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TESTIMONY OF

CHRIS POLYCHRON
2015 PRESIDENT
NATIONAL ASSOCIATION OF REALTORS®

BEFORE THE

UNITED STATES SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

HEARING TITLED
REGULATORY BURDENS TO OBTAINING MORTGAGE CREDIT

APRIL 16, 2015

INTRODUCTION

Thank you for the opportunity to testify today. My name is Chris Polychron. I am the 2015 President of the National Association of REALTORS®. A REALTOR® for 27 years, I am an executive broker with 1st Choice Realty in Hot Springs, specializing in residential and commercial brokerage.

While we have seen great progress in our economic recovery, access to affordable mortgage credit remains a problematic obstacle for prospective homebuyers. The number of first-time buyers entering the market is at the lowest point since 1987, despite historically low mortgage rates. The nation's homeownership rate has fallen almost to levels last seen in 1990. Today, the number of homes purchased annually remains less than 70 percent of what was purchased prior to the real estate bubble and subsequent collapse.

Credit remains tight as lenders remain leery of taking on risk. NAR has long supported strong underwriting standards that require all mortgage originators to verify the borrower's ability to repay the loan based on all its terms, including taxes and insurance. However, there remain some unnecessary regulatory burdens that are preventing qualified, credit-worthy borrowers from obtaining the American dream of homeownership. These fall into four specific areas:

- Consumer Financial Protection Bureau Issues
- Specialty Markets Challenges
- Short Sales and Foreclosure Matters
- Lending Policies

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB) ISSUES

NAR appreciates the CFPB's approach in proposing regulations that recognize the balance between access to credit and responsible lending. We support regulations such as the Qualified Mortgage (QM) rule to ensure that borrowers can repay their mortgage. We generally believe that these rules have created certainty in the mortgage market and have encouraged increased mortgage liquidity and availability, while ensuring consumers are afforded necessary protections. However, we believe there are certain changes that can be made to existing rules that will promote a safe, but more robust housing market.

3 PERCENT CAP ON POINTS & FEES NEEDS TO BE FIXED

This year, the U.S. House Financial Services Committee passed H.R. 685, "The Mortgage Choice Act." This bill is identical to legislation that passed the House last year. This legislation is a bipartisan compromise that reduces discrimination against mortgage firms with affiliates in the calculation of fees and points in the Dodd-Frank Ability to Repay/Qualified Mortgage rule. The QM rule sets the standard for mortgages by providing significant compliance certainty to QM loans that do not have risky features and meet certain requirements. A key requirement is that points and fees for a QM may not exceed 3 percent of the loan amount. The inherent discrimination in this rule arises from the fact that under current law and rules, what constitutes a "fee" or a "point" varies greatly depending upon who is making the loan and what arrangements are made by consumers to obtain closing services. As a result of these definitions, many loan originators affiliated with other settlement service providers are not be able to make QM loans to a significant segment of otherwise qualified borrowers.

The discrimination in the calculation of fees and points is being felt by consumers who are seeing reduced choices and added obstacles in their transactions. A Spring 2014 NAR survey of affiliated mortgage lenders revealed almost half experienced problems due to the ATR/QM rule. When the 3 percent cap was cited as the cause, a significant number had certain services outsourced or were not able to complete the transaction. Where services were outsourced and charges known to the lender, nearly half of loans (43.8 percent) included

higher fees. NAR strongly urges the Senate to introduce companion legislation and work to pass the bill this year.

RESPA/TILA REFORM MUST BE ENFORCED SLOWLY

On August 1, 2015, significant Real Estate Settlement Procedures Act (RESPA) and Truth in Lending (TILA) changes go into effect during the busiest transaction time of the year. There will no longer be a Good Faith Estimate (GFEs) or Truth in Lending disclosures. Those two forms have been combined into a single "Loan Estimate" or "LE." While NAR is supportive of this harmonization, there will be unanticipated problems and issues uncovered in the implementation. NAR, as well as other industry groups, have urged CFPB to provide for a restrained enforcement period on the RESPA-TILA integration regulation, and have asked them to clarify TILA and RESPA liabilities under the regulation.

COMMUNITY BANK LENDING SHOULD BE ENCOURAGED

Ensuring community banks can continue to maintain good relationships and provide mortgage credit to their customers without being overloaded with regulations intended for more complex financial institutions is an important goal.

NAR supports strong underwriting standards and believes that all mortgage originators should act in "good faith and with fair dealings" in a mortgage transaction and treat all parties honestly. This idea is at the core of community banks which base their reputations on a relationship-lending model. These standards had been the basis for offering mortgage credit for decades until the mid-2000's which saw a proliferation of lenders offering mortgage products that were unstainable for most borrowers.

In May 2005, NAR adopted principles that warned that consumers were being taken advantage of by intemperate, and often predatory, lending. We acknowledged then too that, in a credit-driven economy, the legislative and regulatory response to lending abuses could go too far and inadvertently limit the availability of reasonable credit for borrowers. Unfortunately, this restriction of credit was exactly what the market experienced. As a result of lenders and regulators over-correcting in response to the abuses in the middle of the previous decade, NAR called on the credit and lending communities and federal regulators to reassess the entire credit structure and look for ways to increase the availability of credit to qualified borrowers who are good credit risks.

Noting the importance of both of these principles, NAR supported the balance that the January 2013 mortgage rules achieved including strong consumer protections, the promotion of mortgage liquidity, and important ability-to-repay standards. One compliance option allows the creditor to make a reasonable and good faith determination that the borrower has a reasonable ability to repay the loan and related obligations, based on verified and documented information based on all its terms, including taxes and insurance.

The CFPB's proposed amendments recognize that community banks have a long history of this common sense approach to underwriting and that the relationship-lending model is one that should be maintained. Of course, any 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 based on a borrower's ability-to-repay.

SPECIALTY MARKETS SHOULD HAVE SPECIAL CONSIDERATION

AS stated, we believe that exceptions to the CFPB rules must be made on a very limited and specific basis. Certain markets may warrant that type of consideration. Rural communities and manufactured housing loans fall into this category.

RURAL COMMUNITIES

Rural citizens face unique challenges finding access to credit. Almost 20 percent of the U.S. population lives in rural areas or small towns and nearly all of the counties with the highest poverty rates in America are rural. NAR recognizes the uniqueness of rural communities and the key role that housing plays in building strong communities. REALTORS® who live in and serve these communities also understand the need for specialized programs to meet the needs of Americans living in rural areas.

The CFPB has updated its own definition of a rural community for lending policies. NAR supports the recent changes they have made, but also believe communities should be able to petition the CFPB to be considered rural. To this end, NAR supports S. 871, the "Helping Expand Lending Practices in (HELP) Rural Communities Act", introduced by Majority Leader McConnell (R-KY), along with Senators Heller (R-NV), Capito (R-WV) and Paul (R-KY). This bill will allow communities to apply for a designation as a rural community. There are a number of factors to be considered when determining if a community warrants a rural designation – and some factors commonly used can be misleading. For example, the population determined by the census is a common tool used to determine a communities' rural nature. But institutions like prisons and colleges can distort the actual population of a community. This legislation does not require the CFPB to grant a rural designation, but simply allows communities to apply for reconsideration.

The Association also support changes to the process by which loans are approved under the Rural Housing Service (RHS) of the Department of Agriculture. Today, every RHS loan must be reviewed and approved by staff of the Rural Housing Service. In recent years, RHS staffing has been dramatically reduced, and borrowers have experienced significant delays in loan approval. Both the Veterans Affairs loan guaranty and the FHA mortgage insurance program utilize private lenders for direct endorsement. Providing RHS with the authority to approve direct endorsed lenders would create great efficiencies for the Service and for homebuyers. RHS, in turn, would have additional staff time needed to focus on a strengthened lender monitoring process and risk management. NAR strongly urges Congress to provide RHS with direct endorsement authority to ease burdens on the agency and accelerate loan processing for borrowers.

MANUFACTURED HOUSING LOANS

Nearly 20 million Americans live in manufactured homes. These homes are often a more accessible and affordable way for many people to buy their own home. Manufactured housing has come a long way with respect to the features and quality of life it provides homeowners. Today, manufactured homes blend seamlessly into many markets or neighborhoods. In many areas of the country, particularly rural communities, manufactured homes are the only type of quality affordable housing available.

The Dodd/Frank Act regulations have mistakenly resulted in manufactured homes becoming less available as an affordable housing option. We support S. 682, the "Preserving Access to Manufactured Housing Act", introduced by Senators Donnelly (D-IN), Toomey (R-PA), Manchin (D-WV), and Cotton (R-AR). This legislation will preserve manufactured housing as an affordable housing option without reducing important consumer protections.

S. 682 clarifies the difference between manufactured housing manufacturers and loan originators, and ensures that low-dollar manufactured housing loans are exempt from Home Ownership and Equity Protection Act (HOEPA) standards. The costs of originating and servicing a manufactured loan are not much different than those of a more traditionally built home, even though the loan itself is often much smaller. Therefore, the closing costs of a manufactured loan as a percentage of the loan are much higher than the percentage on a more expensive home. This can cause manufactured housing loans to violate caps in Dodd-Frank and be categorized as "High-Cost," or predatory. S. 682 will exempt manufactured loans from this label.

FORECLOSURES AND SHORT SALES REMAIN PROBLEMATIC

Too often, short sales are still a story of delay and unrealistic views of current home values, resulting in the potential buyer cancelling the contract and the property going into foreclosure. Enormous amounts of time are spent on potential short sales that ultimately result in foreclosures. Even if successful, the process usually takes many months and countless hours and often requires re-marketing because buyers lose patience and terminate the contract.

CERTAINTY IS NEEDED TO MAKE THE SYSTEM WORK

NAR believes that the short sale process would significantly improve with the passage of S.361, "The Prompt Notification of Short Sale Act," introduced by Senators Brown (D-OH) and Murkowski (R-AK) last year. This legislation requires servicers to decide whether to approve a short sale within 30 days of completion of the file. The bill attempts to prod servicers to make the short sales process more efficient by setting standards and penalizing them for inadequate performance. Streamlining short sales will reduce the amount of time it takes to sell the property, improve the likelihood the transaction will close, and reduce the number of foreclosures. This will benefit the lender, the seller, the buyer, the community.

TAXPAYERS NEED RELIEF

Today, more than 5 million families remain in a home that is "under water." While Congress provided relief in recent years, uncertainty exists for these homeowners today. For many of these homeowners, a short sale or workout is the most viable option. However, the income tax exemption on mortgage debt forgiven in a short sale or a workout for principal residences was extended late last year retroactively, but expired at the end of 2014. Not having this relief, many families will simply walk away and accept a foreclosure on their home. This is contrary to the goal of every policy designed to keep people in their homes and prevent foreclosures.

Unless remedied, homeowners who participate in a workout or short sale will have to pay tax on "phantom income" from forgiven debt. This is not only unfair but harms families, neighborhoods and communities. NAR urges all Members to extend this provision of the tax code. Without this provision, distressed homeowners will decide to take a pass on opportunities for workouts with the lender or short sales, opting instead for continued delinquency or possible default until foreclosure, or simply to walk away from the property. This will destabilize the communities where such homes are located.

LENDING POLICIES CONTINUE TO CONSTRAIN ACCESS TO CREDIT

Loan pricing and lending restrictions also are making it more difficult for credit-worthy borrowers to purchase a home. We believe that these types of rules should be directly commensurate with actual risk. Borrowers should not be subject to higher fees or burdens that are unnecessary.

CONDO RESTRICTIONS PREVENTING HOMEOWNERSHIP OPPORTUNITIES

Condominiums often represent the most affordable options for first-time homebuyers, including minorities. However, the Federal Housing Administration (FHA) and the Government-Sponsored Enterprises (GSEs) have significant restrictions on the purchase of condominiums. However, NAR supports developing policies that will give current homeowners and potential buyers of condos access to more flexible and affordable financing opportunities as well as a wider choice of approved condo developments. Specifically, we have five areas of concern.

1. Owner Occupancy – FHA requires that a condominium property be at least 50 percent owner occupied. FHA's ratio greatly limits the number of condominium buildings available to credit-worthy borrowers. This policy is also self-fulfilling. If a building has less than the 50 percent owner-

occupancy ratio, sellers of units have fewer buyers who are eligible, leading them to rent out their unit rather than sell. This makes it difficult for many buildings to achieve the 50 percent requirement. By way of contrast, the GSEs do not place limits on the owner-occupancy of a condominium project if the borrower is buying it as a primary residence. NAR strongly urges FHA to eliminate this requirement to open up more properties for FHA eligible buyers.

2. Project Approval Process – FHA requires the entire condominium project to be approved prior to a buyer purchasing a unit. This certification process is costly and time-consuming, and difficult for the often volunteer boards of condominium buildings. Less than 20 percent of all condominium properties nationwide have FHA approval.[1] NAR strongly urges FHA to reduce the burdens associated with project certification. NAR also recommends that the spot loan approval process be reinstated to allow purchases in some buildings that do not have FHA certification.

3. Delinquent Dues – Following the housing crisis, a number of condominium and homeowner associations have units that are behind in paying their dues. Both FHA and the GSEs restrict approval of properties where more than 15 percent of the units have delinquent dues. While NAR appreciates the need to make sure properties are properly capitalized with appropriate reserves; dues payment should not be a sole determinant. Some associations may have compensated for delinquencies by building reserves or taking other steps to ensure that delinquencies are not impacting their financial stability. This requirement should NOT be a determining factor, but instead be a part of an overall review of a property's finances.

4. Commercial Space – Multi-use properties and new "town center" developments are very popular, and lauded by HUD as creating benefits for communities in providing easy access to amenities and transportation. Yet, condominium associations with commercial space are restricted from approval by both the GSEs and FHA. The GSEs limit commercial space to 20 percent, but provide waivers. FHA's limit is 25 percent, also with allowable waivers. The current policy hinders efforts to build neighborhoods that have a mix of residential housing and businesses with access to public transit. The Association urges FHA and the GSEs to lift these restrictions.

5. Transfer Fees – FHA has a policy that prohibits FHA mortgage insurance on any property that has a transfer fee covenant. Fees that increase the costs of housing can disenfranchise those who wish to obtain the American dream; however, fees that provide a direct benefit to homeowners and improve the property are legitimate and should be permitted. The blanket policy used by FHA can greatly disadvantage the millions of homeowners living in community associations, making it much harder for them to sell their homes. FHFA has previously dealt with this issue, following a thoughtful and lengthy rule-making. FHFA's final rule on transfer fee covenants establishes a clear, national standard to protect homeowners from equity-stripping private transfer fees while preserving the preeminence of State and local governments over land use standards.

   FHA should accept a mortgagee's compliance with FHFA's transfer fee covenant regulation as compliance with relevant FHA mortgage insurance program rules, guidelines and requirements. Any additional and potentially conflicting federal standard on transfer fee covenants by FHA will cause confusion in the housing market and require community associations to amend governing documents. Amendments to community association covenants, conditions, and restrictions can be difficult to execute and by statute generally require legal counsel and the approval of at least a supermajority of owners. We urge FHA to mirror FHFA's rule, and prohibit only those fees that don't benefit the homeowner and association where they live.

[1] Based on estimates derived from FHA's condo lookup tool as of 2/24/15.

There are additional concerns related to condo rules including investor ownership, concentration limits, and pre-sale requirements that also should be changed. REALTORS® were pleased to see a recent notice by Fannie Mae, loosening some restrictions. We look forward to the publishing of FHA's upcoming condo rule and are hopeful that it will loosen many of the current restrictions.

Condominium unit mortgages are among the strongest performing in the FHA portfolio. According to FHA data from 2014, the national serious delinquency rate for condominium projects is 0.89 percent versus 1.17 for single-family homes.[2] Condominiums are often the most affordable option for first time homebuyers, or older homeowners who wish to downsize. We strongly believe that qualified homebuyers should not be prevented from this option, simply due to mortgage restrictions.

HIGH G-FEES STILL HURTING CONSUMERS

High guarantee fees (g-fees) and loan level pricing adjustments (LLPAs) charged by the GSEs are negatively impacting the housing recovery. These Enterprises buy single-family mortgages from mortgage companies, commercial banks, credit unions, and other financial institutions. A key revenue component for the GSEs is a g-fee received for guaranteeing the payment of principal and interest on their mortgage backed securities (MBS). The g-fee is a significant factor in determining profits earned from this credit guarantee. The g-fee covers projected credit losses from borrower defaults over the life of the loans, administrative costs, and a return on capital.

Continued increases in g-fees and upfront borrower costs will extend a trend of reduced access to mortgage credit, which is counter to a principal duty of the FHFA Director under the Housing and Economic Recovery Act of 2008 (HERA). Continuing to increase the fee will mean that larger numbers of consumers, many of them first time homebuyers, will be forced to pay substantially higher mortgage rates, or be left with limited housing finance options. NAR believes borrowers who are either purchasing a home or refinancing their existing mortgage using conventional financing are being charged excessive fees due to policy goals that go beyond protecting taxpayers from GSE losses.

NAR is especially concerned with the disparate impact the changes will have on first time homebuyers and other traditionally underserved borrowers. These families are more likely to bear the brunt of these fees, either because they have thin credit files and traditional credit models do not reflect payments toward housing expenses and utilities; or because they often make smaller down payments than do other borrowers.

FHFA seems to believe that by raising costs for loans purchased or guaranteed by the GSEs, they can lure private sector capital back to the mortgage market. However, we believe this policy does not account for the aversion to, and lack of trust in, issuers of private mortgage backed securities that many investors still harbor since suffering tremendous losses during the recent housing crisis. This lack of trust remains and is hard to quantify. When increasing fees, the GSEs must include performance measures to ensure they are meeting the goal of increasing private sector participation. In addition, the Agency should examine other factors that are holding back the private market in conjunction with the Treasury Department. The National Association of REALTORS® believes that future data will show that the effect of raising fees will simply be increased costs to home buying taxpayers who can afford to become homeowners, and that the true effect will be redirection of more mortgage loans to FHA without a robust private sector return.

[2] Serious Delinquent Rates, Retrieved April 13, 2015, from Neighborhood Watch, Early Warning System. ttps://entp.hud.gov/sfnw/public/

CONCLUSION

The Urban Institute recently reported that "If credit standards had been similar to those of 2001, more than 4 million additional loans would have been made between 2009 and 2013. The missing loans grew from 500,000 in 2009 to 1.25 million in 2013."[3] While we generally support recent regulations such as QM, policies still exist that unnecessarily constrain lending to credit-worthy borrowers. While no one wants to see a return to the unscrupulous, predatory lending practices that caused the Great Recession, some modifications of existing regulations may be necessary to ensure a robust housing market.

Adjustments to rules issued by the CFPB including 3 percent cap on points and fees, enactment of RESPA/TILA harmonization, and encouraging responsible community bank lending will help provide consumers with valuable protections and safe access to affordable credit. Small market areas such as rural and manufactured housing must also be provided with flexibility appropriate to their market conditions. Americans who continue to struggle with underwater mortgages or mortgages they simply cannot afford should be provide protections and given certainty so they can make decisions appropriate for their families. Lastly, loans must be priced to reflect actual risk, and unnecessary restrictions must be removed to allow families to achieve the American Dream of homeownership.

Thank you for allowing me to share the view of the National Association of REALTORS®, and we look forward to working with you.

[3] http://blog.metrotrends.org/2015/04/million-mortgage-loans-missing-2009-2013-due-tight-credit-standards/?utm_source=iContact&utm_medium=email&utm_campaign=Housing%20Finance%20Policy%20Center&utm_content=HFPC+newsletter+4%2F8%2F2015