Basel III Commercial Real Estate Requirements
Issue Summary

What is the fundamental issue?

International, voluntary regulatory capital standards for banks are developed by the Basel Committee on Banking Supervision. The most recent round of updates, referred to as Basel III, has been in an implementation cycle since 2013.

In January 2015, the standard was changed to create a new risk-based capital category – High Volatility Commercial Real Estate Exposures (HVCRE) for commercial acquisition, development, and construction (ADC) loans. These changes raise the risk-weight for an ADC loan from 100 percent to 150 percent. In response to the potential changes, it is highly likely that banks will change their current lending practices and reduce the amount of available commercial real estate credit in order to avoid the higher capital charges associated with ADC loans.

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

Basel III agreement will require banks to hold more capital. The changes could significantly curtail the flow of capital to real estate and harm the commercial and residential property market and property values. Further, the creation of the HVCRE standards means that loans used for commercial acquisition, development and construction loans will become more complex.

NAR Policy:

While NAR supports the Basel Committee's objective to prevent another financial crisis, NAR is concerned that requiring banks to hold far more capital could further exacerbate credit challenges for real estate and broader credit capacity. Furthermore, NAR seeks to protect and enhance the flow of capital to commercial and residential real estate by making sure that the capital rules do not require excessive capital to be held by banks.

Opposition Arguments:

Proponents of Basel III argue that by requiring banks to hold more capital, they improve their ability to absorb shocks arising from financial and economic stress, and improve their risk management. these proponents also believe that the heightened capital requirements strengthen banks' transparency and their disclosures.

Legislative/Regulatory Status/Outlook

The final rule went into effect on January 1, 2015. The final rule clarifies that the definition of HVCRE does not apply to the purchase or development of agricultural land if the valuation of the land is limited to the value of the land for agricultural purposes or to ADC loans that otherwise qualify as community development investments. Loans permanently financing owner occupied commercial real estate are not considered HVCRE under the final rule. No other changes were made to the HVCRE definition and HVCRE loans are risk-weighted at 150% under the final rule.

Current Legislation/Regulation (bill number or regulation)

Basel III Final Rule

NAR Committee:

Commercial Legislation and Regulatory Advisory Board

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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 any 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 in the form of fees that are taxed as 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 any 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 generally be directly affected by the proposal, as it applies only to real estate investment partnerships that have carried interests. Real estate brokerages are 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:
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.

Opposition Arguments:
Opponents of NAR policy will say that high-earning taxpayers should pay their "fair share." 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 changes to the treatment of carried interest several times, it has never passed the Senate. No legislation has been considered in the Senate that would change the tax treatment of carried interests. However, bills designed to change the taxation of carried interest income from capital gains to ordinary income were introduced in both the House and Senate in June 2015. These bills have no bipartisan support. Moreover, comprehensive tax reform is unlikely to move in Congress before 2017. Thus, most observers do not view these bills as having a serious chance of being enacted in the short-term.

In addition, President Obama's FY 2016 budget once again includes a proposal that carried interests be taxed as ordinary income rather than as capital gains.

Some observers believe tax reform may be the time when a change is made to the way carried interests are taxed. It is interesting to note that one prominent tax reform plan, released by former Ways and Means Chairman Dave Camp (R-MI) in February 2014, would change the tax treatment of carried interests from capital gains to ordinary income. However, the draft specifically exempts real estate interests from this change.

Current Legislation/Regulation (bill number or regulation)
H.R. 2889, "Carried Interest Fairness Act of 2015"
S. 1686, "Carried Interest Fairness Act of 2015"

NAR Committee:
Federal Taxation Committee

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Capital Gains – Exclusion on Sale of Principal Residence
Issue Summary

What is the fundamental issue?
In 1997, Congress enacted an exclusion for the gains on the sale of a principal residence. Taxpayers who file a joint return can exclude up to $500,000 of gain from taxation. All others may exclude $250,000. The 1997 provision was not indexed for inflation. In 2007, Congress enacted a modest limitation on the value of the exclusion when an individual sells a home that once was used as a second home or rental property and then later converted to a principal residence.

I am a real estate professional. What does this mean for my business?
The exclusion is the most taxpayer-friendly provision enacted in many years. It offers an excellent retirement planning foundation. The 1997 legislation eliminated the requirement that proceeds from the sale of a principal residence be reinvested in another property of the same or greater value. This change facilitated mobility from high cost to lower cost areas, and also greatly simplified the tax compliance burden for homeowners. It also allowed the homeowner the greatest freedom in the use of his/her capital. Proceeds from the sale of a principal residence may be used to purchase another principal residence, a second home, investment property or in any other manner the owner chooses.

NAR Policy:
The $250,000/$500,000 exclusion amount should be indexed for inflation.

Opposition Arguments:
Opponents will say that this is just another tax benefit that mostly benefits higher-income taxpayers.

Legislative/Regulatory Status/Outlook
No proposals are pending that would modify present law as it applies to the exclusion.

Current Legislation/Regulation (bill number or regulation)
None at this time.

NAR Committee:
Federal Taxation Committee

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Clean Water Act (Waters of the U.S.)
Issue Summary

What is the fundamental issue?
Contrary to prior Supreme Court decisions, the Administration has proposed to "clarify" which water bodies are 'U.S. waters' and therefore subject to Clean Water Act regulations. See *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. 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 the "U.S. water" definition, the Act will require expensive, time-consuming federal permits to develop private property near most water bodies -- not just those which are navigable. In addition, property owners may experience a taking under the regulation without adequate compensation, as prescribed under the 5th Amendment of the Constitution.

NAR Policy:
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.

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

Legislative/Regulatory Status/Outlook
On April 21, 2014, the Environmental Protection Agency and Army Corps of Engineers jointly proposed a rule to "clarify" which water bodies are "waters of the U.S." and regulated under the Clean Water Act. This rule would expand jurisdiction and authority over more waters of the U.S., negatively impacting economic development and property rights in communities across the country.

This rule was finalized and went into effect on August 28, 2015. While the Environmental Protection Agency (EPA) made several changes to the proposed rule in response to public comments, the final rule still expands federal jurisdiction over more U.S. waters beyond current practice, guidance and the limitations affirmed by two Supreme Court decisions. Property owners still have a lack of clarity about what is needed or required to not be regulated by the Army Corps of Engineers or the EPA under the Clean Water Act.

Legally, the rule was stayed nationwide by a federal appeals court on October 9, 2015. This means the Corps and the EPA are legally prohibited from implementing the rule while the court engages in additional legal review of the rule. While temporary, the ban demonstrates the legal weaknesses of the rule.

Legislatively, there has been lots of activity, including:

- H.R. 1732, the "Regulatory Integrity Protection Act", sponsored by Rep. Shuster (R-PA), passed the House on May 13, 2015. This bill would require the EPA to withdraw the rule and start the rule development process from the beginning, making sure the regulatory process is followed.

- A companion bill in the Senate, the “Federal Water Quality Protection Act”, sponsored by Sen. Barrasso (R-WY), S. 1140, would have required the EPA to conduct and adhere to the appropriate regulatory process and includes definitions of the kinds of waters that should be excluded from the rule. This bill failed in a close vote in Nov.
- A Resolution of Disapproval under the Congressional Review Act passed both the House and Senate, but was vetoed by the President on January 19, 2016. It now goes back to the Senate for a possible override vote but there is no timeframe set for this vote at this time.
- A provision to prohibit the EPA from expending any funds to implement the WOTUS rule was not included in the FY2016 Appropriations Bill, but we are now working on the FY2017 appropriations.
- NAR believes that only Congress can fundamentally alter the Clean Water Act and will continue to oppose any efforts, whether through policy, guidance or regulation, to expand the Act's reach or otherwise infringe on property rights.

Current Legislation/Regulation (bill number or regulation)
Read the proposed regulatory definition of "Waters of the United States":
http://www.2.epa.gov/uswaters

NAR's web page contains comprehensive information and resources about the proposed rule:
www.realtor.org/topics/clean-water-act

NAR Committee:
Land Use, Property Rights and Environment Committee

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Credit Policy (Credit Availability)
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.

I am a real estate professional. What does this mean for my business?
Many local housing markets currently suffer unduly tight underwriting criteria. Unless buyers have extremely good credit, it can be very difficult for them to be approved for a mortgage. Credit policies adopted by the lending industry, Fannie Mae, Freddie Mac and federal regulators (e.g. credit scoring, downpayment requirements, and rules impacting mortgage liquidity) affect mortgage capital availability, as well as, the homebuyers' ability to qualify for a mortgage.

NAR Policy:
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.

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.

Opposition Arguments:
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 Credit Policy recommendations and met with industry groups and regulators to emphasize the importance of reasonable underwriting policies.

Current Legislation/Regulation (bill number or regulation)
None at this time.

NAR Committee:
Conventional Financing and Policy Committee

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Crowdfunding
Issue Summary

What is the fundamental issue?
"The Jumpstart Our Business Startups (JOBS) Act of 2012" is a law intended to encourage funding of U.S. small businesses by easing various securities regulations, including allowing non-accredited investors to engage in "crowd funding" activities. The JOBS Act was passed in April 2012, with the goal of increasing opportunities for small businesses and startups. The Security and Exchange Commission (SEC) was charged with proposing regulation on crowdfunding.

Crowdfunding refers to the financing of an activity through the collective cooperation of people who pool their money or other resources, sometimes through a networking site on the internet. Crowdfunding has been in practice for some time before the JOBS Act was written, but now there are guidelines in place for many aspects of crowdfunding, including individual investment limits and controlling the way the funds are managed through a third-party platform.

I am a real estate professional. What does this mean for my business?
Crowdfunding could present an alternative funding stream for both residential and commercial buyers and sellers.

NAR Policy:
NAR policy supports laws and regulations that ensure an adequate flow of capital for real estate purposes. NAR has no policy specific to crowdfunding at this time.

Opposition Arguments:
Opponents of the proposed rules to implement the JOBS Act are split between whether the regulations were too relaxed or too restrictive in the balance between protecting the individual investor and creating a positive regulatory environment for crowdfunding to occur. Some critics argue that there is not enough federal oversight of the crowdfunding platforms and that the scheme is ripe for fraud, while others are concerned that too tight registration will stymie the development of crowdfunding as a source of funding for real estate projects.

Legislative/Regulatory Status/Outlook
On June 19, 2015, Regulation A+ took effect. Regulation A+ is the nickname of Title III of the JOBS Act of 2012, which is designed to increase capital-raising opportunities for small businesses. Regulation A+ makes it easier for small businesses to raise capital by removing many of the regulatory compliance hurdles that had been in place previously. The new rules will:

- Allow companies to raise up to $50 million under Regulation A, which is a less-complicated route in terms of compliance and administration, as the previous limit was $5 million.
- Exempt companies using Regulation A from registration with state securities administrations.
- Establish two tiers of fundraising under Regulation A:
    - Tier 1: up to $20 million in a 12-month period, with not more than $6 million in offers by selling security-holders that are affiliates of the issuer
    - Tier 2: $20-$50 million - for offerings of securities of up to $50 million in a 12-month period, with not more than $15 million in offers by selling security-holders that are affiliates of the issue. Also subject to ongoing review.

Title IV of the JOBS Act was finalized in October 2015 and went into effect January 2016. The highlights of the rule for Title IV include:

1) Investor/Investment Limits
    - Permit a company to raise a maximum aggregate amount of $1 million through crowdfunding offerings in a 12-month period;
    - Permit individual investors, over a 12-month period, to invest in the aggregate across all crowdfunding offerings up to:
        - If either their annual income or net worth is less than $100,000, than the greater of:
            - $2,000 or
            - 5 percent of the lesser of their annual income or net worth.
        - If both their annual income and net worth are equal to or more than $100,000, 10 percent of the lesser of their annual income or net worth; and
    - During the 12-month period, the aggregate amount of securities sold to an investor through all crowdfunding offerings may not exceed $100,000.

2) Companies that use a crowdfunding platform – Companies that rely on the recommended rules to conduct a crowdfunding offering must file certain information with the Commission and provide information to investors and the intermediary facilitating the offering. The information required is defined in the rule and is similar to what would be necessary for an audit or other financial reporting. There are ongoing reporting requirements for companies that have used a crowdfunding platform to complete a capital raise.

3) Crowdfunding Platforms - A funding portal would be required to register with the Commission on new Form Funding Portal, and become a member of a national securities association (currently, FINRA). A company relying on the rules would be required to conduct its offering exclusively through one intermediary platform at a time.

Current Legislation/Regulation (bill number or regulation)
None at this time.

NAR Committee:
Commercial Legislation and Regulatory Advisory Board

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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 large retailers, a number of privacy and data security bills have been introduced in 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.

Of note is the recent trend in email fraud targeting home buyers who are approaching closing. Fraudulent emails appearing to come from a trusted source (agent, title company) instruct the buyer to wire funds to a fraudulent account. This scam further heightens the need for REALTORS® and their clients to pay attention to data security.

I am a real estate professional. What does this mean for my business?
Real estate professionals 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 real estate professionals and REALTOR® 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:
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.

<u>NAR Data Privacy & Security Principles</u>
REALTORS® 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® endorse the following Data Privacy and Security principles:

Collection of Personal Information Should be Transparent
REALTORS® 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® should collect and use information about individuals only where the REALTOR® reasonably believes it would be useful (and allowed by law) to administering their business and to provide products, services and other opportunities to consumers. REALTORS® 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.

View NAR's web page on Data Privacy and Security at www.realtor.org/data-privacy-security

Opposition Arguments:
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.

Legislative/Regulatory Status/Outlook
Several data breach bills have been introduced in the House and Senate. NAR supports the approach taken by Senator Warner (D-VA) in his discussion draft. That draft bill:

1. Covers all entities handling sensitive information – there are no exemptions for banks, telcos, third parties, etc.
2. The scope of the bill is appropriate:
    a. breach of security is the acquisition of data (not access or acquisition);
    b. Sensitive account/personal information are narrowly defined terms (not expansive); and
    c. The trigger for notice is risk-based (requiring what is defined as financial harm).
3. Has reasonable data security standards for non-banks;
4. Has enforcement by banking regulators for banks, and by FTC for non-banks;
5. Has equivalent enforcement by all banking regulators and the FTC, with requirement that the agencies coordinate on equivalent enforcement and penalties; and
6. Gives all covered entities the benefit of solid preemption of state and common law.

NAR is working to refine the legislation and to encourage co-sponsorship.

Finally, NAR has developed an educational toolkit for members and has developed an online training course available through REALTOR® University. To view the toolkit visit:
www.realtor.org/law-and-ethics/nars-data-security-and-privacy-toolkit

Current Legislation/Regulation (bill number or regulation)
H.R. 1770, "Data Security and Breach Notification Act
H.R. 580, "Data Accountability and Trust Act"
S. 177, "Data Security and Breach Notification Act"
S _, "Data Breach Notification Act"
S. 961, "Data Security Act"

NAR Committee:
Federal Technology Policy Advisory Board

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Electronic Signatures & Closings
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:
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.

Opposition Arguments:
Those who may oppose electronic signatures in real estate transactions do so in the name of security and 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) significantly broadened the range of signatures that will be accepted as part of FHA mortgage processing. Also, the Consumer Financial Protection Bureau (CFPB) in August 2015 announced results of pilot projects demonstrating 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 continues to work closely with both agencies to promote more efficient and cost effective processes in real estate transactions.

Current Legislation/Regulation (bill number or regulation)
None at this time.

NAR Committee:
Federal Technology Policy Advisory Board

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179D – Energy Efficient Commercial Buildings Tax Provision
Issue Summary

What is the fundamental issue?
Section 179D, the Energy Efficient Commercial Buildings Deduction, was enacted as part of the Energy Policy Act of 2005. This provision allows commercial building owners who improve the building's energy-efficiency (via the building envelope, HVAC system, hot water, or the interior lighting system) to receive a deduction of as much as $1.80 per square foot in the year the upgrade goes into service, after receiving the proper third-party certification. It is available for both new construction and retrofits, and does not favor any particular method of conserving/reducing energy use.

179D has been extended three times – in 2008, 2014, and 2015. The last two extensions, in 2014 and 2015, were short-term and had to be applied retroactively to the previous year due to Congress allowing the provision to lapse. Unless Congress extends it again, it will expire at the end of 2016.

I am a real estate professional. What does this mean for my business?
179D encourages commercial building owners to make energy-efficient improvements to their properties, while giving them the flexibility to make their own choices of how to accomplish this. In addition to reducing energy consumption and saving owners and tenants' money, these improvements can also increase the property's attractiveness to new tenants and help them retain value as they age. Short-term extensions of 179D and allowing it to expire, even for short periods that are covered retroactively, can undermine its purpose, as building owners may be unsure as to whether it will apply to improvements they hope to make and opt not to take the risk.

NAR Policy:
NAR supports deductions such as Section 179D, which are designed to encourage property owners to make improvements to and/or rebuild real property in order to conserve energy and satisfy environmental goals. NAR supports encouraging improving energy usage in commercial buildings through voluntary, market-based programs which leave flexibility in the way that is achieved.

Opposition Arguments:
No specific policy arguments against this deduction have been identified.

Legislative/Regulatory Status/Outlook
Section 179D was extended for two years (2015 and 2016) in the December 2015 Omnibus Appropriations bill enacted into law. Unless Congress extends it again, it will expire at the end of 2016.

While this provision has strong bipartisan support, the prospect of tax reform in the coming years, combined with a number of former expired provisions being made permanent in December 2015, could make it more difficult for Congress to extend this deduction in the future.

NAR will continue to work to persuade lawmakers to make this provision a permanent part of the tax law, or at least to extend it for as long as is possible.

Current Legislation/Regulation (bill number or regulation)
H.R. 2029, "Consolidated Appropriations Act of 2016"

NAR Committee:
Federal Tax Committee
Commercial Legislation and Regulatory Advisory Board

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Energy Efficiency (Energy Scores/Labels)
Issue Summary

What is the fundamental issue?
The federal government is moving forward with voluntary energy efficiency policies and programs, as well as regulations to limit the U.S. atmospheric contribution of carbon dioxide (CO_2) and other greenhouse gases. Some of these policies, programs and regulations may impact the built environment, including commercial and residential properties.

I am a real estate professional. What does this mean for my business?
If energy efficiency were federally mandated, property owners' ability to sell their home or building could be at risk without first having to conduct energy audits and improve its heating and cooling system, windows, insulation and/or lighting. Also, older homes that do not meet adequate energy efficiency requirements or score poorly on energy use assessments would be stigmatized and may lose value compared to newer, more efficient homes.

NAR Policy:
NAR supports improving energy efficiency through voluntary incentives, commercially reasonable approaches and education in lieu of individual building mandates. The policy opposes applying existing laws/regulations that are not designed for global climate change; provisions that impose undue economic burdens on property owners or managers; or triggering such requirements at the time when real property is sold.

Opposition Arguments:
The Environmental Protection Agency's (EPA) policies and regulations will externalize the costs of carbon and provide economic incentives to reduce CO_2 emissions. These rules will also improve the type and pace of energy efficiency in buildings and increase the value of these properties through energy savings and utility bills. Mandated energy labels for buildings will provide the consumer with critical information they need about the property to make an informed choice related to the purchase of these properties and also provide incentives for owners of less efficient properties to make energy efficiency improvements.

Legislative/Regulatory Status/Outlook
The Department of Energy (DOE) has completed development of a voluntary Home Energy Performance Score and has made it available on the department's website for consumers to use. DOE is also in the development phase of a similar protocol for commercial buildings and is in the testing and pilot program phase. The program was expected to be released in Spring 2014, but is still currently in the testing phase, with no timeframe for completion or release.

NAR has communicated with Congress, the White House and various federal agencies to reinforce our strong concerns about the stigmatizing effects these kinds of energy use labels may have on commercial and residential real estate. NAR continues to have concerns about the potential for misuse of such information in the transaction and will continue to raise these concerns and work with the Administration to ensure that the information will be used appropriately and not stigmatize or obstruct the sale of older properties.

In the Spring of 2015, the Senate and House passed S. 535, the "Energy Efficiency Improvement Act of 2015", sponsored by Senators Portman (R-OH) and Shaheen (D-NH). This legislation creates the "Tenant Star" program, a voluntary, market-driven approach which encourages building tenants and owners to reduce their energy consumption. NAR, in coalition with other real estate industry groups, supports this legislation and its flexible approach to improving energy efficiency in commercial buildings.

Current Legislation/Regulation (bill number or regulation)
S. 535, "The Energy Efficiency Improvement Act of 2015"

NAR Committee:
Land Use, Property Rights and Environment Committee

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Fair Housing Act (Source of Income as Protected Class)
Issue Summary

What is the fundamental issue?
Should NAR support Equal Opportunity in housing on the basis of sexual orientation and gender identity? Nationally, equal opportunity is protected on the bases of race, color, religion, sex (gender), handicap (disability), familial status (children in the household) and national origin. Twenty state and numerous local laws prohibit discrimination on the basis of sexual orientation and many jurisdictions also prohibit discrimination on the basis of gender identity. In other states there are no such laws and it is not illegal to discriminate in the provision of housing and real estate services based on sexual orientation.

I am a real estate professional. What does this mean for my business?
Most REALTORS® would see little impact on their business. In 20 states discrimination based on sexual orientation is already illegal. The U.S. Department of Housing and Urban Development (HUD) prohibits discrimination based on sexual orientation and gender identity in HUD funded housing. Since fair housing practices are already the norm, adding sexual orientation and gender identity to the list of protections would require little change in business practices. REALTORS® already are committed to providing equal professional service on the bases of sexual orientation and gender identity through the Code of Ethics. REALTORS® incorporate the commitment to equal opportunity based on sexual orientation and gender identity into their existing fair housing practices, particularly when explaining their fair housing commitment to prospective clients and customers. NAR is not aware of any business impacts caused by state laws prohibiting discrimination based on sexual orientation or gender identity; however, the Michigan Fair Housing Center reported that it found discrimination against same sex couples in nearly 30% of tests it conducted.

NAR Policy:
NAR opposes discrimination in housing based on race, color, religion, sex, handicap, familial status sexual orientation, gender identity, and national origin. This policy is embodied in NAR's Code of Ethics. NAR also authorizes sanctions in response to a finding that a member has violated any fair housing law, including local and state laws that prohibit discrimination based on sexual orientation or gender identity. NAR policy is to support equal opportunity on the basis of sexual orientation and gender identity and the NAR Code of Ethics was amended in 2010 and 2013, to include this updated policy in the Code of Ethics.

View NAR's web page on Diversity and the Fair Housing Program:
www.realtor.org/programs/diversity-program

Opposition Arguments:
There are those who oppose civil rights protections based on sexual orientation and gender identity. There are differences of opinion about sexual orientation and gender identity that often are manifest in opposition or support for civil rights protections on these bases. In several states, there have been legislative efforts to allow discrimination on the basis of sexual orientation and gender identity based on religious beliefs.

Legislative/Regulatory Status/Outlook
HUD has announced its intention to issue rules prohibiting discrimination based on sexual orientation in federally funded housing. No legislation is currently being considered.

Current Legislation/Regulation (bill number or regulation)
None at this time.

NAR Committee:
Diversity Committee

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FHA Lifetime Mortgage Insurance Premiums
Issue Summary

What is the fundamental issue?
Under the Federal Housing Administration (FHA) mortgage program, borrowers must pay an annual mortgage insurance premium to help protect lenders against losses in the event of a homeowner's default. For FHA loans with a loan to value ratio (LTV) over 90 % at origination, borrowers must pay an annual mortgage insurance premium for the life of the loan, up to 30 years. FHA loans with a lower LTV at origination shall pay an annual mortgage insurance premium for 11 years or until the end of the mortgage term, whichever comes first. Prior to 2013, FHA cancelled annual mortgage insurance premiums for loans when the remaining balance reached an LTV of 78% regardless of the original down payment size. However, in June of 2013, FHA removed the ability to cancel the annual mortgage insurance premium for loans with over 90% LTV at origination. While FHA implemented the change in policy in order to mitigate credit risk and help strengthen the Mutual Mortgage Insurance Fund (MMIF), the greater overall health of the MMIF today shows it is time to reconsider the lifetime annual mortgage insurance premium.

I am a real estate professional. What does this mean for my business?
A lifetime annual mortgage insurance premium makes an FHA loan too costly for many potential homebuyers.

NAR Policy:
NAR urges FHA to eliminate the lifetime annual mortgage insurance premium requirement for loans with an LTV greater than 90%.

Opposition Arguments:
Opponents of NAR policy believe a lifetime annual mortgage insurance premium protects the strength of the Mutual Mortgage Insurance Fund and encourages the return of private capital to the housing market. The lifetime annual mortgage insurance premium works to ensure that FHA covers losses for the life of the loan, while private market participants do not.

Legislative/Regulatory Status/Outlook
In January 2015, FHA reduced annual lifetime mortgage insurance premium from 1.35% to 0.85%, estimating an additional 250,000 potential homebuyers would purchase their first home within three years due to the reduction in overall cost. In November 2015, FHA released its Annual Report to Congress and the FY 2015 Independent Actuarial Assessment of the FHA Mutual Mortgage Insurance Fund (MMIF). The review showed that the MMIF capital reserve ratio has reached beyond the required two percent capital reserve ratio and has improved by more than $40 billion since FY 2012. The 0.5% mortgage insurance premium reduction in January 2015 increased the solvency of the fund and added 75,000 borrowers with credit scores below 680. NAR believes this trend will continue and will push FHA to make policy changes that promote homeownership, including advocating for the elimination of the annual lifetime mortgage insurance premium.

Current Legislation/Regulation (bill number or regulation)
None at this time.

NAR Committee:
Federal Housing and Finance Committee

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Financial Regulatory Reform
Issue Summary

What is the fundamental issue?
Since the passage of the Dodd-Frank Act, some believe that increased bank regulations have constricted access to affordable credit for consumers and businesses.

I am a real estate professional. What does this mean for my business?
Access to affordable mortgage capital in all markets at all times and under all economic conditions is essential for a robust economy.

NAR Policy:
NAR supports the removal of burdensome regulations on financial institutions that impede access to affordable credit for consumers and do not reduce consumer protections. Furthermore, NAR recognizes that community banks have a long history of a common sense approach to underwriting and offering mortgage credit to borrowers, and that the relationship-lending model is one that should be maintained. In addition, NAR believes that exception to the general rule must be limited and not become the general rule – moderating regulatory burdens for small lenders needs to be balanced with maintaining principles of strong underwriting.

Opposition Arguments:
Some believe that a financial sector with little to no regulation will result in a more robust economy. While others believe that there currently are not enough regulatory protections for consumers. Many believe the lack of consumer protections was a primary factor that caused the Great Recession.

Legislative/Regulatory Status/Outlook
In February 2015, the Consumer Financial Protection Bureau (CFPB) proposed changes to burdensome mortgage rules that were finalized in January of 2013. The proposal expanded regulatory exemptions for community banks and those serving rural and underserved areas. NAR supported the proposed rules and the recognition by the CFPB of the impact that the regulatory environment has had on the ability of community banks to provide mortgage credit with the importance of ascertaining a consumers ability-to-repay.

On September 25, 2015, the Consumer Financial Protection Bureau (CFPB) finalized the rules to allow exemptions from the Qualified Mortgage (QM) rule for small institutions and expanded the definition of "Rural".

On May 21, 2015, the Senate Banking Committee passed the "Financial Regulatory Improvement Act of 2015" by a partisan 12-10 vote. The legislation aims to ease bank regulations and enforce greater transparency on the Federal Reserve and other financial regulators. This bill also contains 4 provisions related to housing finance reform, which include: (1) prohibiting the use of guarantee fees (G-fees) as an offset to federal spending; (2) barring the sale of Fannie Mae and Freddie Mac's (GSEs) preferred stock by the U.S. Treasury; (3) creating a Common Securitization Platform; and (4) requiring the GSEs to engage in more credit risk-sharing. The legislation, however, is unlikely to win support from Democrats needed to bring it to a floor vote in the Senate.

In fact, Senate Banking Ranking Member, Sen. Brown (D-OH), introduced the "Community Financial Institution Regulatory Relief and Consumer Protection Act of 2015," which removes a variety of regulatory burdens for small community-based financial institutions. This bill will likely not receive a floor vote either due to the Republican-controlled Senate.

Current Legislation/Regulation (bill number or regulation):
S. 1484, "Financial Regulatory Improvement Act of 2015"
S. 1491, "Community Lender Regulatory Relief and Consumer Protection Act of 2015"
Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z)

NAR Committee:
Conventional Financing and Policy Committee

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Flood Insurance (NFIP & Private Market)
Issue Summary

What is the fundamental issue?
Congress must reauthorize the National Flood Insurance Program (NFIP) to continue providing flood insurance after 2017.

I am a real estate professional. What does this mean for my business?
Without the NFIP, millions of home- and small business owners in 20,000 communities nationwide would not be able to obtain a mortgage or insurance to protect their property against the most expensive and common natural disaster in the U.S.: flooding. The NFIP was created because of the lack of access to affordable flood insurance coverage 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:
NAR supports:

1. Reauthorizing and gradually strengthening the NFIP so it is sustainable over the long run.
2. Providing federal assistance to high risk property owners in order to build higher and keep NFIP rates affordable, including guaranteed loans, grants and buyouts;
3. Encouraging the development of a private market to offer comparable flood insurance coverage at lower cost than the NFIP;
4. Accurately pricing NFIP policies to better reflect the property's specific risk; and
5. Improving the resolution of NFIP flood maps and appeals process so property owners bear less of the burden.

View NAR's web page on NFIP at www.realtor.org/floodinsurance.

Opposition Arguments:
Opponents 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 could be forced to borrow more to make up the shortfall in premiums in order to cover future flood claims.

Legislative/Regulatory Status/Outlook
On July 6, 2012, Congress passed the Biggert-Waters Act reauthorizing the NFIP through 2017. While ending the shut downs and short-term extensions that were costing 40,000 home sales a month, implementation problems threatened to undermine real estate transactions where flood insurance is required for a federally related mortgage.

On March 13, 2014, Congress responded by amending Biggert-Waters with passage of the "Homeowner Flood Insurance Affordability Act." President Obama signed these affordability amendments into law on March 21, 2014:

- Repealed FEMA's authority to raise premium rates at time of property sale or new food map;
- Restored grandfathering so properties built to code in one flood zone aren't rated in another simply because FEMA maps change;
- Limited premium increases to 18% annually for newer properties and 25% for the older ones.
- Refunded premium increases overpaid by property owners in excess of the new rate caps;
- Added a small assessment on all NFIP policies until property owners are paying full-risk premiums; and
- Created a flood insurance advocate to help property owners with map appeals and rate quotes.

Within 1 year of passage, FEMA rolled back the most inaccurate premium rates, refunded the overcharges, and capped future increases moving forward. FEMA also established the new office of the advocate to help address some property owner concerns over the flood maps or insurance rates.

NAR supports long-term reauthorization and reform of the NFIP, including:

- H.R. 3297, "The Fairness in Flood Insurance Act" -- Streamlining the flood mapping process and reimbursing property owners for their successful appeal expenses.
- S. 1679/H.R. 2901, "The Flood Insurance Market Act" -- Providing flood insurance options in addition to the NFIP where consumers are able to find comparable coverage at lower cost in the private market.
- Provisions of H.R. 3128, "The Homeland Security Appropriations Act" -- Strengthening the NFIP advocate's office in order to assist more homeowners with correcting faulty insurance rates and flood maps.

The House has already begun holding hearings on the future of the NFIP. NAR will continue to work with Congress to reauthorize and reform the NFIP before the current authority expires in 2017.

Current Legislation/Regulation (bill number or regulation)
S. 1679/H.R. 2901, "The Flood Insurance Market Parity and Modernization Act"
H.R. 3297, "The Fairness in Flood Insurance Act"
Provisions of H.R. 3128, "The Homeland Security Appropriations Act, 2016"

NAR Committee:
Insurance Committee

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FHA Condo Approvals and 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 the pool of buyers for that property.

NAR Policy:
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 homebuyers 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.

Opposition Arguments:
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 May of 2015, NAR published an "FHA Condominium Resource Book", developed to demonstrate the need for changes in FHA's condo policy. The book contains data on the number of FHA condos that are certified (less than 20%), examples of the affordability of condos vs single family homes, and changes we are requesting in the FHA condominium rules.

NAR continues to push HUD to finalize the rules for condominiums and make substantive changes that ease condo purchasing. In the meantime, legislation has been introduced by Reps. Luetkemeyer (R-MO) and Cleaver (D-MO) that will provide 4 changes to current condo policy. H.R. 3700, the "Housing Opportunity Through Modernization Act of 2015" will:

1. reduce owner-occupancy ratio to 35%;
2. allow lenders to approve condos with commercial space over 35%;
3. require HUD Secretary to "substantially reduce" burdens on condo recertification; and
4. require FHA to mirror the FHFA rules related to private transfer fees.

This bill passed out of Committee with a bipartisan vote of 44-10. We are pushing to get this bill to the House Floor this winter.

Current Legislation/Regulation (bill number or regulation)
H.R. 3700, "The Housing Opportunity Through Modernization Act of 2015"

NAR Committee:
Federal Financing and Housing Policy Committee

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Government-Sponsored Enterprises (Secondary Mortgage Market Reform)
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 several years, Congress has focused its conversation on how the GSEs found themselves in their current predicament. In the 113th Congress, two significant pieces of legislation were introduced in the House and Senate – "The Protecting American Taxpayers and Homeowners (PATH) Act" (H.R 2767) and "The Housing Finance Reform and American Protection Act" (S. 1217). Neither bill successfully made it to the floor for consideration by either the full House or Senate. No comprehensive housing finance reform legislation is expected to be signed into law in 2015.

In absence of legislation, FHFA has taken steps to restructure the business practices of the GSEs for a future housing finance system. In 2012, FHFA instructed the GSEs to develop a new program to transfer risk to the private sector with the intent of reducing overall risk they pose to taxpayers. Though still a small market, risk transfers is now a regular part of the GSE business and have become specific goals in the annual conservatorship scorecard. Both FHFA and the GSEs continue to collaborate on the development and evaluation of these structures.

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 government's support of the GSEs and FHA-insured loans, which 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:
NAR believes that Fannie Mae and Freddie Mac should 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, NAR recommends that the entity(s) be managed in such a way as to encourage private capital's participation in the secondary mortgage market.

Opposition Arguments:
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
Several housing finance reform bills are expected to be introduced during the 114th Congress; however, it remains unlikely that any reform of the secondary mortgage market will be signed into law this year.

<u>Housing Finance Reform Legislative Timeline</u>
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 other aspects of the Administration's proposal. Specifically, the Administration favors 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.

After the release of the Obama Administration's housing finance reform report, Congress began serious discussions regarding the future of the GSEs, as well as the need for overall reform of the U.S. housing finance system. In the 113th Congress, the Senate Banking Committee and the House Financial Services Committee held several hearings on housing finance reform, and both Committees have passed their versions of housing finance reform 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 Garrett (R-NJ). NAR opposes this legislation, which includes reforms to FHA, the GSEs, and the financial regulatory law known as the Dodd-Frank Act. NAR opposed the bill based on two major concerns: 1) We strongly opposed the end of federal guarantee for a secondary mortgage market; and 2) we strongly opposed 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 did not reach the House floor during the previous Congress.

U.S. Senate Legislation: "The Housing Finance Reform and American Protection Act of 2013"

On June 25, 2013, Senators Bob Corker (R-TN) and Mark Warner (D-VA) introduced "The Housing Finance Reform and American Protection Act of 2013" that would also phase out Fannie Mae and Freddie Mac. But, unlike 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.

The bill was the subject of hearings but was not taken up for a vote.

Johnson-Crapo Legislation

On May 15, 2014, the Senate Banking Committee passed S. 1217, the "Housing Finance Reform and Taxpayer Protection Act of 2014," to overhaul the secondary housing finance market. The bill built on S. 1217 by including bipartisan changes drafted by Senate Banking Chairman Tim Johnson (D-SD) and Ranking Member Mike Crapo (R-ID). Commonly referred to as the Johnson-Crapo bill, the legislation expanded on the bill released by Bob Corker (R-TN) and Mark Warner (D-VA) that would wind down

Fannie Mae and Freddie Mac and replace them with a new agency, known as the Federal Mortgage Insurance Corporation (FMIC). The bill did not advance to the Senate floor for consideration by the full Senate.

NAR continues to support the Congressional discussion and legislative process for GSE reform. The Johnson-Crapo legislation contained many positive aspects such as an explicit government guarantee, continuing HERA conforming loan limits, and a lower down payment for first-time homebuyers; however, NAR remains concerned with the potential impact on overall mortgage costs for consumers under this bill.

No major housing finance reform legislation is likely to be signed into law during 2015; however, NAR continues to be proactive in ongoing discussions and remains supportive of efforts to improve and further the process of GSE reform while ensuring that qualified borrowers have access to mortgage credit.

Regulatory Housing Finance Reform

Since 2012, FHFA has directed the GSEs to begin working on efforts to reduce outstanding risk to the taxpayers and begin work on a new securitization infrastructure. In 2012, FHFA instructed the GSEs to develop a new program to transfer risk to the private sector with the intent of reducing overall risk they pose to taxpayers. The GSEs have begun to develop risk sharing products that fit within FHFA's set goals of being "economically sensible, repeatable, scalable, and structured to not disrupt the efficient operation of the "To Be Announced" (TBA) market (which provides the market with benefits including allowing borrowers to lock in rates in advance of closing)." Though a small part of the multi-trillion dollar mortgage market, NAR continues to evaluate how different types of risk sharing impacts the availability and affordability of mortgage credit to borrowers. Additionally, the GSEs, at FHFA's direction, have begun development of a new securitization infrastructure for the GSEs for single family loans. NAR has supported the creation of a self-sufficient infrastructure whereby safe, sound, transparent, and insured MBS may be packaged and sold. The development of a common securitization platform will support single-family securitization and the development of single GSE security should increase liquidity of these securities in the market, increasing demand and producing better pricing.

Current Legislation/Regulation (bill number or regulation)

None at this time.

NAR Committee:

Conventional Financing and Policy Committee

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Government-Sponsored Enterprises Guarantee Fees
(Fannie Mae and Freddie Mac Guarantee Fees)
Issue Summary

What is the fundamental issue?
GSE guarantee fees are charged by Freddie Mac and Fannie Mae, to lenders for bundling, selling, and guaranteeing the payment of principal and interest on their Mortgage Backed Securities (MBS). These fees are generally passed on to consumers in the form of higher interest rates. The main component of guarantee fee covers projected credit losses from borrower defaults over the life of the loans, administrative costs, and a return on capital (think of it like MBS insurance). The fees are also used to cover internal expenses for such services as:

- Managing and administering the securitized mortgage pools,
- Selling the MBS to investors,
- Reporting to investors and the SEC, and
- Maintaining the MBS on the open market, and selling, general and administrative expense.

I am a real estate professional. What does this mean for my business?
Impact of the 10 bps G-fee Increase
Lenders who passed an earlier g-fee increase on to borrowers have increased the rate offered to a borrower by at least .1% since April 1, 2012. Several sources have placed the increase in cost at approximately $4000 - $5400 over 30 years on a $200,000 loan. Since passage of this original 10bps in the Payroll Tax legislation, the g-fee has been increased far more than the legislation called for, costing homebuyers and refinancers significantly more money per annum. Since the initial increase, the average g-fee for a fixed, 30-year loan has been raised 32bps, or more than 114%.

Cost of Additional G-fees
Any proposed extension of the g-fee increase will maintain the higher cost of a mortgage credit and continue to cause homebuyers to reconsider a potential home purchase or refinance. At a time when the housing market is beginning to show signs of recovery, and inventories are beginning to fall, a punitive fee that does not support the safety and soundness of the housing finance sector, will likely exacerbate the problem it was intended to fix. A slowdown in housing means higher unemployment, but more importantly, a slowdown in loan originations which is what is required to fuel the "pay-for" via the g-fee.

NAR Policy:
NAR strongly opposes the use of guarantee fees for any use other than intended purpose. The Association understands the need to bring financial relief to the middle-class and reauthorize highway programs, but effectively imposing a tax on housing is not prudent given the continued need for stability in the housing sector. It makes little sense to tax mortgage originations or refinances of middle class Americans in order to generate the desired revenue to cover unrelated expenditures.

Opposition Arguments:
Higher g-fees may help the GSE's better manage their credit risk

Legislative/Regulatory Status/Outlook
In 2011, Congress enacted the "Temporary Payroll Tax Cut Continuation Act of 2011" (Payroll Tax) to fund a two-month extension of the payroll tax cut, unemployment benefits, and Medicare reimbursements. The extension is paid for by a 10 basis point (bp) increase in the average g-fee charged by Fannie Mae and Freddie Mac through 2021.

More recently, on July 30, 2015, the U.S. Senate passed a 6-year highway and transit funding reauthorization bill. The bill included a controversial funding provision that would extend the use of

guarantee fees (g-fees) for an additional 4 years. The multi-year bill passed by a vote of 65-34. The U.S. House made clear that the U.S. Senate's 6-year bill wouldn't receive a vote in the lower chamber. The Senate then passed a short-term highway and transit bill, which extended the highway program through October 29, 2015, but replenished the Highway Trust Fund into December 2015 without the g-fee language.

On December 4, 2015, President Obama signed into law H.R. 22, Fixing America's Surface Transportation Act (FAST Act). The Act sets federal policy and funding levels for highways, transit, passenger rail and bridge programs through 2020 in addition to reviving the expired Export-Import Bank. Through NAR's extensive lobbying efforts and use of its Call-for-Action system, the controversial use of the GSE's guarantee fees as a funding mechanism was dropped from the bill.

Current Legislation/Regulation (bill number or regulation)
H.R. 22, "Fixing America's Surface Transportation Act (FAST Act)"

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Homelessness
Issue Summary

What is the fundamental issue?
On a given night, more than half a million people are homeless in America. Of these, more than 60% are in temporary shelter. While the number of homeless has declined (according to HUD's 2015 Annual Homeless Assessment Report (AHAR) to Congress), finding permanent housing for these families and individuals remains a challenging task.

I am a real estate professional. What does this mean for my business?
Many REALTORS® and state and local associations work with programs to reduce homelessness in their communities.

NAR Policy:
NAR policy supports the right of every individual to live in safe and decent housing.

Opposition Arguments:
While there are questions with respect to funding for initiatives to eliminate homelessness, there are no opponents who argue that there is no need to address the problem.

Legislative/Regulatory Status/Outlook:
There are a number of federal program designed to eradicate homelessness. The Continuum of Care (COC) program is the primary tool, which provides funding for nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families. The Departments of Veterans Affairs and Housing and Urban Development have teamed up to specifically eliminate veteran homelessness (today approximately 8% of homeless people are veterans).

Current Legislation/Regulation (bill number or regulation):
None at this time

NAR Committee:
Housing Opportunity

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Internet Sale Tax (Marketplace 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. The 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, out-of-state online and other remote sellers (such as catalog 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:
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.

Opposition Arguments:
Opponents of the 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 March 10, 2015, Senators Enzi (R-WY) and Durbin (D-IL) introduced S. 698, the "Marketplace Fairness Act of 2015." Similar to legislation introduced in the previous Congress that passed the Senate but stalled in the House, this bill 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. In June 2015 Representatives Chaffetz (R-UT) and Womack (R-AR) introduced H.R. 2775, the "Remote Transactions Parity Act of 2015". This bill is similar to previous internet sales tax bills, but departs in that it gradually phases-in which sellers are required to comply with the legislation, beginning with the largest sellers and working down to the base-threshold. NAR supports these bills, and will

continue to monitor their progress and advocate for internet sales tax fairness legislation to pass in the 114th Congress.

Current Legislation/Regulation (bill number or regulation)
S. 698, "The Marketplace Fairness Act of 2015"
H.R. 2775, "The Remote Transactions Parity Act of 2015"

NAR Committee:
Commercial Legislation and Regulatory Advisory Board
Federal Taxation Committee

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Lender Reluctance to Use FHA
Issue Summary

What is the fundamental issue?
In recent years, as enforcement has increased, some lenders have begun to shy away from writing FHA loans. FHA recently published a revised lender certification rule to ensure lenders are protecting homebuyers and upholding FHA lending practices. This included a requirement for a pre-endorsement review of all loans in which no errors were committed that would render the loan ineligible for FHA insurance. In addition, FHA and the Department of Justice have filed a number of high profile lawsuits with lenders for underwriting violations of FHA. Lenders are concerned that the standards for error correction increase their liability for more FHA related lawsuits and government penalties in the future. As a result of these concerns, JPMorgan Chase publically announced they would stop writing FHA loans. A number of other lenders have increased requirements for FHA borrowers.

I am a real estate professional. What does this mean for my business?
FHA is an important tool, especially for first-time buyers. Lack of access to FHA could hurt mortgage financing options for buyers.

NAR Policy:
NAR supports FHA regulations that protect borrowers without being unduly burdensome.

Opposition Arguments:
FHA believes the current FHA lender certification requirements are necessary to protect the consumer and prevent fraud on behalf of the lenders.

Legislative/Regulatory Status/Outlook:
FHA released a new lender defect taxonomy in June of 2015, and the new lender handbook became effective in September. Since then several major lenders have expressed disinterest in participating in the FHA mortgage insurance program. However, a number of smaller lenders have come in to fill the gap. FHA mortgage insurance has actually grown as a part of the share of the mortgage market in FY 2015.

Current Legislation/Regulation (bill number or regulation)
None at this time.

NAR Committee:
Federal Financing and Housing Policy Committee

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Loan Limits
Issue Summary

What is the fundamental issue?
The mortgage loan limits for the GSEs (Freddie Mac and Fannie Mae) and for FHA and VA are critical to providing liquidity in today's housing market. Today, those limits are set at 115% of local area median home price, up to a cap of $625,500 in high cost areas. The lowest limit for the GSEs is $417,000 and for FHA is $271,050. The Federal Housing Finance Agency (FHFA) recently published a proposed rule to determine the best methodology to use to determine the national GSE limit (currently $417,000).

I am a real estate professional. What does this mean for my business?
With the tight constraints on mortgage availability, lowering the FHA/Fannie/Freddie 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:
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.

Opposition Arguments:
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
The current limits are permanent, and there has been no action to change them. The limits are recalculated every year. For a current listing of the GSE and FHA limits, visit https://entp.hud.gov/idapp/html/hicostlook.cfm.

Current Legislation/Regulation (bill number or regulation)
None at this time

NAR Committee:
Conventional Financing and Policy Committee
Diversity Committee
Federal Financing and Housing Policy Committee

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Mortgage Interest Deduction (MID)
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 12% 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:
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 2013, 55% earned less than $100,000 and 88% earned less than $200,000.

Opposition Arguments:
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 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. However, a tax reform authored by former House Ways & Means Committee Chairman Dave Camp (R-MI) would drastically change the benefit of the MID. Specifically, the proposal would lower the cap on the size of mortgage loans for which the interest is deductible from the current level of $1 million to $500,000 in four steps. But much more significantly, the proposal would also reduce the number of taxpayers eligible to claim the MID from around 33-35% today to an estimated 4-5%. This would occur because the draft plan would eliminate the deduction for state and local taxes and, at the same time, nearly double the size of the standard deduction. The result would be that far fewer homeowners would have itemized deductions in excess of the standard deduction.

The Camp plan was introduced as a bill, but it did not garner any significant support from even House Republicans. Camp has now retired from the House and the focus of tax reform in 2015 and so far in 2016 has been on business tax reform, and not on the individual side. Thus, the Camp draft as released is no longer an active bill. However, many of the ideas of this plan might be resurrected by other policymakers in future years, including this drastic change to the MID.

Moreover, some of the candidates running for the 2016 Republican nomination for president have released tax reform plans that could be harmful or fatal to the mortgage interest deduction. While these plans are a very long way from enactment, and tax reform affecting the MID is unlikely in 2016, NAR continues to watch this issue very closely.

REALTORS® can expect the MID to be under continuing attack and scrutiny as policymakers continue to explore ideas for tax reform.

Current Legislation/Regulation (bill number or regulation)
None at this time.

NAR Committee:
Federal Taxation Committee

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Natural Disaster
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:
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.

Opposition Arguments:
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.

In the 114th Congress, NAR is working to re-introduce legislation that is consistent with NAR principles. Together with the Protecting America Coalition, NAR will promote viable approaches to achieve a forward-looking U.S. policy on natural disasters.

Current Legislation/Regulation (bill number or regulation)
None at this time.

NAR Committee:
Insurance Committee

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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 real estate professionals 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:
NAR supports legislative and regulatory efforts to ensure that broadband providers adhere to net neutral practices. NAR is concerned about the Federal Communications Commission's (FCC) "fast lanes" proposal and has commented in opposition to the current proposed rule.

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 real estate professionals today. Net neutral practices will be essential to ensure that real estate content may be freely and efficiently distributed online.

NAR supports seven principles to guide lobbying efforts on any legislation to require broadband providers to adhere to net neutral practices:

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.

Opposition Arguments:
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.

Legislative/Regulatory Status/Outlook
On December 21, 2010, the FCC issued new rules on net neutrality. Under these rules, wired broadband providers were "prohibited from blocking lawful content, applications, services and the connection of nonharmful devices to the network." Wireless broadband providers, however, were allowed more flexibility, reflecting the technical limitations on the amount of traffic a wireless network can handle. Both wired and wireless broadband providers would have been subject to transparency requirements, which require them to let consumers know how they manage network activity. The new rules also allowed 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.
On May 15, 2014, the FCC issued a proposed rule for comment. This rule would allow large content providers like Netflix and Facebook and others to negotiate separate, exclusive deals with Internet Service Providers to carry their content on faster connections. This has been termed "Internet fast lanes."

NAR filed comments opposing the FCC's "fast lanes" proposal. In addition the Association organized a broad real estate coalition including over 100 MLSs, large firms and industry associations opposing the FCC's proposal. NAR will continue to let members of Congress know about our concerns and urge them to weigh in with the FCC.

The FCC published its Open Internet order in March 2015. The Order seeks to prevent Internet Service Providers from blocking Web traffic, slowing it down or setting up paid fast lanes. Several ISPs and their industry associations have filed lawsuits challenging the FTC's authority to implement this order. It is likely to take several years for these lawsuits to wind their way through the courts.

Finally, both the House and Senate have produced discussion drafts of legislation that purport to create net neutrality protections. NAR is working with both chambers to strengthen the drafts by addressing loopholes that could weaken consumers' protections. To date, this legislation has not progressed in either house.

Current Legislation/Regulation (bill number or regulation)
FCC Notice of Proposed Rulemaking entitled "Preserving the Open Internet" and "Broadband Industry Practices, GN Docket No.09-191, WC Docket No. 07

NAR Committee:
Federal Technology Policy Advisory Board

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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 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 large brokers have been sued for alleged infringement of a patent dealing with property valuation. 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:
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.

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

Legislative/Regulatory Status/Outlook
NAR has been lobbying on our own behalf and as part of the United for Patent Reform Coalition to support common sense patent litigation reforms. We hope to see a comprehensive patent reform bill passed in this Congress.

In the House, H.R. 9, the "Innovation Act" (Goodlatte, R-VA) contains a number of the reforms NAR seeks, while companion legislation, S. 1137 the "Protecting American Talent and Entrepreneurship (PATENT) Act", (Grassley, R-IA; Leahy, D-VT) is moving in the Senate.

NAR continues to work with our partners in the United for Patent Reform coalition to bring the bills to the House and Senate floor. We hope to see the legislation move forward in early 2016.

Current Legislation/Regulation (bill number or regulation)
H.R. 9, "The Innovation Act"
S. 1137, "Protecting American Talent and Entrepreneurship Act" (PATENT Act)

NAR Committee:
Federal Technology Policy Advisory Board

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Private Property Rights (Transfer of Public Lands)
Issue Summary

What is the fundamental issue?
Governments shall not arbitrarily infringe on the basic right of the individual to acquire, possess and freely transfer real property, and shall protect private property rights as referred to in the 5th and l4th Amendments of the United States Constitution. This is a foundational element for all REALTORS® and for NAR.

One aspect of this issue relates to the transfer of public lands from the federal government to private ownership. This process should be encouraged and streamlined and is especially important for states in the West, some in which the federal government owns over 50% of the land. Transferring land to the private sector will encourage economic development and better management of the land for multiple uses, such as resource extraction, ranching and wildlife management. It will also help the federal government prioritize and better manage the land they have left.

I am a real estate professional. What does this mean for my business?
The freedom to buy, sell and utilize property, as protected in the 5th amendment, underlies all real estate transactions and markets. Any restrictions placed on a property owner from realizing the highest and best use of that property hinders economic growth and development and reduces freedoms inherent in our society.

Transferring land from the federal government to private ownership will allow increased economic development and provide better, more efficient land management. This will result in less frequent and severe wildfires, enhanced ecosystems and economic development for rural areas.

NAR Policy:
Governments shall not arbitrarily infringe on the basic right of the individual to acquire, possess and freely transfer real property, and shall protect private property rights as referred to in the 5th and l4th Amendments of the United States Constitution.

We support legislative implementation of the 5th Amendment's guarantee of compensation when property rights are taken. Every person should have the right to acquire real property with confidence and certainty that the use or value of such property will not be wholly or substantially eliminated by governmental action at any level without just compensation or the owner's express consent.

In addition, we support legislation which will provide property owners expeditious access to administrative and judicial systems at all levels - local, state and federal - to pursue 5th Amendment takings claims or relief from other property rights violations.

We recognize the need for all levels of government to be able to exercise legitimate police powers in the regulation of private property to protect the health, safety and general welfare of its citizens. However, when government actions or regulations are not founded within legitimate police powers, the government should be required to pay compensation for the inordinate burden levied on the property owner.

The federal government should not establish criteria for the use of eminent domain by state and local governments. Each state should establish its own rules and laws governing eminent domain without interference from the federal government.

Likewise, when a government entity exercises its eminent domain power to condemn private property for public use, the government should provide - as required by the 5th Amendment - "just"

compensation to affected property owners that covers not only the value of the property condemned but also all other reasonable and necessary costs generated by the condemnation action including, but not limited to, hiring legal counsel, obtaining temporary housing, lost business revenue, severance damages.

Furthermore, when a government entity exercises its eminent domain authority, it should do so only when necessary to materially advance a real public use. The government should provide persuasive, objective evidence that the project, and the resulting public use, will in fact be realized

Opposition Arguments:
Property rights should be balanced with other societal needs, such as environmental quality and economic development. Lands should stay under the ownership of the federal government because only public ownership will allow for the most efficient and multiple use management of these lands.

Legislative/Regulatory Status/Outlook
No actions at this time.

Current Legislation/Regulation (bill number or regulation)
None at this time.

NAR Committee:
Land Use, Property Rights and Environment Committee

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Property Assessed Clean Energy (PACE) Financing
Issue Summary

What is the fundamental issue?
Property Assessed Clean Energy (PACE) programs provide a mechanism for financing energy-related home improvement projects, such as solar panels or energy efficient windows. PACE programs permit local governments to provide financing to property owners for these projects; homeowners repay the amount borrowed, over a period of years through an assessment added to their property tax bill.

I am a real estate professional. What does this mean for my business?
Credit and Mortgage Availability
NAR is concerned that PACE loans could have an adverse impact on credit and mortgage availability. Like property taxes, PACE liens take priority over mortgages. But if a home is foreclosed on, the liens are paid before the mortgage lender can recoup any money. The presence or potential presence of a PACE loan, taking the first position ahead of the mortgage, invariably leads to the devaluation of the mortgage as a secured asset. This has the effect of either making mortgages more risky and costly.

Disclosure Concerns
Real estate professionals are very concerned about issues that are required to be disclosed about a property. The more items that are required to be disclosed, the more liability is increased if an item is not disclosed. Because PACE loan liens run with the property and are included in the tax bill regardless of whom the property owner is, this is an item that would need to be disclosed to a potential buyer of the property.

Concerns Related to the Completion of the Transaction
Because PACE loans run with the property and not with the property owner, tax assessment for the loan will need to be explained for each new buyer. If it is assumed that the average home is sold every five years, and the average length of the PACE loan is 20 years, then this special tax assessment will need to be explained an average of four times over the life of the loan. These assessments have already caused delays in transactions or even cancellations.

NAR Policy:
NAR believes that PACE liens should be subordinate to any first mortgages and support the prohibition of Fannie Mae and Freddie Mac from buying mortgages or notes with PACE-type "super liens." This will allow homebuyers to more easily obtain financing while supporting energy efficiency, and ensure mortgage markets remain secure.

Opposition Arguments
Homeowners should have a variety of options to help them make their homes more energy efficient and save money on their utility bills. PACE programs help homeowners achieve both of those goals and also reduce CO_2 emissions which contributes to climate change.

Legislative/Regulatory Status/Outlook
On July 6, 2010, the Federal Housing Finance Agency (FHFA) issued a statement that states: "*The Federal Housing Finance Agency has determined that certain energy retrofit lending programs present significant safety and soundness concerns ….First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders….They present significant risk to lenders and secondary market entities, may alter valuations for mortgaged-backed securities and are not essential for successful programs to spur energy conservation.*"

This statement, and subsequent statements released by the FHFA expressing concerns about various aspects of PACE programs, chilled the demand for these programs.

On August 24, 2015, the Federal Housing Administration (FHA) published guidance which clarified that properties with subordinated PACE loans can be purchased and refinanced with an FHA insured mortgage. This guidance included the conditions under which borrowers purchasing or refinancing properties with existing PACE assessments will be eligible to use FHA-insured financing.

Current Legislation/Regulation (bill number or regulation)
None at this time

NAR Committee:
Land Use, Property Rights and Environment Committee
Conventional Lending and Finance Committee

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Qualified Commercial Real Estate (QCRE) Loan Regulations
Issue Summary

What is the fundamental issue?
A portion of the Dodd-Frank Act that impacts commercial real estate lending was written in 2014 and will go into effect in 2016. This rule, known as 'risk retention', was written to have institutions that package securities to have 'skin in the game'. As written, the rule treats certain commercial real estate loans as being particularly risky. The Qualified Commercial Real Estate (QCRE) definition exempts some loans from the risk retention requirement. The language would amend Section 15G of the Securities Exchange Act of 1934 (15 U.S.C. 78o-11), which is applied in the Dodd-Frank regulations and contains many of the definitions referenced in the rule. QCRE loans are provided the exemption from the risk retention requirements based on positive historical performance of the loans. In particular, the language would allow for Single Borrower/Single Credit transactions to be considered QCRE loans.

I am a real estate professional. What does this mean for my business?
Should this rule go into effect as written, it will translate into higher borrowing costs in communities across the country. CMBS provides financing to retail, office, apartments, industrial, health care and many other types of commercial real estate. The QCRE exemption would allow more CRE loans to be freed from the heavier cost burdens of the risk retention categories.

NAR Policy:
NAR supports legislative and regulatory activity that eases and increases lending to commercial real estate. NAR works to oppose policy changes that would restrict lending.

Opposition Arguments:
Commercial real estate lending is a volatile sector of the economy and should be held to closer scrutiny.

Legislative/Regulatory Status/Outlook:
NAR is a part of a real estate coalition that has formed to oppose the implementation of the rule. Other coalition members include National Association of Real Estate Investment Trusts, the Real Estate Roundtable, the Mortgage Bankers Association, and the Commercial Real Estate Finance Council.

Current Legislation/Regulation (bill number or regulation)
None at this time.

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Commercial Legislative and Regulatory Advisory Board

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Section 1031 Like-Kind Exchanges
Issue Summary

What is the fundamental issue?
Since 1921, U.S. tax law has recognized that the exchange of one investment or business-use property for another of like-kind results in no change in the economic position of the taxpayer, and therefore, should not result in the immediate imposition of income tax. The exchange rules permit the deferral of taxes, so long as the taxpayer satisfies numerous requirements and consummates both a sale and purchase within 180 days. Real estate investors and commercial real estate practitioners 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 real estate professional 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 real estate professionals.

NAR Policy:
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. This, in turn, results in economic growth and job creation.

Opposition Arguments:
Opponents of NAR policy may 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 bipartisan legislation related to Section 1031 has been introduced in the 114th Congress (which began in January 2015). However, identical bills have been introduced in the House and Senate that would limit the use of the like-kind exchange deferral as a way of partially offsetting the cost of provisions that would shore up multiemployer pension plans. So far, support for these bills is limited to a relatively small number of Democrats, which indicates that there is not much chance of this legislation moving forward in the Republican-controlled Congress.

Of more concern, however, is the fact that Members of Congress in both Houses and both parties continue to express the desire to overhaul the tax system, with some leaders indicating that "everything is on the table." A staff discussion draft released by former Finance Committee Chairman Max Baucus (D-MT) in November 2013 proposed repealing Section 1031. A similar tax reform draft plan was released by former Ways and Means Committee Chairman Dave Camp (R-MI) in February 2014, which would also repeal Section 1031. Moreover, the Obama Administration's budget for Fiscal Year 2016 also proposed limits on the deferral provisions of Section 1031. NAR joined with a number of other commercial real estate associations in strongly condemning these proposals as being harmful to economic growth, job creation, and likely to lower commercial and investment property values.

While comprehensive tax reform appears to be outside the realm of possible agreement between President Obama and the Republican-controlled Congress between now and the end of 2016, there is still a small chance that business-only tax reform could move during that time. In that case, tax writers will likely look to current law provisions that can be repealed or curtailed in order to "pay for" lowering tax rates. Section 1031 Like-Kind Exchanges could be on one or more "hit lists." NAR is working with other interested stakeholders to oppose the repeal or limitation of the like-kind exchange provision and to educate Members of Congress and their staffs on the importance of this provision to the economy.

Current Legislation/Regulation (bill number or regulation)
H.R. 2844, "Keep Our Pension Promises Act" (Kaptur, D-OH)
S. 1631, "Keep Our Pension Promises Act" (Sanders, I-VT)

NAR Committee:
Commercial Legislation and Regulatory Advisory Board
Federal Taxation Committee

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Short Term Rental Ordinances
Issue Summary

What is the fundamental issue?
Many localities in areas across the country are considering or passing ordinances that limit or prevent the ability of property owners to rent out properties on a short-term basis. The dynamics of this issue are complex. The infringement upon property rights is a common theme when local governments limit the use of property. Property ownership includes the right to gain income from property; whereas local governments are granted the legal authority to regulate land use within their jurisdiction by police powers and/or zoning regulations. The natural complexities of short-term rentals also create a division of positions among NAR's membership.

I am a real estate professional. What does this mean for my business?
Rental property especially for vacation destinations may become less desirable to buyers and investors if restrictions are placed upon the amount of time property may be rented.

NAR Policy:
NAR has not adopted an official position on this issue; however, state and local REALTOR® associations may adopt official positions for short-term rental ordinances and/or laws.

Opposition Arguments:
Users of short-term rentals do not uphold existing community standards and violate public nuisance laws. Therefore, these short-term renters place additional costs on the local government and existing property owners without being held accountable for their actions on the property.

Legislative/Regulatory Status/Outlook
There are no federal legislative or regulatory proposals.

Current Legislation/Regulation (bill number or regulation)
Several local jurisdictions across the country are considering or have considered implementing short-term rental ordinances.

NAR Committee:
State and Local Issues Policy Committee

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State and Local Real Estate Tax Deductions
Issue Summary

What is the fundamental issue?
Real property taxes, along with other state and local taxes paid, are deductible for federal income tax purposes. According to the IRS, the average property tax deduction claimed in 2013 was $4,610. Without the deduction, taxpayers would be paying federal tax on funds already paid to state or local governments, which would be double taxation.

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 state and local tax deductions. So far there has been no bipartisan legislation introduced that would reduce or eliminate state and local tax deductions.

I am a real estate professional. What does this mean for my business?
If the deduction for state and local taxes paid were repealed or limited, the costs of homeownership would rise.

NAR Policy:
NAR strongly supports deductibility of state and local real estate taxes, as well as other state and local taxes paid.

Opposition Arguments:
The deduction for state and local taxes paid subsidizes irresponsible spending by certain states, and forces taxpayers in lower-tax jurisdictions to pay more federal tax.

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 state and local tax deductions) 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 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.

Most members of Congress have 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 been introduced repealing the state and local tax deduction. However, a tax reform bill authored by former House Ways & Means Committee Chairman Dave Camp (R-MI) in early 2014 would have repealed the deduction of taxes paid by individuals. State and local taxes paid by businesses would remain as a deductible expense.

The Camp plan did not garner any significant support from even House Republicans. Moreover, Camp has now retired from the House and the focus of tax reform in 2015 and so far in 2016 has been on business tax reform, and not on the individual side. However, many of the ideas in the Camp plan might be resurrected by other policymakers in future years, including limits to the deductibility of state and local taxes. Therefore, NAR continues to watch this issue very closely.

Current Legislation/Regulation (bill number or regulation)
None at this time.

NAR Committee:
State and Local Issues Policy Committee
Federal Taxation Committee

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Student Loan Debt
Issue Summary

What is the fundamental issue?
NAR has been monitoring the important discussion on the potential implications that rising student debt may have on consumer access to mortgage credit, and more broadly, homeownership. While there are various reasons that student debt is growing, several reports have indicated that the continued rise in student debt itself along with a weak labor market may have a long-term impact on the ability of first time homebuyers to qualify for mortgages in the future, particularly lower income consumers. Many of these potential borrowers may find a significant portion of their total monthly debt will be comprised of student loan payments.

I am a real estate professional. What does this mean for my business?
A current survey of home buyers and sellers conducted by NAR indicates that student debt liability is of particular concern to potential buyers trying to save for or meet down payment requirements. Should student loan burdens continue to impact the ability of responsible borrowers to save for a down payment, potential borrowers will be unable to access the most affordable mortgage options. Though a vast majority of borrowers have been responsible and diligent in making their student loan payments, the ability of borrowers to save for priorities such as emergency savings, medical expenses, and down payments may become more difficult and ultimately impact their future decisions to purchase a home.

NAR Policy:
The recommendations of the NAR Student Loan Debt Work Group were approved at the November 2014 NAR Convention. Specifically, the Work Group recommended that NAR (1) continue to monitor student loan debt research, and (2) support legislative and regulatory efforts to educate and protect all student loan borrowers by helping them better understand loan programs, repayment rules, and responsibilities.

Opposition Arguments:
Some believe that stagnant wage and job growth is hindering housing market, not rising student loan debt.

Legislative/Regulatory Status/Outlook
Last year, Congress held hearings on college costs and federal loan and grant programs this year as it prepares to reauthorize the Higher Education Act (HEA). Since the original Higher Education Act (HEA) was created in 1965, the sweeping law governing federal financial aid programs has been rewritten eight separate times.

Congress plans to continue to work on reauthorizing the HEA, which expired at the end of December 2015.

As Congress prepares for the next reauthorization, the issues that likely will be included in the final bill are affordability and college costs, access, persistence and completion, better information for consumers, student loan programs, accreditation and oversight, innovation, and the burden of federal regulations.

Current Legislation/Regulation (bill number or regulation)
A plethora of higher education bills ranging from loan refinancing to increased financial literacy have been introduced in the 114th Congress. Sens. Lamar Alexander (R-TN), and Patty Murray (D-WA), the Chairman and Ranking Member of the Senate Education Committee, have formed bipartisan working groups to draft a reauthorization of the higher education law. The working groups will specifically address accreditation, accountability, affordability and financial aid, and sexual assault and safety.

Meanwhile, on the other side of the U.S. Capitol, Rep. John Kline (R-MN), the Chairman of the House Education Committee, has been focusing on a higher education legislative overhaul as well. Republicans on the Committee said they're hoping to fix the law by focusing on five main areas: empowering students to make informed decisions, simplifying and improving student aid, promoting innovation, increasing access and completion, and ensuring strong accountability while limiting the federal role.

NAR Committee:
Conventional Financing and Policy Committee

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TILA/RESPA Integrated Disclosure (TRID)
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. The final rule is an improvement over the 2012 proposed rule but there still have been questions, complications, and costs related to implementation that took place on October 3, 2015.

I am a real estate professional. What does this mean for my business?
This will make the closing process more rigid and uniform but it also could lengthen it. The requirement that the Closing Disclosure be issued three days before closing may lead to delays even though things other than major loan terms can be adjusted during that period. NAR has worked with the CFPB and Industry to try to remove impediments to smooth closings and prepare our members for these changes.

NAR Policy:
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 could benefit settlement service providers and consumers and ultimately improve the settlement process.

Opposition Arguments:
Opponents of NAR policy believe that each burden imposed by the separate laws is necessary to ensure that consumers are adequately protected. They would also like to see more efforts to control prices. Some on the other side of the spectrum would simply like to get rid of this rule.

Legislative/Regulatory Status/Outlook
A proposed rule was issued on July 9, 2012. The final rule was issued November 20, 2013 and went into effect on October 3, 2015.

In the final rule, the CFPB largely addressed NAR's major concerns regarding the proposed 3-day waiting period to close transactions, And dropped many provisions including the "all in" APR that would have been problematic at best. However, concerns about delays and how the mortgage transaction interacts with the real estate transaction remain.

Given these concerns, NAR has long advocated a period of restrained enforcement and liability for the TILA-RESPA Integrated Disclosure rule. It was through NAR member efforts during the 2015 REALTOR® Legislative Meetings and Trade Expo that almost 300 U.S. Senators and Representatives signed onto a letter to CFPB Director Richard Cordray asking him to grant a period of restrained enforcement as well. On June 3, 2015, the CFPB issued a blog post that said it would be "sensitive" to companies making a good-faith effort to comply with the new TILA-RESPA Integrated Disclosure regulation. At a Senate Banking Committee hearing in July 2015, CFPB Director Cordray further stated that CFPB's enforcement efforts would be "education, not punitive...for many months."

NAR has continued to work with the CFPB to minimize any possible market disruptions or uncertainty after the rule took effect on October 3, which was towards the end of the busiest transaction season for real estate.

Current Legislation/Regulation (bill number or regulation)
Public Law 111-203 (H.R. 4173, "The Dodd Frank Wall Street Reform and Consumer Protection Act")

NAR Committee:
Business Issues Policy Committee

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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 challenge of attracting new appraisers to the business.

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. In April 2013, 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.

Appraiser Qualifications: It is becoming increasingly difficult to attract new entrants into the appraisal profession and the Appraisal Qualifications Board (AQB) is exploring alternative tracks to gaining the experience necessary to sit for the licensing exam.

NAR Policy:
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.

View the NAR's Responsible Valuation Policy at www.realtor.org/appraisal/responsible-valuation-policy

Opposition Arguments:
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 Fannie's and Freddie's efforts to standardize appraisal data delivery through the Uniform Appraisal Dataset (UAD) have negatively impacted the quality of appraisal reports.

Legislative/Regulatory Status/Outlook
NAR closely monitors federal legislative and regulatory issues related to valuations. There is currently no legislation impacting the appraisal issues outlined above.

On January, 26, 2015, Fannie Mae made Collateral Underwriter (CU), an appraisal risk-assessment tool, available to lenders. NAR members were concerned that this could add time to the appraisal process and force appraisers to use lower-value, lower-quality comps. Fannie Mae, however, feels that the tool is

superior to current lender check-lists and engagement letters and that it will prevent some of the call-backs appraisers receive from underwriters for additional or lower comps. NAR has watched the roll-out of CU closely and have asked members to give NAR feedback about issues that may arise.

On June 9, 2015, five regulatory agencies issued a final rule requiring states to register Appraisal Management Companies (AMCs). NAR submitted comments on the proposed rule and is generally supportive of the rule. It is critical that States ensure that AMCs provide quality services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction. The rule went into effect on August 10, 2015.

On September 14, 2015, new sections of the Federal Housing Administration (FHA) Single Family Housing Policy Handbook related to appraisals came into effect. The section entitled *Appraiser and Property Requirements for Title II Forward and Reverse Mortgages* includes policies specific to appraiser actions, including: property eligibility requirements; requirements for appraisers when performing appraisals; and the reporting of appraisal results. FHA's supplemental Single Family Housing Appraisal Report and Data Delivery Guide also came into effect. NAR is monitoring the impact the Single Family Housing Policy Handbook is having on appraisers and the appraisal industry.

On October 16, 2015, the Appraiser Qualifications Board (AQB) held a public hearing on a concept paper it issued about attracting new appraisers to the business. The paper discusses possible improvements to the experience requirements in the Real Property Appraiser Qualification Criteria. NAR's Real Property Valuation Committee submitted a letter to the AQB in response to the concept paper, asking AQB to consider alternative ways to fulfill the residential appraisal experience component of the AQB requirements as well as revisit the 4-year college degree requirement.

Current Legislation/Regulation (bill number or regulation)
Final Rule on Appraisals for Higher-Priced Mortgage Loans
Final Rule on ECOA Free Appraisal Requirement
Final Rule on Minimum Requirements for Appraisal Management Companies
AQB Concept Paper
Letter to AQB

NAR Committee:
Real Property Valuation Committee

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Wildfires
Issue Summary

What is the fundamental issue?
More and more development is occurring in areas that have historically had risk of wildfires, especially in the far West, Intermountain West and the South. At the same time that these homes are being built, the frequency and intensity of wildfires have increased. The past decade has seen more wildfires and more intense wildfires, than at any other time in our country's history. These so-called "mega- fires" are placing more of these new developments, and the people who live in them, in harm's way.

I am a real estate professional. What does this mean for my business?
Wildfires impact real estate agents and the real estate sector in a variety of ways. Properties that are built in areas that are known to be at a higher risk of wildfires may lose value as a result of that risk, especially if that risk changes over time. Agents need to know what areas are at higher risk of wildfires and disclose this risk to potential buyers. Insurance companies may decline to write homeowners insurance in these higher risk areas or drop coverage or dramatically increase premiums after a fire. Building practices and mitigation activities taken to reduce the property's risk of being impacted by a wildfire may be effective but also may be prohibitively expensive for the owner, thereby reducing the value of a property.

NAR Policy:
We support federal legislation and regulation that encourage active forest management practices which will help return the ecological benefits of fire to our forested areas, bring balance to our nation's firefighting policies, and protect homes and communities in the wildland/urban interface. These practices may include - but are not limited to - forest thinning, fuel reduction, and strategic use of prescribed burns and wildfire suppression.

We support increased private sector management of public land in concert with this policy.

The application of environmental laws and regulations should be coordinated with active forest management practices so as not to prohibit such practices on private as well as public land.

We encourage better planning for the environmental and economic impacts on communities after wildfires have occurred.

Opposition Arguments:
If people live in areas with increased risk of wildfires, they should be prepared to pay the cost of living in that area and mitigating the risk. In addition, wildfires are a natural process that many forested areas, particularly in the West, depend on for a healthy forest. Therefore, the best practice is to let wildfires burn with minimal interference.

Legislative/Regulatory Status/Outlook
Lack of adequate funding in the U.S. Forest Service and the U.S. Department of the Interior to fight wildfires effectively, create defensible space in communities and transfer lands from the public to the private sector is always a critical issue.

In light of these concerns, NAR supported H.R. 2647, the "Resilient Federal Forests Act", which would streamline the process for fighting wildfires, address funding deficiencies and incentivize the private sector to clean out publicly managed forests of dead wood. These approaches will encourage more active forest management activities, and more effectively leverage the private sector to manage more public lands and transferring more public lands into private hands.

H.R. 2647 passed the House in July, 2015 and is awaiting action in the Senate.

In the FY2016 Appropriations bill, additional funding for fighting wildfires and encouraging risk reduction and mitigation was included.

Current Legislation/Regulation (bill number or regulation):
H.R. 2647, "The Resilient Federal Forests Act"

NAR Committee:
Land Use, Property Rights and Environment Committee

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Worker Classification (Independent Contractor v. Employee)
Issue Summary

What is the fundamental issue?
The longstanding business arrangement for real estate brokerages includes real estate agents classified as independent contractors rather than employees. While real estate agents have been specifically considered independent contractors for federal taxation purposes since 1984, there have been occasional challenges to that classification in state courts for purposes other than federal taxation, such as overtime pay and other benefits. Calls for federal action to address employer abuses of the independent contractor classification have been ongoing for many years. Most recently, a July 2015 Administrator's Interpretation by the Administrator of the U.S. Department of Labor's Wage and Hour Division states clearly that the bias under existing definitions of independent contractor should be in favor of most workers being considered employees for wage and hour determinations.

I am a real estate professional. What does this mean for my business?
Losing the independent contractor status for real estate agents would drastically change the structure of our industry and probably result in a great decrease in the number of real estate agents. The Administrator's Interpretation itself does not have the force of law, but could affect future policy decisions by the Wage and Hour Division and could be cited in legal challenges in state and federal courts.

NAR Policy:
NAR strongly supports the continued right of brokers to choose whether to classify agents as employees or independent contractors. NAR supports actions at the state level to strengthen the rights of brokers to make these determinations and will resist efforts at the federal level to weaken those rights.

Opposition Arguments:
Those calling for a crackdown on improper worker classification believe that many employers classify workers as independent contractors simply to avoid existing requirements of state and federal labor law, i.e. overtime pay, employer Social Security contributions, workers compensation requirements, health insurance employer mandate, etc.

Legislative/Regulatory Status/Outlook
While there is no organized opposition to the federal taxation determination for real estate agents, the Administrator's Interpretation does raise the issue of a federal Department of Labor bias in favor of classifying nearly all workers as employees for the purpose of determining wages, hours, and benefits. However, the Administrator's Interpretation (2015-1) stands as just that, an interpretation. Congressional committees with jurisdiction over workplace issues have reviewed the use of independent contractor model in the developing shared economy business models such as Uber, as well as other issues raised by the Department of Labor in recent months. NAR continues to track and participate in discussions that have the potential to impact the independent contractor model used by real estate brokerages.

There has been an increase in court cases brought at the state level, notably in California and Massachusetts, contesting the independent contractor status of real estate professionals. For complete information on pending litigation and the legal status of independent contractor designation go to: http://www.realtor.org/topics/independent-contractor.

Current Legislation/Regulation (bill number or regulation)
None at this time.

NAR Committee:
Business Issues Policy Committee

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Visa – Investors (EB-5 Visa Regional Center Program)
Issue Summary

What is the fundamental issue?
The EB-5 Investor Visa Regional Center Program is a temporary pilot program administered by the U.S. Citizenship and Immigration Service that allows foreign nationals to obtain an EB-5 visa for permanent residence in the United States by investing between $500,000 and $1 million (depending on where the investment is made) and creating or preserving 10 or more American jobs. Authority for the regional center program expires in 2016.

I am a real estate professional. What does this mean for my business?
While EB-5 visa seekers may take the traditional route of investing $1 million dollars and starting a new business that meets the investment criteria of the EB-5 visa category, an alternative way for interested foreign nationals to invest less money and create new jobs is through EB-5 "regional centers". Many of these regional centers focus on real estate and real estate development. Making foreign nationals aware of this program can help draw wealthy investors into real estate from around the world to help get real estate markets moving as the economy recovers.

NAR Policy:
NAR supports the right of foreign investors to acquire U.S. real property as well as the free flow of international finance for real estate, subject to the same laws and regulations that govern U.S. investors. NAR supports the permanent authorization of the EB-5 Regional Center Program.

Opposition Arguments:
Making the EB-5 "regional centers" pilot program permanent will open the door for fly-by-night operations to take investors' money and provide little benefit to the U.S. economy. Additionally, the signal that a program like this sends says that with enough money, it is essentially possible to "buy" a visa to live permanently in the United States.

Legislative/Regulatory Status/Outlook
Authority for the EB-5 regional centers extends through September 30, 2016. NAR will once again work with the broad coalition that has championed making the regional center program permanent to pass legislation to keep the EB-5 program viable for the long term and help make the program more accountable and transparent.

Recent History
In 2012, NAR successfully lobbied for legislation that Congress passed, and the President signed legislation reauthorizing the EB-5 regional center pilot program for 3 years, through 2015. Regional centers can be either private or public organizations that manage investor money with the intent of developing business and commerce in a particular region of the United States.

On March 6, 2015, Representative Jared Polis (D-CO) and Mark Amodei (R-NV), introduced "The American Entrepreneurship and Investment Act of 2014", H.R. 1616. The bill permanently authorizes and makes improvements to the EB-5 regional center program. Senators Patrick Leahy (D-Vt.) and Chuck Grassley (R-IA) have introduced companion legislation – the American Job Creation and Investment Promotion Reform Act – to extend and significantly improve the program.

NAR supports both bills and is working in coalition with other organizations to educate congressional members about the importance of reauthorizing this program.

Current Legislation/Regulation (bill number or regulation)
H.R. 1616, "The American Entrepreneurship and Investment Act"
"The American Job Creation and Investment Promotion Reform Act"

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