

NATIONAL ASSOCIATION *of* REALTORS®

# 2014 NAR Federal Policy Conference

**January 28 - January 29, 2014**

Renaissance Arlington Capitol View Hotel  
2800 Potomac Ave., Arlington, VA 22202



# National Association of REALTORS®

## 2014 NAR Federal Policy Conference

### Table of Contents

NAR Federal Policy Conference Agenda	Page 3
About Our Speakers	Page 5
2014 NAR Public Policy Survey Questionnaire	Page 7
2014 NAR Public Policy Survey Results	Page 25
2014 NAR Priority Issues	Page 30
2014 NAR Federal Policy Issues	Page 56
Government Affairs Division Directory	Page 102





# National Association of REALTORS®

## 2014 NAR Federal Policy Conference

### CONFERENCE PROGRAM AGENDA

**Tuesday, January 28, 2014**

7:00pm – 10:30pm	<b>Plated Dinner &amp; Guest Speaker Presentation</b>	Grand Ballroom Salon 4
8:15pm – 8:45pm	Forrest Sawyer <i>Broadcast Journalist</i> <i>Founder &amp; President, Freefall Productions</i>	
8:45pm – 9:00pm	Audience Q&A	
9:00pm – 10:00pm	Telecast of the State of the Union Address	
10:00pm – 10:30pm	Town Hall Analysis of the State of the Union Address --Forrest Sawyer	

**Wednesday, January 29, 2014**

8:00am – 8:45am	<b>Breakfast Buffet</b>	Grand Salon 1, 2 & 3
8:45am – 9:00am	Welcome & Overview of the Day's Program	Grand Ballroom Salon 4
9:00am – 10:00am	<b>Capitol Hill Perspectives</b>	Grand Ballroom Salon 4
9:00am – 9:20am	Brad Bailey <i>Assistant to the Speaker for Tax &amp; Financial Services Policy</i> <i>Office of the Speaker John Boehner (R-OH)</i> <i>U.S. House of Representatives</i>	
9:20am – 9:30am	Audience Q&A	
9:30am – 9:50am	Katherine Monge <i>Tax Policy Advisor</i> <i>Office of Minority Leader Nancy Pelosi (D-CA)</i> <i>U. S. House of Representatives</i>	
9:50am – 10:00am	Audience Q&A	
10:00am – 10:15am	<b>BREAK</b>	

# National Association of REALTORS®

## 2014 NAR Federal Policy Conference

Wednesday, January 29, 2014 *(continued)*

10:15am – 11:15am	<b>Capitol Hill Perspectives</b>	Grand Ballroom Salon 4
<i>10:15am – 10:35am</i>	Trey Reffett <i>Office of the Majority Leader Harry Reid (D-NV)</i> <i>U. S. Senate</i>	
10:35am – 10:45am	Audience Q&A	
<i>10:45am – 11:05am</i>	Jon Lieber <i>Senior Policy Advisor</i> <i>Office of the Minority Leader Mitch McConnell (R-KY)</i> <i>U. S. Senate</i>	
11:05am – 11:15am	Audience Q&A	
11:15am – 12:00pm	<b>NAR 2014 Priority Issues Presentation</b>	Grand Ballroom Salon 4
	Jerry Giovaniello, <i>Sr. Vice President, Government Affairs</i> Evan Liddiard, <i>Federal Taxation</i> Megan Booth, <i>Federal Housing Issues</i> Vijay Yadlapati, <i>Financial Services Issues</i> Austin Perez, <i>Environmental Policy Issues</i>	
12:00pm – 1:30pm	<b>Plated Lunch</b>	Grand Salon 1, 2 & 3
<i>12:15pm – 12:45pm</i>	<b>Guest Keynote Lunch Speakers</b> Honorable Sherrod Brown (D-OH) <i>U. S. Senate</i>	
<i>12:45pm – 1:15pm</i>	Honorable Tim Scott (R-SC) – <i>invited</i> <i>U. S. Senate</i>	
1:30pm – 1:45pm	<b>BREAK</b>	
1:45pm – 2:30pm	<b>Discussion -- Federal REALTOR® Party Activities</b>	Grand Ballroom Salon 4
	John Harrison, <i>REALTOR® Party Spokesperson</i> Iona Harrison, <i>REALTOR® Party Disbursement Liaison</i> John Flor, <i>REALTOR® Party Member Involvement Liaison</i>	
2:30pm – 3:00pm	NAR Leadership Team Wrap-up	Grand Ballroom Salon 4
3:00pm	Conference Program Adjourns	





# 2014 NAR Federal Policy Conference

## About Our Speakers

**Brad Bailey** is Assistant to the Speaker for Policy for House Speaker John A. Boehner where he oversees the economic policy portfolio. Brad has served in the role since September 2013. Previously, he was legislative director for Congressman Patrick J. Tiberi (R-OH), Chairman of the Ways & Means Subcommittee on Select Revenue Measures. A native of Westerville, Ohio, Brad holds a B.S. in Finance from Miami University and is finishing up his J.D. at Georgetown University Law Center.

**U.S. Senator Sherrod Brown** is currently serving in his second term in the U.S. Senate from Ohio. Senator Brown has been described as a champion of middle-class families and Congress' leading proponent of American manufacturing.

Brown serves on the Senate Committee on Finance which oversees tax policy as well as trade, social security, and Medicare. He also serves on the Senate Banking Committee, where he played an instrumental role in passing the historic Wall Street reform law, and is Chairman of its Financial Institutions and Consumer Protection Subcommittee. Brown is also the first Ohio Senator in 40 years to serve on the Senate Agriculture, Nutrition, and Forestry Committee, where he has been instrumental in strengthening the farm safety net and addressing childhood hunger. He serves as Chairman of the Subcommittee on Jobs, Rural Economic Growth and Energy Innovation. From his position on the Senate Veterans Affairs Committee, Brown has advocated for veterans training programs to ensure returning service members have access to good-paying, high-demand jobs. He is the only Ohio Senator to serve a full term on the Senate Veterans Affairs Committee.

Prior to serving in the United States Senate, Brown served as a United States Representative for the 13<sup>th</sup> District, Ohio's Secretary of State, a member of the Ohio General Assembly, and has taught in Ohio's public schools and at The Ohio State University. An Eagle Scout, Brown is a native of Mansfield, Ohio, where he spent summers working on his family's farm. He is married to Pulitzer Prize-winning columnist Connie Schultz. They reside in Cleveland, Ohio, and have three daughters, a son, both a daughter and son-in-law, and two grandsons.

**Jon Lieber** is a policy advisor handling tax, trade, housing, small business issues, and banking policy for the Senate Republican Leader's office. In that role he is Leader Mitch McConnell's staff liaison for the Senate Finance Committee and the Senate Banking Committee, and provides strategic and policy advice on economic policy issues. Jon previously worked researching monetary policy for Dr. Allan Meltzer at the American Enterprise Institute, a DC based think tank; as a budget analyst and the Chief Economist on the Senate Republican Policy Committee; as the economist at the House Ways and Means Committee studying the economic and market impact of tax and trade legislation under Chairman Bill Thomas; and he served in the President's National Economic Council at the White House during the financial crisis. Jon is from California and has a master's degree in economics and a bachelor's degree in philosophy from Tufts University.

**Katherine Mongé** serves as Tax Policy Advisor to Democratic Leader Nancy Pelosi. She advises the Leader on tax, budget, social security, and pension issues. Prior to joining the Leader's staff in September, she was the Tax Counsel to Senator Benjamin L. Cardin, a member of the Senate Finance Committee.

# 2014 NAR Federal Policy Conference

## About Our Speakers

Before joining Senator Cardin's staff, Katherine was an Associate in the Tax Department at Mayer Brown LLP, a law firm in New York. Her practice focused primarily on structured finance transactions and financial products.

Prior to law school, Katherine was an Associate at The Albright Group LLC. There, she developed and implemented strategies to assist Fortune 500 clients to enter markets, reduce political and reputational risk, and build strategic relationships. Katherine also acted as a policy advisor and speechwriter for former Environmental Protection Agency Administrator Carol M. Browner.

Katherine began her career on Capitol Hill, working on a variety of policies for Congressman James L. Oberstar and Senator Mark Dayton. She holds a Bachelor of Science in Foreign Service from Georgetown University and a Juris Doctor, *cum laude*, from Boston College Law School.

**Trey Reffett** is Legislative Assistant for Housing and Welfare Policy for Senate Majority Leader Harry Reid. Originally from central Illinois, Trey received a bachelor's degree from DePaul University and a master's degree from Northwestern University and worked in political fundraising and academic administration before moving to Washington, DC in 2006. Trey has been with Senator Reid for the past seven years.

**Forrest Sawyer** has had a diverse career, first as one of America's most respected television journalists, and today as an advisor and board member of Edison Pharmaceuticals, the world leader in the study of mitochondrial disease. He is also a co-founder of Ampere Life Sciences, a newly launched company developing medical and functional foods targeting antioxidant deficiencies, and the founder of FreeFall Productions, an award-winning documentary production company. He has reported documentaries for ABC News, MSNBC, Frontline and the Discovery Networks

As a journalist, Mr. Sawyer has over 24 years of experience reporting from around the world. He is a veteran of ABC, CBS, and MSNBC. He has anchored the ABC magazine programs *Day One* and *Turning Point*, as well as *World News Sunday*, and *Good Morning America*. For a decade Mr. Sawyer was the primary replacement anchor on ABC's *Nightline*.

A veteran war correspondent, having reported on every United States action over the past two decades, Mr. Sawyer covered the Gulf War, scoring numerous exclusives from Baghdad to Saudi Arabia to Iran. His world travels include reports from the Oklahoma City terrorist attack, a report from inside KGB headquarters on the Lee Harvey Oswald Soviet intelligence file, and the attempted coup of Manuel Noriega in Panama. Mr. Sawyer's work has carried him throughout Asia, Africa, Latin America and the Middle East.

Mr. Sawyer has had numerous honors during his career, including the prestigious George Foster Peabody Award, seven National Emmy Awards, two Sigma Delta Chi Awards, two Edward R. Murrow Awards, an Associated Press Award, an Ohio State Award, an Ark Award, and two American Psychological Association Awards.



# 2014 PUBLIC POLICY AGENDA SURVEY

Listed below are several federal policy issues that the policy committees of the NATIONAL ASSOCIATION OF REALTORS® are currently monitoring. Please indicate, using the scale provided (1=high importance to 5=low importance), how important you believe each issue is as a priority for the 2014 NAR Public Policy Agenda. If you don't know enough about a particular issue to form an opinion, please indicate that you are "Unfamiliar with this issue".

Keep in mind that we are asking for your views on each issue at the federal level even though some states and localities may be addressing similar policy issues.

# 2014 PUBLIC POLICY AGENDA SURVEY

## Appraisal Issues

**\* 1. Geographic Competency- Geographic Competency. Appraisers are required to certify their competency to complete each appraisal report according to the Uniform Standards of Professional Appraisal Practice (USPAP). If an appraiser does not have competency in a specific area, such as geographic competency, the appraiser must disclose this and take all steps necessary to complete the report with competency. If an appraiser accepts an assignment and is not geographically competent, it can negatively impact the quality of the appraisal.**

High Importance	.....	.....	.....	Low Importance	Unfamiliar with this issue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

# 2014 PUBLIC POLICY AGENDA SURVEY

## Business Issues

**\*2. Privacy/Data Security - REALTORS® understand that trust is at the heart of the real estate business. Impacting that trust is the way in which REALTORS® collect, share and protect the sensitive consumer information they deal with every day. Privacy and Data Security are issues that are routinely examined by Congress and the Federal Trade Commission (FTC) and they are sure to be addressed by policymakers in 2014.**

High Importance	.....	.....	.....	.....	Low Importance	Unfamiliar with this issue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\*3. Patent Litigation Reform - "Patent Trolls" are increasingly targeting REALTORS by sending demands to target common business technologies like scanner copiers and website search alerts. Congress is considering legislation to close loopholes and reduce incentives for trolls to stay in business. In addition, the FTC is examining how it can help reduce the negative impact of patent trolls on businesses.**

High Importance	.....	.....	.....	.....	Low Importance	Unfamiliar with this issue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\*4. Network Neutrality - Net Neutrality means that Internet service providers may not discriminate between different kinds of content and applications online. The Federal Communications Commission (FCC) implemented an "Open Internet Rule" in 2010 but that rule has been challenged in court. If that rule is overturned, REALTORS and other consumers could find that a network operator can block certain websites or slow them down so much that they are unusable.**

High Importance	.....	.....	.....	.....	Low Importance	Unfamiliar with this issue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\*5. Immigration's Impact on Real Estate - Approximately \$66 billion or 7% of all residential real estate transactions in the US comprises inbound real estate investment by foreign buyers. Policies that encourage the flow of foreign capital and labor into the United States can benefit both the real estate market and the economy more broadly.**

High Importance	.....	.....	.....	.....	Low Importance	Unfamiliar with this issue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

# 2014 PUBLIC POLICY AGENDA SURVEY

**\*6. Electronic Signatures - According to a 2013 survey, 60% of all REALTORS® have utilized electronic signatures in at least a portion of their real estate transactions; while those who have not cite lack of familiarity with the technology. NAR is committed to increasing the use of electronic signatures as a way to increase security and cut REALTOR® costs of doing business. In 2014 NAR will continue to work with federal regulators and lending institutions to promote greater acceptance of electronic signatures, while also working to educate REALTORS® on how to use them to maximum advantage.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\*7. Health Care Reform & Affordability/Education - Beginning in 2014, the individual mandate provisions of the Affordable Care Act become effective. The mandate requires all legal U.S. residents to have health insurance coverage, unless they meet one of a handful of exceptions allowed for by the law. To assist with the purchase of insurance, some lower and moderate income households will be eligible for premium assistance tax credits. Those who choose not to comply with the mandate will be subject to penalties, the amount of which will vary with the household size or income.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\*8. H-2B Visa Program- Seasonal workers play an important role in maintaining and keeping resort properties looking good and operating effectively. Seasonal workers and the H-2B program have a direct impact on property values in resort and second home communities. NAR supports a robust H-2B program that expands job opportunities for seasonal, overseas workers without taking jobs away from American workers and unnecessarily burdening employers with onerous and cumbersome regulatory requirements.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

# 2014 PUBLIC POLICY AGENDA SURVEY

## Commercial Real Estate Issues

**\*9. Commercial Real Estate and Small Business Liquidity - Trillions of dollars in commercial real estate loans will come due in the next few years, and most will have trouble obtaining refinancing. A significant decline in lending to small business is exacerbating this credit crunch.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\*10. Lease Accounting - In 2014, the Financial Accounting Standards Board and International Accounting Standards Board will issue a final joint rule change to capitalize all real estate leases onto companies' balance sheets, making it more difficult for lessees and lessors of real estate to obtain credit.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\*11. Carried Interest - The Administration and some Members of Congress have proposed treating any carried interest of real estate partnerships as ordinary income rather than as capital gains. By increasing the tax burden on these real estate partnerships, and particularly on those with operational expertise, the proposal would make real estate a less attractive investment. When the value of real estate investment is impaired, there is an indirect impact on all real estate.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\*12. Terrorism Risk Insurance - Following the terrorist attacks of 9/11, insurers backed out of the terrorism insurance market place prompting Congress to create a federal reinsurance risk-sharing program in the Terrorism Risk Insurance Act (TRIA), which also mandated that insurers make terrorism coverage available along with its property and casualty lines. TRIA is set to expire on Dec. 31, 2014. The program's looming expiration is already beginning to affect the availability and accessibility of commercial loans.**

High Importance ..... Low Importance ..... Unfamiliar with this issue



# 2014 PUBLIC POLICY AGENDA SURVEY

**\*13. Basel III - The U.S. banking agencies have proposed a rule to raise capital standards for some commercial loans. If finalized, banks will reduce the availability of commercial loans in order to avoid higher capital charges.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\*14. Dodd-Frank Qualified Commercial Real Estate (QCRE) Loan Regulations - The Administration will finalize rules which define the risk retention exemption for “low credit risk” Qualified Commercial Real Estate (QCRE) loans to include only a very narrow slice of the mortgage market. This will reduce liquidity in commercial credit markets. Some in Congress may seek amendments to the Act.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

# 2014 PUBLIC POLICY AGENDA SURVEY

## Environmental Issues

**\* 15. Affordable Flood and Property Insurance - Congress could vote to delay implementation of some rate increases under the Biggert-Waters law which reauthorized the National Flood Insurance Program for 5 years. Also, Congress may revisit legislation for a broader U.S. policy for additional natural disasters to reduce federal spending on post-disaster financial assistance.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\* 16. Clean Water Act Regulations - The Administration could propose regulations expanding the number of waters on private property that are subject to Clean Water Act construction permits and other wetland protection requirements.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

# 2014 PUBLIC POLICY AGENDA SURVEY

## Housing and Transportation Issues

**\* 17. FHA Underwriting/Availability of Credit - In 2013 the FHA single-family mortgage insurance program took a draw from the US treasury to replenish its 30-year reserve fund. In 2014 there will be significant pressure by Congress to make changes to the FHA program to ensure its solvency that could threaten the widespread availability of the FHA program and its affordability.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\* 18. FHA Condo Financing - Despite recently updating its condo rules to help ease access to FHA condominium financing, there remains existing rules and requirements that make it difficult to buy and sell condominiums. Condos are often the most affordable option for first time home buyers. NAR believes that additional changes are necessary to ease restrictions on FHA condominium financing and ownership.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\* 19. Definition of Rural Housing - The Rural Housing Service (RHS) Section 502 single family loan program continues to use an outdated definition from 1974 to determine which communities are "rural" and therefore eligible for RHS loans. RHS has provided an extension of eligibility through January 15, 2014 for participating communities that have outgrown this definition of rural. But unless Congress acts to extend, more than 900 communities may lose their eligibility for RHS programs after that date.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\* 20. Federal Transportation Funding - The federal revenue from fuel taxes is not adequate to fund existing transportation needs nor support current spending levels. With the current federal authorization expiring in September 2014, Congress will need to decide if the federal gas tax should be increased; if the gas tax should be indexed to inflation; or if drivers should be charged per mile of travel rather than by gallon of fuel used. The reauthorization will also determine how much of the federal funds go toward public transportation and pedestrian and bicycle facilities.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

# 2014 PUBLIC POLICY AGENDA SURVEY

## Financial Issues

**\*21. Short Sales/Loss Mitigation - The short sales process and other loss mitigation efforts have improved significantly since the onset of the financial crisis; however, policies continue to evolve that create more uncertainty in these transactions. Legislative and regulatory actions are possible.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\*22. Credit Policies - Credit policies adopted by the lending industry, the Federal Housing Administration, Fannie Mae, Freddie Mac and federal regulators (e.g. guarantee fee increases and BASEL III implementation) affect mortgage capital availability, as well as, the home buyers' ability to qualify for a mortgage (including condo mortgages).**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\*23. GSE's Loan Limits - In 2011, Congress extended the FHA loan limits for higher cost areas until December 31, 2013, but did not to extend the equivalent Fannie Mae and Freddie Mac (government sponsored enterprises, or "GSEs") loan limits. Reinstating the higher FHA and GSE loan limits will be politically challenging during the new Congress.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\*24. GSE (Fannie Mae and Freddie Mac) Restructuring, Liquidity and Lending - In 2014, the Administration and Congress will continue their efforts to restructure Fannie Mae and Freddie Mac. Concerns have been raised about the amount of government investment in these companies, their lending policies, and their share of the secondary mortgage market.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

# 2014 PUBLIC POLICY AGENDA SURVEY

**\*25. Implementation of the Dodd-Frank Wall Street Reform Act - The Administration will continue implementing the Dodd-Frank Act in 2014, including consumer protections under the new Consumer Financial Protection Bureau (e.g. Qualified Mortgage (QM) takes effect Jan. 10, 2014 and Qualified Residential Mortgage (QRM) rule will be finalized). Some in Congress may seek amendments to the Act.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\*26. Student Loan Debt - The ability for consumers to qualify for mortgage credit has become increasingly difficult with a significant number of buyers indicating that student loans had the biggest impact on their ability to save for a downpayment. Congress and regulators will continue to discuss policies to address the growing debt now that it has surpassed \$1 trillion dollars nationwide.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

# 2014 PUBLIC POLICY AGENDA SURVEY

## Taxation Issues

**\*27. Federal Budget Deficit and Implications for the Nation's Economy and Housing Markets - As our annual federal budget deficits accumulate and the outstanding federal debt increases, severe strain could be placed on the economy as the amount dedicated to interest payments takes an ever-larger share of our federal spending. This, along with increasing interest rates, will have the effect of crowding out other needful spending and leading to the problem spiraling out of control. This can have only negative, and potentially severe, effects on the economy and on the housing markets.**

High Importance	.....	.....	.....	.....	Low Importance	Unfamiliar with this issue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\*28. Like-Kind Exchanges - Several commentators have suggested that the like-kind exchange provision of section 1031 of the Internal Revenue Code is an unwarranted tax loophole that should be eliminated in tax reform. Given that tax reform is a hot current topic in Washington, some are suggesting that like-kind exchanges may not be viable real estate transfer mechanisms in the future. The repeal or the serious restriction on the use of this long-standing tax deferral technique could have large implications on all sizes of real estate development projects and result in significantly fewer transfers of real property. This, in turn, could hinder economic growth and job creation, as well as harming NAR members who may lose business.**

High Importance	.....	.....	.....	.....	Low Importance	Unfamiliar with this issue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\*29. Mortgage Interest Deduction - The Baby Boom generation includes large numbers of current homeowners. As their children mature and leave the nest, and as the Boomers themselves retire, their housing needs change. In many or most cases, they will still want to be homeowners. However, if the tax rules governing the deductibility of home mortgage interest are repealed or changed to be less beneficial, we will see a reduction in the value of currently-owned homes and less an incentive to purchase another home. This could represent a major shift and have serious consequences on the U.S. economy and on the rate of homeownership in America.**

High Importance	.....	.....	.....	.....	Low Importance	Unfamiliar with this issue
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

# 2014 PUBLIC POLICY AGENDA SURVEY

**\*30. Leasehold Improvement Depreciation Period - The current tax law provision that allows leasehold improvements to be depreciated over 15 years, instead of 39 years (as with other non-residential commercial real estate) is temporary and is expiring at the end of 2013 with dim prospects for immediate renewal. Most agree the 15-year period is much longer than economic reality and we should have a shorter period for tax law purposes.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

**\*31. Mortgage Cancellation - The provision that allows homeowners who sell their property in a short sale, or who have debt forgiveness arising from a foreclosure or a negotiated change in terms with the lender, is expiring at the end of 2013, with little hope for a quick renewal. Yet, millions of U.S. homeowners still find themselves distressed and facing the prospect of having to pay tax on income from the cancellation of indebtedness. Without an extension of this provision, these homeowners will find themselves owing tax on “phantom income” at a time when they have suffered a major economic loss.**

High Importance ..... Low Importance ..... Unfamiliar with this issue

# 2014 PUBLIC POLICY AGENDA SURVEY

## Tax Reform

There has been considerable discussion by commentators and policy makers about the need for tax reform, the size of the federal budget deficit and the national debt.

**\* 32. Which of the following real estate tax deductions and benefits do you think is the most important to the health of the real estate market in your community? Please drag the responses to the order you would rank them. Place response with highest importance at the top; response of lowest importance goes at the bottom. Responses can be moved up or down or you can change the numbers on the right side to indicate their importance and they will automatically move.**

<input type="text"/>	Mortgage interest deduction for principal residences
<input type="text"/>	Mortgage interest deduction for mortgages on non-investment second homes (i.e., vacation homes)
<input type="text"/>	The \$250,000/\$500,000 capital gains tax exclusion on the sale of a principal residence
<input type="text"/>	Deduction for state and local property taxes
<input type="text"/>	15% capital gains tax rate on real estate investments

**\* 33. Which of the following statements is closest to your view?**

- When it comes to changes in tax deductions, real estate tax preferences and federal spending, we must all share in the sacrifice to reduce our national debt (including reducing or eliminating some real estate-related deductions) to assure the future health of our nation.
- Existing real estate-related federal tax deductions and preferences, including the mortgage interest deduction and the \$250,000/\$500,000 capital gains exclusion, should be preserved in their current form despite concerns about federal deficits and the national debt.



# 2014 PUBLIC POLICY AGENDA SURVEY

## Other Issues

**\* 34. Is there a particular federal policy issue not mentioned above that NAR should place on its 2014 radar watch?**

**\* 35. What do you believe is the most critical federal issue that continues to hamper our nation's housing recovery?**

# 2014 PUBLIC POLICY AGENDA SURVEY

## About You

### **\*36. What is your gender?**

- Male
- Female

### **\*37. How old are you?**

- 18 to 24 years
- 25 to 34 years
- 35 to 44 years
- 45 to 54 years
- 55 to 64 years
- 65 years or older

### **\*38. Please indicate which of the following positions, if any, you currently hold (check all that apply):**

- State or Local REALTOR® Association President
- State or Local REALTOR® Association Executive Officer
- State or Local REALTOR® Association Government Affairs Director (GAD)
- State or Local REALTOR® Association Committee Chair, Vice Chair or Committee Member
- NAR Affiliate or Diversity Partner Member
- NAR Committee or Forum Chair, Vice Chair or Committee Member
- NAR Board of Directors Member
- None of these

### **\*39. Please describe your primary area of real estate business activity (check only one):**

- REALTOR® Association Staff
- Appraisal
- Sales and Brokerage: Residential only
- Sales and Brokerage: Mostly residential but also commercial
- Sales and Brokerage: Mostly commercial but also residential
- Sales and Brokerage: Commercial only
- Property Management
- Other areas of real estate

# 2014 PUBLIC POLICY AGENDA SURVEY

**\*40. What is your main activity or function in your firm?**

- Administrative support
- Appraiser
- Associate broker
- Broker-Owner
- Manager
- Property manager
- Personal assistant
- Sales agent
- Other

**\*41. For how long have you been active in the real estate business as a REALTOR®?**

- Less than 1 year
- 1 year
- 2 years
- 3 years
- 4 years
- 5 years
- 6 to 10 years
- 11 to 15 years
- 16 years or more

**\*42. Is real estate your only occupation at the present time?**

- Yes
- No

**\*43. How many hours per week do you typically devote to your real estate business?**

- Fewer than 20 hours per week
- 20 to 39 hours per week
- 40 to 59 hours per week
- 60 hours or more per week

**\*44. In which state does most of your real estate business activity occur?**

## 2014 PUBLIC POLICY AGENDA SURVEY

**\*45. Would you like to enter a drawing for a \$100 gift card?**

Yes

No

# 2014 PUBLIC POLICY AGENDA SURVEY

**46. Please fill out the following information to enter the drawing for a \$100 gift certificate.  
The information you provide will not be used for any other purposes.**

**Name:**

**Email Address:**

**Phone Number:**



# Results from 2014 NAR Public Policy Survey

Among 3,486 respondents

	Highest Importance	Moderate Importance	Lowest Importance	Unfamiliar With Issue
Mortgage Interest Deduction	94 %	4 %	2 %	1 %
Geographic Competency	92	6	3	2
FHA Underwriting/Availability of Credit	90	7	3	2
Credit Policies	88	10	3	3
Affordable Flood and Property Insurance	84	11	5	3
FHA Condo Financing	83	11	6	3
Federal Budget Deficit and Implications for the Nation's Economy and Housing Markets	83	12	5	3
Commercial Real Estate and Small Business Liquidity	83	13	4	10
GSE (Fannie Mae and Freddie Mac) Restructuring, Liquidity and Lending	82	13	4	4
Mortgage Cancellation	81	12	6	2
Carried Interest	81	13	6	12
Electronic Signatures	81	13	6	
Implementation of the Dodd-Frank Wall Street Reform Act	79	15	6	10
Network Neutrality	79	16	6	11
GSE's Loan Limits	76	17	7	5
Privacy/Data Security	76	18	6	2
Short Sales/Loss Mitigation	75	18	8	2
Dodd-Frank Qualified Commercial Real Estate (QCRE) Loan Regulations	74	19	7	20
Basel III	73	19	8	18
Lease Accounting	72	21	8	21
Definition of Rural Housing	70	19	11	7
Like-Kind Exchanges	69	20	11	9
Patent Litigation Reform	69	23	9	3
Clean Water Act Regulations	68	20	12	7
Student Loan Debt	66	21	12	2
Federal Transportation Funding	64	23	13	8
Health Care Reform & Affordability/Education	63	20	18	2
Leasehold Improvement Depreciation Period	62	26	12	15
Immigration's Impact on Real Estate	60	26	14	5
Terrorism Risk Insurance	53	28	19	21
H-2B Visa Program	50	28	21	12

Which of the following real estate tax deductions and benefits do you think is the most important to the health of the real estate market in your community?

	Most Important ←————→ Least Important				
Mortgage interest deduction for principal residences	76 %	14 %	5 %	3 %	2 %
The \$250,000/\$500,000 capital gains tax exclusion on the sale of a principal residence	12	33	34	15	6
Deduction for state and local property taxes	5	23	28	31	13
Mortgage interest deduction for mortgages on non-investment second homes (i.e., vacation homes)	4	22	19	24	31
15% capital gains tax rate on real estate investments	3	7	13	28	49

Which of the following statements is closest to your view?

Existing real estate-related federal tax deductions and preferences, including the mortgage interest deduction and the \$250,000/\$500,000 capital gains exclusion, should be preserved in their current form despite concerns about federal deficits and the national debt.	80 %
When it comes to changes in tax deductions, real estate tax preferences and federal spending, we must all share in the sacrifice to reduce our national debt (including reducing or eliminating some real estate-related deductions) to assure the future health of our nation.	20

## Results from 2014 NAR Public Policy Survey

Among 3,486 respondents

<b>Leadership in Association:</b>	
No Leadership Position	54 %
Leadership Position	46
<b>Region:</b>	
Northeast	14 %
Midwest	20
South	37
West	29
<b>Specialty:</b>	
Residential Brokerage	79 %
Commercial Brokerage	4
Other	17
<b>Years of Experience:</b>	
Less than 5 years	13 %
5 to 10 years	21
11 years or more	66
<b>Hours Worked Per Week:</b>	
Fewer than 20 hours	7 %
20 to 39 hours	25
40 to 59 hours	48
60 hours or more	20
<b>Real Estate is Full-time Profession:</b>	
Yes	89 %
No	12
<b>Function at firm:</b>	
Administrative support	< 1 %
Appraiser	1
Associate broker	17
Broker-owner	25
Manager	5
Property manager	1
Personal assistant	< 1 %
Sales agent	49
Other	2
<b>Age:</b>	
18 to 24	< 1 %
25 to 34	4
35 to 44	12
45 to 54	26
55 to 64	37
65 years or older	21
<b>Gender:</b>	
Male	44 %
Female	56



## Results from 2014 NAR Public Policy Survey

Among 3,486 respondents

### RANKING OF POLICY ISSUES BY REALTORS® (percent ranking as highest importance)

#### ACTIVE MEMBERS VS. MEMBERS-AT-LARGE

ALL REALTORS®		GENERAL MEMBERS-AT-LARGE		ACTIVE MEMBERS*	
Mortgage Interest Deduction	94%	Mortgage Interest Deduction	93%	Mortgage Interest Deduction	95%
Geographic Competency	92%	Geographic Competency	91%	FHA Underwriting/Availability of Credit	93%
FHA Underwriting/Availability of Credit	90%	FHA Underwriting/Availability of Credit	88%	Geographic Competency	93%
Credit Policies	88%	Credit Policies	87%	Affordable Flood and Property Insurance	90%
Affordable Flood and Property Insurance	84%	FHA Condo Financing	83%	Credit Policies	89%
FHA Condo Financing	83%	Federal Budget Deficit and Implications for the Nation's Economy and Housing Markets	83%	GSE (Fannie Mae and Freddie Mac) Restructuring, Liquidity and Lending	87%
Federal Budget Deficit and Implications for the Nation's Economy and Housing Markets	83%	Mortgage Cancellation	81%	Commercial Real Estate and Small Business Liquidity	87%
Commercial Real Estate and Small Business Liquidity	83%	Network Neutrality	81%	Implementation of the Dodd-Frank Wall Street Reform Act	84%
GSE (Fannie Mae and Freddie Mac) Restructuring, Liquidity and Lending	82%	Electronic Signatures	81%	FHA Condo Financing	84%
Mortgage Cancellation	81%	Carried Interest	81%	Federal Budget Deficit and Implications for the Nation's Economy and Housing Markets	84%
Carried Interest	81%	Commercial Real Estate and Small Business Liquidity	80%	Electronic Signatures	82%
Electronic Signatures	81%	Affordable Flood and Property Insurance	79%	Carried Interest	82%
Implementation of the Dodd-Frank Wall Street Reform Act	79%	GSE (Fannie Mae and Freddie Mac) Restructuring, Liquidity and Lending	78%	Mortgage Cancellation	81%
Network Neutrality	79%	Privacy/Data Security	78%	Dodd-Frank Qualified Commercial Real Estate (QCRE) Loan Regulations	81%
GSE's Loan Limits	76%	Short Sales/Loss Mitigation	76%	GSE's Loan Limits	79%
Privacy/Data Security	76%	Implementation of the Dodd-Frank Wall Street Reform Act	75%	Basel III	77%
Short Sales/Loss Mitigation	75%	GSE's Loan Limits	73%	Network Neutrality	76%
Dodd-Frank Qualified Commercial Real Estate (QCRE) Loan Regulations	74%	Lease Accounting	70%	Lease Accounting	74%
Basel III	73%	Basel III	69%	Privacy/Data Security	73%
Lease Accounting	72%	Patent Litigation Reform	69%	Definition of Rural Housing	73%
Definition of Rural Housing	70%	Student Loan Debt	69%	Short Sales/Loss Mitigation	73%
Like-Kind Exchanges	69%	Dodd-Frank Qualified Commercial Real Estate (QCRE) Loan Regulations	68%	Clean Water Act Regulations	71%
Patent Litigation Reform	69%	Like-Kind Exchanges	68%	Like-Kind Exchanges	70%
Clean Water Act Regulations	68%	Definition of Rural Housing	68%	Patent Litigation Reform	68%
Student Loan Debt	66%	Clean Water Act Regulations	66%	Health Care Reform & Affordability/Education	63%
Federal Transportation Funding	64%	Federal Transportation Funding	65%	Student Loan Debt	63%
Health Care Reform & Affordability/Education	63%	Health Care Reform & Affordability/Education	62%	Leasehold Improvement Depreciation Period	62%
Leasehold Improvement Depreciation Period	62%	Leasehold Improvement Depreciation Period	62%	Federal Transportation Funding	62%
Immigration's Impact on Real Estate	60%	Immigration's Impact on Real Estate	60%	Immigration's Impact on Real Estate	60%
Terrorism Risk Insurance	53%	Terrorism Risk Insurance	52%	Terrorism Risk Insurance	53%
H-2B Visa Program	50%	H-2B Visa Program	50%	H-2B Visa Program	50%

\* Active Members include: State and Local Association Presidents, Executive Officers, Government Affairs Directors, Committee Chairs, Vice Chairs or Committee Members; and NAR Affiliate or Diversity Partner Members, NAR Committee or Forum Chairs, Vice Chairs, or Committee Members, NAR Board of Directors Members

## Results from 2014 NAR Public Policy Survey

Among 3,486 respondents

### RANKING OF POLICY ISSUES BY REALTORS® (percent ranking as highest importance)

#### COMMERCIAL VS. RESIDENTIAL

ALL REALTORS®		RESIDENTIAL PRACTITIONERS		COMMERCIAL PRACTITIONERS	
Mortgage Interest Deduction	94%	Mortgage Interest Deduction	95%	Commercial Real Estate and Small Business Liquidity	95%
Geographic Competency	92%	Geographic Competency	94%	Geographic Competency	88%
FHA Underwriting/Availability of Credit	90%	FHA Underwriting/Availability of Credit	91%	Mortgage Interest Deduction	87%
Credit Policies	88%	Credit Policies	89%	Carried Interest	86%
Affordable Flood and Property Insurance	84%	Affordable Flood and Property Insurance	85%	Basel III	85%
FHA Condo Financing	83%	FHA Condo Financing	85%	Dodd-Frank Qualified Commercial Real Estate (QCRE) Loan Regulations	85%
Federal Budget Deficit and Implications for the Nation's Economy and Housing Markets	83%	Federal Budget Deficit and Implications for the Nation's Economy and Housing Markets	84%	Like-Kind Exchanges	83%
Commercial Real Estate and Small Business Liquidity	83%	Mortgage Cancellation	83%	Leasehold Improvement Depreciation Period	80%
GSE (Fannie Mae and Freddie Mac) Restructuring, Liquidity and Lending	82%	GSE (Fannie Mae and Freddie Mac) Restructuring, Liquidity and Lending	83%	Federal Budget Deficit and Implications for the Nation's Economy and Housing Markets	80%
Mortgage Cancellation	81%	Electronic Signatures	82%	Implementation of the Dodd-Frank Wall Street Reform Act	79%
Carried Interest	81%	Commercial Real Estate and Small Business Liquidity	82%	Credit Policies	79%
Electronic Signatures	81%	Carried Interest	82%	Lease Accounting	78%
Implementation of the Dodd-Frank Wall Street Reform Act	79%	Network Neutrality	81%	FHA Underwriting/Availability of Credit	78%
Network Neutrality	79%	Implementation of the Dodd-Frank Wall Street Reform Act	80%	Mortgage Cancellation	72%
GSE's Loan Limits	76%	Privacy/Data Security	77%	GSE (Fannie Mae and Freddie Mac) Restructuring, Liquidity and Lending	71%
Privacy/Data Security	76%	Short Sales/Loss Mitigation	77%	Network Neutrality	71%
Short Sales/Loss Mitigation	75%	GSE's Loan Limits	76%	Electronic Signatures	70%
Dodd-Frank Qualified Commercial Real Estate (QCRE) Loan Regulations	74%	Dodd-Frank Qualified Commercial Real Estate (QCRE) Loan Regulations	73%	Privacy/Data Security	68%
Basel III	73%	Basel III	72%	Affordable Flood and Property Insurance	67%
Lease Accounting	72%	Lease Accounting	72%	Clean Water Act Regulations	67%
Definition of Rural Housing	70%	Definition of Rural Housing	71%	FHA Condo Financing	67%
Like-Kind Exchanges	69%	Patent Litigation Reform	69%	GSE's Loan Limits	64%
Patent Litigation Reform	69%	Like-Kind Exchanges	69%	Terrorism Risk Insurance	63%
Clean Water Act Regulations	68%	Student Loan Debt	68%	Patent Litigation Reform	61%
Student Loan Debt	66%	Clean Water Act Regulations	67%	Immigration's Impact on Real Estate	61%
Federal Transportation Funding	64%	Federal Transportation Funding	64%	Health Care Reform & Affordability/Education	61%
Health Care Reform & Affordability/Education	63%	Health Care Reform & Affordability/Education	63%	Definition of Rural Housing	57%
Leasehold Improvement Depreciation Period	62%	Leasehold Improvement Depreciation Period	62%	Student Loan Debt	57%
Immigration's Impact on Real Estate	60%	Immigration's Impact on Real Estate	61%	Federal Transportation Funding	55%
Terrorism Risk Insurance	53%	Terrorism Risk Insurance	52%	H-2B Visa Program	48%
H-2B Visa Program	50%	H-2B Visa Program	51%	Short Sales/Loss Mitigation	47%





## Commercial Real Estate Lending Issue Summary

### **What is the fundamental issue?**

Nearly \$1 trillion in commercial real estate loans will come due over the next several years, and many of these deals will have trouble getting financing. Depressed conditions in the financial and small business sectors continue to negatively affect the commercial real estate industry, which in turn threatens our nation's economic recovery.

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

The freeze in our nation's credit markets has adversely affected commercial and investment real estate. Property owners seeking to refinance existing loans are finding access to credit limited. Restoration of the orderly functioning of financial markets is essential.

### **NAR Policy and Opposition Arguments:**

NAR supports protecting and enhancing the flow of capital to commercial real estate. NAR believes Congress and the federal government should consider legislation and regulation aimed at improving commercial real estate markets including: (1) the creation of a U.S. covered bond market, (2) increasing the cap on credit union member business lending (MBL), (3) additional banking agency guidance related to term extensions and (4) improving credit availability for small businesses.

A covered bond market would provide additional finance options to borrowers in commercial real estate markets where it might otherwise be limited. An increased cap on MBL will allow eligible credit unions to stimulate the economy by providing more credit to small businesses. Additional guidance will aid commercial lenders in avoiding defaults. Finally, improved small business credit availability will stimulate the economy and aid in job growth.

Those who oppose these positions are concerned that the creation of a covered bond market in the U.S. would give big banks an advantage, and could hamper the FDIC's resolution process if a bank fails. There is also concern that increasing the cap on credit union member business lending will harm community banks and reduce federal revenue by taking business loans from tax-paying banks.

### **Legislative/Regulatory Status/Outlook**

**Covered Bond Market:** As credit markets continue to decline, the creation of a covered bond market in the U.S. will be essential to increase liquidity. Already in use in Europe and Canada, covered bonds represent a potential complementary funding source in the U.S. housing financial system as well as an alternative to securitization that could help address ongoing refinancing challenges in the commercial real estate sector. NAR continues to urge lawmakers to reintroduce covered bond legislation this year.

**Credit Union:** Legislation to raise the artificial credit union MBL cap has been introduced in both chambers of Congress. H.R. 688 (Rep. Royce, R-CA) and S. 968 (Sen. Udall, D-CO) would increase the cap on credit union MBL from 12.25% to 27.5% of well capitalized credit unions' total assets.

**Improving Credit Availability for Small Businesses:** Legislation has been introduced in both the U.S. House and Senate to reinstate authority for Small Business Administration (SBA) low-interest refinancing of small business debt not involving business expansion under the SBA's local development business loan program.

Additionally, NAR continues to work with policymakers to establish clear banking agency guidance related to term extensions/ loan workouts. Currently, unfair regulatory scrutiny is preventing many commercial lenders from taking actions that could avoid defaults, even for performing properties.

**Current Legislation/Regulation (bill number or regulation)**

H.R. 1240, “Commercial Real Estate and Economic Development Act of 2013” (Chu, D-CA)

S. 289, “Commercial Real Estate and Economic Development Act of 2013” (Landrieu, D-LA)

H.R. 688, “Credit Union Small Business Jobs Creation Act” (Royce, R-CA; McCarthy, D-NY)

S. 968, “Small Business Lending Enhancement Act of 2013” (Udall, D-CO)

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## **Credit Policy Issue Summary**

### **What is the fundamental issue?**

The housing and mortgage markets have over-corrected in response to abusive lending, poor underwriting, and a serious recession. The result has been excessively tight underwriting criteria. Many homeowners are unable to afford their current mortgages and are unable to refinance or sell their properties. A short sale or a foreclosure too often is the only option.

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

Many local housing markets currently suffer from an excess supply of housing and unduly tight underwriting criteria. Unless buyers have extremely good credit, it can be very difficult for them to be approved for a mortgage. Nationally, approximately one-third of all properties for sale are short sales or bank-owned properties. Until this distressed inventory is cleared, housing markets are likely to remain under stress. Tight credit is delaying the recovery of the housing market and the economy as a whole.

### **NAR Policy and Opposition Arguments:**

The credit and lending communities and federal regulators should reassess the entire credit structure and look for ways to increase the availability of credit to qualified borrowers who are good credit risks. The inadvertent response to the "risk layering" inherent in some mortgage products (e.g. no doc, balloon, negative amortization, or "teaser rate" mortgages) has been "safety layering" where so many safeguards are being imposed that there is little risk to making new loans. NAR has identified specific recommendations for adjusting the current unduly restrictive policies. To learn more visit: [www.realtor.org/topics/credit-policy](http://www.realtor.org/topics/credit-policy)

The current book of business at the GSEs and FHA has been referred to as "pristine." NAR believes pristine loans are the result of excessively tight underwriting, not sound business practices. The GSEs and FHA have a public mission to provide mortgage liquidity to qualified home buyers, including low- and moderate-income families and first-time home buyers. This mission is being impaired by limits on the availability of credit. NAR believes a reassessment of these policies will not only help well-qualified potential borrowers, but also the entire housing market.

Opponents of NAR policy believe that creditworthy borrowers currently have access to affordable credit. They believe tighter lending standards have deterred individuals that do not have an ability to repay a loan from obtaining a mortgage. Therefore, they believe these tighter lending standards will prevent another financial crisis.

### **Legislative/Regulatory Status/Outlook**

NAR has distributed its new Credit Policy and met with industry groups and regulators to emphasize the importance of reasonable underwriting policies.

### **Current Legislation/Regulation (bill number or regulation)**

Not applicable

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## **FHA Condo Financing Issue Summary**

### **What is the fundamental issue?**

While the Federal Housing Administration (FHA) has loosened its condominium approval requirements in recent years, many properties continue to struggle to meet overly stringent criteria and the majority of properties are being denied.

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

Buyers and sellers of condominiums may find the property is ineligible for FHA financing, restricting purchasing ability for that property.

### **NAR Policy and Opposition Arguments:**

Condominiums continue to be the most affordable homeownership option for many first-time buyers, small families, single people, and older Americans. NAR believes that loosening FHA's condominium rules will ensure that more homeowners will be able to sell their units and home buyers will have more opportunities to buy affordable properties. Furthermore, FHA promotes high density, urban living in many of their Smart Growth initiatives; easing condo restrictions should be part of this effort.

Opponents of NAR policy believe that condominium properties are more inherently risky than other residential real estate, and that the federal government should not be involved in that market. They also believe that condo properties that include rental units are even more risky because the renters don't have the investment and may not treat the property as well as owners. Therefore, they think FHA's restriction on the number of rental units reduces the risk.

### **Legislative/Regulatory Status/Outlook**

In July of 2013, NAR joined with coalition partners to submit comments on needed changes to FHA condo lending policies to Federal Housing Commissioner Carol Galante. The letter recommended improvements to the Federal Housing Administration's condominium certification process including: a longer timeframe for recertification, a simplified recertification process, and improved coordination with the Government Sponsored Enterprises (GSEs) to harmonize condominium approval standards.

HUD officials addressed REALTORS<sup>®</sup> at the 2013 NAR Annual meetings, and reported that HUD has heard the feedback from REALTORS<sup>®</sup> and others in the industry and was evaluating the recertification process to make improvements and reduce the amount of required paperwork. In December of 2013, FHA published a temporarily waiver of Mortgagee Letter 2011-22, which suspends the blanket hazard, flood, liability and other insurance requirements for Manufactured Housing, Detached and Common Interest Housing Projects.

FHA also announced at that time new policy related to condominium documents containing language that allows rental of a unit for less than 30 days, use of a unit for hotel purposes or contains mortgagee exception clauses. Properties with such policies were previously denied approval by HUD, but they have now announced that an Association Board may provide a written statement on letterhead, signed and dated, that affirms that there are no units within the project currently rented for less than 30 days and/or pursuant to the lessor providing any services normally associated with a hotel.



A comprehensive new proposed rule on condominiums is expected from FHA in the first quarter of 2014.

NAR also has convened a 2014 working group comprised of members of the Federal Financing and Housing Policy Committee, the Conventional Finance & Policy Committee, and the Resort and Second Home Real Estate Committee to review condo rules and make recommendations for changes to NAR policy on the condo financing.

**Current Legislation/Regulation (bill number or regulation)**

A proposed rule on condos is expected from FHA early this quarter.

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## **FHA Programs (Federal Housing Administration) Issue Summary**

### **What is the fundamental issue?**

FHA is required by law to meet a 2% capital reserves ratio, a measure that FHA had failed to maintain in recent years. The FY 2013 Actuarial Assessment of the FHA Mutual Mortgage Insurance Fund shows that the fund has gained \$15 billion since the FY 2012 Actuarial Review and the current economic net worth has improved to a negative \$1.3 billion. Some may look at the negative balance as evidence of failure, but to put it in perspective, last year the fund was negative \$16 billion. FHA's current cash reserves total \$48 billion, which is almost double what FHA had in reserves in 2012. FHA is expected to meet the 2% ratio obligation by 2015.

The improvements in the reserve fund are due to FHA's tightened credit standards, increased premiums, eliminated mortgage insurance cancellation options for most loans and expanded use of loss mitigation. The FY 2013 book alone added an additional \$11 billion more in economic value than the actuary projected last year.

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

With the collapse of the private mortgage market, the importance of the Federal Housing Administration has never been more apparent. FHA is serving in its role to fill the gap – and make mortgage insurance available to qualified homebuyers in all economic times.

### **NAR Policy and Opposition Arguments:**

NAR is a strong supporter of the single- and multi-family programs administered by FHA. FHA is critical to our nation's housing and economic recovery, and care must be taken to not hamper FHA's ability to facilitate safe, affordable mortgage financing to American families.

During the Great Recession, FHA-insured financing was often the only product available. Moody's analytics has reported that without FHA, housing prices would have dropped an additional 25 percent, and American families would have lost more than \$3 trillion in home wealth.

Opponents of NAR policy believe that the FHA mortgage insurance program is crowding out a return of the private market. They believe government involvement in the mortgage market should be limited and targeted to only certain individuals. They also believe that the FHA program is financially unsound and presents a risk to the federal government and taxpayers.

For more information, visit [www.realtor.org/fha](http://www.realtor.org/fha).

### **Legislative/Regulatory Status/Outlook**

As a result of recent changes, FHA's premiums – both the upfront and the annual – are higher than they have ever been. Today's premiums include a 1.75% upfront premium, and 1.25% in an annual premium, that is paid monthly. FHA has also eliminated the ability to cancel the annual (paid monthly) MIP for new endorsements. FHA covers 100% of the insurance on a property for its lifetime, and so unlike private mortgage insurers, their liability doesn't end at 80% (or 78%) equity. These changes have helped FHA raise their level of reserves.

There are several legislative proposals to make further changes to FHA. H.R. 2767 "The Protecting American Taxpayers and Homeowners (PATH) Act" is the most dramatic. This bill, introduced by

Representatives Garrett (R-NJ) and Hensarling (R-TX) would make significant changes including increasing the down payment, lowering loan limits, and targeting the program to only first-time home buyers or low-income borrowers. NAR opposes this legislation and believes FHA must remain available to allow borrowers who are un-served, or under-served by the traditional market, and must be a viable option when private lenders cannot or will not serve a market. This bill has passed the House Financial Services Committee in 2013, but has yet to see action on the House Floor.

NAR supports S. 1376, the “FHA Solvency Act of 2013”, introduced by Senators Johnson (D-SD) and Crapo (R-ID). This bill provides common sense reforms to ensure the continued solvency of FHA without disenfranchising qualified borrowers. It provides increased enforcement and oversight of the FHA fund, and flexibility to FHA to better manage its programs. NAR supports this bipartisan approach, and the bill has passed the Senate Banking Committee. It has yet to move to the floor of the Senate.

As of January 1, 2014, the FHA loan limits have been reduced to 115% of local area median home price (from 125%) and the high cost ceiling is now \$625,500 (from \$729,750). To find your local median, visit: <https://entp.hud.gov/idapp/html/hicostlook.cfm>.

**Current Legislation/Regulation (bill number or regulation)**

H.R. 1997, “Communities Achieving Sustainability Act” (McKeon, R-CA; Peters, D-CA)

H.R. 2767, “Protecting American Taxpayers and Homeowners Act of 2013” (Hensarling R-TX)

S. 1376, “FHA Solvency Act of 2013” (Johnson, D-SD; Crapo, R-ID)

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## **Government Sponsored Enterprises Issue Summary**

### **What is the fundamental issue?**

On September 7, 2008, the Federal Housing Finance Agency (FHFA) placed Fannie Mae and Freddie Mac (the government sponsored enterprises, or GSEs) into conservatorship. FHFA explained it took this action “to help restore confidence in Fannie Mae and Freddie Mac, enhance their capacity to fulfill their [housing] mission, and mitigate the systemic risk that has contributed directly to the instability in the current market.” Over the last 5 years, Congress has focused its conversation on how the GSEs found themselves in their current predicament. In 2013, two significant pieces of legislation were introduced in the House and Senate – “The Protecting American Taxpayers and Homeowners (PATH) Act” (H.R 2767), introduced by Rep. Hensarling (R-TX) and “The Housing Finance Reform and American Protection Act” (S. 1217), introduced by Senators Warner (D-VA) and Corker (R-TN).

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

Fannie Mae and Freddie Mac play a key role in the secondary mortgage market, which is crucial in providing capital for mortgage lending. During the housing finance sector's collapse, private capital withdrew from having a significant, competing role with the GSEs. Without the GSEs and FHA-insured loans, that currently constitute nearly 90% of the market space, there would be almost no capital available for mortgage lending. This would severely restrict, if not curtail, home sales and any supporting ancillary home sales services.

### **NAR Policy and Opposition Arguments:**

At NAR's November 2008 Annual meeting in Orlando, the Board of Directors approved the GSE Presidential Advisory Group (PAG) "Principles for Ensuring a Robust Financing Environment for Homeownership." The goal of these principles is to ensure there is sufficient capital to support mortgage lending in all types of markets for qualified borrowers. In November of 2012, the Conventional Finance and Policy Committee recommended, and NAR's Board adopted, additions to these principles aimed at ensuring the return of private capital to the housing finance sector.

The revised recommendations entitled, "Restructuring the Secondary Mortgage Market and Encouraging the Return of Private Capital", recommend that Fannie Mae and Freddie Mac be replaced by a non-shareholder owned authority(s) that is subject to tighter regulations on product, revenue generation and usage, and retained portfolio practices in a way that ensures the mission of the GSEs continues to meet the needs of consumers and that the taxpayer is protected. Moreover, the entity(s) are managed in such a way as to encourage private capital's participation in the secondary mortgage market.

Opponents of NAR policy believe the government should not be involved in the mortgage market. Rather, they believe free market competition will provide better pricing and access to credit for consumers and businesses.

### **Legislative/Regulatory Status/Outlook**

On August 6, 2013, President Obama outlined key principles of comprehensive housing finance reform. These principles closely mirror the outline presented by NAR to the administration in early 2011. The President's plan is centered on four core principles for reform:

1. ensure a limited government role, which encourages a return of private capital;

2. a privatized system with a federal catastrophic reinsurance if private capital proved to be insufficient;
3. preserve widespread access to safe and responsible mortgages like the 30-year fixed rate mortgage; and
4. protect the American dream of affordable homeownership for all qualifying borrowers in every community.

NAR believes these principles will contribute to the long-term stability of our nation's housing market and provide consumers with access to affordable mortgage credit, even during economic downturns. However, NAR has serious concerns with the Administration's proposal to lower FHA loan limits, which the Obama Administration believes are appropriate changes to give sufficient incentive for the private sector to resume making mortgages without FHA or GSE involvement.

Additionally, Congress has begun serious discussions regarding the future of the GSEs, as well as the need for overall reform of the U.S. housing finance system. The Senate Banking Committee and the House Financial Services Committee have held several hearings on housing finance reform, and each chamber has introduced pieces of legislation

#### **U.S. House Legislation: "The Path Act"**

On July 24, 2013, the House Financial Services Committee passed H.R. 2767, "The Protecting American Taxpayers and Homeowners (PATH) Act," introduced by Rep. Hensarling (R-TX). NAR opposes this legislation which includes reforms to FHA, the GSEs, and the financial regulatory law known as the Dodd-Frank Act. NAR opposes the bill based on two major concerns: 1) We strongly oppose the end of federal guarantee for a secondary mortgage market; and 2) we strongly oppose the dramatic restructuring and targeting of FHA.

The bill winds down Freddie Mac and Fannie Mae over a five-year period. It would create a new Utility to promote the securitization of mortgages. However, the bill does not provide for a federal guarantee for the Utility.

NAR sent a letter to the Full Committee opposing the bill and asking for a no vote. The bill is not expected to come to the House floor until the fall. NAR will continue to work with Congress and explain our opposition to the legislation.

#### **U.S. Senate Legislation: "The Housing Finance Reform and Taxpayers Protection Act"**

On June 25, 2013, Senators Bob Corker (R-TN) and Mark Warner (D-VA) introduced "The Housing Finance Reform and American Protection Act" that would also phase out Fannie Mae and Freddie Mac but, unlike in the House bill, the federal government would remain as an insurer of last resort, much like the FDIC is the insurer of last resort for troubled banks. NAR has long called for replacing Fannie Mae and Freddie Mac while ensuring continued mortgage market liquidity through the maintenance of an explicit federal presence in the market. On that basis, the Senate approach is the better starting point of the two.

It's unclear how far Congress will get this year in taking the next step to pass either of these bills or to consider other bills that need to be factored in.

**Current Legislation/Regulation (bill number or regulation)**

H.R 2767, “The Protecting American Taxpayers and Homeowners (PATH) Act” (Hensarling R-TX)

S. 1217, “The Housing Finance Reform and American Protection Act” (Warner, D-VA; Corker, R-TN)

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## **Like-Kind Exchange Issue Summary**

### **What is the fundamental issue?**

The like-kind exchange rules have been firmly fixed in the tax law since 1924. The most recent significant modification was in 1991. The exchange technique permits the deferral of capital gains taxes, so long as the taxpayer satisfies numerous requirements and consummates both a sale and purchase within 180 days. Real estate investors and commercial REALTORS<sup>®</sup> place a very high priority on retaining the current like-kind exchange rules.

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

The exchange rules often provide a REALTOR<sup>®</sup> with an opportunity to facilitate two transactions: the sale of the relinquished property and the purchase of the replacement property. Any curtailment of the exchange rules will make both pieces of exchange transactions more difficult to conclude and would mean that many transactions would not take place. The like-kind exchange technique is among the most important of all tax provisions for real estate investors and commercial REALTORS<sup>®</sup>.

### **NAR Policy and Opposition Arguments:**

NAR opposes any change that would undermine the deferral mechanisms associated with exchanges.

The like-kind exchange technique is fundamental to the real estate investment sector. The current law provides investors with the maximum flexibility in managing their real estate portfolio. Real estate is essentially an illiquid asset that requires substantial commitments of cash. Flexibility is needed in order to assure the free movement of property and capital.

Opponents of NAR policy will argue that deferring taxation of any investment is improper, especially when it has been disposed of. Moreover, with capital gains tax rates for most individuals at their lowest level since World War II (15%), the burden on investments is modest.

### **Legislative/Regulatory Status/Outlook**

No legislation related to Section 1031 has been introduced in the current Congress (which began in 2013). The IRS, however, may examine the role of qualified intermediaries and may issue regulations or other guidance to protect investors' assets.

The deficit reduction report released in December 2010 recommended treating capital gains the same as ordinary income. The report did not, however, suggest eliminating the deferral opportunities that the exchange technique provides.

However, Members of Congress in both Houses and both parties have expressed the desire to overhaul the tax system, and some leaders have indicated that "everything is on the table." Both the House Ways and Means Committee and the Senate Finance Committee have begun wide-ranging discussions to look at all current-law tax provisions. While the House Ways and Means Committee has so far not targeted Section 1031, a staff discussion draft released by Senate Finance Committee Chairman Max Baucus in November 2013 proposed repealing it. NAR joined with a number of other commercial real estate associations in strongly condemning this proposal as being harmful to economic growth, job creation, and likely to lower property values. While the Finance Committee



discussion draft is a long way from becoming an active and moving proposal in Congress, NAR is keeping a close watch on this situation and is continuing to monitor other Members and Committees in Congress for possible threats to the like-kind exchange rules.

**Current Legislation/Regulation (bill number or regulation)**

No legislation at this time.

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## **Mortgage Debt Cancellation Relief Issue Summary**

### **What is the fundamental issue?**

A lender will, on occasion, forgive some portion of a borrower's debt. The general tax rule that applies to any debt forgiveness is that the amount forgiven is treated as taxable income to the borrower. Some exceptions to this rule are available, but, until 2007, when a lender forgave some portion of a mortgage debt for which the borrower was personally liable (such as in so-called "short sales," foreclosures and "workouts"), the borrower was required to pay tax on the debt forgiven. A law enacted in 2007 provided temporary relief to troubled borrowers when some portion of mortgage debt is forgiven. That relief has expired and been extended several times. The latest extension provided relief for debt forgiven through December 31, 2013, but the provision has expired for debt forgiven in 2014.

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

Relief from the cancellation of indebtedness rules has facilitated the sale of homes in areas where home prices have declined or where foreclosures have occurred. In addition, providing tax relief would correct the prior-law unfair circumstance in which the only individuals who paid tax on the sale of a residence are fortunate sellers who have gains of more than \$250,000/\$500,000, and unfortunate sellers who have seen the value of their property decline. Short sale relief continues to be an urgent need for sellers in the current market.

### **NAR Policy and Opposition Arguments:**

NAR supports an exclusion from taxation of the phantom income generated when all or a portion of a mortgage is forgiven.

There should be no taxable event when a lender forgives some portion of a debt in a short sale, foreclosure, bank workout or similar situation. Such relief should be limited to principal residences only. An individual or family that has incurred a loss on the sale of their principal residence has suffered what is, for most, the biggest economic loss of their lifetime. It is unreasonable and unfair to require that they also pay tax on the phantom income associated with debt cancellation, especially because there will be no cash proceeds from the sale.

Opponents of NAR policy believe that a principal residence is a personal expense. Because the tax law does not allow for the deduction of personal expenses, tax relief from cancellation of debt on a personal residence is inappropriate, unless the homeowner is insolvent or bankrupt.

### **Legislative/Regulatory Status/Outlook**

Over the past several years, expiring tax provisions have often languished in Congress until after they expire. Most have been reinstated on a retroactive basis. However, with a great deal of attention now on tax reform, it is less certain that expiring tax provisions will be extended as a matter of course or on a timely basis. While there is a great deal of interest in several of the dozens of tax provisions that expired at the end of 2013, including the mortgage debt tax relief provision, it is unlikely that the provisions will be extended until at least the autumn of 2014.

**Current Legislation/Regulation (bill number or regulation)**

H.R. 2788, “Mortgage Forgiveness Tax Relief Act” (Heck, R-NV)

S. 1187, “Mortgage Forgiveness Tax Relief Act” (Stabenow, D-MI; Heller, R-NV)

H.R. 2994, “Mortgage Forgiveness Tax Relief Act of 2013” (Reed, R-NY; Rangel, D-NY)

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## **Mortgage Interest Deduction Issue Summary**

### **What is the fundamental issue?**

Individuals are permitted to deduct interest paid on mortgage debt of up to \$1 million. The deduction is available for interest on mortgages for a principal residence and one additional residence. The \$1 million limitation represents the combined allowable debt on two residences. Mortgage interest on up to \$100,000 of debt on home equity loans or lines of credit also qualifies for the deduction.

Members of Congress in both Houses and both parties are seriously talking about tax reform that would broaden the base and lower rates. Some House Republican leaders have expressed a goal of reducing the top tax rate for individuals to 25% on a revenue-neutral basis. This means that to “pay for” the lower rates, Congress would need to limit or repeal widely-utilized deductions, which could include the mortgage interest deduction (MID). So far there has been no bipartisan legislation introduced that would reduce or eliminate the MID.

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

The mortgage interest deduction is a remarkably effective tool that facilitates homeownership. While only about 30% to 35% of all taxpayers in any given year itemize their deductions, more than 70% of homeowners utilize the deduction over the period they own their home. According to NAR research, eliminating the MID would cause a 15% decline in the value of homes across the nation. In high cost areas, that impact would be greater, while in lower cost areas the effect would be more modest.

### **NAR Policy and Opposition Arguments:**

NAR opposes any changes that would limit or undermine current law. The MID has been in place as long as there has been an Internal Revenue Code. Its value is capitalized into the price of all houses. Decreasing the value of the MID, even for just a limited group, would hurt all homeowners because of the chilling effect any reduction would cause in the market. Moreover, any decline in the value of the most expensive homes compresses the value of all other homes. The major beneficiaries of the MID are not the rich, but young, middle-class families with children who are already carrying more than their fair share of the tax burden. Of all the people who claimed the MID in 2010, 63% earned less than \$100,000 and 91% earned less than \$200,000.

Opponents of NAR policy will say that only about a third of taxpayers itemize and thus benefit from the MID, and that the deduction encourages people to buy larger and more expensive homes than what they need. Some will also claim that it primarily benefits high-income Americans.

### **Legislative/Regulatory Status/Outlook**

As part of its budgets for the past several years, the Obama Administration has proposed reducing the value of all itemized deductions (including the MID) for upper income taxpayers. This would be done by limiting the value of itemized deductions to 28% for taxpayers who are in tax brackets higher than 28%. Thus, individuals who are in the 33%, 35%, or the new 39.6% tax brackets would find their itemized deductions worth less under this proposal. In other words, an individual in the 35% tax bracket currently gets 35 cents of benefit for every dollar of deduction, where under the Administration proposal, the deduction would be worth only 28 cents per dollar. Individuals with incomes below about \$180,000 would generally not be directly affected by this proposal.

Other groups, including the President's Commission on Fiscal Responsibility and Reform, have also proposed different ways to repeal or curtail the MID, including (1) repealing it in favor of lower tax rates, (2) reducing the \$1 million cap to \$500,000, (3) eliminating the deduction for second homes and (4) converting the deduction to a 12% tax credit.

While NAR has supported and applauds the efforts of the Obama Administration in taking aggressive measures to stabilize both the housing market and the nation's economy, NAR has vigorously expressed its opposition to the Administration MID proposal, as well as to these other proposals to repeal or cut back on the benefits of the MID. NAR believes these proposals are ill-timed and ill-advised. Each would have an adverse impact on housing values and the pace of economic recovery.

Most members of Congress have also opposed the President's budget proposal. To date, limits on itemized deductions have not been part of the legislative agenda. In the current deficit environment, many in Congress say that "everything is on the table," but no bipartisan bill has yet been introduced that would eliminate or reduce the MID.

REALTORS® can expect the MID to be under continuing attack and scrutiny as the Nation moves through the difficult fiscal environment.

**Current Legislation/Regulation (bill number or regulation)**

None at this time.

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## National Flood Insurance Program Issue Summary

### What is the fundamental issue?

Congress provided a 5-year reauthorization of the National Flood Insurance Program (NFIP), but severe implementation problems threaten to undermine real estate transactions where flood insurance is required to obtain a mortgage.

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

Without the NFIP, 5.6 million home- and business owners in 20,000 communities nationwide would not be able to obtain a mortgage or insurance to protect their properties against flooding, the most expensive and common natural disaster in the U.S. The NFIP was created because of the lack of available flood insurance in the private market. It also reduced the number of uninsured properties that otherwise would be rebuilt with taxpayer-funded disaster relief after major floods.

### NAR Policy & Opposition Arguments:

NAR supports:

1. Renewing and strengthening the long-term viability of the federal flood insurance program;
2. Maintaining funding to update and improve the accuracy of flood maps, which are used to determine which properties require flood insurance; and
3. Including comprehensive coverage for properties including non-primary residences and reforms to ensure "full risk" premiums for properties with repetitive insured losses.

A 5-year reauthorization of the NFIP, including the gradual removal of subsidies, was required to maintain access to affordable flood insurance that is required but not available in the private market. Without the NFIP, property owners would have to take their chances and go without insurance or rely on taxpayer-funded disaster relief after the next major flood. However, FEMA's implementation of the removal of the subsidies was problematic, at best. Additionally, there is compelling evidence that the insurance companies are over charging the property buyers, forcing them out of the program and the existing owners potentially into foreclosure.

Opponents say that a short-term delay of these unintended consequences amounts to a roll back of necessary reforms implemented by the Biggert-Waters law. They believe that home buying in riskier flood zones will continue as long as flood insurance is underpriced by federal subsidies. As a result, the NFIP will be forced to borrow more to make up the premium short fall to cover claims due to future flooding.

Visit NAR's page on the NFIP:

[www.realtor.org/topics/national-flood-insurance-program-nfip](http://www.realtor.org/topics/national-flood-insurance-program-nfip)

### Legislative/Regulatory Status/Outlook

In July 2012, Congress passed the Biggert-Waters Act reauthorizing the NFIP for 5 years. This ended a series of shorter term extensions and shut downs that were costing 40,000 home sales a month. It also phases out subsidized rates for the owners of second homes and businesses or the buyers of property, as well as the grandfathering of properties under lower risk rates when new flood maps are issued.

However, FEMA botched the transition to full risk rates for property buyers. FEMA failed to disclose these increases before thousands of families purchased their property. Additionally many of the increases appear to be excessive and inaccurate. In recent testimony, NAR provided several examples where the quoted rate exceeded the true actuarial rate by \$10,000-\$30,000 per year. FEMA also missed the April 2013 statutory deadline to report to Congress which could have shed light on the accuracy of these increases.

On January 27, 2014, the Senate is scheduled to vote on the "Homeowner Flood Insurance Affordability Act" (S. 1926) sponsored by Sens. Menendez (D-NJ) and Isakson (R-GA). Reps. Grimm (R-NY) and Waters (D-CA) have introduced companion legislation in the House (H.R. 3370). The bill calls a 4-year "time-out" on rate increases triggered by the sale of property (including second-home and commercial sales) or the update of a flood map for grandfathered properties. It also creates a flood insurance advocate within FEMA to investigate and assist property owners with questions over multiple or excessive rate quotes. NAR is urging all Senators to support the bill.

On January 16, 2014, Congress passed the Omnibus Appropriations Bill (H.R. 3547) to fund the federal government through September 30, 2014. The bill prohibits FEMA from implementing future premium increases on grandfathered properties for nine months. It does not limit the increases triggered by a property sale that FEMA implemented on October 1, 2013.

On a separate track from Biggert-Waters, FEMA continues to update the flood maps under an on-going modernization initiative. This and the spate of insurance company rating errors and discrepancies are contributing to widespread reports of rate increases that were not intended by Biggert-Waters. NAR has called on FEMA to convene a National Flood Insurance Summit to help pinpoint the cause and provide better information for Congress to act on the affordability of the recent flood insurance reforms.

NAR invites those who have recently received a significant rate quote increase to fill out NAR's survey and include any supporting documentation possible.

For more information, please see the updated legislative analysis of the Biggert-Waters Flood Insurance Reform Act of 2012 at:

[www.realtor.org/topics/national-flood-insurance-program-nfip/legislative-analysis](http://www.realtor.org/topics/national-flood-insurance-program-nfip/legislative-analysis)

### **Current Legislation/Regulation (bill number or regulation)**

S. 1926, "Homeowner Flood Insurance Affordability Act" (Menendez, D-NJ; Isakson, R-GA)

S. 1846, "Homeowner Flood Insurance Affordability Act" (Menendez, D-NJ; Isakson, R-GA)

H.R. 3370, "Homeowner Flood Insurance Affordability Act" (Grimm, R-NY; Waters, D-CA)

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## **Tax Reform Issue Summary**

### **What is the fundamental issue?**

An exploding federal debt and continued growth of tax complexity have forced tax reform into the limelight once again. Members of Congress from both Houses and both parties have indicated that tax reform is a priority, and President Obama has also expressed qualified support, especially for corporate tax reform.

Following a divisive 2012 presidential election campaign in which the proper tax rates for higher-income Americans was fiercely debated, a partial compromise was enacted that increased the highest tax brackets to 39.6% from 35% and the top rate for capital gains to 20% from 15%. “The American Taxpayer Relief Act of 2013” (signed into law on January 2, 2013), also made the lower tax rates enacted in 2001 and 2003 permanent for all but the highest-income taxpayers. However, instead of alleviating the calls for tax reform, the Act merely hardened partisan positions, with most Democrats (including President Obama) insisting that tax reform should produce even more revenue from higher-income taxpayers, and most Republicans insisting that all additional revenue from broadening the tax base in tax reform be used to lower tax rates.

With the two parties not agreeing on what tax reform should accomplish or what form it should take, enactment of a comprehensive bill proved elusive during 2013, despite continued calls for action on this issue. This uncertainty seems very likely to continue through at least 2014. However, with policymakers on both sides expressing a willingness to simplify the tax law and to broaden the base and lower the tax rate, the possibility exists that common ground on tax reform can be found. Along with this possibility is the danger that vital tax benefit provisions for real estate, such as the mortgage interest deduction, the deduction for property taxes paid, and a variety of tax deductions affecting commercial real estate investment, could be repealed or limited in order to “pay for” lowering the tax rates.

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

Tax reform carries high stakes for real estate professionals and those who own real estate. The current system is very efficient and generally favorable for real estate. Alterations to that system would change -- likely to the detriment -- the economics of homeownership and of real estate investment. Any modification of real estate-related tax benefits in the current fragile economy could do serious damage and will certainly create uncertainty for prospective purchasers.

Also, tax reform based on a goal to lower the tax rates as much as possible could mean that policy makers ignore the societal and economic benefits of important and long-standing deductions, such as the mortgage interest deduction, in favor of reaching the ultimate low tax rate. While lower rates could help take some of the sting out of lost tax benefits, and generally be positive for the economy, the trade-offs would create many winners and losers among individuals, businesses, and entire industries. There is no assurance that tax reform would result in a net positive for real estate or for the economy. Indeed, the real estate sector could take a big hit, as it did in 1986, the last time tax reform was successfully undertaken.

### **NAR Policy and Opposition Arguments:**

NAR embraces no single tax reform model such as a flat tax or a retail sales tax. Similarly, NAR does not adhere to any specific schedule of tax rates as a primary goal. Rather, NAR policy

acknowledges the complexity of the current tax system and seeks tax reforms that support the goals of homeownership and freedom to buy, maintain and sell real estate.

The current real estate tax provisions are among the most widely used and most readily understood tax provisions. Homeownership is not a special interest, nor a loophole. Nearly two-thirds of Americans own their homes, and a high percentage of tax benefits go to households with less than \$200,000 of income. Many real estate investment decisions have been made with current-law tax law factored in. Changing the rules on existing investments could harm the economy recovery and job creation.

Opponents of NAR policy argue that the current tax system is riddled with loopholes that benefit mostly high-income Americans. In the case of mortgage interest and property tax deductions, only about one-third of taxpayers itemize and are thus able to take advantage of these deductions, so the benefits should be spread out to more Americans.

### **Legislative/Regulatory Status/Outlook:**

Both of Congress's tax-writing committees (House Ways and Means Committee and Senate Finance Committee) have been active in holding hearings and developing draft tax reform plans over the past two years. Thus far, however, these draft plans have not moved beyond the discussion stage.

In early 2013, the House Ways and Means Committee established bipartisan "working groups" to examine various areas of the tax law to better understand the current rules and the various proposals for reform that have been made. One of these working groups focused on real estate taxation. NAR met with this working group on March 5, 2013, and subsequently submitted a detailed defense of current law provisions that provide tax incentives and benefits to homeownership and real estate investment.

Until late 2013, most of the tax reform discussion was focused on rate reduction, but no details were provided that would suggest which deductions and tax credits would be reduced or eliminated in order to "pay for" deep rate cuts. NAR is particularly concerned about the mortgage interest deduction (MID), property tax deduction, and the \$250,000/\$500,000 exclusion of gain on the sale of a home.

House Ways and Means Chairman Dave Camp (R-MI) had indicated that he would like to see the Ways and Means Committee approve a tax overhaul bill in 2013. However, his goal was deferred after the Republican leadership of the House determined that the timing of such a bill was not right. Senate Finance Committee Chairman Max Baucus (D-MT) expressed a similar goal for his panel, but no action took place here in 2013 either. Due to GOP term limits on committee chairmen, Camp is facing his last two-year stint as head of the Ways and Means Committee. Senator Baucus has recently been nominated by President Obama to be U.S. ambassador to China. Thus, if he is confirmed as is expected, he will be leaving the head of the Finance Committee early in 2014. Senator Ron Wyden (D-OR) is widely expected to take over as chairman. Most observers believe these factors greatly decrease the likelihood of tax reform being enacted before the end of 2014. Others are less certain.

In late November 2013, Senator Baucus released a series of staff discussion drafts on tax reform. Each draft covered a different topic of tax reform, and topics included international tax, tax administration, energy tax, and cost recovery and tax accounting. These drafts include some specific



proposals to repeal certain tax benefits now available under the current tax code. Important to real estate are proposals to increase the depreciable lives of real property used in business or held for investment to 43 years (from the current periods of 39, 27.5, and 15 years), to raise the tax rate on gain from depreciation recapture from the current 25% to the ordinary income tax rate (now as high as 39.6%), and to repeal the tax rules that allow taxpayers to exchange like-kind real estate on a tax-deferred basis.

Many stakeholders in the real estate community, including NAR, view these proposals as a significant threat, even though they are far from being viable legislative proposals for the near-term. NAR, together with many other groups, sent a detailed letter to the Finance Committee in January 2014, which outlined the many reasons why adoption of these proposals would be a major step in the wrong direction for the nation's economy, for job growth, and for tax reform. NAR is continuing to watch these proposals very carefully. With the pending departure of Chairman Baucus, it is believed that these proposals will have less potency. However, they remain a significant threat to commercial real estate that deserves close monitoring.

While the threat of tax reform in the next 12 to 18 months seems to have subsided, in the longer term it is still possible. However, the many changes that are likely to take place before tax reform is likely to move in Congress (such as new leadership in the Senate Finance Committee and the mid-term congressional elections in November 2014) means that much of what we have seen developing so far will likely emerge in a different form in 2015 or later years. In sum, tax reform remains a possibility, but is less likely in the near term and is more unpredictable in the longer term.

#### **Current Legislation/Regulation (bill number or regulation)**

Both tax-writing committees have indicated a willingness to move forward with detailed tax reform plans when the time is right. However, the timing does not appear favorable for this throughout the remainder of 2014, although movement on this issue does remain a possibility.

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## **Terrorism Insurance Issue Summary**

### **What is the fundamental issue?**

Following the terrorist attacks of September 11, 2001, insurers backed out of the terrorism insurance market place prompting Congress to create a federal reinsurance risk-sharing program in the “Terrorism Risk Insurance Act of 2002 (TRIA)” which also mandated that insurers make terrorism coverage available along with its property and casualty lines. In December 2005, Congress passed the “Terrorism Risk Insurance Extension Act (TRIEA),” which extended the federal terrorism insurance risk-sharing mechanism for an additional two years. On December 26, 2007, President Bush signed H.R. 2761 into law to extend the program through the end of 2014. The House and Senate began holding hearings in September 2013 to examine the status of the program and its future prior to its expiration at the end of 2014.

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

American businesses continue to rely upon the availability and affordability of terrorism risk insurance. The federal backstop program is a critical component of the private/public partnership created to protect the nation's business sector by ensuring that adequate insurance coverage is available to effectively manage economic risks. This has been a particular concern for those in commercial real estate who need to have terrorism coverage in place in order to secure financing. Commercial mortgage-backed security (CMBS) borrowers face the threat of default and bond downgrades without adequate coverage. In the retail and multifamily sectors specifically, a jump in terrorism insurance premiums can reduce the value of commercial properties. If terrorism insurance becomes unavailable, again this throws the financing into technical default.

### **NAR Policy and Opposition Arguments:**

Because of the importance of terrorism insurance coverage to commercial real estate, NAR supports the continued availability and affordability of coverage made possible by the federal backstop program of the “Terrorism Risk Insurance Act of 2002” and its extensions.

The program provides stability and creates a viable insurance market, with widely available coverage and affordable premiums, at virtually no cost to taxpayers. Sustaining a viable private market for terrorism insurance depends on the federal backstop. If TRIA is allowed to lapse, or if there is even a threat that it might, the terrorism insurance market in the U.S. will be disrupted (as illustrated by the lead-up months to the reauthorizations in 2005 and 2007), and terrorism insurance coverage will become both more limited and more expensive.

Those who oppose NAR’s position believe that the Terrorism Risk Insurance Program is no longer necessary. They argue that terrorism risk insurance can now be adequately provided by the private market and that the federal backstop program should be phased out and eventually eliminated in order to allow the private insurance market to take over.

### **Legislative/Regulatory Status/Outlook**

Several bills have been introduced in the 113<sup>th</sup> Congress that would extend the “Terrorism Risk Insurance Extension Act,” including the “Terrorism Risk Insurance Act of 2002 Reauthorization Act of 2013” (H.R. 508), introduced by Rep. Grimm (NY-R), which would reauthorize the program for five years, and the “Terrorism Risk Insurance Program Reauthorization Act of 2013” (H.R. 2146), introduced by Rep. Capuano (MA-D), which would reauthorize it for 10 years. Moreover,

Rep. Thompson (MS-D) has introduced H.R. 1945, the "Fostering Resilience to Terrorism Act of 2013," which also aims to extend TRIA for 10 years. A variety of other proposals related to the reauthorization of the insurance program are likely to be introduced in both chambers of Congress this year. In September 2013, the House Financial Services Committee and the Senate Banking Committee each held hearings on the status of the Terrorism Risk Insurance Program and its future.

**Current Legislation/Regulation (bill number or regulation)**

H.R. 508, "TRIA Reauthorization Act of 2013" (Grimm, R-NY)

H.R. 2146, "Terrorism Risk Insurance Program Reauthorization Act of 2013" (Capuano, D-MA)

H.R. 1945, "Fostering Resilience to Terrorism Act of 2013" (Thompson, D-MS)

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## Valuation Issues Update Issue Summary

### What is the fundamental issue?

Over the past year, NAR members have identified several valuation issues impacting real estate transactions. Most concerns are related to appraisals, including appraiser geographic competency, appraiser independence, and the ineffectiveness of the appraisal appeals processes.

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

**Geographic Competency:** Appraisers are required to be competent in the geographic area where they are working. Some appraisers work in cities and counties beyond their residences but are knowledgeable about those specific areas. If the appraiser is not geographically competent and accepts an assignment, it can negatively impact the quality of the appraisal. If a real estate agent suspects that an appraiser is not competent to appraise in a certain area, you may contact the lender who is the appraiser's client.

**Appraiser Independence:** Appraiser independence rules were implemented to isolate parties with a financial interest in a mortgage loan transaction from appraiser selection and retention. Last spring, NAR wrote an issue brief to clarify appraiser independence requirements. The issue brief stresses the fact that the rules do not prohibit appraisers from speaking with real estate agents during the appraisal process. To view the issue brief visit:

[www.realtor.org/appraisal/issue-brief-appraiser-independence](http://www.realtor.org/appraisal/issue-brief-appraiser-independence)

**Appeals Process:** NAR supports a more standard process to request a reconsideration of value if the original value opinion is not credible. In order to ask an appraiser to correct errors in the appraisal report or consider additional information, the real estate agent or home buyer must contact the client, typically the lender, in writing. Lender appraisal processes vary and some lenders choose to work with Appraisal Management Companies, which can make appeals process more confusing for the homebuyer.

### NAR Policy and Opposition Arguments:

REALTORS® support and encourage credible, independent valuations of real property because valuations are critical to the health of the overall real estate industry.

A trustworthy valuation of real property ensures the real property value is sufficient to collateralize the mortgage, protects the mortgagor, allows secondary markets to have confidence in the mortgage products and mortgage backed securities, and builds public trust in the real estate profession.

There is no political opposition to NAR's support of credible, independent valuations of Real Property. However, some in the real estate industry are frustrated by the Dodd-Frank appraiser independence regulation that they feel is too rigid. The appraiser independence regulation limits the ability of a real estate agent or consumer to interfere with an appraiser even if they feel the appraiser is not geographically competent. There are also concerns that the GSE's efforts to standardize appraisal data delivery through the Uniform Appraisal Dataset (UAD) have negatively impacted the quality of appraisal reports.

To view the NAR's Responsible Valuation Policy please go to:

[www.realtor.org/appraisal/responsible-valuation-policy](http://www.realtor.org/appraisal/responsible-valuation-policy)

### **Legislative/Regulatory Status/Outlook**

NAR closely follows federal legislative and regulatory issues related to valuations. There is currently no legislation impacting the appraisal issues outlined above, but there is a provision in the Housing Finance Reform and Taxpayer Protection Act that requires any new privately capitalized system to take into consideration the existing data standards in the Uniform Mortgage Data Program established by FHFA. There is also a bill to enhance energy efficiency in underwriting valuation guidelines.

NAR anticipates a proposed rule in 2014 requiring states to register Appraisal Management Companies (AMCs).

### **Current Legislation/Regulation (bill number or regulation)**

Final Rule on Appraisals for Higher-Priced Mortgage Loans

Final Rule on ECOA Free Appraisal Requirement

S. 1217, "The Housing Finance Reform and Taxpayer Protection Act of 2013" (Warner, D-VA; Corker, R-TN)

S. 1106, "The Sensible Accounting to Value Energy Act of 2013" (Bennet, D-CO; Isakson, R-GA)

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## **Affiliated Business – 3% Cap on Fees & Points Issue Summary**

### **What is the fundamental issue?**

The Dodd-Frank Qualified Mortgage (QM)/Ability to Repay 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, fees and points cannot exceed 3% of the loan amount. The problem is that under the Consumer Financial Protection Bureau's (CFPB) rule, mortgage bankers, broker, and affiliated companies have to count many more items towards fees and points than large retail financial institutions. Legislation is needed to change this.

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

Real estate professionals and their clients will have fewer choices in where they can obtain a mortgage and what level of service they can rely on. Some will likely not be able to obtain loans at all.

### **NAR Policy and Opposition Arguments:**

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.

This definition of fees and points creates an un-level playing field between different types of lenders. Other laws and rules already in effect prevent the apparent harms the current 3% rule is supposed to address. It is not necessary to discriminate against mortgage banks, mortgage brokers, and affiliates in order to protect the consumers from such issues as steering. They are protected via RESPA and other rules such as the loan officer compensation rule which forbids compensation to be based on loan terms or conditions, removing any incentive to steer.

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

### **Legislative/Regulatory Status/Outlook**

H.R. 3211, “The Mortgage Choice Act,” is bipartisan legislation sponsored by Representatives Bill Huizenga (R-MI), David Scott (D-GA), Ed Royce (R-CA), Gregory Meeks (D-NY), Spencer Bachus (R-AL), Mike Doyle (D-PA), Steve Stivers (R-OH), Gary Peters (D-MI), Patrick Murphy (D-FL), and Betty McCollum (D-MN). H.R. 3211 makes adjustments to the Truth in Lending Act’s (TILA) definition of fees and points to ensure greater consumer choice in mortgage and settlement services under the Ability to Repay/Qualified Mortgage (QM) rule. S. 1577 is companion legislation in the Senate, sponsored by Senators Joe Manchin (D-WV), Mike Johanns (R-NE), Carl Levin (D-MI), Debbie Stabenow (D-MI), Mark Kirk (R-IL) and Pat Toomey (R-PA). NAR continues to work with CFPB to try to make regulatory changes as well.

### **Current Legislation/Regulation (bill number or regulation)**

H.R. 3211, “The Mortgage Choice Act” (Huizenga, R-MI; Scott, D-GA)  
S. 1577, “The Mortgage Choice Act” (Manchin, D-WV; Johanns, R-NE)

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## Capital Gains – Carried Interest Issue Summary

### What is the fundamental issue?

The Obama Administration and some Members of Congress have proposed treating the income from a general partner's carried interest as ordinary income.

### Background

Many real estate partnerships are organized with general partners, who contribute their expertise (and, occasionally, some capital) and limited partners who contribute money and property (capital) to the enterprise. Generally the profits of the partnership are divided among the limited partners who contribute capital. A common practice among real estate partnerships, however, is to permit the general partner to receive some of the profits through a "carried interest," even when the general partner has contributed little or no capital to the enterprise. The general partner's profits interest is "carried" with the property until it is sold.

During the time that the real estate is held, the general partner receives compensation and fees in the form of ordinary income. The limited partners receive both ordinary income from operations and capital gains income from any profits generated during the year. When the property is sold, the limited partners receive their profits distributions (the earnings on the capital they have invested) as capital gains. The general partner also receives the value of its carried interest as capital gains income.

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

A residential real estate sales agent and/or broker will not be directly affected by the proposal, as it applies only to real estate investment partnerships that have carried interests. Real estate brokerage is rarely, if ever, organized in that model. Real estate investment, however, is typically held in partnership (or LLC) form. Not all partnerships include both general and limited partners or carried interests for the general partners, but real estate investments that are held in that form would be harmed by the proposal. By increasing the tax burden on these real estate partnerships, and particularly on those with operational expertise, the proposal would make real estate a less attractive investment. When the value of real estate investment is impaired, there is an indirect impact on all real estate.

### **NAR Policy and Opposition Arguments:**

NAR opposes any proposal that would eliminate capital gains treatment for any carried interest of a real estate partnership.

Utilization of the carried interest mechanism for real estate partnerships is a standard operating practice that has not, historically, been seen by either courts or policy makers as a "loophole." Rather, capital gains treatment for income from a carried interest is seen as a reward for entrepreneurs (general partners, in this case) who take the risks inherent in new projects and in making capital investments. Capital gains treatment of carried interests also mitigates the impact of inflation on a long-term investment.

Opponents of NAR policy will say that high-earning taxpayers should pay their "fair share," which they interpret as meaning a high tax rate. The 2012 presidential election campaign highlighted the divide between those who believe that Wall Street high-rollers such as certain hedge fund and private equity fund managers should pay ordinary income tax rates on income from carried interests

and those who believe the tax law should provide incentives in the form of lower tax rates for those who risk their time and capital in risky long-term investments. Opponents also believe that capital gains treatment for carried interests favor higher-income taxpayers over those of more modest means, who usually do not have access to investment vehicles that offer a carried interest.

### **Legislative/Regulatory Status/Outlook**

While the House has passed the carried interest provision several times, it has never passed the Senate. No legislation has been considered that would have changed the tax treatment of carried interests. However, a bill designed to eliminate a number of so-called tax “loopholes,” including taxing carried interests as ordinary income, has been introduced by Senator Carl Levin (D-MI). This bill has no bipartisan support nor any cosponsors who are on the Senate Finance Committee. Thus, most observers do not view this bill as having a serious chance of being enacted in the short-term.

In addition, President Obama's FY 2014 budget once again includes a proposal that carried interests be treated as ordinary income rather than as capital gains. NAR continues to follow and participate in any ongoing discussions.

### **Current Legislation/Regulation (bill number or regulation)**

S. 268, “Cut Unjustified Tax Loopholes Act” (Levin, D-MI)

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## Clean Water Act Issue Summary

### What is the fundamental issue?

Contrary to Supreme Court decisions, the Administration has proposed guidance to "clarify" which bodies of water are subject to Clean Water Act regulation. Relevant court decisions include *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001); and *Rapanos v. United States*, 547 U.S. 715 (2006).

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

Depending on its definition of 'waters of the U.S.,' the "Clean Water Act" would require expensive and time consuming federal permits to develop private property with any wet area -- not just properties with a navigable interstate water or adjacent wetland. In addition, property owners may experience a taking under the regulation without adequate compensation, as prescribed under the 5<sup>th</sup> Amendment of the Constitution.

### NAR Policy & Opposition Arguments

NAR supports using appropriate scientific criteria to identify regulated areas, keeping the focus on preserving high value wetlands; requiring that local officials and affected property owners be notified about the presence of wetlands; and using wetlands mitigation banking.

NAR and others supported the Supreme Court decisions to reject federal agency attempts to assert jurisdiction beyond the navigable to all waters based on "theories" like the presence of migratory birds.

However, opponents counter that the Clean Water Act was originally supposed to be read that broadly, and see these agencies as attempting to restore federal protections over all waters of the U.S. From their perspective, the Supreme Court weakened the law leaving many of the nation's streams and wetlands vulnerable to over development and pollution.

### Legislative/Regulatory Status/Outlook

On September 17, 2013, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Army Corps) announced a joint proposed rule that purports to clarify which streams, wetlands and other waters are "waters of the United States" and subject to jurisdiction under the federal Clean Water Act (CWA). The agencies sent the proposed rule to the White House's Office of Management and Budget (OMB) but have not yet released it to the public. In support of the proposed rule, the agencies have released a draft science report titled "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence" (Draft Study).

The Draft Study is a compilation of independent peer-reviewed scientific literature that, when finalized, is intended to provide the scientific basis for the agencies to clarify CWA jurisdiction through the rulemaking process. NAR is submitting comments on the draft Connectivity Study to raise important concerns and flaws in the scientific methodology. The agencies could issue a final version of the Draft Study and publish a draft rule in the Federal Register in early 2014. A critical focus of the Draft Study, and likely the joint proposed rule, is the important effect that "ephemeral" and "intermittent" streams have on downstream rivers, lakes, estuaries and oceans. The Draft Study also addresses the effect of isolated wetlands and role of ditches and other man-made conveyances of water.

EPA requested that their Science Advisory Board (SAB) review the Draft Study. The SAB convened a two day meeting in December, 2013, in which they advised the EPA that the Draft Study and the draft regulations need to account for gradations in connectivity among U.S. waters.

NAR is working closely with industry partners and the Waters Advocacy Coalition to refute the conclusions of the study and conduct an economic impact analysis of the proposed regulation.

NAR believes that only Congress can fundamentally alter the Clean Water Act and will continue to oppose any efforts, whether guidance or proposed regulation, to expand the Act's reach or otherwise infringe on property rights.

**Current Legislation/Regulation (bill number or regulation)**

“Draft Guidance on Identifying Waters Protected by the Clean Water Act,” dated April 27, 2011, see:

[http://water.epa.gov/lawsregs/guidance/wetlands/upload/wous\\_guidance\\_4-2011.pdf](http://water.epa.gov/lawsregs/guidance/wetlands/upload/wous_guidance_4-2011.pdf)

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## **Data Privacy & Security Issue Summary**

### **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 Target and other retailers, we can expect a number of privacy and data security bills to be introduced in this 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. Some bills may also permit industry to develop their own self-regulatory privacy programs that, if endorsed by the Federal Trade Commission (FTC), would create a safe harbor from regulation.

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

REALTORS<sup>®</sup> 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 REALTORS<sup>®</sup> and REALTOR<sup>®</sup> 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.

### **NAR Policy & Opposition Arguments:**

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.

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.

### **NAR Data Privacy & Security Principles:**

REALTORS<sup>®</sup> 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<sup>®</sup> endorse the following Data Privacy and Security principles:

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

REALTORS<sup>®</sup> 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<sup>®</sup> should collect and use information about individuals only where the REALTOR<sup>®</sup> reasonably believes it would be useful (and allowed by law) to administer their business and to provide products, services and other opportunities to consumers. REALTORS<sup>®</sup> 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.)

## **Maintaining Consumer 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.

## **Legislative/Regulatory Status/Outlook**

The Senate has introduced S. 1193, “The Data Security & Breach Notification Act” (Toomey R-PA) that would establish a national data security breach notification standard and preempt a patchwork of state regulations. No companion House bill has yet been introduced.

Privacy and data security will remain a hot topic in this Congress and on the regulatory front. We can expect new legislation to be introduced shortly – in addition the FTC and the Commerce Department continue to focus on the issue as a top priority.

Both the Commerce Department and the FTC recently released reports on consumer privacy. The Commerce report recommends legislation to implement a consumer privacy bill of rights and a multi-stakeholder process to recommend industry self-regulatory practices.

NAR has developed an educational toolkit for members and is exploring the possibility of developing a real estate industry self-regulatory program. To view the toolkit visit:

[www.realtor.org/law-and-ethics/nars-data-security-and-privacy-toolkit](http://www.realtor.org/law-and-ethics/nars-data-security-and-privacy-toolkit)

## **Current Legislation/Regulation (bill number or regulation)**

S. 1193, “Data Security & Breach Notification Act” (Toomey, R-PA)

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## Depreciation - General Issue Summary

### **What is the fundamental issue?**

The current law depreciation rules are out of date and do not reflect the economic life of structures. The 27.5- and 39-year cost recovery periods for real property should be shortened.

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

A more realistic rate of return on depreciable assets would make real estate a more attractive investment.

### **NAR Policy and Opposition Arguments:**

NAR supports a depreciable life for real estate that accurately reflects the economic life of the property. A 2001 NAR Working Group determined that a more realistic life would be about 22 to 24 years.

Independent studies indicate that the economic life of real property ranges between 18 and 30 years. Economic depreciation is more than just physical wear and tear, but also includes adjustments to the value of real property caused by changes in tastes and by improvements in the quality of new assets relative to old assets (known as obsolescence).

Opponents of NAR policy will generally be looking at maintaining or lengthening the depreciable period for real property for purposes of raising revenue that can be used to pay for other changes in the tax law, such as lowering tax rates.

### **Legislative/Regulatory Status/Outlook**

Congress may explore issues related to depreciation when it debates tax restructuring during 2014.

### **Current Legislation/Regulation (bill number or regulation)**

Many Members of Congress on both sides of the political aisle have indicated a deep interest in reforming the tax code. The House Ways and Means and Senate Finance Committees have specifically taken an interest in tax reform, as they are the ones with jurisdiction over this issue.

Both Ways and Means Chairman Dave Camp (R-MI) and Finance Chairman Max Baucus (D-MT) have indicated a desire to broaden the tax base and lower the tax rates by eliminating tax benefit provisions that might be deemed unwarranted. So far, in the House Ways and Means Committee, this has translated itself only into vague notions that depreciation methods and recovery periods should be examined in tax reform. However, the threat for changes that would harm commercial real estate is much more real in the Senate Finance Committee.

In November 2013, Finance Chairman Baucus released a staff discussion draft that would drastically change the depreciation regime for real property. Specifically, the discussion draft proposed moving the depreciable life of all real property to 43 years, from the current lives of 39 years for nonresidential real property, 27.5 years for residential property, and 15 years for certain leasehold improvement property.

While the discussion draft is not legislation and does not have much of a chance of moving forward in the legislative process during 2014, it still represents a major long-term threat to commercial real estate. NAR, along with a number of other concerned stakeholders, sent a detailed comment letter

to the Finance Committee setting forth the many reasons why this proposal would be devastating to the U.S. economy, to job creation, and to property values. To view the comment letter visit: <http://www.ksefocus.com/billdatabase/clientfiles/172/2/1937.pdf>

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## Depreciation – Tenant Improvements Issue Summary

### **What is the fundamental issue?**

A temporary provision permitting the cost of leasehold improvements to be recovered over 15 years has been in place for many years. Unfortunately, this provision was allowed to expire at the end of 2013. Unless Congress extends the provision on a retroactive basis, for leasehold improvements placed in service on or after January 1, 2014, such costs will need to be recovered over a 39-year statutory life.

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

Property owners are required to amortize the costs for improvements made on behalf of tenants over a recovery period that has no relation to the economic life of the assets. This artificially depresses rates of return. Providing a shorter and more realistic depreciation period for tenant improvements allows upgrades for technology and modernization to be more economically feasible. These types of improvements assure that nonresidential buildings will be adequately maintained and remain technologically current. Updated and well-maintained properties are more readily bought and sold.

### **NAR Policy and Opposition Arguments:**

NAR supports efforts to establish a *permanent* rule that more accurately reflects the depreciable lives of buildings and to conform amortization periods for tenant improvements more closely to the term of the lease. NAR supports the 15-year recovery period, but would eagerly support an even shorter term.

Even a 15-year recovery period for tenant improvements is longer than the term of a standard lease. Good tax policy dictates that the cost recovery period should approximate the economic life of the asset.

No one has put forward any valid policy arguments in opposition to NAR policy, and policymakers on both sides of the political aisle support a cost recovery period of no longer than 15 years. The difficulty in getting the 15-year recovery period enacted permanently has to do with the problems of finding ways to offset the cost to the Treasury and not to policy opposition.

### **Legislative/Regulatory Status/Outlook**

There is no controversy about the merits of the 15-year life for leasehold improvements. The provision has always been part of a huge package driven by the need to extend expiring provisions. Controversy on that so-called "extenders package" has always been a matter of how to "pay for" it.

However, with tax reform being discussed seriously in Congress, extending the expiring provisions has taken a back seat to reform. Many observers believe that expiring provisions, including the leasehold improvement provision, may not be addressed by Congress before autumn 2014. Moreover, many believe that not all expiring provisions will be automatically extended, as they have often been in the past. This provision enjoys bipartisan support, so it may fare better in tax reform than other expiring provisions. However, there is more doubt surrounding the long-term outlook for this issue than has existed in the recent past. NAR will continue to work with Congress to permanently extend the 15-year cost recovery period for leasehold improvements. NAR will also

continue to urge Congress to pass legislation that would expand expensing rules to include leasehold improvements.

**Current Legislation/Regulation (bill number or regulation)**

S. 749, a bill to permanently extend the 15-year recovery period for qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property. (Casey, D-PA; Cornyn, R-TX)

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## Electronic Signatures and Authorizations Issue Summary

### **What is the fundamental issue?**

The "Electronic Signatures in Global and National Commerce Act" became effective for transactions on October 1, 2000, and for record-keeping and filing on March 1, 2001. The law allows the use of electronic signatures, disclosures, and authorizations to replace paper versions. The law does not have any effect on the content of disclosures, or any party's rights or responsibilities. It requires no particular technology, but requires all parties to the transaction to agree on the method for electronically "authenticating" the contracts or documents. Adoption of electronic signatures in the real estate and lending industries has been slow.

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

The replacement of paper documents with electronic ones will result in cost and time savings for consumers and REALTORS®. Anticipated savings include funds expended on paper, postage, and storage space for disclosures and authorizations. In addition, this practice will also allow for a streamlining of the real estate transaction and continue the promotion toward paperless transactions.

### **NAR Policy and Opposition Arguments:**

NAR supported the E-SIGN Act of 2000 that makes electronic signatures the legal equivalent of handwritten signatures in order to make real estate transactions more efficient and to reduce paperwork. NAR is working to provide education to REALTORS® in the procedures for using electronic signatures and is urging regulators and lenders to facilitate and widen the acceptance of electronic signatures.

Those who may oppose electronic signatures in real estate transactions do so in the name of security technology cost concerns.

### **Legislative/Regulatory Status/Outlook**

State legislatures have been and continue to be the venue for further legislative activity since state statutes require amendments to allow the use of electronic documents for business transactions.

On the regulatory front, the Federal Housing Administration (FHA) is about to significantly broaden the range of signatures that will be accepted as part of FHA mortgage processing. An announcement is expected in early 2014. Also, the Consumer Finance Protection Bureau has solicited information from the public on ways that the mortgage closing process can be improved, with special attention to making more parts of the closing process open to electronic signatures and formats. NAR is working closely with both agencies to promote more efficient and cost effective processes in real estate transactions.

### **Current Legislation/Regulation (bill number or regulation)**

Consumer Finance Protection Bureau's Request for Information on mortgage closing process, with a deadline of February 7, 2014, is at:

<http://www.consumerfinance.gov/blog/its-closing-time-tell-us-about-your-experience-closing-on-a-mortgage/>

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## Estate Tax Reform Issue Summary

### What is the fundamental issue?

In 2001, Congress enacted legislation to phase out the estate tax, with full repeal scheduled to occur in 2010. Because of unique procedures associated with passage of the 2001 legislation, however, the estate tax would have been reinstated as of January 1, 2011 at its pre-2001 levels. The amount excluded from estate tax would have been \$1 million. Any remaining taxable estate would have been taxed at a maximum rate of 55%.

Technically, the estate tax *was repealed* for 2010, but, as a practical matter, the repeal was never activated. In December 2010 Congress, with President Obama's approval, voted to extend the 2009 estate tax rate through December 31, 2012. The estate tax exclusion was increased to \$5 million (from \$3.5 million) for 2010-2012, and the maximum tax rate was reduced to 35%.

However, without action by Congress, the pre-2001 estate tax rules (\$1 million exemption and 55% rate) were set to become effective for those who died on or after January 1, 2013.

Fortunately, Congress and President Obama enacted the "American Taxpayer Relief Act (ATRA) of 2013" on January 2, 2013. This Act made permanent the changes Congress made to the estate tax rules in December 2010, except that the top estate tax rate was increased from 35% to 40%. Thus, for decedents dying after December 31, 2013, the estate tax exclusion is \$5.34 million per person (the \$5 million amount from 2010, indexed for inflation), and the top tax rate is 40%.

Some Republicans in Congress are still pursuing full repeal of the estate tax. However, many others on both sides of the political aisle believe the compromise reached in ATRA is about as good as is likely to be enacted in the current political environment.

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

The great amount of uncertainty that has surrounded the estate tax rules for the past few years has been confusing and frustrating to owners and investors (and prospective owners and investors) of real estate. While many policy makers were pleased with the 2001 Act's scheduled repeal of the estate and gift tax, others felt there should be some level of estate tax left in place, although with higher thresholds and lower tax rates. The provisions made permanent in ATRA of 2013 are a genuine compromise between the parties. Many in the real estate world have been very concerned that the rules were changing so rapidly and were so uncertain as to make planning practically impossible. While the ATRA of 2013 did not repeal the estate tax, it did put permanent rules into place, with a fairly generous exemption and a lower rate, compared with what would have been the case had Congress not acted.

### NAR Policy and Opposition Arguments:

NAR generally supported repeal of the estate tax but was opposed to certain other portions of the 2001 Act, such as the provisions that required the use of so-called "carryover basis." If repeal cannot be achieved, NAR supports the lowest possible rate (but in no event a rate higher than the maximum capital gains tax rate) and a substantial exclusion.

Proponents of estate tax repeal believe that individuals should be able to pass their property at death to whomever they wish without having to pay a tax. Others believe the estate tax harms economic growth and kills jobs by causing family-owned businesses to have to be liquidated to pay the tax.

Opponents of NAR policy believe that one of the reasons we have an increasing amount of inequality of wealth in our society is that the tax laws favor high-income and wealthy taxpayers, and that a more equitable public policy would assess a much higher rate of tax on accumulated wealth so that no as much of it is passed on to heirs.

### **Legislative/Regulatory Status/Outlook**

Now that a compromise on the estate tax has been enacted, repeal of the estate tax is a long shot in the short term. However, several bills have been introduced in the House of Representatives to repeal the estate tax.

### **Current Legislation/Regulation (bill number or regulation)**

H.R. 147, “The Death Tax Repeal Act” (Thornberry, R-TX)

H.R. 177, “The Death Tax Repeal Act” (Griffin, R-AR)

H.R. 483, “The Farmers Against Crippling Taxes Act” (Hudson, R-NC)

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## Health Insurance Reform Issue Summary

### **What is the fundamental issue?**

For roughly a decade, NAR surveys have indicated that approximately twenty-eight percent of REALTORS® have been uninsured in any given year. Consequently, NAR has advocated for reforms in the health insurance markets that the self-employed and small employers depend upon for coverage. Among the legislative approaches that NAR has supported are small business health options plans (SHOP), small business health plans (SBHPs) and association health plans (AHPs). NAR continued to represent the interests of the REALTOR® community during the comprehensive health reform debate and the subsequent Affordable Care Act rulemaking.

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

Lacking affordable health insurance, many REALTORS® and other self-employed individuals have been unable to seek necessary medical attention and/or face significant financial burdens when they or their dependents need medical care. Without health insurance underwriting and rating reforms, problems with the availability and affordability of health insurance can undermine the ability of many to continue in their chosen careers.

### **NAR Policy and Opposition Arguments:**

NAR supports health insurance reforms that address the access and affordability problems that the self-employed and small employers face when looking for health coverage. While NAR did not take a position on the Affordable Care Act, NAR did participate in the debate to ensure that the interests of the self-employed, independent contractor and small businesses were represented.

Supporters of NAR's position have long argued that the state regulated health insurance delivery system is broken and does not meet the needs of the small business community, especially the self-employed. The self-employed and the owners and employees of small businesses are widely recognized as the largest source of new American jobs and much of the technological innovation from which our economy has benefited. Without change to underwriting and rating rules, problems with the availability and affordability of health coverage have and will continue to threaten the ability of workers to be self-employed.

Opponents of federal actions to address the need for health insurance reforms believe that insurance reform is the rightful purview of state government. Since the passage of the McCarren-Furgeson Act, state government has had the responsibility for insurance market regulation.

NAR's health reform policy principles include:

1. The nation and its health care system are best served by having all citizens covered by health insurance.
2. Health care coverage and/or insurance should be made available to all.
3. Individuals should have health care coverage that is continuous, i.e. allows for no gaps in coverage.
4. Individuals should have the ability to choose their preferred health insurance plan from an array of policy options that offer choices in the scope of covered services and policy costs.
5. Health care coverage should enhance health and well-being by providing preventive health services and chronic disease management services.



6. The health care delivery system must provide cost effective, quality care in an efficient and timely manner in order to be affordable and sustainable for society. Cost containment, therefore, must be a component of any reform effort.
7. A “single payer” health care system in which the government pays for and allocates health care services should be opposed.
8. Employers should not be required to offer employee health insurance programs.

### **Legislative/Regulatory Status/Outlook**

Having survived legal challenges to the constitutionality of the Affordable Care Act, January 2014 marks the beginning of the implementation of the law's underwriting and rating reforms, as well as the individual mandate that requires most U.S. residents to demonstrate that they have health insurance coverage that meets the law's requirements for minimal essential benefit coverage. The law's employer mandate, i.e. the requirement that large employers (50 or more full time employees) provide health insurance coverage for salaried employees, will take effect in 2015.

The underwriting reforms now in effect are of significant importance to those who purchase their own coverage. Unlike previous years, insurance companies can no longer deny coverage to an applicant on the basis of their health status, preexisting conditions, past claims, age, gender, line of work or any of the multitude of factors that the states have allowed insurers to routinely use to deny an applicant. Insurance pricing policies can now only take into account the applicant's place of residence, age, number of covered individuals, level of coverage chosen and tobacco usage.

For more information on the implications of the new rules for NAR members, NAR has published a series of articles and resources that can be found at: <http://www.realtor.org/topics/health-care-reform>.

The ACA placed the responsibility on the states for creating the Health Exchange marketplaces that serve as the new insurance marketplace for individual and small business insurance coverage. States had until Spring 2013 to decide whether to create a state-run Exchange or allow the federal government to create and run the Exchange for their states. To date, 27 states opted to let the federally-run exchange serve as their state's exchange. The National Conference of State Legislatures has a map showing the decisions made by each state; it can be accessed at <http://www.ncsl.org/?tabid=21388>.

Access to both the federal and state run exchanges can be found at [www.healthcare.gov](http://www.healthcare.gov) which serves as a portal for all exchanges.

After a rocky and problem-filled rollout in October, the federal and state exchanges have enrolled 2.2 million individuals. An additional number of individuals have obtained coverage through their state's expanded Medicaid programs.

### **Current Legislation/Regulation (bill number or regulation)**

There is no pending legislation at this time.

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## Immigration Reform Issue Summary

### **What is the fundamental issue?**

With nearly 12 million undocumented immigrants in the United States, a porous border that raises national security concerns, and substantial economic implications, immigration and visa reform has been discussed for many years. The last successful major overhaul of immigration laws took place in 1986.

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

The real estate industry benefits from a number of current visa programs that allow for tourism and foreign investment in U.S. residential and commercial real estate markets. Stable, prosperous, and secure communities enhance the nation and make it a destination of choice for those seeking to own, transact, lease and use real property.

### **NAR Policy and Opposition Arguments:**

NAR policy supports the rights of foreign citizens to own U.S. real property, opposes laws/regulations that impede that the free flow of capital, urges resolution of the undocumented immigration issue, as well as enactment of visa reforms that encourage investment in U.S. real property for business or personal reasons.

Comprehensive immigration reform has the potential to impact the economy, including commercial and residential real estate markets, in a positive manner. Foreign investors and immigrants who make a capital investment in real property and businesses that may help stimulate, stabilize, and strengthen real estate markets across the nation should be encouraged to invest and allowed to spend longer periods of time in the United States. In addition, some have argued that resolving the status of undocumented residents already in the United States has the potential to boost the national and regional economies as those individuals are able to openly seek work, invest and purchase homes and property.

Opponents of immigration reform believe that the U.S. must first address concerns with border security before the broader issue of visa or immigration reform are undertaken. Concerns can also be raised about the fairness of visa and immigration reforms for American workers amid fears that both high and low skilled workers would be displaced by foreign populations. Additionally, some argue that proposals to create new visas for foreign investors and home purchasers amount to the U.S. incentivizing foreign persons to "buy" a visa to live permanently in the United States.

### NAR's Principles for Immigration Reform:

1. The rights of foreign citizens to acquire, own and sell U.S. real property and the right of U.S. citizens to acquire property outside of the U.S.;
2. The free flow of international capital for real estate and opposes laws and regulations that impede that flow;
3. Application of the same set of rules under the U.S. tax system to all resident owners of U.S. real estate;
4. Organized real estate's involvement in the immigration reform debate to the extent necessary to support the creation of thriving communities and enhance the U.S. as a destination of choice for those seeking to own transact, lease and use real property;
5. Timely federal resolution of undocumented immigration that includes (i) securing U.S. borders to prevent illegal entry, (ii) allowing for the flow of legal immigration to



accommodate the labor needs of the US economy, and (iii) settling the status of undocumented immigrants in a way that acknowledges their presence in the U.S., their role in the economy, and their historic contribution to U.S. society; and

6. Visa reforms that encourage foreign investment in U.S. residential and commercial properties.

### **Legislative/Regulatory Status/Outlook**

Immigration reform remains a top priority of the Administration and many in Congress. In 2013, a bipartisan group of eight Senators introduced a comprehensive immigration reform bill, S. 744, “The Border Security, Economic Opportunity, and Immigration Modernization Act.” The so-called “Gang of Eight” includes Senators Charles Schumer (D-NY), John McCain (R-AZ), Richard Durbin (D-IL), Lindsey Graham (R-SC), Robert Menendez (D-NJ), Marco Rubio (R-FL), Michael Bennet (D-CO), and Jeff Flake (R-AZ). The bill was approved by the full Senate in 2013.

While the bill is truly a comprehensive reform measure, a number of real estate-related provisions are of particular interest to NAR. These include language that permanently reauthorizes the EB-5 immigrant investor regional center pilot program; makes changes to the H-2B visa program which is important to the economies of many second home and resort communities; and creates two new non-immigrant retiree visas.

The retiree visa provisions contained in the bill were first proposed in 2011/2012 by Senators Schumer (D-NY) and Lee (R-UT) as a part of two bills: S. 1746, “The Visa Improvements to Stimulate International Tourism to the United States of America Act (VISIT-USA Act),” and S. 3199, “The Jobs Originated through Launching Travel Act of 2012 (JOLT Act).”

S. 744 creates (1) an non-immigrant Canadian retiree visa that would allow Canadians 55 years and older who have a rental agreement for lodging or own a U.S. home in the U.S. to stay as long as 240 days each year, and (2) an non-immigrant retiree visa for foreign nationals 55 years of age or older who purchase a principal residence (or a personal residence plus other residential properties) valued at \$500,000 or more and who agree to stay in the US for a period of not less than 180 days per year.

The Senate bill was sent to the House for consideration but has not been taken up and is not expected to be considered. Rather the House Judiciary Committee has considered a series of immigration-related single issue bills. In mid-January, it was reported that House Republican leaders are within weeks of releasing their own set of comprehensive immigration reform principles. At this time the outlook for successful consideration is unclear.

### **Current Legislation/Regulation (bill number or regulation)**

S. 744, “The Border Security, Economic Opportunity, and Immigration Modernization Act” (Schumer, D-NY; McCain, R-AZ)

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## **Internet Sales Tax Fairness Issue Summary**

### **What is the fundamental issue?**

In 1992 the U.S. Supreme Court ruled in *Quill Corporation v. North Dakota* that complex state and local sales tax rules were a burden to interstate remote retailers, and therefore, Internet and catalog retailers should be exempt from collecting sales taxes unless they have a physical presence, such as a store or warehouse, in the purchaser's state. Burden to remit sales tax on Internet and catalog purchases has fallen on the consumer, who is usually unaware of the responsibility. The Supreme Court also stated that "Congress may be better qualified to resolve [the problem]." But for the last two decades, Capitol Hill has not taken action.

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

While consumers are required under state laws to pay sales and use taxes on the goods they purchase, online sellers are not required to collect the tax in the same way that local businesses do. This unequal treatment puts local "brick-and-mortar" businesses at a competitive disadvantage. The resulting pressure on established retail districts and historic downtowns can adversely affect overall economic sustainability in a community, and can also lead local jurisdictions to attempt to make up the lost revenue by increasing property taxes.

### **NAR Policy and Opposition Arguments:**

NAR supports the passage of legislation to level the sales tax playing field for all retailers.

Supporters of legislation to level the sales tax playing field argue that Internet and other remote sellers are often physically located far from their customers, and thus do not pay property and other taxes to help support the local infrastructure of the communities in which the customers live. "Brick-and-mortar" retailers do pay these taxes, and this fact should not put them at a competitive disadvantage.

Opponents of NAR policy will say that imposing sales tax collection burdens on small Internet merchants will add a heavy burden of complexity and be costly and could drive some of them out of business. Others argue that even though consumers are already subject to use taxes on goods purchased from remote sellers, forcing sales tax collection is tantamount to a tax increase since the current law levy is largely unenforceable.

### **Legislative/Regulatory Status/Outlook**

Since the *Quill* ruling, 24 states have simplified their sales tax systems through the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA provides one uniform system to administer and collect sales tax, eliminating the burden of the country's diverse sales tax systems on retailers. However, because this is a matter of interstate commerce, Congressional authorization is still required to allow states to collect taxes from out-of-state sellers and online retailers.

On February 14, 2013, S. 743, "The Marketplace Fairness Act," a bipartisan bill, was introduced by Senators Enzi (R-WY), Alexander (R-TN), Heitkamp (D-ND) and Durbin (D-IL). That same day in the House of Representatives, Rep. Womack (R-AR) introduced H.R. 684, a companion bill to the Senate's. This legislation would assist states in collecting uncollected state sales and use taxes due on Internet and other remote purchases. It will also level the playing field for traditional "brick-and-mortar" businesses which have faced an unfair price disadvantage against online sellers due to sales taxes.

On May 6, 2013, the Senate passed S. 743 by a vote of 69-27. The legislation is now before the House Judiciary Committee, where it faces a less certain future. Many observers, however, believe that the House will pass the bill before the end of 2014. NAR will continue to monitor and support the bill as it progresses.

**Current Legislation/Regulation (bill number or regulation)**

S. 336, “Marketplace Fairness Act of 2013” (Durbin, D-IL; Enzi, R-WY)

H.R. 684, “Marketplace Fairness Act of 2013” (Womack, R-AR; Speier, D-CA)

S. 743, “Marketplace Fairness of Act of 2013” (Durbin, D-IL; Enzi, R-WY)

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## Lead Paint Issue Summary

### **What is the fundamental issue?**

Under the Residential Lead-Based Paint Hazard Reduction Act, the EPA has regulated renovation, repair and painting (RRP) activities in pre-1978 residential buildings. Currently, the Agency is considering extending those rules to all commercial buildings but first is required to determine that RRP activities create a lead hazard that harms children.

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

The law requires real estate professionals to obtain and disclose information on known lead paint hazards in homes. Residential property managers must spend more on staff that now must be EPA certified in lead-safe renovation procedures. The Agency may impose the same regulatory burden on commercial building managers if data show their RRP activities pose a child lead hazard.

### **NAR Policy & Opposition Arguments:**

NAR opposes mandatory testing for lead-based paint tied to the transaction process and supports property condition disclosure and education.

Owners of office buildings, factories or other properties where children don't live or play should be allowed to opt out of mandatory testing for lead-based paint when repairs and renovations are undertaken. Unlike residential housing, children do not spend significant time in these properties. Forcing commercial properties to hire more specialized and expensive contractors to provide routine repairs and maintenance without any public health benefit is unnecessary.

Opponents of NAR's policy assert that more regulations are necessary to protect pregnant women and children from lead paint poisoning caused by property renovations, including those present in commercial properties. While both groups may spend less time in these properties, ANY risks THAT do exist should be minimized, especially given the significant health risk that lead poisoning presents for both.

To learn more visit: [www.realtor.org/topics/lead-based-paint](http://www.realtor.org/topics/lead-based-paint)

### **Legislative/Regulatory Status/Outlook**

On April 22, 2010, the EPA issued the residential RRP regulations to certify renovators/remodelers in lead-safe procedures. NAR has on-going concerns with this rule, including:

- Elimination of the "Opt-out" provision that previously exempted low-risk property owners from the rule — for example, elderly and childless couples.
- EPA's inability to certify a Lead Paint Test Kit which would enable RRP contractors to quickly and inexpensively exclude any home that does not have lead paint.

Currently, EPA is considering extending the residential regulations to all commercial buildings. Originally, the Agency had suggested basing its determination solely on residential RRP data, but as part of a broad coalition, NAR submitted extensive comments questioning the scientific basis for such an approach, and Congress held oversight hearings. The Agency has since reversed course and issued a request for that data.

Most recently, 51 bipartisan members of the House urged the EPA to collect data from commercial buildings to write an effective rule. A public hearing on the hazard determination was held June 26,

2013. NAR, along with a number of other regulated stakeholder organizations, testified and expressed concerns regarding the costs of implementing a residential RRP program in a commercial building context. EPA is now estimating a proposed rule for both the exterior and interior of commercial buildings in the summer of 2015.

NAR is working closely with a coalition of regulated stakeholders to develop data and information that will inform EPA's development of a hazard determination and, if necessary, a proposed rulemaking.

On March 6, 2013, Sen. Inhofe (R-OK) introduced S. 484 to restore the “Opt-out” in the residential RRP rule and direct EPA to collect the requisite health data for a commercial rule.

NAR has also provided comprehensive information to REALTORS® on RRP regulatory compliance and will continue to communicate with the EPA on how the residential and commercial rules will impact REALTORS®, property managers and contractors.

**Current Legislation/Regulation (bill number or regulation)**

S. 484, “Lead Exposure Reduction Amendments Act of 2013” (Inhofe, R-OK)

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## Lease Accounting Issue Summary

### **What is the fundamental issue?**

The Financial Accounting Standards Board (FASB) and International Accounting Standards Board (IASB) proposed lease accounting changes that would reduce the overall borrowing capacity of many commercial real estate lessees and lessors. The proposal would bring nearly \$1.3 trillion in leased assets back onto companies' balance sheets, with roughly 70% being real estate leases. Under the proposal, companies would be required to use a "right-of-use" accounting model where both lessees (renters) and lessors (property owners) recognize assets and liabilities arising from lease contracts. Currently, accounting rules allow many businesses to classify leases as operating expenses, which do not appear on their balance sheets. Both FASB and IASB believe these changes would improve transparency as well as provide investors with more consistent and concise financial reporting. However, if enacted, this proposal could negatively impact the financial stability of many businesses, which could prolong our nation's economic recovery.

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

If ratified, this proposal would hurt businesses of all sizes, especially lessees and lessors of commercial real estate. With more bloated balance sheets, some companies may see their debt-to-equity ratios increase and find it more difficult to obtain credit, especially those with heavy debt loads or still recovering from the recession. The proposed accounting changes could also complicate compliance with debt covenants or agreements between the bank and borrower, which usually prohibit companies from borrowing more than they are worth. By capitalizing new and/or existing leases, some businesses could show more debt than allowed in their agreement with the lender, and therefore be in default of their loan. This could force some firms to put up more capital for existing loans or even have their credit lines revoked.

Additionally, the elimination of off-balance-sheet financing would be detrimental to commercial property owners. More frugal lessees will want less space and shorter-term leases without renewal options or contingent rents, which will decrease cash flow for property owners. Shorter-term rents will likely reduce the borrowing capacity of many commercial real estate lessors, who rely on leases and the value of the property as collateral in order to obtain financing. Ultimately, property owners would be forced to increase rent rates due to market uncertainty and reduce tenant improvements due to shorter recovery periods. Conversely, this change could encourage some firms to consider buying instead of leasing commercial real estate.

### **NAR Policy and Opposition Arguments:**

NAR believes the new lease accounting proposal will be detrimental to our nation's economy. Also, NAR is opposed to lease accounting standards changes that would treat the income producing real estate business as a financing business on company balance sheets.

The new lease accounting proposal reduces the overall borrowing capacity of many commercial real estate lessees and lessors, by requiring them to recognize leases on their balance sheets as liabilities and assets, as opposed to their current treatment as operating expenses, which are not reflected on balance sheets. Including leases on balance sheets may have the effect of "bloating" them, and some companies may see their debt-to-equity ratios increase as a result, making it more difficult for them to get credit. Treating income producing real estate business as a financing business on company balance sheets will not accurately depict the unique characteristics of the investment real estate sector and in turn discounts the usefulness of the industry's financial statements.

Opponents of NAR policy believe that real estate should not get special treatment over other asset types. Thus, they believe, all assets, including real estate should be reflected on company balance sheets.

**Legislative/Regulatory Status/Outlook**

FASB/IASB will likely finalize their proposal in 2014. The effective date of this proposal will likely be in 2017, where virtually all new and outstanding leases would be subject to the new accounting standard. NAR continues to work with FASB/IASB and other stakeholders to ensure that any modifications to lease accounting rules will not negatively impact commercial real estate practitioners.

**Current Legislation/Regulation (bill number or regulation)**

No actions at this time.

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## Mortgage Loan Limits Issue Summary

### **What is the fundamental issue?**

The mortgage loan limits for the GSEs (Freddie Mac and Fannie Mae) and for FHA are critical to providing liquidity in today's housing market. In 2008 Congress set the permanent limits for Freddie Mac and Fannie Mae (the GSEs) as well as FHA at 115% of local area median home price, with a high cost limit of \$625,500. On October 1, 2011, the GSE loan limits reduced from \$729,750 to \$625,500 in high cost areas, and from 125% to 115% of local median home price. On January 1, 2014, the FHA limits declined to the same levels.

In December, the regulator of the GSEs, the Federal Housing Finance Agency (FHFA), formally requested comments on a proposal to further reduce the limits for Freddie Mac and Fannie Mae to \$400,000 (from \$417,000) nationwide and to \$600,000 (from \$625,000) in high cost areas.

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

With the tight constraints on mortgage availability, lowering the FHA/Fannie Mae/Freddie Mac loan limits would only further restrict liquidity. Even with the higher limits, borrowers are finding it more and more difficult to find affordable mortgage options. Making the limits permanent at levels appropriate in all parts of the country will provide homeowners and homebuyers with safe, affordable financing and help stabilize local housing markets.

### **NAR Policy and Opposition Arguments:**

NAR supports reliable loan limits to provide security and consistency to the marketplace.

Providing access to credit for all communities during all economic times is a hallmark of our federal housing policy. Appropriate loan limits for FHA, Freddie Mac and Fannie Mae (GSEs) are, and will continue to be, a critical factor in ensuring access to safe and affordable mortgage financing in all areas and all markets. Reducing limits will constrict liquidity to housing markets, and homebuyers.

Opponents of NAR policy believe the mortgage loan limits are far too high and would like to reduce them relative to current housing prices. They believe the limits should be routinely adjusted – both up and down – to conform to housing price levels. Further, they believe that higher limits only continue to shut out private return to the mortgage marketplace.

### **Legislative/Regulatory Status/Outlook**

In September 2013, reports surfaced that FHFA Acting Director Edward DeMarco was considering using conservator authority to lower loan limits. NAR cautioned that such an experiment would jeopardize homeownership for many credit worthy buyers, especially first-time home buyers who are less likely to meet the 20% minimum down payment requirement. NAR sent a letter to FHFA opposing such a move and questioning their legal authority without Congressional action. NAR worked with Congress and 66 members of the House of Representatives as well as 13 Senators followed with their own letter of opposition. NAR also joined a coalition to oppose the change.

On November 26, 2013, NAR welcomed an announcement from FHFA that the current limits on conforming loans will remain in effect until further notice. However, on December 16<sup>th</sup>, the FHFA issued a request for comments on reducing the loan limits to a national floor of \$400,000 and a high cost limit of \$600,000. Comments are due by March 20, 2014. NAR will respond to this request,



and oppose such a change - again questioning their legal authority to do so, and urging them not to disrupt our housing recovery.

In December 2013, FHA published their new loan limits for loans with case numbers assigned after January 1, 2014. Due to federal law, these limits declined to 115% of local area median price (from 125%) and the high cost limit declined to \$625,500 from \$729,750. However, in many areas the decline was more than expected. NAR, in coalition with other industry groups, sent a letter to HUD Secretary Shawn Donovan expressing concern with the department's recent announcement of substantial reductions in FHA loan limits in numerous counties across the country. NAR was granted an extension of the appeals process for local limits through January 31, 2014. But on January 10, 2014, NAR, in coalition with other groups, sent FHA a letter asking they revert to the pre-crisis policy of allowing appeals for all communities at all times. We believe communities should be able to demonstrate the need for higher limits based on local sales data and should not be constrained. NAR continues to work with HUD and Congress on this issue.

**Current Legislation/Regulation (bill number or regulation)**

On December 16th, the FHFA issued a request for comments on reducing the loan limits to a national floor of \$400,000 and a high cost limit of \$600,000. Comments are due by March 20, 2014. Federal Housing Finance Agency, No. 2013-N-XX.

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## Multifamily Housing Development & Insurance Issue Summary

### **What is the fundamental issue?**

FHA's multi-family loan programs provide insurance that assists both the private and public sectors to finance the construction, purchase and rehabilitation, or the refinancing of rental housing projects, condominiums, and cooperatives.

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

Affordable rental housing is the first step on the housing ladder for many Americans.

### **NAR Policy and Opposition Arguments:**

NAR recognizes the need to maintain the viability of federal multi-family housing programs and to increase the availability and affordability of rental housing. Without federal involvement, such financing can be difficult to find in the private market. Especially for low-income renters, and in communities experiencing economic distress, such financing is often unavailable in the private market. We encourage the removal of policy and program disincentives that inhibit owner participation in the development of new rental housing or the preservation of existing safe and affordable rental housing.

Opponents of NAR policy believe the private market is well positioned to serve the rental housing needs of American families. They also believe that federal resources are not necessary to provide access to financing for these programs.

### **Legislative/Regulatory Status/Outlook**

The need for affordable rental housing continues to be great. In recent years, FHA's role in the multifamily market has increased dramatically – nearly 4 times its size from just several years ago. As lenders remain slow to provide financing for construction loans, FHA is the primary source of construction for multifamily developers and owners. FHA has implemented a number of new procedures and requirements for its multifamily loans. They have strengthened underwriting by changing ratios and increasing documentation. They have also implemented a number of oversight and risk-management provisions. As demand continues to be high, we urge FHA to look for ways to streamline procedures.

High rise construction costs are significantly different than garden-style apartments. Yet the loan limits for the two are nearly the same. Because the so-called “elevator” limits are so low, many urban areas have not had any properties endorsed with FHA multifamily insurance in the last several years. We urge Congress to pass legislation to increase the elevator loan limits for multifamily to assure all our nation's families can find affordable rental housing.

### **Current Legislation/Regulation (bill number or regulation)**

No actions at this time.

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## Natural Disaster Policy Issue Summary

### **What is the fundamental issue?**

Insurers have responded to recent natural disasters by raising insurance rates or declining to write policies. NAR supports development of a forward-looking national policy that improves access to affordable property insurance nationwide.

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

Without federal involvement, affordable property insurance will continue not to be available in many parts of the U.S. to protect against the next mega-catastrophe caused by a hurricane, earthquake, or other Act of God. Without insurance, it is the taxpayer -- not the property owner -- that pays when Congress reacts to the latest disaster by providing millions of dollars in financial disaster assistance to rebuild under-insured properties and communities.

### **NAR Policy & Opposition Arguments**

NAR supports the development of a federal natural disaster policy that promotes the availability and affordability of property insurance nationwide and provides for pre-disaster mitigation as well as post disaster assistance.

Proponents of NAR's position believe that a federal natural disaster policy would increase the number of property owners that are insured and therefore will not have to turn to the federal government for taxpayer-financed federal assistance after the next major natural disaster.

Opponents assert that the federal government is being asked to bailout billionaire beach mansions. However, billionaires are more likely to self-insure than rely on insurance from the federal government. On the other hand, the middle class families will not be able to afford insurance from the private market but will have no choice but to turn to the federal government for taxpayer financed rebuilding assistance after the next major disaster.

### **Legislative/Regulatory Status/Outlook**

NAR has adopted a multi-bill strategy to advance the natural disaster policy debate, including legislation that:

1. Protects property owners by ensuring that comprehensive and transparent insurance coverage is available and affordable all across the United States;
2. Acknowledges the importance of personal responsibility and smart land use decisions while providing for building codes and adequate incentives to undertake mitigation measures where appropriate; and
3. Recognizes the state's role in regulating property insurance markets and the federal government's in addressing mega-catastrophe as well as critical infrastructure including levees, dams and bridges.

In previous congresses, NAR has supported a range of legislation including bills to:

- Offer federal reinsurance or loan guarantees for qualified states as alternatives to a volatile global market that offers reinsurance at rates many times the expected loss; and
- Clarify insurance coverage under the NFIP where there is wind as well as flood damage.

This Congress, Reps. Albio Sires (D-NJ) and Dennis Ross (R-FL) have each introduced federal reinsurance alternatives that are consistent with NAR policy (H.R. 1101 and H.R. 240, respectively).

Together with the Protecting America Coalition, NAR is promoting these as viable approaches to achieve a forward-looking U.S. policy on natural disasters.

**Current Legislation/Regulation (bill number or regulation)**

H.R. 240, “Homeowners Insurance Protection Act of 2013” (Ross, R-FL)

H.R. 1101, “Homeowners and Taxpayers Protection Act of 2013” (Sires, D-NJ)

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## Net Neutrality Issue Summary

### **What is the fundamental issue?**

Net neutrality is shorthand for the concept that Internet users should be in control of what content they view and what applications they use on the Internet. More specifically, net neutrality requires that broadband networks be free of restrictions on content, sites, or platforms. Networks should not restrict the equipment that may be attached to them, nor the modes of communication allowed on them. Finally, networks should ensure that communication is not unreasonably degraded by other communication streams.

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

The business of real estate is increasingly conducted on-line. Streaming video, virtual tours and voice-over-internet-protocol are just some of the technologies that are commonly used by REALTORS® today. In the future, new technologies will be adopted which will no doubt require unencumbered network access.

Some real estate professionals, realty website operators and real estate industry affiliated content providers believe net neutrality provisions are necessary to prevent broadband providers (cable and telephone companies, primarily) from implementing possibly discriminatory practices that could negatively impact real estate professionals' use of the Internet to market their listings and services. Some possible examples include practices that would (1) limit the public's access to real estate websites, (2) limit a real estate firm access to online service providers who may be in competition with network operators' own services, e.g. Internet phone services, or (3) charging certain websites more for the broadband speeds necessary to properly transmit or display audio or video content such as online property tour, podcast or phone services.

### **NAR Policy & Opposition Arguments:**

NAR supports legislative and regulatory efforts to ensure that broadband providers adhere to net neutral practices.

The business of real estate is increasingly conducted on-line. Streaming video, virtual tours and voice-over-internet-protocol are just some of the technologies that are commonly used by REALTORS® today. Net neutral practices will be essential to ensure that REALTOR® content may be freely and efficiently distributed online.

Opponents of network neutrality fear that excessive regulation of Internet Service Providers will create a disincentive to invest in new or additional Internet infrastructure ultimately leading to poor service for consumers.

### NAR Net Neutrality Principles:

1. Consumers are entitled to access the lawful Internet content of their choice;
2. Consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement;
3. Consumers are entitled to connect their choice of legal devices that do not harm the network;
4. Consumers are entitled to competition among network providers, application and service providers, and content providers;

5. Network providers should not discriminate among internet data transmissions on the basis of the source of the transmission as they regulate the flow of network content;
6. Broadband providers must be transparent about the service they provide and how they run their network and;
7. These principles should apply to both wireless and wireline networks.

### **Legislative/Regulatory Status/Outlook**

On December 21, 2010 the Federal Communications Commission (FCC) issued new rules on net neutrality. Under these rules, wired broadband providers are "prohibited from blocking lawful content, applications, services and the connection of nonharmful devices to the network." Wireless broadband providers, however, are allowed more flexibility, reflecting the technical limitations on the amount of traffic a wireless network can handle. Both wired and wireless broadband providers are subject to transparency requirements, which require them to let consumers know how they manage network activity. The new rules also allow internet service providers to charge usage-based fees for broadband, so customers using more bandwidth may be charged more for service than customers using less bandwidth.

On January 14, 2014, the U.S. Court of Appeals for the District of Columbia ruled that key elements of the FCC's 2010 Open Internet Order are invalid. By tossing out these rules, ISPs are now free to charge content companies higher fees to deliver Internet traffic faster or otherwise more efficiently. It remains to be seen what the response to this decision will be. The FCC may appeal the decision to the Supreme Court meaning that further litigation will delay the effects of the ruling. It is also possible that the FCC could reclassify broadband service as a common carrier thereby bringing ISPs within their regulatory authority. Finally, the FCC could decide to use what is called section 706 authority to police anti-competitive behavior on a case-by-case-basis.

NAR will work with FCC and/or Congress to ensure that our members continue to enjoy open Internet access.

### **Current Legislation/Regulation (bill number or regulation)**

N/A

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## Patent Litigation Reform Issue Summary

### **What is the fundamental issue?**

In 2011, Congress passed legislative reforms to patent law in response to growing concerns that the patent system was unable to deal with challenges presented by the ever growing number of patent applications being submitted and the increasing complexity of the technology for which a patent is being requested. In addition, the growing number of cases of licensing demands being made by holders of obscure software patents as well as number of patent lawsuits being filed pointed to the need for reform. Many in the tech industry believe that 2011's reforms did not adequately address the issue of "patent trolls" and that additional legislation is necessary to reduce the costs of litigation caused by "non-practicing patent entities."

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

The real estate industry is more and more dependent on the use of information technology and software products to market properties and manage their businesses. An increase in patent-infringement claims can drag unsuspecting real estate professionals into expensive and time-consuming litigation putting all REALTORS® at risk. The recent CIVIX lawsuit is a good example. CIVIX owns a very broad patent on any online service that provides "systems and methods for remotely accessing a select group of items from a database." As a result of this patent infringement lawsuit a number of MLSs have been required to pay licensing fees to this patent holder. Patent reform could help to more narrowly tailor patents and reduced the scope of future infringement lawsuits.

NAR has recently learned that several members have been sent draft complaints in a patent litigation suit involving their use of scanner copiers. News reports indicate the holder of these patents believe that 99% of businesses are violating their patent. New "trolls" pop up all the time and increasingly REALTORS® and MLSs are the subject of their demands to license bogus patents. The problem is only growing worse over time.

### **NAR Policy & Opposition Arguments:**

NAR believes that curbing questionable patent litigation is a needed reform. However, improving patent system transparency and patent quality are equally important. While the Patent Trademark Office (PTO) has taken important steps to improve the system, more work is needed.

Without needed reforms that assure that asserted patent rights are legitimate, the ability of businesses owned by REALTORS®, many of which are small businesses, to grow, innovate and better serve modern consumers will be put at risk.

Opponents argue that proposed reform could sweep in legitimate business practices, reduce the value of patent assets and chill innovation.

### **Legislative/Regulatory Status/Outlook**

The House overwhelmingly passed H.R. 3309, "The Innovation Act" (Goodlatte, R-VA) on December 5. In the Senate there is a package of bills introduced by Senators Leahy (D-VT), Hatch (R-UT), Schumer (D-NY) and Cornyn (R-TX) that await action (S. 1720, S. 1612, S. 866, S. 1013, respectively). The White House has signaled that it supports patent litigation reform.



**Current Legislation/Regulation (bill number or regulation)**

H.R. 845, “The SHIELD Act” (DeFazio, D-OR)

S. 866, “The Patent Quality Improvement Act” (Schumer, D-NY)

S. 1013, “The Patent Abuse Reduction Act” (Cornyn, R-TX)

S. 1612, “The Patent Litigation Integrity Act” (Hatch, R-UT)

S. 1720, “The Patent Transparency & Improvement Act” (Leahy, D-VT; Lee, R-UT)

HR 3309, “The Innovation Act” (Goodlatte, R-VA)

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## Qualified Mortgage (QM)/Ability to Repay Issue Summary

### **What is the fundamental issue?**

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, no creditor may make a mortgage loan without making a reasonable and good faith determination that the borrower has the ability to repay (ATR). The principal way lenders are expected to comply with this standard is by making a "Qualified Mortgage" or QM as it has become known. The rule implementing the statute went into effect on January 2014. The QM rule includes the Ability to Repay (ATR) elements and a few other items deemed to make the loan "safer" for consumers and is designed to capture most of the loans made in recent years. Nevertheless, concerns remain regarding the treatment of some lenders and also some of the standards in the rule itself.

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

If the QM rule tightens credit further, it will negatively affect the ability of borrowers to access affordable mortgage credit. It will also affect consumers' ability to choose which lender they want as some lenders are treated differently than others under the rules 3% cap on fees and points. Lenders who are affiliated with real estate, title, and insurance companies have to count more towards the cap than lenders who are not affiliated.

### **NAR Policy & Opposition Arguments:**

NAR supports a definition of QM and fees and points that promotes mortgage liquidity and availability. The QM should be broad based and cover a wide range of traditionally safe products and reliable underwriting criteria and should not discriminate against lenders with affiliates. NAR supports adjustments to the QM rule should its implementation result in significantly reduced access to credit or increased costs to consumers.

A definition of QM that only includes fees and point charged directly to the consumer will promote liquidity and consumer choice. Also, CFPB should be flexible and make adjustments to such things as 43% DTI cap if it is shown that access to credit has been reduced or has become unduly costly.

Opponents of NAR policy believe that a definition of QM that has a narrow definition of fees and points will not control profits and prices in the title industry. Also, the 43% DTI cap is appropriate and does not mean consumers will not get loans. Those loans will just not be QMs.

### **Legislative/Regulatory Status/Outlook**

The final rule to implement the ability-to-repay requirements was published by the Consumer Financial Protection Bureau (CFPB) in January 2013. The final rule went into effect in January 2014. NAR issued comments and advocated for significant changes in the definition of fees and points to ensure consumer access and greater choice amongst mortgage providers. NAR is also seeking legislative changes to reduce discrimination against affiliates.

### **Current Legislation/Regulation (bill number or regulation)**

The ability-to-repay requirements were added as section 129C of the Truth in Lending Act (TILA) by the Dodd-Frank Act. TILA regulations are found at 12 CFR Part 226.

H.R. 3211, "The Mortgage Choice Act" (Huizenga, R-MI; Scott, D-GA)  
S. 1577, "The Mortgage Choice Act" (Manchin, D-WV; Johanns, R-NE)

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## Qualified Residential Mortgage (QRM)/Risk Retention Issue Summary

### What is the fundamental issue?

The Dodd-Frank Act requires lenders that securitize mortgage loans to retain 5% of the credit risk unless the mortgage is a Qualified Residential Mortgage (QRM) or is otherwise exempt. Six federal regulators originally issued a proposed rule that narrowly defined a QRM to require a 20% down payment, stringent debt-to-income ratios, and rigid credit standards. Late 2013, the rule was re-proposed to match the definition of a “QRM” with the definition of “QM”. In addition to the main proposal, regulators introduced an unfavorable alternative that would require buyers to put 30 percent down to qualify for a QRM loan, a restrictive measure that dramatically favors the wealthy. NAR advocates for adoption of the preferred standard which is in line with the congressional intent of a QRM exemption that includes a wide variety of traditionally safe, well documented and properly underwritten products.

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

If the regulators adopt a narrow QRM definition in the final rule, it could create significant barriers for millions of home buyers to qualify for low-cost financing, and could potentially frustrate efforts to stabilize the housing market. A majority of borrowers would be subject to higher-cost non-QRM loans. GSE loans, while Fannie Mae and Freddie Mac are in conservatorship, and FHA loans would be exempt from risk retention, so the impact will not be seen for some time.

### NAR Policy & Opposition Arguments:

NAR believes that Congress intended to create a broad QRM exemption. The purpose of the QRM exception from the risk retention requirement is to encourage safe, reasonably priced lending, not to raise costs for millions of creditworthy borrowers.

NAR and those who share its perspective argue that the definition of a QRM should be based on loan features and underwriting standards that have historically demonstrated a low risk of default, including loans with downpayments less than 20% (with mortgage insurance), sound underwriting, and documentation of income and assets. Loans with risky features such as teaser rates, negative amortization, and balloon payments should not qualify as QRM loans.

Opponents of NAR policy believe lenders should have more “skin in the game” when securitizing mortgages. This will promote safe and sound lending and assure investors they will be protected.

To learn more visit: [www.realtor.org/topics/qualified-residential-mortgage-and-risk-retention](http://www.realtor.org/topics/qualified-residential-mortgage-and-risk-retention)

### Legislative/Regulatory Status/Outlook

The deadline for public comments on the re-proposed Risk Retention/QRM rule was October 30, 2013. NAR and its nearly 50 partners in the Coalition for Sensible Housing Policy submitted joint comments to the regulators in a White Paper entitled “Proposed Qualified Residential Mortgage Definition Harms Creditworthy Borrowers While Frustrating Housing Recovery.” NAR submitted its own individual comment on October 30, 2013. The Senate sponsors of the QRM provision strongly support the message of the Coalition. A majority of the members of both the House and Senate have sent letters to the regulators opposing the original proposed rule. The final rules take effect one year after the final rules are published (date not known).

NAR's Comment on Risk Retention/QRM Proposed Rule (August 1, 2011)

NAR's Comment on Re-Proposed Risk Retention/QRM Rule (October 30, 2013)  
Coalition for Sensible Housing Policy Webpage (<http://sensiblehousingpolicy.org/>)

**Current Legislation/Regulation (bill number or regulation)**

The Risk Retention/QRM proposed rule was issued pursuant to Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. It was published on August 28, 2013, by six banking and housing agencies: the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Securities and Exchange Commission (SEC), the Office of the Comptroller of the Currency (OCC), the Department of Housing and Urban Development (HUD), and the Federal Housing Finance Agency (FHFA).

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## RESPA/TILA Harmonization Issue Summary

### **What is the fundamental issue?**

The Consumer Financial Protection Bureau (CFPB) is undertaking an effort to harmonize Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) disclosures and regulations.

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

The outcome of this process could simplify the disclosure and settlement process if done properly. However, if not done properly, it could add time, costs, and confusion to the settlement process with little, no, or negative consumer benefit.

### **NAR Policy & Opposition Arguments:**

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 would benefit settlement service providers and consumers and improve the settlement process.

Opponents of NAR policy believe that each burden imposed by the separate laws is necessary to ensure that consumers are adequately protected.

### **Legislative/Regulatory Status/Outlook**

A proposed rule was issued on July 9, 2012. The final rule was issued November 20, 2013. The CFPB largely addressed NAR's major concerns that a proposed 3-day waiting period would delay closings. CFPB also dropped many provisions including the "all in" APR that would have been problematic at best. The rule takes effect in August of 2015, giving industry and CFPB significant time to fine tune the rule and implement the changes.

NAR submitted comments on the proposed rule's harmonization provisions on November 5, 2012.

### **Current Legislation/Regulation (bill number or regulation)**

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

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## Rural Housing Programs Issue Summary

### **What is the fundamental issue?**

Rural families face unique difficulties in finding access to safe, affordable mortgage financing. Programs like the Rural Housing Section 502 loan program are instrumental in providing opportunities for homeownership for these families. Section 502 loans can be used to build, repair, renovate or relocate a home, or to purchase and prepare sites, including providing water and sewage facilities. These loans are funded by private lenders, and simply insured by the Rural Housing Service (RHS).

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

Rural housing programs provide much needed affordable mortgage financing to unserved markets and are instrumental in providing affordable housing opportunities to low and moderate-income rural homebuyers.

### **NAR Policy and Opposition Arguments:**

NAR supports federal programs for home loans, rental development and rental assistance, including those of the RHS. NAR believes the current definition of “rural” needs to be updated, and that currently eligible communities should be retained.

Rural families face unique difficulties in finding access to safe, affordable mortgage financing, and affordable rental options in short supply in rural America. Fully funding the Rural Housing Service’s programs is critical to the more than 17 million Americans living in rural communities. The current definition of “rural” is 40 years old and must be reformed in a thoughtful, reasoned way, taking into consideration the rural characteristics of local communities.

Critics believe that the private market is the best provider of mortgage finance and rental housing. They believe the current definition of “rural” is too broad and needs to be severely constrained.

### **Legislative/Regulatory Status/Outlook**

Under current law, the United States Department of Agriculture (USDA) must revise the list of communities eligible for Rural Housing Service (RHS) Section 502 loans based on the 2010 census data. Under the law, USDA must begin using a definition not updated since 1974 which requires eligible communities to: 1) be outside of a metropolitan statistical area (MSA), 2) be “rural in character”, 3) have a serious lack of mortgage credit, and 4) have a population under 20,000. This is expected to make more than 900 communities nationwide ineligible for the program. NAR has been successful in delaying this implementation. Currently the law will expire on September 30, 2014. The Section 502 program is self-funded and budget neutral, meaning that broadening the population definition will not place additional financial burden on American taxpayers.

NAR also supports legislation to extend current definitions until the next census. Rep. Fortenberry (R-NE) has introduced H.R. 858, the “Rural Housing Preservation Act of 2013” that would grandfather existing communities through 2020. Senators Johnson (D-SD) and Roberts (R-KS) have introduced S. 766 which will grandfather existing communities through 2020 and also increase the population threshold to 35,000 (for existing communities). This legislation is currently included in the Senate-passed FARM bill that is currently in conference. NAR continues to advocate for this legislation, and hopes to work with Congress to update the definition of “rural” for using in housing programs.

**Current Legislation/Regulation (bill number or regulation)**

H.R. 858, “The Rural Housing Preservation Act of 2013” (Fortenberry, R-NE)

S. 766, A bill to amend section 520 of the Housing Act of 1949 to revise the census data and population requirements for areas to be considered as rural areas for purposes of such Act.

(Johnson, D-SD; Roberts R-KS)

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## Short Sales Issue Summary

### **What is the fundamental issue?**

NAR has been actively pushing the lending industry to improve the process for approving short sales. In a direct response to REALTOR® concerns, the Treasury Department developed a new program, the Home Affordable Foreclosure Avoidance Program (HAFA), to establish uniform procedures, forms, and deadlines for short sales. Since the development of the HAFA program, both Fannie Mae and Freddie Mac, as well as a number of servicers, have implemented standardized processes and procedures to improve the speed and efficiency of short sale transactions.

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

Too often, short sales are still a story of delay and unrealistic views of current home values, resulting in the potential buyer cancelling the contract and the property going into foreclosure. Enormous amounts of time are spent on potential short sales that result in foreclosures. Even if successful, the process usually takes many months and countless hours and often requires re-marketing because buyers lose patience and terminate the contract. Streamlining short sales will reduce the amount of time it takes to sell the property, improve the likelihood the transaction will close, and reduce the number of foreclosures. This will benefit the lender, the seller, the buyer, the community.

### **NAR Policy & Opposition Arguments:**

NAR strongly supported the implementation of the HAFA program and continues to call for improvement of other short sales programs to make them feasible. NAR believes lenders should adopt the HAFA principle of identifying the required net proceeds, and approvable closing costs, up front to reduce delays in approving the transaction once a sales contract is executed.

HAFA has helped stabilize the housing market by providing additional options for responsible homeowners to avoid foreclosure. In turn, this has allowed homeowners to avoid the foreclosure process and neighborhoods to avoid the blight of vacant foreclosed properties.

Opponents of NAR policy believe that is burdensome and costly for lenders, whom ultimately will pass on the costs to consumers.

### **Legislative/Regulatory Status/Outlook**

Servicers continue to face problems training their front line staffs on existing short sale programs, such as the HAFA program, and understanding the importance of improving efficiency of short sale transactions. NAR continues to meet with the four largest lenders, Fannie Mae, and Freddie Mac to emphasize the importance of making short sales work better. Though many lenders and the GSEs have improved procedures to handle escalated cases, NAR has continued to push for changes to make the short sales process as efficient as regular transactions.

NAR supported the Consumer Financial Protection Bureau's final rule on mortgage servicing that requires servicers to comply with new loss mitigation procedures for loans secured by a borrower's principal residence. If the servicer receives a complete loss mitigation application more than 37 days before a scheduled foreclosure sale, the servicer must evaluate the borrower within 30 days for all loss mitigation options available, including loan modifications and short sales. A borrower may appeal a denial of a loan modification only if the complete application was received 90 days or more before a scheduled foreclosure. The rule also restricts so-called dual tracking



NAR supports H.R. 839 (Rooney, R-FL) and S.361 (Brown, D-OH; Murkowski, R-AK), the "Prompt Notification of Short Sale Act" that requires servicers to decide whether to approve a short sale within 30 days of completion of the file. The bill attempts to prod servicers to make the short sales process more efficient by setting standards and penalizing them for inadequate performance. For details on short sales issues, go to [www.realtor.org/shortsales](http://www.realtor.org/shortsales).

**Current Legislation/Regulation (bill number or regulation)**

CFPB Mortgage Servicing Rule

H.R. 839, "Prompt Notification of Short Sales Act" (Rooney, R-FL)

S. 361, "Prompt Notification of Short Sales Act" (Brown, D-OH; Murkowski, R-AK)

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## Transportation Issue Summary

### **What is the fundamental issue?**

Federal transportation revenues and programs support communities in their efforts to catalyze growth and mitigate congestion. The Highway Trust Fund has become insolvent as revenues are not keeping up with committed expenditures, and Congress has had to provide billions from general funds or other revenue offsets to meet current obligations. The current surface transportation authorization ("MAP-21") expires September 30, 2014.

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

Improvements to infrastructure enhance property values. Traffic congestion imposes costs throughout the economy. Further constraints on funding for transportation projects of all types, particularly those that contribute to walkable, stable, and vibrant neighborhoods, may negatively affect property values and inhibit development.

### **NAR Policy and Opposition Arguments:**

NAR believes more needs to be done to level the playing field with respect to funding highways versus transit and other modes and maintain the current transportation system. In addition, NAR supports a modest increase in the federal motor fuel tax and annual adjustments for inflation.

NAR and those who agree with NAR's position believe that transportation plans should reflect a broad community vision, considering the needs of all transportation users, and should emphasize repair and maintenance over development of new capacity. A modest increase in motor fuel taxes would assist local communities to either build or maintain transportation infrastructure. Improved transportation facilities enhance commerce and lead to higher property values.

Opponents of NAR policy claim that an increase in fuel tax will unduly burden drivers in areas without additional public transportation options. Further, opponents will claim that a fuel tax will not generate enough revenue to sustain the Highway Trust Fund because new vehicles are being produced to be more fuel efficient; therefore, the fuel tax will be inadequate funding for transportation programs throughout the U.S.

### **Legislative/Regulatory Status/Outlook**

At the beginning of 2014, no specific piece of legislation has been introduced to ensure reauthorization of MAP-21 by the expiration date (September 30, 2014). The House Committee on Transportation and Infrastructure held a public hearing on January 14, 2014 to discuss surface transportation reauthorization. Witnesses during the hearing emphasized the importance of stability in federal transportation funding.

It is expected that the House will continue to hold hearings and roundtable discussions over the next few months with a goal to have a vote on transportation reauthorization funding by August 2014.

NAR has been working with several coalitions to shape the reauthorization legislation and to build support for NAR's policies such as increasing fuel taxes, increasing funding for public transportation, and transportation planning that addresses the needs of all transportation users.

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## VA (Veterans Administration) Housing Issue Summary

### **What is the fundamental issue?**

Since its establishment in 1944, the VA home loan guarantee program has helped millions of veterans purchase and maintain homes. We believe this program is a vital homeownership tool that provides veterans with a centralized, affordable, and accessible method of purchasing homes as a benefit for their service to our nation. Small tweaks are needed to make this program accessible to all eligible veteran borrowers. In 2012, VA reached the milestone of insuring its 20 millionth loan. NAR President Moe Veissi took part in the ceremony honoring this achievement.

NAR continues to work with VA to provide more flexibility in their policies. Currently, VA limits the fees which a veteran can pay. While this is designed to protect veteran purchasers, it places them at a disadvantage in multiple bid situations or when buying REOs. NAR is working to ensure veterans are not paying unnecessary fees, while ensuring they are able to purchase the home they wish.

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

VA loans provide zero-downpayment financing for veterans and surviving spouses.

### **NAR Policy and Opposition Arguments:**

NAR is a strong supporter of, and REALTORS® are a major participant in, the VA Home Loan Guaranty Program.

The VA Home Loan Guaranty program has guaranteed more than 20 million loans to American veterans, with a total loan volume over one trillion dollars. This program is a vital homeownership tool that provides veterans with a centralized, affordable, and accessible method of purchasing homes as a benefit for their service to our nation.

There is no current political opposition to the VA Home Loan Guaranty Program. Some sellers may be hesitant to sell their homes to buyers using the VA Home Loan Guaranty Program because of the strict conditions that come along with these loans. For instance, there is a limit on fees that can be charged to the buyer using a VA Loan and VA loans also require more strict home inspections.

### **Legislative/Regulatory Status/Outlook**

NAR is working with Congress and the Department of Veterans Affairs to enhance the program. NAR continues to work to ensure that are able to negotiate all reasonable and customary fees as part of the real estate transaction. Today's veterans are losing out on some home sale purchases due to their inability to pay certain fees like pest inspections or certifications. We are working with the VA to provide more flexibility to veteran borrowers.

### **Current Legislation/Regulation (bill number or regulation)**

No actions at this time

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## Visa – Seasonal Workers Issue Summary

### **What is the fundamental issue?**

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, waitstaff, lifeguards and ski lift operators.

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

Seasonal workers and the H-2B program have a direct impact on property values in resort and second home communities. If these communities are not well-maintained, and the facility does not operate efficiently and effectively, this will make the community less attractive to buyers.

### **NAR Policy and Opposition Arguments:**

NAR supports a robust H-2B program that expands job opportunities for seasonal, overseas workers without taking jobs away from American workers and unnecessarily burdening employers with onerous and cumbersome regulatory requirements.

The H-2B seasonal worker visa program provides a critical pool of temporary seasonal workers that is essential to the successful operation of resort and second home communities. Seasonal workers and the H-2B program have a direct impact on property values in these communities. While there is always the capacity to reform and improve a program to address changing labor market conditions and economic circumstances, the federal government should not make the H-2B program so difficult and onerous to use that no employer wants to use it.

Critics of the H-2B program claim employers who use the H-2B program exploit and abuse workers from other countries; some of these workers could pose a threat to national security; and the program takes jobs away from American workers. Additional measures to eliminate employer abuses and mitigate other programmatic concerns are needed and warranted.

### **Legislative/Regulatory Status/Outlook**

The federal Department of Labor (DOL) has proposed sweeping changes to the existing H-2B program that make it much more difficult for employers to utilize the program effectively. On March 18, 2011, the DOL proposed amendments to the H-2B program that would significantly change how the H-2B program is operated. Highlights of these amendments include changes to the employer recruitment process, revised definitions of temporary and full-time employment, changes to how housing and transportation costs are calculated, and the creation of a national registry of H-2B employment opportunities.

Taken together, these proposed changes would add costly and time-consuming paperwork and administrative requirements, and would eliminate the flexibility employers need to effectively manage their workforce. In addition, enforcement of these new rules would be costly and create additional burdens on small businesses.

Those onerous burdens spurred a coalition of companies impacted by these new rules to file suit against them and achieved a victory by winning a one-year preliminary injunction against their implementation. In addition, the H2-B WorkForce Coalition, working in Washington, DC, lobbied successfully through the congressional appropriations process to prohibit any funds to be used by

the Dept. of Labor to implement the rules through 2013. This effort prohibited DOL from implementing the 2011 H-2B wage rule, but was silent on the 2013 H-2B interim final rule.

NAR continues to work with our Coalition partners to pressure Congress to prohibit DOL from implementing both rules and direct the Department to use a more reasonable approach to setting wages as was done under the 2008 regulations. Together with the Coalition, NAR will continue to work to ensure this program is cost-efficient, effective and useful to employers and visa-holders alike.

**Current Legislation/Regulation (bill number or regulation)**

Temporary Non-Agricultural Employment of H-2B Aliens in the United States - published in the Federal Register on 3/18/2011.

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