



## **i. NAR Joins in Brief on RESPA Suit**

On December 30, 2010, NAR joined several other housing trades in [filing an amicus brief](#) in the case of First American Corporation and First American Title Insurance Company vs. Edwards. NAR and its fellow trades advocated for the case to be heard by the United States Supreme Court in order to address conflicts in the interpretation of the Real Estate Settlement Procedures Act (RESPA) by various courts across the U.S.

Despite the plain language of RESPA allowing referrals but prohibiting kickbacks for referrals, the court in the Edwards case found a violation of RESPA where no kickback existed. The plaintiff, Edwards, acknowledged that she was not overcharged and was satisfied with the services she received. Nevertheless, the court found a RESPA violation. NAR believes this result is in conflict with other courts and the RESPA statute itself and joined in filing the brief to ensure that NAR's members are treating consistently and fairly under RESPA.

## **ii. Resolution Protecting Mortgage Interest Deduction Introduced**

California Representative Gary Miller (R-42), along with five original cosponsors Representatives Calvert (R-CA), Manzullo (R-IL), Meeks (D-NY), Baca (D-CA) and Hinojosa (D-TX), have introduced House Resolution 25. The resolution expresses the "sense of the Congress that the current Federal income tax deduction for interest paid on debt secured by a first or second home should not be further restricted."

Representative Miller has sent a "Dear Colleague" letter asking other Members of Congress to cosponsor the resolution. NAR will be working with Congressman Miller's office to seek additional cosponsors by visiting every office in the House of Representatives to present the dear colleague letter as well as a letter from NAR requesting additional cosponsors.

## **iii. FHA Extends Temporary Condominium Rules, NAR Calls for Additional Enhancements**

The US Department of Housing and Urban Development (HUD) released Mortgagee Letter 2011-03, which extends the temporary guidance for condominium rules through June 30, 2011. NAR has been calling for an extension of the temporary measures for several months and recommended additional enhancements to the condominium rules. This week, NAR President Ron Phipps sent a [letter](#) to FHA Commissioner Dave Stevens commending the agency for recent program enhancements, including hiring FHA's first Credit Risk Officer, which resulted in great improvements to loan performance in the Mutual Mortgage Insurance Fund (MMIF). FHA's purchase activity appears to be performing as well as any period since Neighborhood Watch was established and condominium loans appear to be performing even better. Mr. Phipps called on FHA to make additional enhancements to the condominium rules and re-evaluate the proposed rule that would reduce permitted seller concessions to 3 percent.

[Mortgagee Letter 2011-03](#) extends and clarifies temporary guidance announced in Mortgagee Letter 2009-46 A. The temporary guidance 1) increases Federal Housing Administration (FHA) concentration requirements to 50 percent, 2) requires 50 percent of units in a project to be owner-occupied but vacant and REO property are not considered in the

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calculation of the owner-occupancy percentage, 3) reduces the pre-sale requirement to 30 percent, 4) all projects in Florida are required to be reviewed under the HUD Review and Approval Process (HRAP), and 5) Spot Loans are extended through February 1, 2010. The temporary guidance is effective for all FHA case numbers assigned through June 30, 2011. The Spot Loan Approval Process was eliminated on February 1, 2010, and is not extended.

#### **iv. Law Extends Tax Rates, Some Credits**

On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (H.R. 4853) extending the Bush-era tax rates and a host of other expired and expiring provisions. The legislation is not "paid for," so there are no revenue raisers taken from real estate or other industry groups. The package provides temporary extensions of its numerous provisions. Some are retroactive, as well, so that the rules that had been in place previously will operate as if they had never expired.

Included in the bill are provisions that affect real estate investment and operations—such as energy-efficiency tax credits, capital gains, and more. A few key provisions of interest to REALTORS® include:

- Retention of Bush-era tax brackets through the 2011 and 2012 tax years;
- Retention of the capital gains tax rate of 15 percent for assets sold or disposed of during 2011 and 2012;
- Reduction of payroll taxes for employees and self-employed individuals during 2011;
- Extension of numerous energy efficiency credits through December 31, 2011, including: the Energy Efficient New Homes, Energy Efficient Existing Homes, and Energy Efficient Buildings credits.

For more detailed information on the provisions of this bill affecting real estate, home owners, and REALTORS® as small business owners, please see the [full summary](#).

#### **v. VA Loan Limits for 2011 Released**

The US Department of Veterans Affairs (VA) announced the [2011 loan limits](#) for the Loan Guaranty Home Loan Program. The new limits begin January 1, 2011, and run through September 30, 2011. VA has no maximum loan amount; however, loan limits are established to determine the maximum guaranty for a particular county. A veteran with full entitlement available may borrow up to the 2011 VA limit and VA will guarantee 25 percent of the loan amount. If a veteran has previously used entitlement that has not been restored, the maximum guaranty amount available must be reduced accordingly. For many counties the loan limit is \$417,000. VA has published a list of county limits for high cost counties.

#### **vi. House Passes Bill to Narrow the Applicability of the FTC's "Red Flag" Rule**

NAR House Passes Bill to Narrow the Applicability of the Federal Trade Commission's "Red Flag" Rule

On December 7, 2010, the House passed S. 3987, the "Red Flag Program Clarification Act of 2010", which was passed by the Senate on November 30th. The President is expected to sign the bill into law. The legislation narrows the definition of the term "creditor" for purposes of the [Red Flag Rule](#).

The Federal Trade Commission's (FTC) Red Flag Rule requires creditors to implement identity theft protection programs required under the Fair Credit Reporting Act (FCRA). As originally enacted, FCRA used the definition of the term "creditor" as defined in the Equal Credit Opp Act (ECOA). Under the bill, the definition of creditor is narrowed to an entity that regularly and in the ordinary course of its business:

- Obtains or uses consumer reports in connection with a credit transaction;
- Furnishes information to consumer reporting agencies in connection with a credit transaction; or
- Advances funds to or on behalf of a person, which there is an obligation to repay or is repayable from pledged property.

The FTC is expected to amend the rule to incorporate the new narrower definition of creditor. NAR expects the amended rule to clarify it applies to real estate brokers and agents in few circumstances.

Originally scheduled to go into effect November 1, 2008, the FTC announced in May 2010 that it would delay enforcement through December 31, 2010.

### **vii. Fannie, Freddie Announce Updates to Uniform Mortgage Data Program**

The Uniform Mortgage Data Program (UMDP) is a joint effort between the government sponsored enterprises (GSE), Fannie Mae and Freddie Mac, to create uniform data standards and collection processes. The program will create efficiency, strengthen risk management for the GSEs, and improve transparency.

The Uniform Appraisal Dataset (UAD) standardizes key appraisal data elements to enhance data quality and promote consistency. Appraisal reports were initially required to use the dataset by January 1, 2011 but this effective date has been extended to September 1, 2011. Although not required, the UAD may be used for appraisals with effective dates prior to September 1, 2011.

The Uniform Collateral Data Portal is being developed "for the electronic collection of appraisal data to minimize impact on lenders." While standardization will occur, the GSEs will each have additional requirements for their appraisal data. Originally, the GSEs indicated appraisal report forms must be delivered through the UCDP after January 1, 2011. The effective date for this requirement has been extended to December 1, 2011.

### **viii. Treasury Department Amends HAFA Program to Increase Borrower Eligibility**

On December 28, 2010, the Treasury Department released an update to the Home Affordable Foreclosure Alternatives Program (HAFA). The changes will increase the number of eligible borrowers who may participate in the program and should expedite approvals:

- A borrower's reason for relocation no longer needs to be connected to employment nor be of a certain distance from the property. Borrowers may have moved up to 12 months before certain dates in the HAFA process but may not have purchased another home.
- Servicers are not required to determine if the borrower's total monthly mortgage payment exceeds 31% of gross income. Borrowers will still be required to show a hardship.
- Servicers are now required to communicate approval, disapproval, or a counter offer no later than 30 calendar days after receiving an (i) executed sales contract, (ii) Alternative Request for Approval of Short Sale, and (iii) a signed Hardship Affidavit.
- If an unsolicited borrower requests HAFA, the servicer has 30 calendar days to determine the borrower's eligibility and, if eligible, send the borrower the Short Sale Agreement.
- HAFA will no longer impose a 6% cap on payments to each subordinate mortgage/lien holder. The \$6,000 aggregate limit is still in effect.

The update also clarifies vendors of the servicer may not be paid from the real estate commission. Servicers must implement the changes by February 1, 2011.

### **ix. NAR Submits Appraisal Independence Comments**

NAR President Ron Phipps provided [written comments](#) on the Federal Reserve Board's [interim final rule](#) amending Regulation Z (Truth in Lending) and implementing Section 129E of the Truth in Lending Act (TILA). The interim final rule is designed to ensure that underwriting decisions are based on an appraiser's independent professional judgment. The interim final rule is effective December 27, 2010, but compliance is optional until April 2, 2011.

NAR is generally supportive of the Federal Reserve's interim final rule but provided several recommendations. NAR recommends that the Federal Reserve include automated valuation models (AVMs) in the definition of valuation to ensure the protection of independent valuations beyond the appraisal report. NAR also recommends prohibiting the coercion of developers of AVMs. Though not specifically addressed by the rule, NAR recommends greater disclosure of fees paid to appraisers.

**x. NAR is Streamlining its Member Communications**

On January 6, NAR launched a new [customizable weekly e-newsletter](#) that consolidate several newsletters including The Washington Report and Real Estate Insights. In response to member feedback, NAR designed this new communication to reduce the volume of e-mail NAR sends its members. The NAR Weekly Report will be sent to all NAR members as a benefit of membership and will offer must-have information from and about NAR, as well as the ability to select from 18 categories including sales and marketing information, industry news, special offers for REALTORS®, and more. You'll automatically continue to receive the information you value—and you'll have the opportunity at any time to change your preferences.

## UPCOMING DATA RELEASES

Thursday, January 20

December Existing-Home Sales

Thursday, January 27

Pending Home Sales Index

Thursday, February 10

4th Quarter Metro Home  
Prices/State Resales

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