



ISSUE PAPER

Subject: **The Need for a Uniform National Standard to Fight Predatory Lending**

Issue: Through nonprime lending the mortgage industry has afforded credit options to a growing number of consumers that would not traditionally have access to mortgage credit. The recent transition in the subprime market is affecting access to mortgage credit and putting mortgage companies out of business. This situation, along with the significant liability due to the growing proliferation of well-intended, though overbroad, state regulations and laws, threaten the availability of credit to consumers. In response, MBA supports the establishment of a balanced uniform national lending standard that protects consumers and facilitates the availability of mortgage credit.

Background: Over the last several years, state and local governments have increased efforts to combat abusive lending practices by promulgating new laws and regulations to prohibit particular loan terms and products. While these laws were enacted with the good intention of protecting consumers, some are overbroad and threaten the availability of credit. To date, there are over 30 states and 17 localities with anti-predatory lending standards. The proliferation of disparate state and local laws create an enormous compliance challenge and expense for lenders. In many instances, these laws create subjective standards that leave lenders vulnerable to unnecessary and frivolous litigation. Further, some of these state and local laws set forth draconian penalties, criminal and otherwise, that discourage responsible lenders from entering that market. There are severe economic and social consequences for the departure of lenders from a market. It results in diminished competition, fewer product offerings and increased credit costs for borrowers.

The passage of subjective state and local predatory lending standards impacts the secondary market. Some states passed laws with assignee liability provisions that are subjective, rendering an investor liable for the acts or omissions of the originator. Assignee liability refers to a transfer of liability from the originator to the investor or one who holds the note. The problem with subjective assignee liability standards lies in the fact that the investor cannot discover the error or misdeed based on a review of the loan documents. Rather, the investor is made aware of an error after a claim is made by the borrower. In response, the ratings agencies announced in certain states that they would not

Uniform National Standard

Page 2

rate securities that included loans with subjective assignee liability standards because they could not project the liability incumbent on an investor. Without a rating, securities lose investor interest and without investors buying securities, the mortgage market loses liquidity and interest rates rise.

MBA Position: MBA is committed to eradicating predatory lending. MBA supports a balanced, strong national anti-predatory lending standard that protects borrowers from unscrupulous actors without diminishing legitimate lending. MBA believes that a uniform set of federal laws would ultimately relieve the significant compliance burden and liability that currently exists among the states. It would also increase competition thereby lowering the costs of homeownership.

Status: Barney Frank (D-Mass.), Chairman of the House Financial Services Committee, announced that he will be introducing predatory lending legislation this year. . In February 2007, Doug Duncan, MBA's Chief Economist, testified before the Senate Banking Committee on the state of foreclosures and predatory lending. On March 27, John Robbins, MBA's Chairman, testified before the Financial Services Committee on predatory lending and the state of the subprime market. Senator Schumer (D-NY) introduced S. 1299, the "Borrowers Protection Act of 2007," which includes duties of care on mortgage brokers and lenders and increases lenders' liability, on May 3, 2007. On June 26, Robbins testified before a Senate Banking Subcommittee at a hearing focused on S. 1299 and the state of the market.

MBA will continue to work with members from both chambers of Congress and their staff to provide guidance on predatory lending issues.

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