NATIONAL ASSOCIATION of REALTORS® | Real Estate Services

Newsletter Update

August 2011

i. NAR Submits Comments on Risk Retention/QRM Proposed Rule

On August 1, 2011, NAR President Ron Phipps submitted NAR's comments on the proposed rule to implement the risk retention requirements of the Dodd-Frank Act. The Act requires entities that securitize mortgage loans to retain 5% of the credit risk unless the mortgage is a qualified residential mortgage (QRM) or is otherwise exempt (GSE loans, while in conservatorship, and FHA loans would be exempt). NAR asks the six federal regulators to withdraw, revise, and republish the rule for public comment because the rule:

- Is inconsistent with the standards set forth for risk retention in title IX of the Dodd-Frank Act and violates congressional intent.
- Unnecessarily defines the QRM exemption from the risk retention requirements to include only a narrow slice of the mortgage market. REALTORS® believe that imposing a minimum 20% downpayment, stringent debt-to-income ratio requirements, and rigid credit standards will deny millions of creditworthy Americans access to the lowest cost and safest mortgages.
- Jeopardizes the fragile housing market and general economic recovery.
- Reduces liquidity for commercial real estate.

ii. NAR Comments on Qualified Mortgage (QM) Rule

On July 22, 2011, NAR President Ron Phipps submitted comments to the Federal Reserve Board on the ability-to-repay proposed rule (referred to as the QM rule) implementing new Truth in Lending Act (TILA) requirements added by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The rule would prohibit any creditor from providing a mortgage loan without making a reasonable and good faith determination that the borrower has the ability to repay the loan. The proposed rule gives creditors 4 ways to comply with the ability to repay requirement: (1) determining general ability to repay, (2) originating a QM, (3) refinancing a non-standard mortgage into a standard mortgage, and (4) originating a balloon-payment QM in a rural or undeserved area. The proposed rule lays out the criteria required to meet these compliance options. The Board will transfer all comments to the Consumer Financial Protection Bureau (CFPB), which assumed rulemaking authority for this rule on July 21, 2011.

NAR's comments focus on three points of particular concern to REALTORS®. Seller financing should continue to be exempt from the ability-to-repay requirements to the extent it is exempt from the definition of creditor, which only applies to persons extending consumer credit more than five times in the pertinent calendar year. The definition of QM should include stronger consumer protections than proposed, promote liquidity, incorporate ability-to-repay standards, and offer lenders a safe harbor that reduces litigation exposure. In the context of determining compliance with the 3% cap on points and fees for a QM, the final rule should reinstate the affiliated business exemption from the Real Estate Settlement Procedures Act (RESPA) or remove title and escrow charges from the calculation of fees and points.

iii. FTC Announces MARS Enforcement Forbearance

NAR has made an important step in resolving the confusion caused by the Federal Trade Commission's (FTC) Mortgage Assistance Relief Services Rule (MARS) among real estate professionals who provide assistance to struggling homeowners in negotiating short sales with servicers on the sale of the home.
On July 7, 2011, NAR President Ron Phipps met with FTC Chairman Jon Leibowitz to discuss the problems caused by MARS. On July 15, 2011, The FTC announced that it will forbear from enforcing most provisions of its MARS Rule against real estate professionals who assist consumers in obtaining short sales from their lenders or servicers.

Effective immediately, real estate professionals acting in their licensed capacity will no longer need to comply with most of the Rule's requirements, including the required disclosures, advance fee ban, and recordkeeping requirements.

This forbearance of enforcement will only apply to real estate brokers (and real estate agents under their direction and control) who are:

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

The FTC will still enforce the Rule's prohibition against misrepresentations made by a real estate professional while assisting a consumer in negotiating or obtaining a short sale.

The FTC's forbearance should have the effect of resolving this issue for real estate professionals who are acting in their licensed capacity. While the Consumer Financial Protection Bureau and state attorney generals can still enforce the Rule as written, both groups are expected to follow the FTC's lead. NAR will continue to work on obtaining a complete resolution of this issue.

iv. Senators Introduce Loan Limit Extension Bill

Senators Menendez (D-NJ), Isakson (R-GA),and Feinstein (D-CA) have introduced S. 1508, the "Homeownership Affordability Act of 2011''. This bill would extend the loan limits for FHA, the GSEs, and VA through December 31, 2013. The current loan limits for FHA and the GSEs expire on September 30, 2011.(VA loan limits don't expire until December 31, 2011). Many lenders have already begun rejecting applications at the higher limits, fearing the loan won't close prior to the reset. On October 1st the limits will fall in 669 counties and 42 states. The new limits will be tied to 115% of local area home price (from the current 125%) and in high cost areas the limit will fall from $729,750 to $625,500. NAR sent a letter of support to the Senators, and continues to work with the House and Senate to extend the limits as soon as they return from the August Congressional recess.

v. NAR Works with Coalition on Loan Limits

NAR, along with a coalition of industry partners, sent a letter to the House Appropriators and House leadership asking them to include an extension of the mortgage loan limits in action this year. Already several large lenders have stopped accepting mortgage applications at the current limits, fearing the loans won't close before the limits expire on September 30, 2011. The current limits are equal to 125% of local area median home price, up to $729,750. If the limits aren't extended, the new limit will be 115% of median home price up to $625,500. The lowest limit for FHA will remain at $271,050 and the lowest limit for the GSEs will remain at $417,000. The decrease in the limit impacts 669 counties in 42 states and the territories. NAR is working with the House and Senate to try and extend the limits.

vi. HUD Issues Technical Corrections on RESPA

In a final move before RESPA moves to the Consumer Financial Protection Bureau (CFPB), on July 9, 2011, HUD issued technical corrections to the RESPA rule published on November 17, 2008. The corrections are largely minor and deal with making terminology consistent and other matter that have caused confusion since the rule was implemented. RESPA was handed over to CFPB on July 22, 2011 and many of the HUD staff that handle RESPA are also transferring over. CFPB is continuing its effort to combine the GFE and the Truth in Lending disclosure. Until that process is completed, existing rules issued by HUD will apply with regard to the GFE and HUD - 1 and existing rules issued by the Federal Reserve will govern Truth in Lending.

vii. NAR Announces Support for GSE Refinancing Bill

On July 12, 2011, NAR President Ron Phipps participated in a press conference call held by Senator Barbara Boxer (CA-D) to discuss her bill, S. 170, the “Helping Responsible Homeowners Act of 2011.” NAR supports the bill, which requires Fannie Mae and Freddie Mac (the government sponsored enterprises, or GSEs) to carry out refinancing programs for mortgages they own or guarantee and for the purchase and securitization of the refinanced mortgages. The home subject to the mortgage must be occupied by the borrower as the principal residence and the borrower must be current on mortgage payments. The existing GSE refinancing program, called HARP, only allows refinancing of mortgages where the loan-to-value ratio does not exceed 125%. The new program would (i) have no loan-to-value limits, (ii) require an interest rate no more than 40 basis points higher than the prime rate, (iii) waive prepayment penalties, (iv) limit the term to 40 years, and (v) prohibit any additional fees beyond the standard guarantee fee for refinancing a mortgage. The program expires one year after enactment, but may be extended in one year increments by the Federal Housing Finance Agency, which regulates the GSEs. A similar, but not identical bill, has been introduced in the House of Representatives—H.R. 363, the “Housing Opportunity and Mortgage Equity Act of 2011,” introduced by Representative Dennis Cardoza (CA-D).

viii. Ways and Means Committee to Review FAIR Tax

A proposal for a national retail sales tax, known as the FAIR Tax, emerged in the late 1990's and has been introduced in every Congress since about 1997. While it has always drawn a fair number of cosponsors, the proposal has never gained traction in the tax-writing committees. Now, in conjunction with its tax reform hearings, the Ways and Means will hold a hearing on consumption taxes, including the FAIR Tax and the value-added tax models most of our trading partners use.

The FAIR Tax would replace the federal income tax with a sales tax of 30% on the purchase of all goods and services. Goods and services subject to the tax would include housing (both the rents on rental housing and the purchase of a newly-constructed housing) and all of the services associated with the purchase and sale of a home (existing or newly-constructed), including such things as appraisals, staging, termite and other inspections, Realtor commissions and all other settlement services.

NAR has no formal position on the FAIR Tax. However, at the time the FAIR Tax appeared, NAR's Board of Directors approved policy that would oppose any federal-level transfer tax on the sale of real estate. NAR has not been invited to testify at the hearings, but will submit a statement emphasizing the adverse the impact the FAIR Tax would have on housing and real estate investment.

ix. Treasury Department Updates HAFA Policies

On August 9, 2011, the U.S. Department of the Treasury issued Supplemental Directive 11-08 that made updates to the Making Home Affordable HAFA program. The policy update implements many of the recommendations the Treasury Department received from the National Association of REALTORS® along with representatives from the California, Illinois, and Nevada Association who participated in the Treasury Department’s HAFA Summit and Working Groups with several lenders and mortgage insurance companies.

Specifically, Supplemental Directive 11-08 implements the following key changes:

- Requires servicers to develop and post on their website a HAFA Matrix that describes various components of a servicer’s HAFA Policy, including any unique HAFA eligibility criteria or program rules, the servicer’s process for re-evaluation of property value, and contact information for HAFA assistance.
- Removes non-mortgage debt from the $6,000 subordinate lien cap. Non-mortgage lien holders still must provide lien releases and waive borrower liability.
- Requires all servicers to develop a process for periodic re-evaluation of property value and to reconcile discrepancies between the servicer’s independent assessment of value and market value data provided by the borrower or the borrower’s real estate broker.

NAR will continue to collaborate with the Treasury Department on HAFA improvements and promoting a streamlined short sale process beyond the end of the program.

x. IDX Policy - Franchisor Display

Following the 2011 Midyear Meetings, the NAR Leadership Team appointed a presidential advisory group ("PAG") to address several aspects of the IDX policy including a provision allowing franchisor display of IDX listings. That provision went into effect in January of this year. It was subsequently amended in May to require listing broker "opt in" rights. The PAG met last week and the Leadership Team has received the PAG's recommendation regarding franchisor display. The PAG recommends that the policy be rescinded and that NAR support syndication of listings as an alternative method for franchise organizations and similar entities (e.g., real estate brokerage networks and regional real estate firms) to access and display listings. It is anticipated that this recommendation will go to the Multiple Listing Issues and Policies Committee in November. The PAG also studied other aspects of the IDX policy, including the display of IDX listings using mobile applications, via social media and using RSS subscription. The Leadership Team has not yet received this portion of the PAG's report.

xi. Introducing New Facebook Guide for REALTORS®

NAR's new "Social Media for REALTORS®: Facebook", turns theory into action for more results out of your social media marketing. Get exclusive member information on creating a "Profile" and Business "Page", what to post, and more.
http://www.realtor.org/prodser.nsf/products/E135-49?OpenDocument&cid=prod00358

xii. NEW DocuSign for REALTORS®, FREE Edition - Exclusively for NAR Members

DocuSign, the official and exclusive electronic signature provider to NAR members under the REALTOR Benefits® Program, announces a special DocuSign for REALTORS®, FREE edition, offering a flexible document signing solution and the only REALTOR® branded edition in the industry.
http://www.realtor.org/realtor_benefits/benefits_partners/docusign?cid=DSF0011

xiii. REALTORS®, Become Hertz #1 Club Gold Members Free

You and your agents now can receive free, fee-waived membership in the Hertz #1 Club Gold – a $60 value – from REALTOR Benefits® Program partner, Hertz. Benefits include expedited service at special "Gold" counters in over 1,000 locations worldwide, no stopping at over 40 of the world's busiest airports, instant car-return, and more. For more information or to enroll, visit: http://www.realtor.org/realtor_benefits/benefits_partners/hertz?cid=HZ0012

UPCOMING DATA RELEASES

Thursday, August 18	Thursday, August 25	Monday, August 29
July Existing-Home Sales	Commercial Forecast	Pending Home Sales Index

Real Estate Services Staff
Ken Trepeta – Director, ktrepeta@realtors.org
Kara Beigay – Communications Manager, kbeigay@realtors.org
Patricia Tarhon – Project Coordinator, ptarhon@realtors.org