agencies, including responsibilities over various regulations and rulemaking authorities. This collective streamlining has placed a tremendous amount of oversight over consumer financial products and services, and as a result, has greatly impacted a variety of industry operations by real estate professionals and settlement service providers.

The National Association of REALTORS® (NAR) 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 residential and commercial real estate transactions and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations. REALTOR® members also include affiliated title, escrow, and mortgage brokerage services, all of which have a vested stake in the regulatory operations of the Bureau.

One of the primary inherited regulations of interest to NAR's membership is the *Real Estate Settlement Procedures Act* (RESPA) that provides consumers with improved disclosures of settlement charges and reduces the costs of closing by the elimination of referral fees and kickbacks. RESPA was signed into law in December 1974, and became effective in June 1975. The law has gone through a number of changes and amendments since then, all with the intent of informing consumers of their settlement charges and prohibiting kickbacks that can increase the cost of obtaining a mortgage.

Originally enforced by the U.S. Department of Housing and Urban Development (HUD), RESPA enforcement responsibilities were assumed by the Bureau when it was created by the Dodd-Frank Act. Since this time, there have been a number of enforcement actions and interpretations issued by the Bureau that have not delivered the compliance clarity needed by industry but rather have resulted in ongoing confusion and uncertainty. NAR is hopeful the insight provided through the comments offered on the RFI will illustrate needed action by the Bureau to remedy such ongoing RESPA concerns.

In a broad effort to prohibit the use of marketing service agreements (MSAs), which are permissible under RESPA, on October 8, 2015, the Bureau issued Compliance Bulletin

2015-05, "RESPA Compliance and Marketing Services Agreements." The compliance bulletin offered "guidance" that contradicted previous longstanding interpretations of the law offered by HUD. In the Bulletin, the Bureau took the position that an "agreement that entails exchanging a thing of value for referrals of settlement service business involving a federally related mortgage loan likely violates RESPA," meaning that even a marketing contract itself could be viewed as a RESPA violation. While the bulletin was problematic in its inconsistent interpretation of RESPA, it provided formal insight into the Bureau's new perspective on a law that industry had been following for decades, serving as an important warning for actions moving forward. Before the Bulletin however, the Bureau offered a preview of this unfounded interpretation and began the troublesome streak of providing regulatory insight through enforcement.

In June 2015, the Bureau issued a decision against PHH Corporation and a number of other defendants for violating Section 8 of RESPA by paying for referrals when there is a federally related mortgage. RESPA Section 8(a) prohibits payments for the referral of settlement services and Section 8(c)(2) provides a safe harbor, stating that "[n]othing in [section 8] shall be construed as prohibiting…the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or services actually performed." In a prior interpretation by HUD on a captive insurance structure, the Department stated that section 8(c)(2) can be an affirmative defense if the service is actually provided and the price reflects the actual cost of the service; however, if what is being given is a thing of value in an effort to obtain more referrals, RESPA is violated.

In the PHH case however, former Director Richard Cordray held that section 8(c)(2) of RESPA does not automatically shield fair market value payments to other settlement service providers because if the payments are seeking future referrals, the payments are not "bona fide." Thus, the decision called into question a number of practices relating to reinsurance arrangements and also attempted to expand the agency's statute of limitations authority. As a result of the Bureau's action, Wells Fargo and Prospect Mortgage joined a growing number of lending institutions to discontinue participation in MSAs with real estate agents and brokers – a practice key to growing real estate business operations.

The PHH case was litigated at the U.S. Court of Appeals for the District of Columbia and NAR filed two amicus briefs defending properly implemented MSAs. In October 2016, the D.C. Circuit Court held in favor of PHH and stated that payments for bona fide services provided and made at fair market value do not violate RESPA. The CFPB appealed the decision *en banc* to the D.C. Circuit, which granted the petition for rehearing wholly vacating the panel's decision. In February of this year, the court sitting *en banc* reinstated the previous panel decision, holding the Bureau had incorrectly rejected the well-established RESPA interpretation that payments between settlement service providers are permissible so long as those payments are for goods or services actually provided and are made at fair market value. The decision was celebrated by industry as it restored clarity on RESPA Section 8, but actions by the Bureau are needed to support this ruling with special attention given to marketing on technology platforms.

More specifically, there is a need for additional clarity on acceptable ways in which settlement service providers can enter into agreements for marketing services online under RESPA. In 2014, NAR worked with leading RESPA experts to construct "Dos and Don'ts" for marketing services agreements that represent more than a decade's worth of industry best practices. Last year, NAR issued best practices for online co-marketing as digital technology platforms develop unique advertising opportunities for the real estate industry. However, the Bureau has failed to ratify such guidance despite these best practices being shared by RESPA attorneys across the country to clients.

Instead of providing such guidance, the Bureau continued enforcement actions with respect to payments tied directly to referrals as a means to set an example for the industry. In January 2017, the Bureau issued multiple enforcement actions for RESPA violations against a mortgage lender, mortgage servicer, and two real estate brokers for accepting illegal payment for referrals related to lead agreements, marketing service agreements, desk-licensing agreements, and/or steering of consumers to pre-qualify for mortgages. Investigations into third party marketing platform regarding RESPA violations have also occurred, continuing the regulation through enforcement regime rather than issuing rulemakings or guidance.

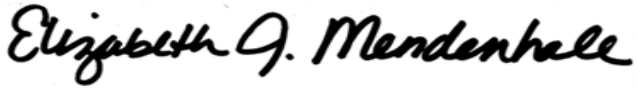
As online platforms continue to evolve, a lack of guidance and oversight of online co-marketing practices could harm consumers. The Bureau should rescind the 2015 Bulletin and ratify NAR's best practices to ensure that those who have complied with RESPA do not face unnecessary regulatory burdens and potential lawsuits. With the PHH decision settling the uncertainty that resulted under previous leadership, the Bureau should take this opportunity to establish clear guidance reflecting the letter of the law – in line with the Acting Director's goals. Additionally, as other litigation losses mount up, such as the Borders & Borders case where the Bureau misinterpreted the affiliated business arrangements exemption under RESPA Section 8(c)(4), the Bureau should offer supplementary guidance on this safe harbor so affiliated businesses can continue to operate while providing important disclosures for consumers.

NAR and its industry partners have also long disputed a 2010 HUD ruling that the sale of home warranty contracts by real estate agents for compensation was a per se violation of RESPA. In this case, HUD erroneously limited the ability of real estate professionals to market home warranty products to the detriment of consumers who benefit from such products. While legislation has been introduced over the years to exempt home warranty companies from RESPA, the Bureau has the power to remedy this problematic interpretation, which would provide much needed relief to an industry that acts in the best interest of and in support of homebuyers.

Conclusion

The Bureau's future actions on RESPA will dictate a successful future of closing transactions, marketing agreements, and affiliated arrangements for the real estate industry. NAR appreciates the Bureau's assessment of its inherited rulemakings and the impact on regulated entities. REALTORS® are hopeful that following the RFI, necessary attention will be given to maximize RESPA compliance and resulting consumer protections. NAR looks forward to working with the Bureau in regards to its rulemaking authorities so that REALTORS® can continue to help more consumers achieve homeownership.

Sincerely,



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July 2, 2018

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Re: Request for Information Regarding Bureau Guidance and Implementation Support; Docket No. CFPB-2018-0013 submitted electronically via: https://www.regulations.gov/comment?D=CFPB-2018-0013-0001.

Dear Acting Director Mulvaney,

On behalf of over 1.3 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the Request for Information (RFI) Regarding Bureau Guidance and Implementation Support. With the Bureau of Consumer Financial Protection (the Bureau) having jurisdiction over many consumer financial protection laws, it is imperative that necessary guidance, including interpretive rules and non-rule guidance, be provided to regulated entities to ensure compliance across the industry. Such support in turn, helps to protect consumers' financial interests and bolster life goals such as buying a home.

The National Association of REALTORS® (NAR) 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 residential and commercial real estate transactions and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations. The real estate industry is diverse – ranging from sophisticated large mortgage lenders with extensive compliance departments to self-employed real estate professionals with limited compliance support. When the Bureau is issuing regulations and subsequent guidance, it must therefore recognize what type of guidance is needed for varying entities, when it is appropriate to provide such guidance, and how that guidance should best be conveyed.

For a majority of the industry, guidance that can be relied upon – that is both written and authoritative – provides the most certainty and clarity. While formal rulemaking procedures are essential when it comes to legal liability concerns, the Bureau should ensure that any supplementary non-rule guidance does not conflict with the existing rules and provides necessary flexibility to adjust to changing circumstances. In some instances, time is of the essence, so quick responses with Bureau insights are also a factor that should be considered depending upon the regulatory need. In determining which regulatory issues merit additional guidance, the Bureau should assess the topics being brought up consistently through the RFIs, including those outlined below.

There are specific areas where Bureau guidance has been helpful in the past, but more could be done to provide additional clarity. This is especially the case as marketplace practices change in response to new judicial interpretations and changing technology. Of priority to NAR members are regulations and guidance related to the Know Before You owe mortgage disclosure rule and the *Real Estate Settlement Procedures Act*.

Know Before You Owe

The "Know Before You Owe" (KBYO) mortgage disclosure rule that harmonized the *Truth in Lending Act* (Regulation Z) and the *Real Estate Settlement Procedures Act* (Regulation X) radically altered the settlement process the real estate industry. While implemented for the benefit of consumers, the overhaul of the mortgage disclosures was, and continues to be to a certain extent, an uphill battle for settlement service providers. As a result, the Bureau released several updates to the original 2015 rule, in addition to webinars, rule summaries, and compliance guides to support the regulatory changes.

With the KBYO rule being so complex, the first set of guidance issued in an attempt to clarify the rule raised additional questions and concerns, creating confusion rather than understanding for the industry. For example, the KYBO webinars were helpful, but could not be reasonably relied upon for compliance certainty due to the ambiguous non-authoritative disclaimers. As a result, NAR recommends that future guidance, especially on complex regulations, be in line with the underlying rule and offer an authoritative basis for reliance. Such authoritative guidance, along with delayed enforcement, will provide the support sought by industry when undergoing an intensive regulatory shift and ultimately result in more attainable compliance.

As some industry uncertainty remains and another rule clarifying the "black hole" issue was finalized earlier this year, the Bureau should continue assess whether any additional guidance is needed. Such assessment will likely reveal a continued need to fix the timeframe in which minor KBYO errors can be corrected to remedy any investor loan salability issues. While such a fix may be more appropriate through a formal rulemaking, the Bureau could consider expedited procedures through guidance to address the outstanding concerns. In any case, clarity on the ability to cure errors should be provided in writing to minimize any cost increases associated with loan production that could be passed on to consumers.

Real Estate Settlement Procedures Act

The *Real Estate Settlement Procedures Act* (RESPA) provides consumers with improved disclosures of settlement charges and reduces the costs of closing by the elimination of referral fees and kickbacks. Since the jurisdiction over RESPA was transferred from the U.S. Department of Housing and Urban Development to the Bureau, there have been a number of enforcement actions and interpretations issued by the Bureau that have not delivered the compliance clarity needed by industry but rather have resulted in ongoing confusion and uncertainty.

According to the RFI, interpretative guidance often comes in the form of compliance bulletins, which may offer settlement services providers' protection from civil liability for acts committed in good faith when relying on those interpretations. While such bulletins are often useful due to the expedited timeframe for issuance without formal notice and comment procedures, there must be a consistency check to ensure the underlying information does not contradict prior interpretations of the law. If the Bureau is adopting a novel interpretation through the official guidance, then a more through formal feedback process is warranted. For example, if the Bureau had taken a more thoughtful and deliberate approach when constructing Compliance Bulletin 2015-05, "RESPA Compliance and Marketing Services Agreements," public feedback would have revealed the inconsistences of the interpretation, as the courts have found more recently on these issues.

In light of recent judicial decisions, including in the case of PHH Corp. and Borders & Borders, the Bureau has an opportunity to provide insightful guidance on the scope of permissible activities under RESPA including marketing service agreements, co-marketing relationships, and affiliated business arrangements. In the past, the Bureau has taken the position that various marketing activities are in violation of RESPA to certain degrees, but judicial interpretations have struck down such views, paving the way for new guidance to be provided.

As held by the U.S. Court of Appeals for the District of Columbia in the PHH case, payments for bona fide services provided and made at fair market value do not violate RESPA. This recent decision restored clarity on RESPA Section 8, but additional actions by the Bureau are needed to support this ruling, with special attention given to marketing on technology platforms. Guidance explaining acceptable ways in which settlement service providers can enter into agreements to provide marketing

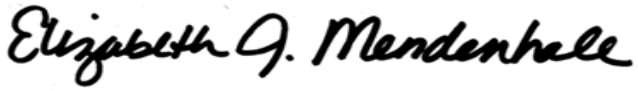
services under RESPA would endorse the court's decision and serve as an important compliance aid to direct industry practices.

While the Bureau has failed to provide such guidance, in 2014, NAR worked with leading RESPA experts to construct "Dos and Don'ts" for marketing services agreements that represent more than a decade's worth of industry best practices. Last year, NAR also issued best practices for online co-marketing as digital technology platforms develop unique advertising opportunities for the real estate industry. The Bureau's adoption of well-researched and unambiguous references would offer indispensable insight to industry, especially as online marketing platforms continue to evolve.

Conclusion

The Bureau's implementation of guidance such as the Small Entity Compliance guides and quick reference materials, even when not legally required to do so, have been helpful for regulated entities, especially those lacking teams of compliance personnel. The Bureau should continue to offer such helpful resources through new methods like Frequently Asked Questions and advisory opinions, and continue to provide oral and email responses when questions arise, as there is always a need for multiple communications to effectively reach all audiences. Such support through an array of broadly available resources will provide much needed guidance for industry practitioners and ensure the financial interests of consumers are protected. NAR looks forward to continuing to work with the Bureau to provide the necessary regulatory insights to further their administrative goals while assisting homebuyers with their homeownership dreams.

Sincerely,



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July 9, 2018

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Re: Request for Information Regarding Bureau Financial Education Programs; Docket No. CFPB-2018-0015 submitted electronically via: https://www.regulations.gov/docket?D=CFPB-2018-0015.

Dear Acting Director Mulvaney,

On behalf of over 1.3 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the Request for Information (RFI) Regarding Bureau Financial Education Programs. As one of the primary functions of the Bureau of Consumer Financial Protection (the Bureau), conducting financial education programs is necessary to ensure consumers make responsible decisions about financial transactions. Buying a home is arguably the biggest personal and financial decision an individual will make in his or her life. Understanding the intricacies involved in such as transaction requires patience, fiscal responsibility, and most importantly, the guidance of a real estate professional.

The National Association of REALTORS® (NAR) 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 residential and commercial real estate transactions and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations. Real estate professionals recognize the importance of empowering consumers and a strong financial literacy foundation is key for tackling the complicated but rewarding process of buying a home.

With the support of the Bureau, consumers should continue to have access to helpful programs covering financial topics such as mortgages, bank accounts, credit reports, and credit scores. This is especially important for younger generations, low to moderate income households, and first-time homebuyers, each embarking upon various financial goals, such as saving for school, saving for a down payment, and saving for retirement. Providing financial education through a variety of means including print publications, online materials, and webinars, and through diverse communication channels available at libraries and social service agencies will also broaden the reach of these essential educational tools.

As the Bureau examines its financial education programs, one of the more pressing issues is student loan debt. Recognizing that student loan debt is different from other debt is an important step in addressing the effect of such debt on student borrowers and their future financial decisions, including purchasing a home. Increasing effectiveness of educational programs so that more borrowers understand what their debt means, how relationships change

with various servicers, the impact on credit, and how the loan debt is treated in the market will improve the financial awareness of many more consumers.

While improving education for potential and current student loan debt holders, the Bureau should also consider educating the lending community on how monthly student loan payments affect debt-to-income ratios. A significant aspect of the Qualified Mortgage standard is a requirement that borrower payments on all debts, including those for their mortgage, car, and student loan payments, be 43 percent or less of their total income. Though it may be a reasonable standard in many instances, the continued rise in student debt and a weak labor market may have a long-term impact on the ability of many first time homebuyers to qualify under this standard, particularly lower income consumers. Many of these potential borrowers are learning that their student loan payments are a significant portion of their total monthly debt burden. Consequentially, community banks and lenders may choose not to approve mortgage loans to a large number of these responsible and otherwise qualified borrowers because of that debt.

As the Bureau looks to improve financial education programs, thoughtful consideration of how student loan debt reduces homeownership opportunities for many responsible young Americans must be considered. Rising monthly student debt payments continue to limit consumers' ability to save for down payments. The Bureau should prioritize educational programs about the impact of such debt on long-term financial goals and work with lenders to increase awareness of student repayment programs on debt-to-income ratios. Students should not be penalized for seeking out higher education; rather they should be rewarded for consistent on-time repayments illustrating a responsible track record of borrowing.

NAR also encourages the Bureau to continue to educate consumers on the home buying process, as buying a home not only helps build personal financial wealth and stability, but also strengthens communities as resident owners commit to improving their neighborhoods and supporting local businesses. While the real estate industry continues to adjust to the Know Before You Owe rules, it would be helpful for the Bureau to further educate consumers about the new disclosures to improve their understanding of the financial aspects of the transaction. Such education will empower consumers to ask the necessary questions and avoid mistakes that may delay closings and increase costs for all parties.

The Bureau must ensure that "Buying a House" programs also cover cybercrime, such as wire fraud, as such criminal activity could devastate a homebuyer's dream with the quick click of simply opening an email. Many settlement service providers are aware of the detrimental impact of cyber fraud and are educating practitioners and their clients about such threats. NAR has substantial resources available to real estate professionals to better understand and combat transactional dangers and help educate consumers about data security and privacy protection. These resources include guidance on notices to include in contracts and email communications, toolkits on protecting businesses and clients from cyber fraud, and tips on how to report breaches and criminals to proper authorities.[1]

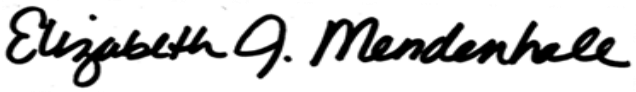
The Bureau should follow suit and emphasize awareness of cybercrime, especially wire fraud, and protections for consumers and industry practitioners in its financial education programs. This is especially important as digital commerce is increasingly the preferred method for a majority of financial transactions. As electronic closings, electronic mortgages, and electronic notarizations become more widely accepted, there must remain responsiveness to threats affecting consumers' privacy and financial stability. Enhanced education through the Bureau's programs, particularly for potential home buyers and sellers, will provide additional safeguards to result in successful completion of real estate sales transactions.

Continued expansion of financial education programs – to new audiences, through new communication channels, and with new industry partners – will ensure consumers are engaged in more thoughtful decision-making to improve

[1] *See* https://www.nar.realtor/law-and-ethics/protecting-your-business-and-your-clients-from-cyberfraud, https://www.nar.realtor/data-privacy-security/nars-data-security-and-privacy-toolkit, https://www.nar.realtor/data-privacy-security/wire-fraud-notices.

overall financial wellbeing. NAR looks forward to continuing to serve consumers as they navigate the homebuying process and working with the Bureau to educate future homeowners about how to best achieve their financial goals.

Sincerely,



Elizabeth Mendenhall
2018 President, National Association of REALTORS®

NAR Issue Summary
Business / RESPA/TILA Harmonization

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

For a number of years, the Bureau of Consumer Financial Protection (CFPB) has been working to harmonize the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) disclosures and regulations. While a published final rule is an improvement over the 2012 proposed rule, there still have been questions, complications, and costs related to the implementation that began on October 3, 2015.

I am a real estate professional. What does this mean for my business?

The new integrated disclosures replace the long-standing Good Faith Estimate (GFE) and HUD-1 settlement statement. Like any new process, there has been a learning curve with unanticipated hurdles. This uncertainty has generated a degree of risk aversion on the part of lenders that has led to a more tightly lender-controlled closing process. Of concern is a requirement that the Closing Disclosure (CD) be issued three days before closing, what adjustments can be made to the CD after it has been issued, and the potential delays that could result. Additionally, agents have reported reluctance by lenders and title companies to share the CD out of fear of liability for disclosing clients' nonpublic personal information.

NAR Policy:

NAR supports a RESPA/TILA harmonization that adds transparency, simplifies disclosures, and reduces burdens to settlement service providers, including real estate professionals. RESPA and TILA are confusing statutes with sometimes conflicting disclosures and procedures. A single reformed set of rules and initial disclosures could benefit settlement service providers and consumers, ultimately improving the settlement process.

Opposition Arguments:

Opponents of NAR policy believe that each requirement imposed by the RESPA and TILA laws is necessary to ensure that consumers are adequately protected. Some would like to see more efforts to control costs. Some at the other end of the spectrum would simply like to get rid of this rule.

Legislative/Regulatory Status/Outlook

The final Know Before You Owe (KBYO) mortgage disclosure rule was issued November 20, 2013, and went into effect on October 3, 2015.

In the final rule, the CFPB largely addressed NAR's major concerns regarding the proposed 3-day waiting period to close transactions and dropped many provisions including the "all in" APR that would have been problematic. However, concerns of possible closing delays and how the mortgage transaction

interacts with the real estate transaction remained. For instance, real estate agent access to the CD continues to be problematic. Many lenders have argued that the privacy requirements of the *Gramm-Leach-Bliley Act* (GLBA) or Regulation P prohibit lenders from releasing the CD to the real estate agent. However, an exception to the law and regulation already allows lenders to distribute the CD to third parties, including real estate professionals.

NAR advocated for a period of restrained enforcement and liability for the rule. It was through NAR member efforts during the 2015 REALTOR® Legislative Meetings that almost 300 U.S. Senators and Representatives signed a letter to CFPB Director Richard Cordray asking him to grant a period of restrained enforcement, which the CFPB subsequently granted. In June 2016, NAR sent a letter to the CFPB requesting guidance on several concerning issues still causing problems for consumers and industry, including seeking: clarity on lenders' ability to share the CD with third parties; insight on revising the CD to reflect changes in circumstances (the so-called "black hole"); and extension of post-consummation timelines to correct minor errors to reduce impact on the secondary market.

On July 29, 2016, the CFPB issued a proposed rule addressing some of these concerns. As advocated for by NAR, the CFPB included language acknowledging that sharing the CD with real estate professionals is permitted under existing privacy laws (GLBA and Regulation P). Thus, regardless of when this proposed rule was finalized, KBYO does not impact the existing privacy law exception. As a result, lenders' continued reluctance to share the CD out of fear of liability for disclosing clients' nonpublic personal information remains unwarranted.

On October 18, 2016, NAR sent a comment letter to the CFPB commenting on the proposed rule urging the CFPB to: (1) emphasize that lenders and title agents should share the CD with real estate agents, in accordance with existing privacy law and regulation; (2) ensure lenders are able to revise the CD to reflect valid changes in circumstances; (3) extend post-consummation timelines to correct minor KBYO errors; and (4) implement additional modifications to decrease consumer and industry uncertainty.

On July 7, 2017, the BCFP released the final rule amending the "Know Before You Owe" (KBYO or TRID) mortgage disclosure rule and clarified the ability to share the CD with third parties - a victory for real estate professionals nationwide. The final rule was published in the Federal Register on August 11, making it effective on October 10, 2017. Mandatory compliance is required by October 1, 2018.

At the same time as the final rule was released, the CFPB issued a proposed rule looking at the outstanding "black hole" issue related to creditors' ability to use a CD to reflect changes in costs imposed on consumers. On October 10, 2017, NAR sent a letter to the CFPB commenting on the proposed rule. In the comment letter, NAR advocated for adoption of the proposed rule, which allows for lenders' flexibility in being able to reissue a CD to determine if a closing cost was disclosed in good faith, regardless of when the CD is provided relative to consummation. NAR explained the advantages to having information early on in the closing process, which helps facilitate improved communication and an overall more transparent process for the consumer. A final rule was issued on April 26, 2018, and is effective June 1, 2018.

NAR continues to work with the CFPB industry partners to ensure that appropriate guidance is provided on any outstanding issues to ensure compliance and a smooth transaction. NAR recently weighed in on a series of Requests for Information (RFIs) and has participated in industry roundtables advocating for such changes.

CFPB Press Release

CFPB Final Rule

October 19, 2016 - NAR Comment Letter to CFPB

October 10, 2017 - NAR Comment Letter to CFPB

Current Legislation/Regulation (bill number or regulation)

CFPB Final Rule
Public Law 111-203 (HR 4173, The Dodd Frank Wall Street Reform and Consumer Protection Act).

Legislative Contact(s):

Christie DeSanctis, CDeSanctis@realtors.org, 202-383-1102

Daniel Blair, dblair@realtors.org, 202-383-1089

Regulatory Contact(s):

Christie DeSanctis, CDeSanctis@realtors.org, 202-383-1102

NAR Issue Summary

Business / Affiliated Business 3% Cap on Fees and Points

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

The Dodd-Frank Ability to Repay/Qualified Mortgage (QM) rule discriminates against various business models including mortgage bankers, mortgage brokers, and affiliates. Specifically, for a mortgage to be a QM and receive safe harbor protections, the mortgage's fees and points cannot exceed three percent of the loan amount. However, mortgage bankers, mortgage brokers, and affiliated companies are required to count more items towards fees and points than large retail financial institutions. This puts these smaller firms at a competitive disadvantage. Legislation is needed make any changes to the QM rule because of the specificity of the Dodd-Frank statutory language.

I am a real estate professional. What does this mean for my business?

Real estate professionals' clients will have fewer choices in where they can obtain a mortgage or other settlement services and the service they can rely on.

NAR Policy:

NAR supports greater access to mortgage credit and consumer choice. The Dodd-Frank Qualified Mortgage definition of fees and points needs to be fixed in order to ensure continued access to a broad range of lending institutions and options that meet consumer needs.

Opposition Arguments:

Opponents of NAR policy believe consumers do not receive enough protection and need additional protections to control the prices they pay for title insurance, mortgages and other settlement services.

Legislative/Regulatory Status/Outlook

In the 114th Congress, H.R. 685, the “Mortgage Choice Act”, introduced by Representatives Bill Huizenga (R-MI) and Gregory Meeks (D-NY) passed the House Financial Services Committee with a bipartisan vote of 43-12 and passed the House 286-140. The measure was not taken up by the Senate.

Representatives Huizenga and Meeks introduced the bill again in the 115th Congress as H.R. 1153, the "Mortgage Choice Act of 2017". The bill has also been incorporated into the "Financial CHOICE Act of 2017" introduced by Representative Jeb Hensarling (R-TX). The Financial CHOICE Act was approved by the House Financial Services Committee (HFSC) on April 27, 2017, and passed by the House on June 8, 2017. NAR also is pushing for inclusion of Mortgage Choice Act language in bills moving through the appropriations process.

NAR continues to work with an industry coalition on efforts to identify a bipartisan set of cosponsors for

a Senate companion bill and exploring potential regulatory fixes with the Bureau of Consumer Financial Protection (CFPB).

Current Legislation/Regulation (bill number or regulation)

H.R. 1153, the "Mortgage Choice Act of 2017 (Huizenga, R-MI; Meeks, D-NY)

Legislative Contact(s):

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Regulatory Contact(s):

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NAR Issue Summary

Business / Money Laundering and Terrorist Financing

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

Real estate professionals should understand their responsibilities in the current efforts being made to combat money laundering.

I am a real estate professional. What does this mean for my business?

The USA PATRIOT Act, the Bank Secrecy Act, and Executive Order 13224 have increased the level of the government's scrutiny of financial transactions in an effort to prevent money laundering and block the financial dealings of terrorists. Under the USA PATRIOT Act, financial institutions are required to create anti-money laundering (AML) and customer identification programs. The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and individuals. OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries collectively called Specially Designated Nationals (SDNs).

The laws impose the following duties on real estate professionals:

1. Real estate brokers and agents must report, using IRS form 8300, any single or series of related transactions in which they receive cash in excess of $10,000.
2. SDN assets are blocked, and all businesses (including real estate agents and brokers) have a responsibility to ensure that they are not dealing with any SDN by checking the list provided by OFAC. The SDN list can be found at: www.treasury.gov/sdn.

At this time, real estate firms and professionals engaged in brokerage or property management activities are not required to implement formal anti-money laundering or anti-terrorist financing (AML/TF) programs, as do regulated financial institutions. However, the U.S. Department of Treasury has the authority to change this and expand coverage of these requirements. To date, the Department of Treasury implements a risk-based analysis approach, focusing regulation on high-risk entities such as financial institutions rather than non-financial professions.

In 2017, the Financial Crimes Enforcement Network (FinCEN), Treasury's lead agency on AML/TF requirements, issued an Advisory to Financial Institutions and Real Estate Firms and Professionals to provide information on money laundering risks for real estate transactions. The Advisory provides examples of money laundering in the real estate sector, how shell companies and all-cash purchases may be linked to illicit activity, and ways in which real estate professionals' can voluntarily file suspicious activity reports. FinCEN also continues tracking data reported by title companies involved in certain high-end real estate transactions through Geographic Targeting Orders (GTOs).

NAR Issue Summary

Business / Money Laundering and Terrorist Financing

NAR Policy:

NAR supports continued efforts to combat money laundering and the financing of terrorism through the regulation of entities using a risk-based analysis. Any risk-based assessment would likely find very little risk of money laundering involving real estate agents or brokers. Regulations that would require real estate agents and brokers to adopt anti-money laundering programs would prove burdensome and unnecessary given the existing AML/TF regulations that already apply to United States financial institutions.

Opposition Arguments:

Some believe that real estate agents and brokers should be required to have specific anti-money laundering plans and procedures in place. NAR believes that such requirements would be overly burdensome compared to the risks. NAR worked with the Department of the Treasury to develop suggested voluntary guidelines for real estate professionals to follow to be on guard for possible money laundering situations and how to report those situations.

Legislative/Regulatory Status/Outlook

In 2003, FinCEN issued an advance notice of proposed rulemaking regarding anti-money laundering program requirements for "person involved in real estate closing and settlements" including real estate agents. NAR submitted comments stating "without evidence suggesting that regulation would substantially benefit the fight against money laundering, the burden on brokers of having to adopt and implement anti-money laundering programs clearly outweighs any perceived benefit." In proposed rules published in 2010, FinCEN deferred proposing rules for real estate agents and others until it could conduct further research and analysis on business operation and money laundering vulnerabilities. FinCEN released its Final Rule in 2012, which continues to defer on covering real estate brokers and agents pending further study and analysis. There has been increased attention lately on imposing obligations on real estate brokers and agents, and FinCEN may likely release recommendations later this year on their research as international pressures to regulate this industry grow.

NAR continues to monitor closely and has worked with FinCEN to develop an educational publication informing real estate agents and brokers of their responsibilities under current law. To date, educational items have included a fact sheet, suggested voluntary guidelines, and a FinCEN/NAR podcast. The Association of Real Estate Licensing Law Officials (ARELLO) has published the NAR Fact Sheet, which is now being distributed by many state real estate offices.

Increasingly, Congress and the Administration are focusing on the lack of collection of beneficial ownership information that has allowed anonymous shell companies to fund corrupt domestic and foreign interests, such as laundering money through real estate purchases. To address this issue, legislation has been introduced that would require disclosure of the beneficial owners of a corporation or LLC upon creation to prohibit a shell company from masking the actual ownership interests. There are several bipartisan legislative measures in the House and the Senate that would require beneficial ownership information to be reported to law enforcement agencies - the information would not be publicly available - and would impose no requirements on real estate professionals. For example, the information may be

collected by the individual state (S. 1454) or the state could elect to have the Federal Government collect (H.R. 3089; S. 1717).

Current Legislation/Regulation (bill number or regulation)

In early 2016, FinCEN began to issue Geographic Targeting Orders (GTOs), imposing new data collection and reporting requirements on specific title companies involved in certain high-end real estate transactions. These GTOs required title companies to identify natural persons with 25 percent or greater ownership interest in a legal entity making an all cash real estate purchase. The first GTOs were specifically directed at all cash real estate purchases in excess of $3 million dollars and $1 million dollars in the Borough of Manhattan in New York and Miami-Dade County, Florida, respectively.

FinCEN discovered that a significant portion of the reported covered transactions in the GTOs were linked to possible criminal activity by the individuals revealed to be the beneficial owners of the shell company purchasers. As a result, FinCEN has continued expanding and extending the covered geographic areas where title companies must comply with the GTO's data collection and reporting requirements. The latest GTO, effective until March 20, 2018, covers the following geographic areas and transactions:

- $500k and above – Bexar County, Texas
- $1m and above – Miami-Dade, Broward, and Palm Beach Counties, Florida
- $1.5m and above – New York City Boroughs of Brooklyn, Queens, Bronx, and Staten Island
- $2m and above – San Diego, Los Angeles, San Francisco, San Mateo, and Santa Clara Counties, California
- $3m and above – New York City Borough of Manhattan
- $3m and above - City and County of Honolulu, Hawaii

In accordance with the GTOs, title companies, and their agents, must file a report with FinCEN regarding covered purchases of residential real property meeting the requirements above when such purchases are made without a bank loan or similar external financing and is paid at least in part by using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check, or a money order. Pursuant to the recently passed legislation that directed Treasury to allow investigators to obtain additional records to better target illicit Russian activity, the GTOs will now include wire funds transfers.

The GTOs do not impose any new obligations on real estate professionals. However, it is important for members to be aware of these and the potential impact on real estate sales transactions. In the event a transaction is covered by a GTO, the title company may consult with the real estate professional to obtain information necessary to report in compliance with the order. Such communications should not affect the real estate sales transaction or timeline for closing as title companies are required to report GTO covered transactions to FinCEN within 30 days of the closing.

For more information, visit NAR's Issue Brief on the Geographic Targeting Orders (GTOs).

Legislative Contact(s):

NAR Issue Summary

Business / Money Laundering and Terrorist Financing

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BUSINESS

Senators Seek Probe of Money Laundering in Real-Estate Market

Lawmakers want to know what the government has learned while tracking all-cash sales in certain markets since 2016

U.S. Sen. Sheldon Whitehouse (D., R.I.) spoke in Washington in July. He and Sen. Chris Van Hollen (D., Md.) requested help from the Government Accountability Office in probing real-estate money-laundering risks. PHOTO: AARON P. BERNSTEIN/GETTY IMAGES

By Samuel Rubenfeld

Updated Oct. 3, 2018 4:46 p.m. ET

Two U.S. senators are seeking a congressional probe into the risk of money laundering in the real-estate sector.

Sens. Chris Van Hollen of Maryland and Sheldon Whitehouse of Rhode Island, both Democrats, sent a letter Wednesday to Gene Dodaro, head of the Government Accountability Office, seeking assistance with an investigation into vulnerabilities in the U.S. anti-money-laundering legal regime related to the real-estate sector.

"Residential real estate markets currently have fewer [anti-money-laundering] protections than lending financial institutions, presenting increased risk of access by foreign and domestic criminal organizations," they wrote.

The request comes as Congress tries, again, to address broader deficiencies in the nation's anti-money-laundering laws. Lawmakers for a decade have attempted to pass laws that close loopholes through which criminals can abuse the U.S. financial system, such as through the purchase of property.

U.S. authorities have seized real estate in multiple high-profile cases as part of its pursuit of money laundering by corrupt foreign officials stashing their funds in the U.S. as part of its Kleptocracy Asset Recovery Initiative.

The real-estate industry has an exemption from the requirements under the country's anti-money-laundering framework. Currently, no mandatory reporting requirements are placed on real-estate funds, title insurance or escrow agents, the senators said.

U.S. federal agencies, however, are starting to impose some requirements on the sector—in specific markets, on high-end, all-cash deals. The U.S. Treasury Department's Financial Crimes Enforcement Network, or FinCEN, has required title insurance companies since 2016 to file paperwork identifying the true, human owner of a company buying luxury property in New York City, Miami and several other major markets.

The program, known as a geographic targeting order, is subject to renewal every six months.

Those markets, particularly Miami, have seen a significant decline in all-cash sales since the requirements came into effect, according to a paper from economists at the Federal Reserve Bank of New York and the University of Miami. All-cash real-estate deals involving companies dropped nationally by about 70%, even in areas not subject to the requirements, the study found. It observed a 95% drop in the cash spent by corporate entities on homes in Miami.

The letter from Messrs. Van Hollen and Whitehouse seeks an assessment of what FinCEN has learned since it began collecting that data. Among the questions they ask: How has FinCEN used the information gathered to inform its continuing efforts to address money-laundering vulnerabilities? They also ask if FinCEN is considering any regulatory changes.

It comes as senators consider a sanctions bill that also includes a provision that would take the title insurance data program national, and state and federal officials push legislation that would require limited liability companies to disclose their owners.

“The widespread money laundering risks posed by real estate transactions conducted without any financing through the use of shell companies creates challenges for law enforcement and federal regulators seeking to safeguard the financial system from illicit use,” the letter said.

Write to Samuel Rubenfeld at samuel.rubenfeld@wsj.com

United States Senate
WASHINGTON, DC 20510

October 3, 2018

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Comptroller General Dodaro:

We write to you today regarding our concerns that transnational criminal organizations and other corrupt actors may be exploiting the gaps in U.S. regulatory and law enforcement processes related to the laundering of money through the U.S. real estate market. Accordingly, we ask for your assistance with an investigation into whether vulnerabilities in anti-money laundering laws applicable to the real estate sector present increased risk of criminal activity.

As you know, the Bank Secrecy Act (BSA) and its implementing regulations generally require financial institutions to collect and retain various records of customer transactions, verify customers' identities, maintain anti-money laundering (AML) programs, and report suspicious transactions. However, the full application of the BSA is unevenly distributed across sectors of the economy. Residential real estate markets currently have fewer AML protections than lending financial institutions, presenting increased risk of access by foreign and domestic criminal organizations.

For example, although federal law requires persons involved in real estate closings and settlements to establish anti-money laundering programs, real estate professionals are not required to report suspicious transactions involving real estate purchases and sales.[1] While the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) has noted that "drug traffickers, corrupt officials, money launderers, and other criminals seek to exploit real estate transactions to hide their illicit profits, conceal their identities, and launder funds", the vulnerability of the real estate sector to money laundering is further emphasized by the following:

- The real estate industry currently has an exemption from the BSA and portions of the Money Laundering Control Act of 1986.[2] Currently, no mandatory reporting

[1] At a minimum these entities must: (A) develop of internal policies, procedures, and controls; (B) designate a compliance officer; (C) have an ongoing employee training program; and (D) establish an independent audit function to test programs.

[2] The exemption was made to exclude "persons involved in real estate closings and settlements" from Section 352 of Patriot Act , which went into effect in April 2002.

requirements are placed on, real estate funds, title insurance and escrow agents. The standard for persons involved in real estate transactions is voluntary.

- The real estate industry is currently not subject to FinCEN's Customer Due Diligence rule, which was issued to amend BSA regulations to strengthen financial institutions' vetting of customers.

- FinCEN's rule requiring covered financial institutions to identify and verify information of their *legal entity customers* at the time a new account is opened which goes into effect May 2018, does not extend to persons involved in real estate closings and settlements.

As a result, we are concerned that transnational criminal organizations and other illicit actors may seek to take advantage of any gaps in U.S. regulatory and law enforcement processes. The widespread money laundering risks posed by real estate transactions conducted without any financing (i.e.,"all-cash") through the use of shell companies creates challenges for law enforcement and federal regulators seeking to safeguard the financial system from illicit use. According to the National Association of Realtors, one in four residential real estate purchases are "all-cash", totaling hundreds of billions of dollars annually nationwide.

In January 2016, FinCEN issued real estate Geographic Targeting Orders (GTOs) for several areas of the U.S. that temporarily required certain U.S. title insurance companies to identify the persons behind shell companies used to purchase high-end residential real estate, among other requirements. FinCEN has indicated that these GTOs, which have been renewed and extended several times, are temporary measures intended to help the agency, "better understand the vulnerabilities presented by the use of shell companies to engage in all-cash residential real estate transactions."

To better ensure effective and consistent AML safeguards, we are requesting an assessment of the results of the real estate GTOs, including the information provided to FinCEN and any actions taken, and how it has helped FinCEN achieve its defined objectives. Specifically, we ask GAO to address as rigorously as possible the following questions:

1. Has the information gathered by the GTOs provided useful insight about any of the above mentioned regulatory gaps or exemptions that exist regarding the BSA and the real estate industry?

2. Has the information gathered by the GTOs produced other tangible benefits, and in what ways will closing the above mentioned regulatory gaps or exemptions enhance financial market integrity in the United States?

    a. How has FinCEN used the information collected from the real estate GTOs to inform its ongoing efforts to address money laundering vulnerabilities?

    b. Has the information gathered by the GTOs improved the ability of FinCen, DOJ, the FBI and other law enforcement agencies to prevent money laundering in the real estate industry?

c. Based on the information it has collected from these GTOs, is FinCEN considering any regulatory changes?

3. Are there ways to improve upon the information gathered by the GTOs to make FinCEN more effective in the fight against money laundering?

   a. Are there any gaps or loopholes that exist in the design of the GTO program that could be exploited by illicit actors, such as the beneficial ownership thresholds[3] or limiting the GTO to title insurance companies?

   b. Are there any unintended consequences from targeting specific geographic regions while leaving other areas uncovered? The adaptive nature of illicit actors raises concerns they may shift their real estate activities from GTO areas to other regions of the United States.

4. Lastly, we ask that GAO identify any additional vulnerabilities and gaps in the current BSA framework, specifically as they pertain to the real estate sector, and how they might be addressed through regulatory or legislative action.

Thank you for your prompt attention to this request.

Sincerely,

Chris Van Hollen
United States Senator

Sheldon Whitehouse
United States Senator

[3] Experts have raised issues with the GTOs requiring beneficial ownership information for those with 25% or greater ownership interest in an LLC and have concerns that illicit actors seeking to launder money can creatively work around the threshold.

UNITED STATES DEPARTMENT OF THE TREASURY
FinCEN
FINANCIAL CRIMES ENFORCEMENT NETWORK

ADVISORY

FIN-2017-A003 **August 22, 2017**

Advisory to Financial Institutions and Real Estate Firms and Professionals

Drug traffickers, corrupt officials, money launderers, and other criminals seek to exploit real estate transactions to hide their illicit profits, conceal their identities, and launder funds.

This Advisory should be shared with:

- *Real Estate Professionals*
- *Organization Executives*
- *Comptroller/Treasury/ Accounting Departments*
- *Compliance Departments*
- *Legal Departments*

The Financial Crimes Enforcement Network (FinCEN) is issuing this advisory to provide financial institutions and the real estate industry with information on money laundering risks associated with certain real estate transactions. As highlighted by recent Geographic Targeting Orders (GTOs) issued by FinCEN, real estate transactions involving luxury property purchased through shell companies—particularly when conducted with cash and no financing—can be an attractive avenue for criminals to launder illegal proceeds while masking their identities.[1]

Each type of financial institution—defined by law to also include "persons involved in real estate closings and settlements"—has certain anti-money laundering obligations and can provide valuable reporting on potential money laundering and terrorist financing.[2] While real estate brokers, escrow agents, title insurers, and other real estate professionals are not required to, FinCEN encourages them to voluntarily report suspicious transactions involving real estate purchases and sales. As with other financial institutions under the Bank Secrecy Act (BSA), a safe harbor from liability exists with respect to the filing of suspicious activity reports, including voluntary ones, by persons involved in real estate closings and settlements.[3]

1. Although FinCEN to date has focused on residential real estate, money laundering can also involve commercial real estate transactions.
2. FinCEN—a bureau of the U.S. Department of the Treasury—administers and issues regulations pursuant to the Bank Secrecy Act (BSA). The BSA is the commonly used term for statutory enactments requiring U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering, terrorism finance, and other illegal activity. The BSA's definition of "financial institution" includes "persons involved in real estate closings and settlements." 31 U.S.C. § 5312(a)(2)(U). While that term has not yet been defined under FinCEN's regulations, it is not intended to include individual buyers and sellers.
3. *See* 31 U.S.C. § 5318(g)(3).

Money Laundering Risks in the Real Estate Sector

Real estate transactions and the real estate market have certain characteristics that make them vulnerable to abuse by illicit actors seeking to launder criminal proceeds. For example, many real estate transactions involve high-value assets, opaque entities, and processes that can limit transparency because of their complexity and diversity. In addition, the real estate market can be an attractive vehicle for laundering illicit gains because of the manner in which it appreciates in value, "cleans" large sums of money in a single transaction, and shields ill-gotten gains from market instability and exchange-rate fluctuations.[4] For these reasons and others, drug traffickers, corrupt officials, and other criminals can and have used real estate to conceal the existence and origins of their illicit funds.

Example: Corruption and Residential Real Estate

A high-profile case illustrating money laundering risks in the real estate sector involves 1Malaysia Development Berhad (1MDB), a Malaysian sovereign wealth fund. In 2016, the U.S. Department of Justice sought forfeiture of over $1 billion in assets—including luxury real estate—associated with funds stolen by corrupt foreign officials from 1MDB. This included a hotel, two homes, and a mansion in Beverly Hills, CA; a home in Los Angeles, CA; a condominium, two apartments, and a penthouse in New York, NY; and, a townhouse in London, England; all with a collected value estimated at approximately $315 million.

This money laundering risk in the real estate market was a principal driver of FinCEN's decision to issue GTOs, which, as described below, have provided greater insight into illicit finance risks in the high-end real estate market. FinCEN's analysis of BSA and GTO reported data, law enforcement information, and real estate deed records, as depicted by the case studies in this advisory, indicates that high-value residential real estate markets are vulnerable to penetration by foreign and domestic criminal organizations and corrupt actors, especially those misusing otherwise legitimate limited liability companies or other legal entities to shield their identities. In addition, when these transactions are conducted without any financing *(i.e.*, "all-cash"), they can potentially avoid traditional anti-money laundering (AML) measures adopted by lending financial institutions, presenting increased risk.

FinCEN encourages both financial institutions subject to mandatory suspicious reporting requirements, as well as real estate professionals filing voluntary suspicious activity reports, to keep the risks detailed below in mind when identifying and reporting suspicious transactions.

4. Money laundering is a crime orchestrated to conceal the source of illegal proceeds so that the money can be used without detection of its criminal source. Visit www.fincen.gov for further information.

Use of Shell Companies Decreases Transparency

Criminals launder money to obscure the illicit origin of their funds. To this end, money launderers can use a number of vehicles to reduce the transparency of their transactions. One such vehicle, highlighted in the below case study, is the use of shell companies. Shell companies are typically non-publicly traded corporations, limited liability companies (LLCs), or trusts that have no physical presence beyond a mailing address and generate little to no independent economic value.[5] Most shell companies are formed by individuals and businesses for legitimate purposes, such as to hold stock or assets of another business entity or to facilitate domestic and international currency trades, asset transfers, and corporate mergers. Shell companies can often be formed without disclosing the individuals that ultimately own or control them (*i.e.*, their beneficial owners) and can be used to conduct financial transactions without disclosing their true beneficial owners' involvement. Criminals abuse this anonymity to mask their identities, involvement in transactions, and origins of their wealth, hindering law enforcement efforts to identify individuals behind illicit activity.[6]

Example: Drug Trafficking, Luxury Real Estate, and Shell Companies

An example of abuse of the luxury real estate sector involves current Venezuelan Vice President Tareck El Aissami and his frontman Samark Lopez Bello. The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) designated El Aissami under the Foreign Narcotics Kingpin Designation Act for playing a significant role in international narcotics trafficking. Lopez Bello was designated for providing material assistance, financial support, or goods or services in support of the international narcotics trafficking activities of, and acting for or on behalf of, El Aissami.[7] In addition, OFAC designated shell companies tied to Lopez Bello that were used to hold real estate.[8] Lopez Bello is tied to significant property and other assets, which were also blocked as a result of OFAC's action.

The misuse of shell companies to launder money is a systemic concern for law enforcement and regulatory agencies, but it is of particular concern in the "all-cash" segment of the real estate market, which currently has fewer AML protections.

5. For further information on shell companies, see FinCEN Guidance FIN-2006-G014 "Potential Money Laundering Risks Related to Shell Companies" (November 2006) and FinCEN's SAR Activity Review Trends, Tips, and Issues: Issue 1 (October 2000), Issue 2 (June 2001), and Issue 7 (August 2004).
6. In May 2018, many financial institutions will be required to implement customer due diligence obligations and collect beneficial ownership information on their legal entity customers at account opening. See, 81 Fed. Reg. 91 (May 2016).
7. *See* "Treasury Sanctions Prominent Venezuelan Drug Trafficker Tareck El Aissami and His Primary Frontman Samark Lopez Bello" (February 2017).
8. *Id*. Generally, under U.S. law, the assets and accounts of a designated individual, entity, or country must be frozen or blocked by U.S. individuals or entities.

Use of "All-Cash" Real Estate Purchases Further Decreases Transparency

Criminals can use all-cash purchases to make payments in full for properties and evade scrutiny—on themselves and the origin of their wealth—that is regularly performed by financial institutions in transactions involving mortgages.[9] All-cash transactions account for nearly one in four residential real estate purchases, totaling hundreds of billions of dollars nationwide, and are particularly exposed to abuse.[10] All-cash transactions account for an even larger stake in some U.S. markets. For instance, nearly 50 percent of residential real estate sales in Miami-Dade County were all-cash transactions in 2015 and 2016.[11] Many all-cash transactions are routine and legitimate, however, they also present significant opportunities for exploitation by illicit actors.

Example: Fraud, Money Laundering, and All-Cash Purchases

An example highlighting fraud and money laundering through all-cash transactions involves real estate agent Anthony Keslinke, who in 2016 was jailed, ordered to pay $1,427,916 in restitution to victims, and forfeited $3,808,831. Keslinke was the leader of both a large-scale bank fraud conspiracy and a separate money laundering conspiracy. Between 2011 and 2014, Keslinke used straw buyers and altered records and documents to purchase real estate with cash throughout Northern California, which he then resold at significant financial gain.[12]

FinCEN's Geographic Targeting Orders (GTOs)

In 2016 and 2017, FinCEN issued GTOs to better understand the vulnerabilities presented by the use of shell companies to engage in all-cash residential real estate transactions. A GTO is an order issued by FinCEN under the BSA that imposes additional recordkeeping or reporting requirements on financial institutions or other businesses in a specific geographic area.[13] In this case, FinCEN issued GTOs requiring certain U.S. title insurance companies to record and report information, including beneficial ownership, about legal entities used to make non-financed purchases of high-value residential real estate in seven major U.S. geographic areas.[14]

9. The BSA and FinCEN regulation generally require covered financial institutions—including those providing financing—to conduct diligence on their customers and their source of wealth.
10. The National Association of Realtors (NAR) consistently reports monthly figures on all-cash sales for existing homes to near 25 percent. *See* http://www.realtor.org/topics/existing-home-sales.
11. *See* the Miami Association of Realtors' 2016 Yearly Market Summaries for Single Family Homes and Townhouses and Condos.
12. *See* the Internal Revenue Service's (IRS) "Examples of Money Laundering Investigations – Fiscal Year 2016."
13. *See* 31 U.S.C. § 5326(a), 31 CFR § 1010.370, and Treasury Order 180-01.
14. *See* "GTOs Involving Certain Real Estate Transactions Frequently Asked Questions" (August 2016), "FinCEN Renews Real Estate "GTOs" to Identify High-End Cash Buyers in Six Major Metropolitan Areas" (February 2017), and "FinCEN Targets Shell Companies Purchasing Luxury Properties in Seven Major Metropolitan Areas" (August 2017).

As of May 2, 2017, over 30 percent of the real estate transactions reported under the GTOs involved a beneficial owner or purchaser representative that had been the subject of unrelated Suspicious Activity Reports (SARs) filed by U.S. financial institutions. In other words, the beneficial owners or purchaser representatives in a significant portion of transactions reported under the GTO had been previously connected to a wide array of suspicious activities, including:

- A beneficial owner suspected of being connected to over $140 million in suspicious financial activity since 2009 and who sought to disguise true ownership of related accounts.
- Two beneficial owners (husband and wife) involved in a $6 million purchase of two condominiums were named in nine SARs filed from 2013 – 2016 in connection with allegations of corruption and bribery associated with South American government contracts.
- A beneficial owner suspected of being connected to a network of individuals and shell companies that received over $6 million in wire transfers with no clear business purpose from entities in South America. Much of these funds were used for payments to various real estate related businesses.
- Eleven SARs filed from 2008 through 2015 named either the buyer (an LLC), beneficial owner, or purchaser's representative involved in a GTO-reported $4 million purchase of a residential unit. Law enforcement records indicate that both the purchaser's representative and his business associate were associated with a foreign criminal organization involved in narcotics smuggling, money laundering, health care fraud, and the illegal export of automobiles.

Review of U.S. Anti-Money Laundering Regulations in the Real Estate Sector

The real estate sector is one of many within the U.S. economy for which anti-money laundering (AML) safeguards have been established to protect the U.S. financial system.[15] More specifically, covered financial institutions—including depository institutions, loan or finance companies, and housing government-sponsored enterprises like Fannie Mae and Freddie Mac—generally have obligations to establish AML programs, report suspicious activity to FinCEN using Suspicious Activity Reports (SARs), and understand their customers and their source of wealth. In addition, beginning in May 2018, many financial institutions will be required to implement customer due diligence obligations and collect beneficial ownership information on their legal entity customers opening accounts.[16] FinCEN provides substantial guidance and information on how to implement these requirements effectively.[17]

15. 31 U.S.C. § 5318(h) requires financial institutions, including "persons involved in real estate closings and settlements," to establish an anti-money laundering program that includes, at a minimum: (A) the development of internal policies, procedures, and controls; (B) the designation of a compliance officer; (C) an ongoing employee training program; and (D) an independent audit function to test programs.
16. 81 Fed. Reg. 91 (May 2016).
17. For additional information, see https://www.fincen.gov/resources/financial-institutions/mortgage-co-broker.

While FinCEN currently has exempted them from these broader obligations, persons involved in real estate closings and settlements do participate in efforts to safeguard the U.S. real estate industry and financial system from money laundering and terrorism financing through their existing AML/CFT requirements.[18] They, like all U.S. persons engaged in trade and business, must file reports on transactions in currency and certain monetary instruments involving more than $10,000 (commonly referred to as "Form 8300").[19] They also may be required to annually report on foreign bank and financial accounts they own or control, report the transportation of currency across the U.S. border, and keep associated records, as well as respond to FinCEN-issued GTOs.[20] In addition, as other financial institutions under the BSA, persons involved in real estate closings and settlements—which may include real estate brokers, escrow agents, title insurers, and other real estate professionals—can voluntarily report suspicious activity and such disclosures would be protected from liability under the BSA's safe harbor.

The real estate industry recognizes the seriousness and importance of protecting the U.S. real estate market from abuse. For example, the National Association of Realtors has issued red flags and voluntary guidelines to assist real estate professionals minimize the risk of real estate becoming a vehicle for money laundering.[21]

Mandatory Reporting of Suspicious Activity

A covered financial institution is required to file a SAR if it knows, suspects, or has reason to suspect a transaction conducted or attempted by, at, or through the financial institution involves funds derived from: illegal activity, attempts to disguise funds derived from illegal activity, is designed to evade regulations promulgated under the BSA, lacks a business or apparent lawful purpose, or involves the use of the financial institution to facilitate criminal activity.[22]

Voluntary Reporting of Suspicious Activity

SARs play an important role in assisting law enforcement to combat crime as they identify possible illicit activity and criminals. FinCEN encourages persons involved in real estate closings and settlements—which may include real estate brokers, escrow agents, title insurers, and other real estate professionals—to voluntarily file a SAR to report any suspicious transactions.[23] These persons are well-positioned to identify potentially illicit activity as they have access to a more complete view and understanding of the real estate transaction and of

18. *See* FinCEN's advance notice of proposed rulemaking "Anti-Money Laundering Program Requirements for 'Persons Involved in Real Estate Closings and Settlements'" (April 2003).
19. 31 CFR § 1010.330 (Form 8300). A Form 8300 also may be filed voluntarily for any suspicious transaction, even if the total amount does not exceed $10,000.
20. 31 CFR §§ 1010.350 (FBAR), 1010.340 (CMIR), 1010.430 (recordkeeping), and 1010.370 (GTO).
21. *See* "Tips for Spotting Global Money Laundering Schemes" (January 2017) and "Anti-Money Laundering Guidelines for Real Estate Professionals" (November 2012).
22. 31 C.F.R. §§ 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, 1029.320, and 1030.320.
23. For instructions on how to file a SAR with FinCEN see https://www.fincen.gov/resources/filing-information.

those involved in the transaction. For example, real estate brokers may have greater insight as to the potential purpose for which a property is being purchased or the possible origin of a purchaser's funds. When reporting suspicious activity, persons involved in real estate closings and settlements should note that they can benefit from protection from civil liability.[24]

Real estate brokers, escrow agents, title insurers, and other real estate professionals can identify potential suspicious transactions by reviewing available facts and circumstances. Real estate professionals may determine a transaction is suspicious after evaluating whether the real estate transaction:

- Lacks economic sense or has no apparent lawful business purpose. Suspicious real estate transactions may include purchases/sales that generate little to no revenue or are conducted with no regard to high fees or monetary penalties;
- Is used to purchase real estate with no regard for the property's condition, location, assessed value, or sale price;
- Involves funding that far exceeds the purchaser's wealth, comes from an unknown origin, or is from or goes to unrelated individuals or companies; or
- Is deliberately conducted in an irregular manner. Illicit actors may attempt to purchase property under an unrelated individual's or company's name or ask for records (e.g., assessed value) to be altered.

Filing Suspicious Activity Reports (SARs)

To report suspicious transactions, financial institutions—including persons involved in real estate closings and settlements—should electronically submit a SAR through FinCEN's BSA E-Filing System. Additional information on how to complete and file a SAR is available at FinCEN's public website here.

When filing a mandatory or voluntary SAR involving a real estate transaction, financial institutions should provide complete and accurate information, including relevant facts in appropriate SAR fields, and information about the real estate transaction and the circumstances and reasons why such transaction may be suspicious in the narrative section of the SAR.

FinCEN also requests that financial institutions reference this advisory and include the key term

"ADVISORY REAL ESTATE"

in the SAR narrative and in SAR field 33(z) (Money Laundering-Other) to indicate a connection between the suspicious activity being reported and real estate property.

24. *See* 31 U.S.C. § 5318(g)(3)(A). Persons filing SARs should also note that FinCEN protects the confidentiality of such filings.

For Further Information

Additional questions or comments regarding the contents of this advisory should be addressed to the FinCEN Resource Center at FRC@fincen.gov, (800) 767-2825 (Option 9), or (703) 905-3591 (Option 9). ***Financial institutions wanting to report suspicious transactions that may potentially relate to terrorist activity should call the Financial Institutions Toll-Free Hotline at (866) 556-3974 (7 days a week, 24 hours a day)***. The purpose of the hotline is to expedite the delivery of this information to law enforcement. Financial institutions should immediately report any imminent threat to local-area law enforcement officials.

FinCEN's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.

NAR Issue Summary

Business / Worker Classification (independent contractor v. employee)

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

The longstanding business arrangement for real estate brokerages includes real estate agents classified as independent contractors rather than employees. While real estate agents have been specifically considered independent contractors for federal taxation purposes since 1984, there have been occasional challenges to that classification in state courts for purposes other than federal taxation, such as overtime pay and other benefits.

Calls for federal action to address employer abuses of the independent contractor classification have been ongoing for many years. In July 2015, an Administrator's Interpretation by the U.S. Department of Labor's Wage and Hour Division Administrator stated that the bias under existing definitions of independent contractor should be in favor of most workers being considered employees for purposes of wage and hour determinations. By expanding the "economic realities" test used to define the term "employee" for purposes of the *Fair Labor Standards Act* (FLSA), the Department was reducing the ability of employers to classify workers as independent contractors. On June 7, 2017, U.S. Department of Labor Secretary Alexander Acosta withdrew the 2015 Administrator's Interpretation.

I am a real estate professional. What does this mean for my business?

Losing the independent contractor status for real estate agents would dramatically change the structure of the industry. The Administrator's Interpretation itself did not have the force of law, as it was informal guidance, but illustrates how policy decisions issued by the Wage and Hour Division are impactful and could be cited in legal challenges in state and federal courts.

NAR Policy:

NAR strongly supports the continued right of brokers to choose whether to classify agents as employees or independent contractors. NAR supports actions at the state level to strengthen the rights of brokers to make these determinations and will resist efforts at the federal level to weaken those rights.

Opposition Arguments:

Those calling for a crackdown on improper worker classification believe that many employers classify workers as independent contractors simply to avoid existing requirements of state and federal labor law, *i.e.* overtime pay, employer Social Security contributions, workers compensation requirements, health insurance employer mandate, etc.

Legislative/Regulatory Status/Outlook

On June 7, 2017, U.S. Department of Labor Secretary Alexander Acosta withdrew the 2015 informal

guidance on independent contractor misclassification that raised the issue of a federal Department of Labor bias in favor of classifying nearly all workers as employees for the purpose of determining wages, hours, and benefits. Removal of this guidance does not change the legal responsibilities of employers under the FLSA and NAR will continue to monitor federal and state action on these issues.

In recent months, Congressional committees with jurisdiction over workplace issues have also been reviewing the use of the independent contractor model in the developing shared ("gig") economy business models, such as Lyft. NAR continues to track and participate in discussions that have the potential to impact the independent contractor model used by real estate brokerages.

Outside of the federal realm, there has been an increase in court cases brought at the state level, notably in California and Massachusetts, contesting the independent contractor status of real estate professionals. For complete information on pending litigation and the legal status of independent contractor designation go to: http://www.nar.realtor/topics/independent-contractor.

Current Legislation/Regulation (bill number or regulation)

H.R. 3825, the *Harmonization of Coverage Act of 2017*, sponsored by Reps. Diane Black (R-TN) and Elise Stefanik (R-NY).

Legislative Contact(s):

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Regulatory Contact(s):

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Consumer Financial Protection Bureau

Consumer complaint

Complaint snapshot: 50 state report

OCT 23, 2018

One of the primary functions of the Bureau of Consumer Financial Protection (Bureau) is collecting, investigating, and responding to consumer complaints. The Bureau's Office of Consumer Response hears directly from consumers about the challenges they face in the marketplace, brings their concerns to the attention of companies, and assists in addressing their complaints.

This complaint snapshot provides a high-level overview of trends in consumer complaints and supplements the Consumer Response Annual Report with more recent information on complaints about consumer financial products and services by state.

FULL REPORT

Read the full report

RELATED REPORTS

Topics

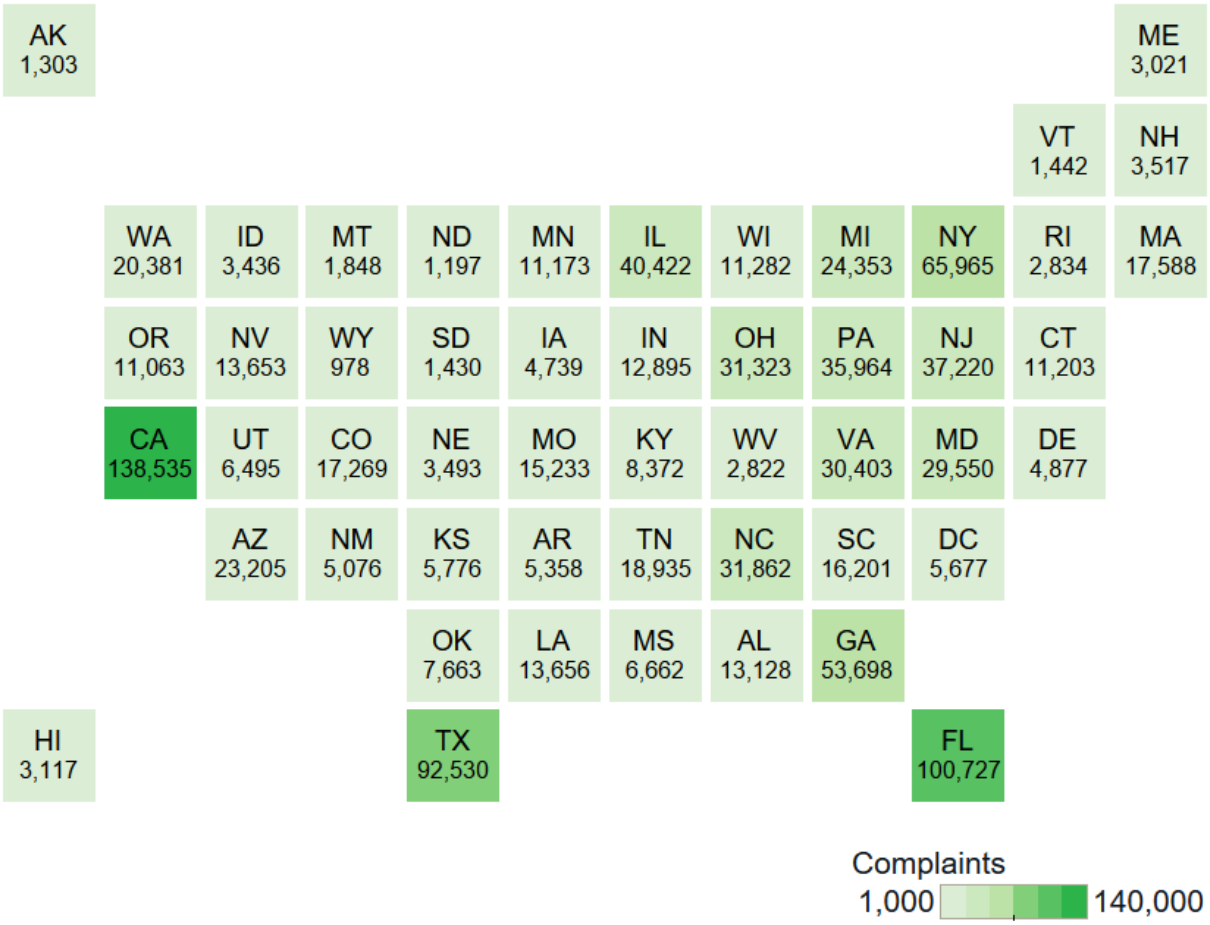
- DATA
- CONSUMER COMPLAINTS
- DEBT COLLECTION

FURTHER READING

Blog

Background

FIGURE 1: COMPLAINTS RECEIVED BY STATE: JANUARY 1, 2015 THROUGH JUNE 30, 2018



One of the primary functions of the Bureau of Consumer Financial Protection ("Bureau") is collecting, investigating, and responding to consumer complaints.[1] Created as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bureau's Office of Consumer Response ("Consumer

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203 ("Dodd-Frank Act"), Section 1021(c)(2).

Response")[2] hears directly from consumers[3] about the challenges they face in the marketplace, answers their inquiries about consumer financial products and services, brings their concerns to the attention of companies, and assists in addressing their complaints.[4]

Complaint snapshots like this one provide a high-level overview of trends in consumer complaints and supplement the Consumer Response Annual Report[5] with more recent information about complaints submitted to the Bureau. This Complaint snapshot covers complaints submitted from January 1, 2015 through June 30, 2018. It provides an overview of the similarities and differences in complaints about consumer financial products and services by state. State snapshots are presented in descending order by the number of complaints submitted from January 2017 through June 2018 per 100,000 population. Refer to the State index on page 4 for an alphabetical listing of state snapshots.

Visit consumerfinance.gov/complaint to learn about how we handle complaints. Visit our Consumer Complaint Database at consumerfinance.gov/complaintdatabase to search, sort, filter, and export complaints.

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[2] *Id.* § 1013(b)(3)(A).

[3] *Id.* § 1002(4) ("The term 'consumer' means an individual or an agent, trustee, or representative acting on behalf of an individual.").

[4] Consumer complaints are submissions that express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identifiable entity related to a consumer's personal experience with a financial product or service.

[5] Section 1013(b)(3)(C) of the Dodd-Frank Act requires an annual report on the complaints received by the Bureau regarding consumer financial products and services. *See* Bureau of Consumer Financial Protection, *Consumer Response Annual Report* (Mar. 2018), *available at* http://www.consumerfinance.gov/documents/6406/cfpb_consumer-response-annual-report_2017.pdf.

COMPLAINTS SUBMITTED BY

US consumers

494,540	27,474	+9%
Complaints received Jan. 2017 - Jun. 2018	Average complaints per month Jan. 2017 - Jun. 2018	Change in average monthly complaints 2018 vs. 2017
-3%	**98%**	**150**
Change in complaint volume 2018 Q2 vs. Q1	Timely company responses Jan. 2017 - Jun. 2018	Complaints per 100k population Jan. 2017 - Jun. 2018

Top 5 products by volume since 2015 with 2017 vs. 2016 comparison

	Total complaints	2017 vs. 2016 % of total (2017 / 2016)	Top issue reported by consumers by product
Debt collection	302,438	26% / 30%	Attempts to collect debt not owed 40% (121,180)
Credit or consumer reporting	273,699	31% / 19%	Incorrect information on your report 64% (176,148)
Mortgage	155,519	12% / 18%	Trouble during payment process 40% (61,851)
Credit card	90,242	8% / 9%	Problem with a purchase shown on your statement 22% (19,965)
Checking or savings	88,170	8% / 10%	Managing an account 80% (70,125)

Top 5 products by quarterly percent change

	2017 Q4 complaints	2018 Q1 complaints	2018 Q2 complaints	Quarterly complaint trend
Prepaid card	545	571	649	
Student loan	2,679	2,915	2,634	
Payday loan	664	654	573	
Credit repair	282	305	249	
Money transfer or service, virtual currency	2,047	2,996	1,790	

'15 '16 '17 '18

This report uses dynamic data through June 30, 2018 and may differ slightly from other public reports. Visit consumerfinance.gov/complaint to learn how we handle complaints.

NAR Issue Summary
Technologies / Data Privacy and Security

NAR Committee:

Federal Technology Policy Committee

What is the fundamental issue?

Public concern about the confidentiality of personal medical, financial and consumer data has put pressure on policy makers to increase regulation on the uses of this information. The recent popularity of marketers to use online advertising targeted to individual consumers has also concerned members of Congress. With the recent data breaches of large retailers, a number of privacy and data security bills have been introduced in Congress. Many of these measures will likely: apply privacy regulations to both online and offline data collection, storage and flow; require privacy notices and impose other information safeguards.

I am a real estate professional. What does this mean for my business?

Real estate professionals collect, store and share a great deal of consumer information. Often, the collected data is of a sensitive financial nature. The current proposals for comprehensive privacy legislation would require nearly all real estate professionals and REALTOR® Associations to comply with the new rules. NAR is working to ensure that any future privacy law takes into account the burden on small businesses and is narrowly tailored to reduce its impact on members.

Of note is the recent trend in email fraud targeting homebuyers who are approaching closing. Fraudulent emails appearing to come from a trusted source (agent, title company) instruct the buyer to wire funds to a fraudulent account. This scam further heightens the need for REALTORS® and their clients to pay attention to data security.

NAR Policy:

NAR recognizes the importance of protecting client data entrusted to them and supports common sense data privacy and security safeguards that are effective but do not unduly burden our members' ability to efficiently run their businesses. Proposed regulations must be narrowly tailored to avoid burdening businesses, especially small businesses that lack the resources available to larger entities.

NAR Data Privacy & Security Principles
REALTORS® recognize that as data collection continues to become a valuable asset for building relationships with their clients, so does their responsibility to be trusted custodians of that data. Consumers are demanding increased transparency and control of how their data is used. For this reason, REALTORS® endorse the following Data Privacy and Security principles:

- **Collection of Personal Information Should be Transparent**

REALTORS® should recognize and respect the privacy expectations of their clients. They are encouraged to develop and implement privacy and data security policies and to communicate those policies clearly to their clients.

- **Use, Collection and Retention of Personally Identifiable Information**

REALTORS® should collect and use information about individuals only where the REALTOR® reasonably believes it would be useful (and allowed by law) to administering their business and to provide products, services and other opportunities to consumers. REALTORS® should maintain appropriate policies for the, reasonable retention and proper destruction of collected personally identifiable information.

- **Data Security**

REALTORS® should maintain reasonable security standards and procedures regarding access to client information.

- **Disclosure of Personally Identifiable Information to Third Parties**

REALTORS® should not reveal personally identifiable data to unaffiliated third parties unless: 1) the information is provided to help complete a consumer initiated transaction 2) the consumer requests it; 3) the disclosure is required by/or allowed by law (i.e. investigation of fraudulent activity); or 4) the consumer has been informed about the possibility of such disclosure through a prior communication and is given the opportunity to decline (i.e. opt-out.)

- **MaintainingConsumer Privacy in Business Relationships with Third Parties**

If a REALTOR® provides personally identifiable information to a third party on behalf of a consumer, the third party should adhere to privacy principles similar to the REALTOR® that provide for keeping such information confidential.

- **Single Federal Standard**

NAR supports a single federal standard for data privacy and security laws in order to streamline and minimize the compliance burden.
View NAR's page on Data Privacy and Security

Opposition Arguments:

Opponents to legislative and regulatory efforts generally oppose the scope of limitations on various business practices that may significantly curtail certain business models or create what is viewed to be excessive costs for business. Others believe that proposed legislation/regulations do too little to protect consumers.

Legislative/Regulatory Status/Outlook

NAR supports the approach taken by Senator Warner (D-VA) in his 2016 discussion draft. That draft bill:

1. Covers all entities handling sensitive information – there are no exemptions for banks, telcos, third

parties, etc.

2. The scope of the bill is appropriate:
    - A breach of security is the acquisition of data (not access or acquisition);
    - Sensitive account/personal information are narrowly defined terms (not expansive);
    - The trigger for notice is risk-based (requiring what is defined as financial harm).

3. Has reasonable data security standards for non-banks;

4. Has enforcement by banking regulators for banks, and by FTC for non-banks;

5. Has equivalent enforcement by all banking regulators and the FTC, with requirement that the agencies coordinate on equivalent enforcement and penalties; and

6. Gives all covered entities the benefit of solid preemption of state and common law.

Finally, NAR has developed an educational toolkit for members and has developed an online training course available through REALTOR® University. To view the toolkit visit: www.nar.realtor/law-and-ethics/nars-data-security-and-privacy-toolkit

Current Legislation/Regulation (bill number or regulation)

S. 2179 Data Security and Breach Notification Act (Nelson FL-D)
S. 2728 Social Media Privacy Protection and Consumer Rights Act (Klobuchar- MN-D)
H.R.3806 Data Notification Protection Act (Langevin RI-D)
H.R. 3904, Data Protection Act of 2107 (Dingel MI-D)

Legislative Contact(s):

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Federal Technology Policy Action Item Re: Remote Notary

Rationale:
The opportunity exists to bring 1.25 billion hand-notarized documents into the 21st century. Remote notary offers 24/7 access to a live notary, you can get a document notarized from anywhere at any time. The recently concluded Total Electronic Closing Presidential Advisory Group (TECPAG) recommended that NAR support and encourage the nationwide adoption of remote notarization, a form of eNotarization in which the signer appears before the notary by means of real-time audio-video communication and the notary performs and completes the notarial act by electronic means.

NAR Recommends that:

- NAR support enabling laws, regulations and standards that:
    - Are technology neutral, focusing on the desired outcome of completing the notarial act rather than the technical means by which it is achieved;
    - Advance, enable and support the interstate adoption and recognition of remote notarization across all U.S. states and territories.
- NAR urge federal agencies to facilitate the adoption of remote notary across the mortgage ecosystem for the acceptance of electronic signatures and records in all federally-guaranteed and federally supported mortgage markets.

2018 COMMITTEE GOALS

BUSINESS ISSUES COMMITTEE
Chair: John Kmiecik (IL)
Vice Chair: Jeffrey Levine (FL)
Liaison: Kevin Brown (CA)

Committee Purpose:
To identify, monitor and recommend positions on federal legislative and regulatory~~,~~ issues that affect the operations of REALTOR® businesses and the ability of NAR to meet REALTOR® needs (i.e., RESPA, money laundering, telecommunications, telemarketing, association volunteer liability, bankruptcy, immigration/visa reform, licensing, and worker classification) and to recommend legislative or regulatory strategies in furtherance of those positions.

Staff Contacts:
Christie DeSanctis, 202-383-1102

2018 Goals:

1. ***Anti-money Laundering:*** Represent the interests of real estate professionals in any efforts to impose onerous anti-money laundering regulations on the real estate industry.
2. ***Real Estate Settlement Procedures Act (RESPA)/Know Before You Owe:*** Continue to address issue/concerns arising with the implementation of RESPA and the TRID/Know Before You Owe rules, and improve NAR guidance and outreach on these issues
3. ***Foreign Investment:*** Represent the best interests of current and prospective property owners, as well as real estate professionals, should immigration and visa reform be considered.
4. ***Federal Preemption:*** Continue NAR's long tradition of ensuring that federal laws do not preempt the ability of the states to determine the appropriate rules governing the real estate sales profession.

Rationale: Federal legislation and regulations of business practices continue to impact and, in some cases, limit the ability of real estate practitioners to conduct their businesses in an efficient and effective manner. While the business of real estate has traditionally been regulated at the state level, NAR represents the interest of its members to ensure that federal legislation and regulations support or do not needlessly hinder the ability of REALTORS®, realty firms and REALTOR® associations to conduct business.

NAR Policy Process - Creation of Formal Policy by Committees

The start of the process beings with a policy committee of NAR making a motion to create a new policy or change existing policy. The motion then moves through a series of venues before being approved as official NAR policy. The venues for approval include:

1.) Public Policy Coordinating Committee (PPCC),
2.) Executive Committee (Exec), and
3.) Board of Directors (BOD).

At each level, several things can happen:

- The Motion can be approved and moves onto the next level without change.

- The Motion can be amended. If the amendment is accepted as a friendly amendment, the amended motion will move on. If the amendment is not accepted as a friendly amendment, both motions will be referred on to the next level.

- The Motion can be opposed by the reviewing committee. Both the originating Committee motion and the motion of disapproval move on to the next level.

- The Motion can be referred back to the original Committee for further review, or be referred to an additional Committee for consideration.

NAR policy is then final if approved by the Board of Directors.

Example: The Committee passed a motion "that NAR support Closing Disclosures being issued on purple paper." The motion would go to the PPCC Committee. However, PPCC felt that pink paper was also acceptable. This results in two motions moving forward to Exec.

Exec would first hear the Business Issues Policy Committee (BIPC) motion for purple paper, and then it would hear the PPCC motion for purple OR pink paper. Exec could approve either of these motions, edit either, or oppose or refer either or both. Let's say Exec approved the purple and pink motion. BIPC's motion would still move forward to BOD; along with the PPCC motion, which would be reported as the "approved motion" from Exec. BOD could pass either of these motions, or develop a new motion from the floor.