

Update

i. REALTORS® Urge Congress to Stop Rescue Foreclosure Scams

On May 6, 2009, NAR [testified](#) before the House Financial Services Subcommittee on Housing and Community Opportunity on the importance of protecting homeowners from foreclosure rescue scams and other predatory and irresponsible lending practices which have been on the rise, negatively impacting families, communities, and the housing market.

John W. Anderson, a broker-owner from Crystal, Minn., who spoke on NAR's behalf, noted "there has been a significant rise in the number of foreclosure rescue scammers making all kinds of claims to defraud already devastated families."

NAR provided a list of recommendations that would help prevent foreclosure rescue scams and protect consumers. The recommendations include enacting H.R. 1231, the Foreclosure Rescue Fraud Act of 2009, as introduced. The bill would create appropriate minimum standards for disclosure and terms of service for individuals or firms offering their services as foreclosure consultants to distressed homeowners.

In addition, NAR asked Congress to direct lenders and servicers to be more aggressive in helping distressed homeowners with loan modifications, ensure foreclosure prevention options are widely advertised, shorten the closing process for short sales, and establish methods for the private and public sectors to actively educate home buyers about foreclosure alternatives and today's safer more affordable mortgage products. Congress should also pass balanced mortgage reform that safeguards consumers and assures access to mortgages at a reasonable cost.

ii. 11th Circuit District Court Rules Against Realty South in RESPA 8(b) Case

On April 20, 2009 the United States District Court for the Northern District of Alabama, Southern Division, filed a memorandum opinion in [Busby v. JRHBW Realty, Inc. d/b/a Realty South](#). The court concluded that a \$150 Administrative Brokerage Fee charged by Realty South violated Section 8(b) of RESPA. For analysis of this case and its impact on NAR members, please [click here](#).

iii. NAR Asks IRS to Help States Make Credit Available at Closing

A number of state housing finance agencies (HFAs) have developed or are developing programs to provide bridge loans to first-time home buyers eligible to receive the First-Time Home Buyer Tax Credit. However, due to budget constraints many states are finding it difficult to institute or fund such programs. This obstacle can be alleviated to some degree by ensuring a prompt stream of repayment for bridge loans.

NAR President Charles McMillan [wrote](#) to IRS Commissioner Douglas Shulman and Taxpayer Advocate Nina Olson asking that the IRS lay out a framework whereby a refund from an amended 2008 tax return (associated with the home buyer tax credit) could be assigned to the relevant state housing finance agency. HFA's receiving the assignment of the refund would be able to make more loans quicker and with less risk, improving the effectiveness of the credit.

NAR continues to work with National Council of State Housing Agencies (NCSHA) and other industry partners to improve access to the tax credit for downpayment purposes. Nearly a dozen states have implemented or are working on programs

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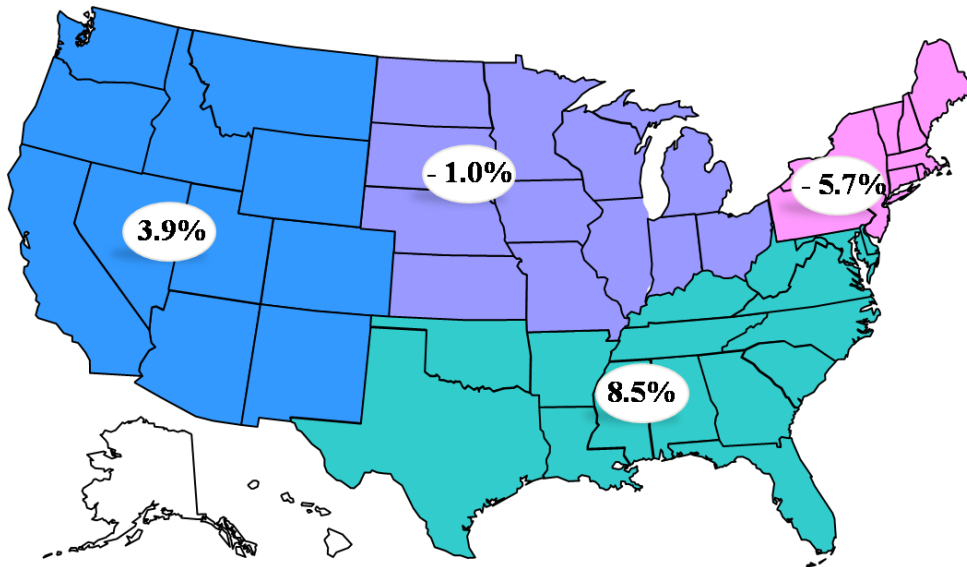
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to make the value of the credit available at closing. NCSHA has launched a [webpage](#) with the latest updates on programs at the state level and links to state programs.

iv. Pending Home Sales Rise, Housing Affordability Near Record

[Pending home sales](#) rose with many first-time buyers taking advantage of historically good housing affordability conditions according to NAR's latest market data. Lawrence Yun, NAR's Chief Economist, noted "this increase could be the leading edge of first-time buyers responding to very favorable affordability conditions and an \$8,000 tax credit, which increases buying power even more in areas where special programs allow buyers to use it as downpayment." The Pending Home Sales Index, a forward-looking indicator based on contracts signed in March, increased 3.2 percent to 84.6 from a level of 82.0 in February, and is 1.1 percent higher than March 2008 when it was 83.7. Regionally:

- In the Midwest, the index slipped 1.0 percent to 82.3 but is 8.2 percent higher than March 2008.
- In the South, the index rose 8.5 percent to 93.2 in March and is 7.7 percent above a year ago.
- In the West, the index increased 3.9 percent to 93.1 and is 1.7 percent higher than March 2008.
- In the Northeast, the index fell 5.7 percent to 59.5 in March and is 24.1 percent below a year ago.



v. Making Home Affordable Program Expanded to Permit Modification of Second Mortgages

On April 28, 2009, the Treasury Department announced expansion of the Making Home Affordable Program to help reduce payments on second mortgages. The Obama Administration took this action because as many as 50% of all at-risk borrowers have second mortgages and without modifying them the borrowers remain at a higher risk of default. Under the Second Lien Program, if the servicer initiates a Home Affordable Modification on the first mortgage, participating servicers will automatically reduce payment on the second lien in accordance with complex, but uniform, program criteria. As an alternative, servicers may extinguish the second lien in exchange for receiving a lump sum payment. For more on this expansion, please [click here](#).

vi. Freddie Mac Announces Guidelines for Super Conforming Mortgages in High Cost Areas

On April 10, 2009, Freddie Mac [announced](#) implementation of the 2009 conforming loan limits for high cost areas (loans higher than \$417,000 are called "super conforming" mortgages by Freddie Mac and "high-balance" loans by Fannie Mae). The American Recovery and Reinvestment Act (ARRA) raised loan limits for high cost areas to the higher of the permanent limits in effect for 2009 or the temporary limits in effect for 2008. In most cases the 2008 limits are higher and are subject to a cap of \$729,750.

The Freddie Mac announcement specifies eligibility requirements for high-balance loans, including:

- One to four unit primary residences properties are eligible.

- Second homes and 1- to 4-unit investment properties are eligible.
- Ineligible loans include balloon mortgages, adjustable rate mortgages with initial periods of less than five years, 40-year mortgages, and many other categories.
- Loans must meet complex loan-to-value (LTV) requirements. For purchase money mortgages for one unit primary residences with qualifying fixed rate or adjustable rate mortgages, the maximum LTV is 90%. For second homes and one unit investment properties, the maximum LTV is 80%. For 2- to 4-unit investment properties, the maximum LTV is 70%. Other rules apply to other categories.
- Different LTV and minimum credit score requirements apply to super conforming mortgages with loan amounts greater than \$1 million and certain others.
- Limited cash out refinancing is permitted.

vii. NAR Calls for Delay in Implementation of HVCC

On April 20, 2009, NAR President Charles McMillan sent a letter to [Fannie Mae President and CEO Michael Williams](#) and [Freddie Mac Interim President and CEO John Koskinen](#) requesting that the Home Valuation Code of Conduct (HVCC) be delayed until May 1, 2010. Citing a host of reasons, NAR President Charles McMillan said "Stakeholders across the country will be granted sufficient time to prepare for changes to the appraisal process brought forth by the HVCC." A copy of the letter was sent to the Federal Housing Finance Agency and NYS Attorney General Andrew Cuomo.

Some of NAR's concerns include a lack of guidance from the government sponsored entities (GSE) since the final agreement was announced in late December 2008. NAR also noted that it is not clear who will have enforcement responsibility for HVCC and the Independent Valuation Protection Institute (IVPI) is not yet operational. Delaying the implementation of HVCC for one year will give stakeholders an opportunity to address these and other concerns outlined in the letter. NAR recently issued a [paper](#) on how the HVCC impacts various stakeholders in the mortgage transaction.

viii. Home Energy & Climate Bill Unveiled

House Energy Chair Henry Waxman (D-CA) and Subcommittee Chair Ed Markey (D-MA) unveiled 648-page draft climate and energy legislation, the "American Clean Energy and Security Act." Among the many provisions, the bill would provide funding to states that:

- Increase the energy efficiency of new and renovated buildings by 30-50% over latest model codes. The Energy Department could develop future models which states must adopt to receive bill funding.
- Implement energy labels (like mileage/gallon labels for cars) on homes and buildings. The label must be accessible so it is "more fully factored into market transactions," but states could provide it at times other than the property's sale (e.g., when an energy audit is conducted).

The Waxman-Markey bill would also:

- Direct the EPA to issue regulations for states to implement labeling and building codes, and assure that citizens can bring lawsuits to force action; and
- Bar EPA from regulating carbon emissions under the New Source Review program, which effectively prevents regulation of tens of thousands (EPA numbers) of office and apartment buildings. If Congress fails to enact this provision, EPA will have to require permits and installation of energy saving measures (such as solar panels) in order for owners to build, maintain or operate buildings with 20 or more units. This is the result of a Supreme Court ruling that carbon dioxide is an air pollutant within the meaning of the Clean Air Act.

Chairman Waxman has vowed to move the bill out of his committee by Memorial Day so the House could consider it later this year. The Senate is also developing legislation but the energy and climate provisions are being drafted by different committees on separate tracks, so the timing is less clear.

ix. REALTORS® Push Mortgage Reform

Home buyers must be protected against mortgage lending abuses while being assured of access to affordable mortgages. Toward this end, NAR has actively been expressing its support of H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009, and urging quick passage of this bill. It was scheduled to go to vote the week of May 4, 2009.

On May 5, 2009, NAR President Charles McMillan, a broker with Coldwell Banker Residential Brokerage in Dallas-Fort Worth, stated “REALTORS® have a strong stake in preventing abusive lending for many reasons. Beyond the devastating impact on individuals and families, abusive lending erodes confidence in the nation’s housing system, and entire communities are harmed whenever abusive lending strips equity from homeowners.”

As consumer abuse in mortgage lending increased in the earlier part of this decade, REALTORS® established a set of “Responsible Lending Principles” in 2005 with the goal of protecting consumers in the housing market. “After years of sharing our Responsible Lending Principles with Congress, NAR is extremely pleased that H.R. 1728, which embodies these principles, is set to be voted on this week,” McMillan said.

In a letter to Congress, NAR expressed strong support for H.R. 1728, including measures to ensure that all mortgage originators act in good faith and that all parties in real estate transactions are treated honestly. “We ask members of Congress to indicate their support of consumers and the housing market by voting in favor of this important legislation,” said McMillan.

On April 23, 2009, NAR President Charles McMillan [testified](#) before the House Financial Services Committee (HFSC) regarding H.R. 1728. President McMillan testified that REALTORS® support the need for mortgage reform, and generally support H.R. 1728; however, he recommended that a few adjustments be made to ensure that the legislation does not cause unintended consequences and unduly restrict the marketplace.

One concern was the broad definition of mortgage originator that could overreach and encompass some of the everyday activities of REALTORS®, including providing advice to consumers to help them find fair and affordable mortgages. He also suggested that the inclusion of just 30-year fixed rate mortgages in the safe harbor provision is too narrow. In both instances, the legislation's rules could significantly hurt real estate professionals' ability to help navigate the consumer through the home buying process, as well as limit the traditional mortgage products available to the consumer during the home buying process. NAR worked with members of the HFSC to ensure that the bill, which was reported out of the Committee on May 4, 2009, contained provisions that ensure the appropriate protections for consumers and does not unnecessarily restrict the marketplace.

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