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September 30, 2015

Ms. Laura Temel
Attn: Marketplace Lending RFI
U.S. Department of the Treasury
1500 Pennsylvania Ave, NW, Room 1325
Washington, DC 20220

Transmitted electronically through www.regulations.gov

Dear Ladies and Gentlemen:

On behalf of its over 1.1 million members, the National Association of REALTORS® (NAR) provides the following feedback on Expanding Access to Credit through Online Marketplace Lending¹. The National Association of REALTORS® is America's largest trade association. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®. The Certified Commercial Investment Member Institute (CCIM) and the Institute of Real Estate Management (IREM), two of NAR's affiliated organizations, join NAR in its comments.

NAR appreciates the efforts of the Department to engage the public on opportunities that marketplace lending may potentially provide. Our membership, made up of both residential and commercial practitioners, has been affected by the cost and availability of financing.

REALTORS® understand that the tremendous size of the residential and commercial mortgage markets can't be solely supported either by lending from insured bank deposits, or from private investors taking additional risk. Increasingly, alternative sources of lending are being considered by our members and their clients. The continued rapid development of marketplace lending will benefit from a clear regulatory framework.

Connecting those who need capital with non-traditional lenders is one way to meet demand for real estate lending. NAR's membership is eager to embrace new methods of raising capital, but is aware of the need for, and supports, strong consumer protections, accountability, and transparency within any new funding mechanism.

As exciting as these developments are, a clear regulatory framework that both supports innovation and protects consumer confidence is vital. If too restrictive, regulation has the potential to harm innovation on these new approaches to lending. Balancing the two interests of supporting innovation while enabling reasonable underwriting standards should be at the forefront of regulators' minds as they move forward on this issue. Continued work with industry and innovators will ensure the safe growth of these marketplaces.

I. NAR Support of Innovation in Lending

NAR policy has consistently supported lending and the many innovations concerning financial services. REALTORS® and their clients are consumers of these products: from an



¹ Treasury Department, *Public Input on Expanding Access to Credit Through Online Marketplace Lending*, July 20, 2015, 80 FR 42866

individual buying his or her first home to a small business accessing financing for continued growth, REALTORS® are partners for their clients every step of the way. Access to financing is critical to the *success of the residential and commercial real estate sectors and the economy as a whole*.

In addition to its policy positions, NAR has fostered innovation in lending through the creation of Second Century Ventures, the investment arm of NAR, and the REach® program. Second Century Ventures helps technology companies launch into the real estate vertical and its adjacent markets. REach® is a nine-month program administered through Second Century Ventures that provides education, mentorship and market exposure to help its companies access the trillion-dollar real estate market. REach® accepts fewer than a dozen companies each year and provides access to one of the world's largest industries. Two marketplace lenders have recently participated in the REach® program: AssetAvenue and FundWell.

FundWell is an online marketplace that connects brokers and their commercial clients with prequalified traditional and non-traditional lenders that will fund their real estate needs and business expansion plans. FundWell prequalifies and matches small businesses and commercial real estate investors to lenders. FundWell users get access to the best funding options they are eligible for today, and improve their fundability for more and lower cost financing in the future.

AssetAvenue is an online peer-to-peer lending platform for real estate loans, providing borrowers and brokers quick and reliable access to competitively priced loans while offering accredited and institutional investors the potential to earn attractive returns.

a. Residential Lending

The model of most interest to the REALTOR® community is the development of crowdfunded financing for homeowners. Though seen in the commercial space much more broadly, community participation in real estate investment in an individual's own neighborhood is a model that could expand to residential financing in the near future. Technological innovations that reduce costs and broaden the base of investment capital to the housing market present an opportunity to change the dynamic of the development of affordable housing and access to credit.

In 2011, NAR called on federal regulators and the credit and lending communities to reassess the entire credit structure and look for ways to increase the availability of credit to qualified borrowers who are good credit risks. Marketplace lenders have the opportunity to be leaders in the adoption of innovation in the credit scoring space.

REALTORS® support safe, responsible access to financing for borrowers who can show they are ready and able to own a home and keep up with monthly payments. Unfortunately, overly restrictive lending in the residential mortgage space, except to buyers with near-pristine credit scores, has prevented many otherwise qualified buyers from entering the housing market. Implementing alternative credit scoring methods could expand access to financing without dramatically increasing risk in the housing market. New models used by marketplace lenders have the ability to incorporate public utility and rental housing payments, information that helps lenders to evaluate younger persons and minorities who might not have a history of credit use.

b. Commercial Lending

According to the 2015 NAR Commercial Lending Survey, commercial REALTORS® managed transactions averaging \$1.6 million per deal, frequently located in secondary and tertiary markets, and their clients were mainly small businesses and entrepreneurs². The same study reports that REALTORS® cite uncertainty from legislative and regulatory initiatives as the most relevant cause of bank capital shortage for CRE.³ While the number of failed transactions reported in the 2015 survey was the lowest in recent years, the lack of funding continues to be a problem. In the 2015 study, 40% of respondents reported deals failing because of lack of financing, a statistic that is still too high⁴. Online lending is a part of the solution to this problem. Finding the right fit for a client in a commercial space is just as important as finding the right type of loan for the client, and online lending provides options that have the potential to be a great fit for many commercial REALTOR® clients.

² Ratiu, G. Commercial Lending Survey 2015. Washington, DC: National Association of REALTORS®
<http://www.realtor.org/reports/commercial-lending-trends-survey>

³ *Id.*

⁴ *Id.*

A major appeal of online lending to these clients is the pace at which approvals are made. Clients, and REALTORS®, frequently cite the slow pace of traditional banking entities in the loan approval process as a significant hurdle to closing deals. When lenders can't keep up with the speed of the deal making, it hurts all parties. Online lenders have demonstrated the ability to move quickly in getting business done for their borrowers.

NAR has consistently recognized the important role played by small businesses in this conversation. Small businesses are an important player in the economy as a whole and are the clients of REALTORS®, the CCIM Institute and the Institute of Real Estate Management (IREM) professionals. Small business properties are the exact property types that commercial REALTORS® most frequently work with: office, retail and industrial⁵. Increasing lending to small businesses will help these businesses grow and solidify their important role in the US economy.

A widely-cited study from Harvard Business School, *The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game*⁶, examines the situation by pointing out how critical small businesses are to the economy, but how challenged small businesses are by the current lending environment. The study authors point to the 'perfect storm' of facts working against traditional lenders working with small business: increased costs of lending to lenders; lower profitability of small business loans; few new banking entities; lack of collateral owned by small businesses; and general lack of options in the space.

The study highlights reasons why online lending has been so successful in working with small businesses. Easy to use platforms, data-driven decision making, and emphasis on customer service have all been cited as reasons for the success of online lending.⁷ Two other critical factors are the speed at which the loan decisions are made, and the likelihood of loan approval. Small businesses had a loan approval rate of 60% from alternative lenders, and 17% from large banks; 51% from community banks; and 45% from credit unions.⁸

Small businesses are a fast-growing and important sector of the US economy and keeping these entities moving is beneficial to all sectors of the economy. Since many REALTORS® are small businesses themselves, and even more REALTORS® work with small businesses, NAR has a particular interest in the needs of the small business community. This study is one of many describing the borrowing needs of small businesses being met outside of traditional banking structures. To protect small businesses and foster their growth, productive regulation of the online lending industry is needed.

c. Underwriting Standards

Despite all of the advantages offered by online lending, NAR believes that the development of safe and responsible underwriting standards is a key component for safe growth of this burgeoning industry. Strong underwriting standards lend predictability to the market, give lenders more information about borrowers, and create uniformly applied lending standards. Combining the modern outlook of online lending and enhancement of traditional banking industry's approach to underwriting standards would create an outcome that would benefit both the industry and consumers.

II. Consumer Privacy Principles

As the Department and others begin to examine the online lending industry, it is essential to also consider consumer privacy rights. Without an industry wide standard or regulation governing the collection, retention, sharing, and destruction of consumer data, there is no predictability for consumers and businesses using the system. Further, without a standardized set of safeguards, there is more opportunity for bad actors to access this data for their own nefarious purposes. Recently there have been many high profile data breaches of consumer credit card information, employee background information, and identity theft caused by these data breaches.

⁵ *Id.*

⁶Harvard Business School, *The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game*, by Karen Gordon Mills and Brayden McCarthy, July 22, 2014

⁷ *Id.*

⁸ *Id.*, page 44

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:⁹

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.

While the real estate segment of marketplace lending is only one piece of the online lending puzzle, we encourage regulators to examine our principles as a starting point for a conversation about data privacy.

III. Conclusion

The National Association of REALTORS®, CCIM, and IREM are eager to work with the Department, innovators, and other stakeholders on the development of marketplace lending. Achieving a reasonable balance between innovation and consumer protection will ensure continued safe growth of this rapidly developing financing option. In addition, NAR encourages regulators to consider the important issues of consumer data privacy and loan underwriting standards as you move forward with this valuable conversation. Please do not hesitate to contact Charlie Dawson, Managing Director, Regulatory Policy and Industry Relations at cdawson@realtors.org or Stephanie Spear, Commercial Regulatory Policy Representative at sspear@realtors.org if you have any questions. Thank you.

Sincerely,



Chris Polychron
2015 President, National Association of REALTORS®

⁹ Adopted by the NAR Board of Directors, November 2010