# AGENDA

#### **BUSINESS ISSUES POLICY COMMITTEE**

National Association of REALTORS®
2013 Midyear Meetings
Marriott Wardman Park
Thurgood Marshall Ballroom South, Mezzanine Level
Wednesday, May 15, 2013
10:00 AM - 12:00 PM

Chair: Brian Sears, MA

Vice Chair: Michael Jewell, MA

Committee Liaison: Robert Kulick, CA

Committee Executive: Marcia Salkin, Bill Gilmartin, Melanie Wyne, Ken

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- I. Call to Order
- II. Opening Remarks, Chair: Brian Sears
- **III. Conflict of Interest Statement**
- IV. RPAC Fundraising Challenge
- V. Approval of Previous Meeting's Minutes
- VI. Approval of 2013 Committee Goals
- VII. Report of the Federal Technology Policy Advisory Board
- A. Member Education & Self-Regulatory Discussions
- B. Legislative/Regulatory Technology Issue Updates

## 1. Data Privacy, Security & Breach Legislation

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 advertisng targeted to individual consumers has also concerned members of Congress. We can expect a number of privacy and data security bills to be introduced in this 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, would create a safe harbor from regulation.

#### 2. Patent Reform

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 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."

## 3. Copyright Infringement

On April 24, 2013, House Judiciary Chairman Bob Goodlatte (R-Va.) announced that his committee will launch a sweeping review of the country's copyright law and hold a series of hearings on the matter "in the months ahead."

In remarks at the Library of Congress, Goodlatte argued that existing copyright law lags behind the rapid pace of technology, forcing policymakers to make challenging decisions based on these outdated rules.

While House Judiciary Chairman did not explicitly say what topics he hopes to cover during the upcoming hearings, his remarks may provide potential clues on copyright issues the committee will tackle. During his comments, Goodlatte touched on a range of copyright challenges that policymakers are currently grappling with, including online piracy, orphan works and music licensing.

#### 4. NAR E-Signature Summit Report

## VIII. Other Legislative/Regulatory Updates

#### A. RESPA Updates

## 1. Home Warranty Issue

In February 2008, HUD issued an informal letter (the Ceja Letter) that said that the sale of home warranty contracts by real estate agents for compensation was essentially a per se violation of RESPA. For the next two years, NAR and its industry partners disputed this letter and tried to convince of HUD of its error. In the summer of 2010, HUD issued new guidance which made the situation worse and led to even more lawsuits. NAR commented on HUD's guidance but the guidance remained in force.

RESPA is now under the purview of the new Consumer Financial Protection Bureau (CFPB). With

regards to home warranty marketing agreements, NAR believes that agents and brokers provide bona fide and separate services for the reasonable compensation they receive. NAR believes HUD erroneously limited the ability of real estate professionals to market home warranty products to the detriment of consumers who benefit the most from such products.

NAR continues to work with CFPB and our industry partners to ensure that appropriate guidance is provided to industry. NAR will also work with Congress to ensure that any future legislative changes improve RESPA without imposing undue burdens on NAR members.

## 2. RESPA/Truth-in-Lending Disclosure Reform

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.

#### 3. H.R. 1077, 3% Cap on Fees and Points

The Consumer Financial Protection Bureau (the Bureau) issued a somewhat final Ability to Repay (ATR) Qualified Mortgage (QM) rule in January. The pleasant surprise was the inclusion of a safe harbor for many QM loans. NAR and its industry partners fought for several months to ensure that the less safe "rebuttable presumption" was not adopted as the primary standard. The Bureau did not yield a pleasant surprise with another key part of the QM-- the 3% cap on fees and points and its impact on affiliates. In fact, it made the situation marginally worse by including other items in fees and points that will make it more difficult for a mortgage firm with affiliates involved in the transaction to meet the test.

## B. Immigration Reform Legislation Introduced

# 1. Immigration Reform Issue Summary

Immigration reform remains a top priority of the Administration and many in Congress. On April 16, 2013, a bipartisan group of 8 Senators introduced a comprehensive immigration reform bill, S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act. The so-called "Gang of Eight" includes Senators Charles Schumer (D-NY), John McCain (R-AZ), Richard Durbin (D-IL), Lindsey Graham (R-SC), Robert Menendez (D-JN), Marco Rubio (R-FL), Michael Bennet (D-CO), and Jeff Flake (R-AZ). Although not certain, passage of a comprehensive reform package looks more promising than it has in many years.

While the bill is truly a comprehensive reform measure encompassing a broad array of issues, including border security issues, a number of provisions are of particular interest to NAR. These include language that makes improvements to the visa application/approval process, permanently reauthorizes the EB-5 immigrant investor regional center pilot program; makes changes to the H-2B visa program which is important to the economies of many second home and resort communities; and creates two new non-immigrant retiree visas.

#### 2. NAR Policy - Real Estate Related Visa Proposals

## C. Health Reform Rulemaking

On Friday, March 15, 2013, NAR submitted comments to the Internal Revenue Service in connection with proposed regulations published on January 2, 2013, interpreting the Shared Responsibility for Employers Regarding Health Coverage requirements of the Patient Protection and Affordable Care Act. Among other things, the proposed regulations set out a definition of "employee" for purposes of determining when an employer is an "Applicable Large Employer" and is thus subject to certain requirements under the Act, including providing health insurance coverage to employees of the firm.

The proposed regulations set forth a common law standard for defining the term "employee" and did not recognize the fact that "qualified real estate

agents" are considered non-employees (independent contractors) under the tax law (Section 3508 of the Internal Revenue Code). The comment letter urges the IRS to modify the regulations in their final form to recognize section 3508 and provide that statutory non-employees are not subject to the common law standard.

- IX. New Business
- X. Announcements
- A. 2014 Committee Appointment Recommendations Last Chance Flyer
- XI. Adjournment