

Mortgage Bankers Association's 2010 Legislative and Regulatory Priorities

By investing in communities, the real estate finance industry has played a critical role in the American economy. The turmoil of the last couple of years in the industry has, however, threatened this critical responsibility. As the voice of the residential and commercial real estate finance industry, the Mortgage Bankers Association (MBA) will continue to work closely with the 111th Congress, the Obama administration and financial regulators to help restore confidence in our industry and restore stability to our nation's single-family, commercial and multifamily mortgage markets, allowing them to emerge from this time stronger, more resilient and better positioned to serve America's housing and commercial real estate needs for the future. While the policy issues before our industry are many and we will work on them all, our focus in 2010 will be on the following issues.

REFORM THE FINANCIAL REGULATORY SYSTEM

Financial Regulatory Reform Legislation

In March 2009, MBA released its own proposed bill to reform regulation of the mortgage industry, The Mortgage Improvement and Regulation Act (MIRA). We proposed new uniform national lending standards to replace the current patchwork of state and federal lending laws and a new federal regulator for independent mortgage bankers and mortgage brokers. We continue to advocate for the policies contained in MIRA as financial regulatory reform legislation moves through Congress this year.

MBA's priorities as the legislation advances include opposing the creation of the Consumer Financial Protection Agency (CFPA) and instead advocating for uniform national lending and servicing standards and consolidated federal regulation of mortgages by a new or existing prudential financial regulator. We support crucial changes to the proposed new risk retention requirements in order to avoid severely curtailing both residential and commercial lending and forcing many nondepository mortgage bankers out of business. We also support clarifications to the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act to eliminate duplicative state

requirements, which are causing unreasonable and uneven costs — costs that are ultimately borne by consumers.

As Congress seeks to mitigate excessive risk taking in the asset securitization process, MBA will work to eliminate additional measures that would overburden the core of the market for lower risk mortgage products. MBA's proposal is to create a definitive statutory exemption from the risk retention requirements for stable, affordable well-underwritten residential mortgages and for commercial/multifamily real estate loans.

MBA remains supportive of financial services regulatory modernization generally, and mortgage reform specifically, but opposes aspects and proposals that are unnecessarily onerous, exacerbate the current problem of uneven regulation in the states or fail to ensure that mortgage financing remains widely available and affordable for American borrowers.

CONTINUE TO ASSIST BORROWERS

Help for the Unemployed

The primary driver for borrowers being unable to make their mortgage payments on time has shifted solidly to loss of income. The primary cause of that loss of income is unemployment or underemployment. Borrowers who have suffered such a temporary setback are often best served

by forbearance from their mortgage payments while they seek employment. In February, MBA met with Obama administration officials and urged them to create a forbearance option for unemployed borrowers on the front end of the Home Affordable Modification Program (HAMP). Aspects of MBA's specific proposal were included in such a forbearance program announced by Treasury and HUD on March 26th. MBA will work with the administration in implementing the program as soon as possible this year.

Improve HAMP

HAMP is an important tool for assisting borrowers who are having trouble making their mortgage payment in full and on time. The program's complexity and requirements, however, continue to hinder its effectiveness in providing quick and lasting help to borrowers. Furthermore, since April 2009, there have been more than a dozen releases of significant new program requirements and over 90 clarifications, including new or revised forms, new and revised reporting changes and supplemental policy changes from the GSEs. These changes have required servicers to re-work processes, reprogram systems and retrain large numbers of employees, all of which take away from maximizing assistance to borrowers.

While less frequent changes in servicer requirements, as mentioned above, would help with HAMP effectiveness, there are some key enhancements that would allow the program to help more borrowers. In addition to the forbearance option outlined above, MBA supports establishing an interest-only modification option under HAMP. This would benefit borrowers with option adjustable rate mortgages (ARMs), which often have minimum payments that are lower than what they would be after HAMP modification. Some borrowers could better achieve affordability through an interest-only structure. MBA will continue to work with the administration on ways to enhance and improve HAMP and related programs while maximizing the use of servicer resources to assist borrowers.

RESTORE REAL ESTATE FINANCE MARKETS AND ENSURE THEIR FUTURE STRENGTH

Build a Strong Secondary Market for Core Single-family and Multifamily Mortgages

Since the creation of Fannie Mae in the 1930s, the federal government has played a key role in providing stability to the secondary mortgage market. The current housing crisis has tested that role and led to calls for a fundamental rethinking of the appropriate government role. The long-term viability of the mortgage markets depends on the federal government putting in place a sound system for ensuring liquidity for financing the core of the residential mortgage market in America. MBA has developed a set of recommendations on how this should be accomplished.

The centerpiece of our recommendations on federal support for the secondary mortgage market is to create a new type of mortgage-backed security (MBS). Each new security would have two components. First, a security-level, federal government-guaranteed "wrap" similar to that on a Ginnie Mae security. The government backstop, financed in a similar way to the Federal Deposit Insurance Corporation (FDIC) insurance fund, would be explicit and focused on the credit risk of these mortgage securities. Second, the security would be backed by loan-level guarantees provided by privately owned, government-chartered and regulated mortgage credit guarantor entities (MCGEs). The infrastructures of Fannie Mae and Freddie Mac, including their technology, human capital, standard documents and existing relationships, would be used as a foundation for one or more MCGEs. A strong federal regulator would oversee the MCGEs and would charter new MCGEs to provide for competition in the market. MCGEs would stick to securitizing standard loan products for single family and multifamily housing, and there would remain plenty of room in the market for the return of private label securities and government programs such as the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA) and rural housing lending.

We also cannot lose sight of the importance of a smooth transition to the new structure, ensuring the continued viability of Fannie Mae and Freddie Mac and their support for the housing markets in the short term.

Ensure the Future Viability of the Federal Housing Administration (FHA)

Given the results of the actuarial report on the FHA Mutual Mortgage Insurance (MMI) Fund last year that showed a dramatic decrease in the FHA capital fund to 0.53 percent, MBA has focused on recommending strategies for enhancing FHA's risk management and ensuring the health of the agency for the long term. We have convened an executive-level council of small and large lenders to make short- and long-term recommendations.

MBA believes that FHA should evaluate, and modify where appropriate, its credit policies and other standards and procedures for single family and multifamily insurance programs to ensure that it can continue to provide stability, liquidity and affordability to the housing market during this difficult time in housing finance and ensure its future viability. FHA should also be given appropriate resources and flexibility to administer its programs effectively.

In support of these goals, MBA supports short-term changes including:

1. Limiting the FHA approval process to mortgagees (eliminating correspondent approval), as long as FHA provides lenders with guidance on minimum standards for correspondents;
2. Increasing the net worth requirements for single family FHA-approved mortgagees to \$2.5 million over a five-year phase-in period; and
3. Establishing a separate net worth requirement for FHA approved multifamily mortgagees at \$500,000 plus one percent of annual origination volume up to \$1.5 million.

MBA also supports FHA efforts to improve its single family programs by reevaluating credit and underwriting standards, reexamining the insurance premium structure and enhancing consumer and lender protections for Home Equity Conversion Mortgages (HECMs). Additionally, MBA continues to advocate for increased staffing and technology resources for FHA as well as greater flexibility in FHA's hiring and compensation practices. These changes are needed to facilitate the short- and long-term health and effectiveness of FHA's single family and multifamily programs.

MBA PLANS TO MAKE ADDITIONAL RECOMMENDATIONS TO CONGRESS AND THE ADMINISTRATION REGARDING FHA OVER THE COMING MONTHS.

Tax Incentives Should Encourage Housing Stabilization and Economic Growth

MBA supports policies that encourage housing market recovery, job creation and economic growth. Specifically, MBA seeks to preserve and improve the mortgage interest deduction for borrowers. The deduction should be maintained at its current level and made available to taxpayers who claim a standard deduction, not just those who itemize their deductions. In general, MBA will support tax reforms that incentivize homeownership and commercial real estate investment, promote affordable housing finance, encourage investment and expansion of business to create new jobs and sustain economic growth in America. In addition, MBA opposes tax increases for certain real estate partnerships that would provide a disincentive for residential and commercial development. In addition, MBA opposes an increase in the carried interest tax rate from the capital gains tax rate of 15 percent to the ordinary income tax rate of up to 35 percent because it would deter partnerships from developing commercial properties.

Extend Higher Loan Limits

In this time of market turmoil, it is important for Fannie Mae, Freddie Mac and the Federal Housing Administration (FHA) to provide support to the broadest spectrum of home prices possible. Therefore, MBA urges Congress to extend the increased government-sponsored enterprises' (GSEs) conforming loan limits (currently up to \$729,750 in high-cost areas) beyond their expiration at the end of this year. MBA also requests that Congress extend the FHA loan limits to the same level as GSE limits until the current mortgage market crisis subsides. As the housing market stabilizes and the private market returns, the need for FHA to maintain the increased loan limits should be reconsidered. MBA supports a decrease in the FHA loan limit after the stabilization of the housing market and a return of private financing. The specific decreased loan limit and whether it should be a nationwide loan limit, or based on county or metropolitan statistical area (MSA) data, will be determined based on the structure of the new conforming loan limit.

Additionally, it is important that the government play a role to provide support to the broadest spectrum of housing choices as possible. For example, FHA multifamily programs are being negatively impacted in many urban areas due to unnecessarily low mortgage limits for elevator buildings. These limits should be increased to recognize the significantly higher costs of high-rise construction. This change would encourage the production and preservation of workforce and seniors' housing in urban areas.

Preserve Current Bankruptcy Laws

Current bankruptcy laws were intended to help keep mortgage interest rates low by prohibiting bankruptcy judges from altering the terms of most residential mortgage contracts during Chapter 13 bankruptcy proceedings. Overturning these laws to allow bankruptcy judges to unilaterally “cramdown” mortgages would draw more families into bankruptcy and make it harder and more expensive for all Americans to obtain mortgages by forcing lenders to impose tougher lending standards, requiring larger down payments and raising interest rates.

Support Covered Bonds

MBA supports legislation and regulation to provide for equal treatment of covered bonds with other qualified financial contracts. Covered bonds are debt securities backed by cash flows from mortgages that remain on the issuer's consolidated balance sheet. Covered bonds provide an additional source of liquidity for residential and commercial real estate financing. Although covered bond transactions are not currently in widespread use, prospective revisions to accounting regulations and an improvement in market spreads could provide further incentive for their increased use. In short, MBA believes covered bonds represent one of the most affordable wholesale funding instruments for financial institution asset-liability management.

Proceed with Caution on Accounting Changes

As a result of the G20 summit in April 2009, the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB) undertook a project to amend and converge accounting standards for financial instruments by the end of 2011. Such accounting standards encompass classification and measurement of financial instruments, fair value accounting principles, hedge accounting, accounting for impairment, de-recognition of financial instruments and consolidation of variable interest entities

(VIEs). Since then, FASB and IASB have continued to work on revising their own respective standards instead of meeting jointly to “do it once and do it right.” FASB and IASB should work together to come up with converged, sound accounting principles for financial instruments. Those principles should be written so that the accounting accurately reflects the way the respective assets and liabilities are managed. Converged accounting principles will enable comparability of financial statements of financial institutions worldwide and prevent “accounting arbitrage.”

Use of fair value accounting continues to have a pro-cyclical impact on the economy as market participants write down assets valued at fair value to prices of distressed sales in an inactive market. Although FASB has made some incremental changes to its guidance for measuring fair value in an inactive market, the guidance remains flawed. The requirement for use of a “liquidity risk factor” in determining discount rates used to model future cash flows needs to be eliminated. It is “circular” and leads to marking assets to distressed sale values. These accounting issues are important to MBA members engaged in both residential and commercial real estate lending.

PROMOTE LIQUIDITY DURING DISRUPTION OF THE COMMERCIAL REAL ESTATE MARKET

REMIC

Last year, the Internal Revenue Service released final rules that addressed permissible loan modifications for loans that are contributed to a Real Estate Investment Mortgage Investment Conduits (REMIC). MBA participated in a group letter submitted to the Treasury Department recommending modifications to the final rule that would avoid unintended consequences and boost investor confidence in commercial mortgage-backed securities (CMBS).

The Mortgage Bankers Association looks forward to working with Congress, the Obama administration and financial regulators to help restore confidence in our industry and restore stability to our country's mortgage markets, allowing them to serve our residential and commercial real estate needs for the future.

