



NATIONAL
ASSOCIATION *of*
REALTORS®

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March 26, 2012

The Honorable Spencer Bachus
Chair, House Financial Services
Committee
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Barney Frank
Ranking Member, House Financial Services
Committee
U.S. House of Representatives
B371A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Bachus and Ranking Member Frank:

On behalf of the 1.1 million members of the National Association of REALTORS® (NAR), I urge you to support the "FHA Emergency Fiscal Solvency Act of 2012" as passed out of Subcommittee, and H.R. 2446, "The RESPA Home Warranty Clarification Act", in the House Financial Services Committee's (HFSC) March 27, 2012 markup.

The "FHA Emergency Fiscal Solvency Act of 2012", which was marked up by the HFSC Insurance, Housing and Community Opportunity Subcommittee on February 7th, provides FHA with the tools to ensure its continued financial viability and secure its critical role in our nation's housing markets. FHA has taken a number of necessary steps to safeguard the continued financial viability of the fund, while guaranteeing its availability to consumers as a source of affordable, safe mortgage financing. The bill affords FHA with flexibility to increase premiums, protections against lenders who make errors of material fact, and creates a structure of oversight. While FHA's recent premium increases may have been necessary to ensure its financial solvency, we would strongly oppose legislative mandates on premium increases or any other amendments that would increase the costs of financing for homeowners.

During this crisis, FHA has successfully played its role of providing safe, affordable access to financing when the private market cannot or will not act. FHA has weathered the storm, with total cash reserves of \$33.7 billion - a \$400 million increase from a year ago. Although we remain concerned that FHA's excess reserves remain below 2%, much of this is a factor of the economic crisis – and not FHA's policies. FHA's annual actuarial review is highly dependent on projections about the future economic environment, particularly house price projections. We believe that FHA has taken many steps to secure its financial stability, and this bill provides them with additional means to protect against taxpayer risk. Again, we would strongly oppose any additional amendments that could increase costs to homebuyers and stymie our economic recovery.

H.R. 2446, bipartisan legislation introduced by Representatives Judy Biggert (R-IL) and Lacy Clay (D-MO) and cosponsored by 36 others, clarifies that home warranties fall outside the scope of the Real Estate Settlement Procedures Act (RESPA). NAR believes that the provision of a home warranty policy is not a



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settlement service subject to RESPA. Yet, after nearly 20 years of RESPA enforcement in keeping with this view, the regulators now have chosen to interpret the statute differently, an action that has resulted in numerous lawsuits that have severely impacted long-standing business practices. In the original enabling legislation, Congress defined “settlement services”. Home warranty services are not among the services listed. Each item in the statutory definition of settlement services shares a common purpose, namely each is necessary for the closing of the transaction. Home warranties, however, are not required to close the transaction, and are routinely purchased independent of a real estate transaction. That they are most often paid for at closing is simply a matter of convenience and ensuring the warranty covers the property when the buyer takes possession.

The lack of clarity on this matter has had a chilling effect on the business practices of real estate brokerages and agents across the country, as many are no longer able to do business with home warranty companies to avoid being in violation of the statute. This result could have been prevented had the regulators rightly clarified that home warranties fall outside the scope of RESPA. Therefore we are asking that Congress take action to clarify this matter and remove them from the purview of RESPA. It is important to note that warranties would still be regulated under federal and state consumer protection laws. Furthermore, the involvement of real estate professionals in the warranty transaction has significant consumer benefit since real estate professionals act as intermediaries in any disputes regarding warranty coverage and can often leverage their business relationship to ensure appropriate service under warranty contracts.

The National Association of REALTORS® supports both of these bills, and urges their passage.

Sincerely,

A handwritten signature in black ink, appearing to read 'Moe', followed by a horizontal line.

Maurice “Moe” Veissi
2012 President, National Association of REALTORS®