

# 2012 NAR Legislative & Regulatory Year in Review

(As of November 5, 2012)

## LEGISLATIVE ACCOMPLISHMENTS

### **Congress Reauthorized National Flood Insurance Program for 5 Years**

On July 6, the Senate and House passed the Flood Insurance Reform Act as a part of H.R. 4348, the Surface Transportation Conference Report. Passage of the 5-year reauthorization will bring certainty to real estate transactions in more than 21,000 communities nationwide where flood insurance is required for a mortgage. The bill ensures the program will continue long-term for more than 5.6 million business- and homeowners who rely on it, achieves one of NAR's top priorities for the year, and means taxpayers will spend less on federal assistance for flood disasters over the long run. This is the culmination of a successful multi-year REALTOR campaign and a final push at NAR's Midyear Legislative Meetings & Trade Expo in May 2012.

### **VA Loan Limits Reinstated, VA ARM Made Permanent**

On August 6, President Obama signed into law the "Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012," which reinstates the higher VA loan limits and makes the VA ARM programs permanent. This bill will restore the higher loan limits for VA guaranteed loans through 2014, and makes the current ARM programs under VA permanent. NAR joined in a coalition letter sent to the leadership of the House Committee on Veterans' Affairs and the House Leadership urging Congress to pass this bill.

### **Extension of Mortgage Cancellation Relief**

The Senate Finance Committee sent to the full Senate a package that would extend the mortgage relief provision for an additional year, through Dec. 31, 2013. Along with mortgage cancellation relief, this package includes a relief provision to limit the impact of the Alternative Minimum Tax (AMT) in 2012 and 2013, and renews the 15-year cost recovery for leasehold improvements through Dec. 31, 2013. It is predicted that the full Senate will act on this package following the August adjournment, before the elections, but not known when the House will consider it.

### **Foreign Investment Bill Passes**

On September 28<sup>th</sup>, President Obama signed S. 3245, which ratifies the three year reauthorization of the EB-5 Regional Center Pilot Program. EB-5 regional centers allow foreign investors to channel investment funds into American business, development and home purchasing, stimulating the economy and creating job opportunities at no cost to U.S. taxpayers. NAR signed onto multiple coalition letters to the House and Senate Judiciary Committees urging reauthorization of the program.

### **House Passes RESPA Home Warranty Clarification Act of 2011**

NAR and its industry partners worked with Reps. Judy Biggert (R-IL) and William "Lacy" Clay (D-MO) to draft "The RESPA Home Warranty Clarification Act of 2011," On Aug. 1, 2012, the U.S. House of Representatives passed the measure which is designed to counter an erroneous Department of Housing and Urban Development interpretive rule that reversed decades of common understanding of RESPA. This bill restates Congress' intent that warranties are not covered by RESPA and also requires disclosure of any relationship between the real estate professional and the warranty company, a common practice already. NAR and its industry partners will continue to work on the legislation with the Senate.

### **The House Oversight and Government Reform Committee Passes the GSA Act of 2012**

The House Oversight and Government Reform Committee passed legislation that eases proposed limitations on government employee attendance at conferences, including those held by trade associations like NAR. This followed letters from NAR to both the House and Senate regarding concerns with recent restrictions on government employee travel and meeting attendance approved by the House and Senate.

### **Rural Housing Extends Deadline on Implementing 2010 Census Data**

In September, the Rural Housing Service extended the deadline for implementing 2010 census data through March 27, 2013. After that date, more than 900 communities nationwide are expected to be made ineligible for rural housing programs due to an antiquated definition of "rural" that has not been updated since 1974. NAR will continue to work with Congress to protect rural communities.

### **House Committee Passes FHA Bill**

On Sept. 11, 2012 the House of Representatives passed the "FHA Emergency Fiscal Solvency Act of 2012." NAR supported this measure, which strengthens FHA's financial solvency by barring unscrupulous lenders from participating in the program; allowing FHA to collect losses from lenders who made material errors in underwriting or committed fraud; and strengthens financial oversight and disclosure. The bill will also give FHA flexibility to increase premiums, if needed to restore reserve levels. NAR was successful in defeating amendments to mandate increased premium levels and reduce the federal guarantee on loans.

### **House Subcommittee Passes Section 8 Reform Bill**

The Insurance and Housing Subcommittee of the House Financial Services Committee passed a the "Affordable Housing and Self-Sufficiency Improvement Act of 2012," which seeks to reduce taxpayer costs within the Department of Housing and Urban Development's Section 8 voucher program and facilitate greater private sector participation in the program. The bill includes provisions that will reduce administrative burdens and lower program costs, while increasing local flexibility. These changes (such as streamlining physical inspections; simplifying rent and income calculations; and reducing the burden of foreign language translations) will mean that more owners will want to participate in delivering affordable housing to those who need it. NAR supported this bill along with other industry partners.

## **REGULATORY ACCOMPLISHMENTS**

### **Short Sales**

On August 21, 2012, the Federal Housing Finance Agency (FHFA, the conservator of Fannie Mae and Freddie Mac), announced that Fannie Mae and Freddie Mac would be issuing new guidelines to enhance and streamline the short sale process. Based on feedback from members, NAR worked closely with FHFA on improving the short sale process which includes changes such as increased hardship eligibility, a fix to the arm's length affidavit our members have had problems with, alignment of deficiency waiver policies, and improvements to property valuation 'guidance'.

FHFA also responded to the concerns of REALTORS® and consumers regarding the ongoing delays in the approval process and the negative impact that slow response times are having on buyers, sellers, lenders and the housing market. At NAR's urging, FHFA issued new guidance requiring servicers of Fannie Mae and Freddie Mac loans to speed responses to short sale requests.

NAR has also been working in collaboration with the U.S. Department of Treasury to organize Making Home Affordable "Help for Homeowners" outreach events throughout the country. These events include sessions for real estate agents wanting to learn more about the Treasury Department's Home Affordable Foreclosure Alternatives (HAFA) program. NAR urged the Treasury Department to engage real estate professionals at Making Home Affordable community outreach events to increase participation in the HAFA program and expedite short sales transactions.

### **RESPA Fees**

On May 24, 2012, the U.S. Supreme Court ruled that a violation of RESPA only occurs when a split of a settlement-service fee paid by a consumer to a real estate settlement-service provider is split with a third party. NAR filed an amicus curiae brief arguing this same position.

### **RESPA/TILA Harmonization**

On July 9, 2012, The Consumer Financial Protection Bureau (CFPB) issued the long awaited RESPA/TILA harmonization proposal. While the proposal is far more ambitious than simplifying and combining the Good Faith Estimate (GFE) and Truth in Lending (TIL) disclosures given to consumers upon application for a mortgage as NAR advocated, CFPB did take NAR's advice and provided some exceptions to the mandatory three day waiting period. NAR is reviewing the 1,100 page proposal and will offer extensive comments.

## **Sackett vs. EPA**

In a 9-0 unanimous decision, the Supreme Court ruled against the EPA in Sackett vs. EPA. The Sackett family was building a house on Priest Lake, ID, but was stopped in mid-construction by EPA because of a question about whether or not there was wetlands on the property. NAR wrote an amicus brief which raised concerns and questions about overreaching federal authority in water issues, due process and property rights. This case was important because it tested the scope of EPA authority under the Clean Water Act.

## **Condo Rules**

On Sept. 13, 2012, FHA issued a mortgagee letter announcing modest improvements to the treatment of condos under the FHA program including expanding the ability to use FHA mortgages in mixed-use projects and loosened some of the requirements for investor owners and delinquent HOA dues, among other changes. At the urging of NAR, sixty-nine Members of the House of Representatives wrote to the Federal Housing Administration (FHA) asking them to loosen restrictions on the sale of condominiums. Led by Representatives Fitzpatrick (R-PA) and Cleaver (D-MO), the letter focused on four major concerns with the current condo rules: treatment of delinquent dues, property certification requirements, owner-occupancy requirements, and treatment of commercial space. NAR continues to advocate with HUD for needed condo underwriting restrictions.

## **Meetings with Large Lenders**

In continuation of meetings that began in 2010, NAR Leadership and staff met with several of the largest national mortgage lenders in an effort to build upon our established relationships and obtain commitments to improve the origination, short sale, and valuation processes. As a result of these meetings, NAR and the banks have worked on several initiatives.

- *Appraisals and Valuation* - NAR staff has arranged meetings between the lenders and RPR to incorporate agent market knowledge with servicer and investor valuation methods. NAR also arranged meetings with the federal regulators and GSEs to further promote the importance of RPR.
- *Documentation* - NAR is working with the lenders to create a bank resource web page on Realtor.org to educate REALTOR® on the documents and processes that each bank requires. Currently, JP Morgan Chase and Bank of America have provided content for the web page which is tentatively scheduled to go live in early October.
- *Short Sales* - The large lenders have made specific commitments to work with NAR on solutions that will continue to improve the short sales process. NAR has created working groups with Wells Fargo Home Mortgage and JPMorgan Chase to discuss the barriers, difficulties, and challenges to short sales, as well as things that may be working. The working groups will be continue their meetings throughout the year to address REALTORS® concerns.

## **Bank of America Accepts Electronic Signatures on Short Sales and REO**

At the urging of NAR, Bank of America recently announced it will now accept electronic signatures on some documents collected during the short sale process.

## **Qualified Mortgage (QM) / Ability to Repay**

On May 31, 2012, the Consumer Financial Protection Bureau (CFPB) announced it was seeking additional information on loan performance with regard to Debt to Income (DTI) ratios and a few other factors, as part of developing a Qualified Mortgage (QM) test. NAR had advocated and supported a delay in publishing a QM rule as it is widely expected to be the standard for lending for years to come.

## **QRM (Qualified Residential Mortgage) / Risk Retention**

For more than a year, NAR has worked with the Coalition for Sensible Housing Policy (a coalition comprised of more than 50 industry, consumer and civil rights groups) to oppose a rule proposed by six Federal regulators that would implement the risk retention requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act. A cornerstone of the proposed QRM rule would be requirement of a 20% downpayment. Due to NAR and the Coalition's continued advocacy on how detrimental this provision would be for homeowners, the regulators have backed off the 20% downpayment.

### **EPA Delays Proposed Lead Paint Regulations**

The EPA has announced that proposed regulations for lead paint activities in commercial and public buildings will be delayed until July 1, 2015. The agency recently signed a litigation settlement that significantly delays the release of proposed renovation, repair and painting regulations covering these activities on the exterior of commercial buildings. With the settlement agreement, the proposed rules are now delayed by nearly three years — until July 1, 2015. Any final rule with a regulatory impact on real estate is not expected for well over four years — until December 31, 2016.

Working through a coalition of real estate industry trade groups, NAR urged EPA to obtain more data before proceeding with potential new regulations covering lead dust in public and commercial buildings as a result of renovation and remodeling activities. As of this writing, EPA has still not followed through on statutory directives to conduct such studies in the commercial buildings context and to report on the results to Congress. NAR will continue working with its allied real estate partners to prepare a response to any federal regulatory actions in this area.

### **CO2 Regulations on Small Emitters**

Responding to a court order, the EPA was required to develop regulations to reduce greenhouse gas emissions, including carbon dioxide (CO<sub>2</sub>). EPA initially proposed a two-phased regulatory process: Phase 1 would be regulations that reduced CO<sub>2</sub> from large emitters, such as manufacturing facilities and coal-fired power plants. Phase 2 would be regulations that reduced CO<sub>2</sub> emissions from small emitters, such as dry cleaners and commercial office buildings. NAR's comment letter expressed concerns about Phase 2 of the regulations because these rules would have impacted office buildings and apartments by raising their operating costs. In April of 2012, EPA released a statement that they will not proceed with Phase 2 of the CO<sub>2</sub> regulations for a variety of costs, implementation and administrative reasons.

### **Water Jurisdiction Guidance**

The EPA and the Corps of Engineers have proposed a "Guidance Document" that claims to clarify what waters of the U.S. are under federal Clean Water Act jurisdiction and what waters are not. NAR, along with a broad coalition of stakeholders, have written numerous letters and had numerous meetings with officials from EPA and the Corps of Engineers to express our concerns that this document includes many waters under federal jurisdiction that are now excluded from the Clean Water Act. NAR believes that only Congress can include additional waters for inclusion under federal jurisdiction. As a result of this continuous pressure, the guidance document has not been approved and finalized by the Office of Management and Budget and no date has been set for its approval.

### **Harmful H2-B Regulation Not Funded for One Year**

The Department of Labor (DOL) finalized sweeping regulatory reforms of the H2-B temporary, seasonal VISA program. These new regulations would have harmed the program and made it virtually impossible for employers to actually use the program. NAR is concerned about this program because resort areas use these seasonal workers for a variety of operations and maintenance functions, such as lifeguards, waiters and groundskeepers. These employees keep these resort communities operating efficiently and looking good. NAR commented on the rule before it was finalized and met with officials from the DOL to express concerns about compliance costs and usability of the new regulations. In March 2012, Congress agreed and declined to provide funds in 2012 to the DOL to implement the regulations. This is only good for one year however, so NAR will continue to pursue this appropriations strategy for FY 2013.