

# **Hurricanes Katrina & Rita Concerns and Recommendations Relating to HUD/GNMA Affected Properties and Areas**

## **I. LEGISLATIVE PROPOSALS**

### **A. Ginnie Mae Advancement of Principal and Interest**

MBA recommends making a minor statutory change that would allow Ginnie Mae to advance principal and interest to security holders without requiring that Ginnie Mae classify the mortgage issuer (servicer) as being in technical default of its contractual obligations with Ginnie Mae. A declaration of a default under the Ginnie Mae Guaranty/Contractual Agreement starts a "domino" default under other contracts that issuers typically have for bank loans and warehouse lines. In addition, external auditors will refrain from issuing unqualified opinions on the financial condition of the issuer when such defaults occur. While Ginnie Mae offers such principal and interest advances today, servicers are reluctant to use this option because of the consequences. Making this minor change will give servicers additional liquidity they may need to extend forbearance periods for borrowers. This will also allow multifamily lenders additional time to work with owners to modify their mortgages and/or repair their properties, thus avoiding assignments and claims on the insurance fund.

### **B. Treatment of Non-Conveyable Properties**

To the extent that a home in a hurricane-affected area is demolished by the local, state, or federal government; the property is contaminated by hazardous substances; the land and structure no longer exist; or other situations exist that hamper the servicer's ability to take possession of the property, MBA recommends that FHA pay a claim for the total indebtedness and recoverable expenses without the servicer or HUD taking title to the property. Statutory language providing for this claim option is required.

### **C. Expand FHA's Partial Claim Program**

MBA recommends Congress grant authority for FHA to expand its "partial claim" option currently available under its loss mitigation program. A new partial claim option could provide funds to FHA borrowers to repair moderate damage to their homes. We envision that the new partial claim program would allow FHA to advance insurance proceeds to mortgage servicers that will remit the proceeds to borrowers to repair properties. The borrower would execute a note in HUD's name. The loan would be non-interest bearing, subordinate to other liens and require repayment when the borrower received insurance proceeds or at some other appropriate time (such as pay-off). Allowing this authority would reduce losses to the Mutual Mortgage Insurance Fund (MMIF) by saving homeowners from foreclosure. This option would also expedite repairs for borrowers waiting

for insurance funds or for borrowers without adequate insurance coverage. To provide such a benefit, FHA will need general authority from Congress for this program and authority to use MMIF funds in this manner. Certain precautions will be required to ensure servicers are not penalized for processing these partial claims.

#### **D. Section 223(e) Program**

MBA recommends Congress consider amending FHA's Section 223(e) program to apply to the hurricane-affected areas. Section 223(e) is a program that allows HUD to waive many of its insurance requirements to insure loans made to renovate or build single-family and multifamily housing in certain areas. This change would require: 1) an amendment to current statute as Section 223(e) is now limited to "property located in an older, declining urban area" and 2) an appropriation of credit subsidy because these loans are part of the Special Risk Insurance Fund and will probably be determined by HUD to require credit subsidy.

#### **E. Increasing Low-income Housing Stock**

Due to the fact that many of the displaced families are low-income and will not be able to afford market rents, MBA recommends long-term building efforts include new project-based Section 8 rental assistance and increases for low-income housing tax credits and tax-exempt bonds for the states affected by Hurricanes Katrina and Rita.

#### **F. Improving HUD Resources**

MBA recommends adequate HUD support, in both staffing and technology, to perform the necessary activities it will undertake in providing emergency housing, processing increased FHA insurance claims and possibly implementing new program authority.

## **II. SINGLE-FAMILY REGULATORY/POLICY PROPOSALS**

### **A. Conveyance Condition and "As Is" Conveyances**

Generally, in order to receive FHA claim funds, the servicer must deliver the property in conveyance condition, that is, free from damage due to fire, flood, earthquake, tornado, hurricane, boiler explosion (condominium units only) and/or mortgagee neglect. This regulatory policy is extremely problematic with regard to the catastrophic events of Hurricanes Katrina and Rita. In effect, it denies and/or delays the 100% insurance guaranty to single-family servicers. To the extent that insurance is not available to return a property to conveyance condition, the servicer bears the risk of loss associated with that loan, despite the fact that they do not own it. Interestingly, multifamily servicers do not bear this risk. Failure to assist single-family mortgagees will result in decreased interest in servicing and

originating the product and increased costs to originate FHA loans due to the “catastrophic risk” servicers must accept. MBA asks that HUD give single-family servicers relief from these losses using one or more of the options suggested below:

- Eliminate the Conveyance Condition Requirement: HUD could eliminate the conveyance condition requirement specific to these hurricanes.
- As-Is Conveyance: HUD could expand the ability for servicers to convey properties in “as is” (damaged) condition and eliminate the requirement to reduce the claim by the amount of the damage.
- Direct Conveyance: HUD could provide for automatic acceptance of direct conveyance of properties with property damage and not reduce the servicer’s claim by the amount of the damage.
- Accelerated Claims Disposition Program: HUD could enhance its Accelerated Claims Disposition (ACD) Program so that loans can be assigned to HUD regardless of the condition of the property. Currently properties that have declined in value by 10% are not eligible.

## **B. Underwriting Policies that Negatively Impact Servicers**

We understand that HUD is contemplating adopting underwriting standards that would disregard existing mortgages for debt-to-income ratios, credit histories and the existence of multiple FHA loans. While in theory this policy appears helpful to consumers, it has significant consequences for borrowers and servicers. The policy encourages consumers to leave their old communities at a time when the Administration is seeking to revitalize affected areas. It also encourages borrowers to abandon their properties and their original mortgages. Without relief from the “conveyance condition” requirement, such a policy is at the servicer’s expense. Moreover, HUD is not informing borrowers that they are still obligated on the old loan and that the servicer has the right to sue under the note to collect the previous debt. MBA believes a waiver of these underwriting standards is ill advised at this time.

## **C. Property Preservation and Reasonable Diligence Issues**

### **1. Property Inspections**

It is important that HUD and servicers be able to identify, assess and secure damaged properties as soon as possible. MBA recommends that HUD temporarily modify its rules to prevent further damage to already affected properties. MBA further requests that HUD allow servicers to perform and claim property inspections on current loans in severely affected areas and to allow monthly or bi-weekly inspections until the disaster areas are stabilized.

- MBA requests that HUD set up a mechanism to reimburse servicers for inspection costs on current loans.
- HUD should consider modifying its 25-35 day inspection requirement so that servicers will not be penalized if certain inspections are not performed due to resource limitations or inaccessibility.
- HUD should consider identifying affected areas as “Hot Zones” and allow for more frequent inspections.

## **2. Conveyances**

HUD should provide automatic extensions on conveyances on properties in affected areas to allow servicers to inspect the property prior to conveyance.

## **3. Property Preservation/Damaged Properties**

Due to the fact that many property preservation contractors have been displaced and may not remain in the disaster areas, preservation vendors are bringing in contractors from across the country in an attempt to handle the huge task of securing properties and performing repairs in the disaster area. In addition, many areas will not be accessible for several weeks or even months. As a result of resource shortages and the inaccessibility of properties, servicers may be unable to perform all of the securing work and repair work needed. Accordingly, we request the following:

- If properties are insured, consider allowing servicers to convey as-is with insurance proceeds as a standard option.
- Allow M&M Contractors the ability to grant longer extensions without HUD approval, especially for settlement of insurance claims. MBA recommends 90–120 day extensions. The extension period granted should be re-assessed on an ongoing basis.
- If properties on current loans are found to be damaged and/or vacant, allow servicers to perform and claim preservation work that is allowed for delinquent loans.
- Grant approval to board properties or use other temporary protective coverings, in lieu of replacing windows, while insurance claims are being settled. Replacement can be done after claims are settled.
- Grant servicers broad authority and increased “allowables” to perform debris removal, including trees or limbs, animals and health hazards.

- Eliminate the requirement to provide dump receipts if the servicer is unable to obtain them.
- Grant waivers to the reporting of citations or demolition notices when local, state or federal governments demolish properties without notice.
- Limit requirements for multiple bids because contractors will be scarce.
- Increase maximum “allowables” in affected areas.

#### **4. Loss Mitigation**

- After expiration of the 90-day foreclosure moratorium, allow servicers to grant automatic extensions for loss mitigation plans that fall outside HUD’s normal guidelines. Plans may include accepting partial payments or suspending payments while mortgagors are displaced from their homes and jobs. Eliminate the requirement that a borrower must be able to show his/her ability to cure the delinquency during the period of time while displaced from his/her job and/or home.
- Provide for automatic variance to allow servicers to execute loss mitigation plans with any mortgagor that is not occupying the property due to the disaster.

#### **5. Foreclosure**

Mortgagee Letter 05-33 imposes a foreclosure moratorium on properties directly affected by the disasters for a 90-day period. The moratorium applies to the initiation of foreclosure and foreclosures already in process. FHA needs to better define the scope of the moratorium and address how to handle loans where there is no contact with the borrower.

### **D. Underwriting Policies that Contribute to Rebuilding**

#### **1. Section 203(k) Rehabilitation Home Loan Program**

Under the Section 203(k) program, the purchase or refinance of a property and the funds for rehabilitation are rolled into a single loan. This construction-perm, single closing product lowers costs and streamlines rehabilitation. The program could be particularly useful in addressing current FHA properties in the affected disaster areas.

MBA suggests the following program changes to make the program more effective in the Presidentially-declared disaster areas:

- Allow the 203(h) program to be combined with the 203(k) program to provide rehabilitation loans without a downpayment requirement for

owner-occupants on properties in the disaster areas.

- Waive the policy that requires the use of the “as is” appraised value in determining the maximum mortgage amount on 203(k) loans used to purchase FHA REO in the disaster areas. Borrowers and lenders should be allowed to rely solely on the “after-rehabilitation” costs of the project. In instances where the purchase price on a property exceeds the “as-is” appraisal, FHA has required the borrower to pay the difference in cash, regardless of the value determined by the after-rehabilitation appraisal.
- Allow investors to purchase HUD REO using the 203(k) program. Investors may be more willing and capable than many homeowners to undertake major rehabilitation that will be necessary on certain properties. FHA could modify underwriting requirements under the 203(k) program for investor-purchasers, such as requiring a larger equity contribution.

## **2. Section 203(b) Home Mortgage Insurance Program**

Endorsement streamlining efforts, such as the recently announced Lender Insurance program, can have a positive impact in speeding redevelopment capital to the disaster areas. MBA supports a review of origination requirements that could be waived or modified to facilitate originations in the disaster area.

MBA supports raising the FHA loan limits in the affected areas to the conforming loan limits to promote the infusion of private capital into the disaster areas for the rebuilding of a greater variety of properties. Currently, FHA loan limits are established county-by-county and are pegged to 95% of an area’s median home price, though they cannot be lower than a national floor of \$172,632.

## **3. Section 234(c) Condominium Program**

The Section 234(c) program provides FHA insurance on mortgages made on condominium units purchased by owner-occupants, as long as the unit is located in a HUD-approved project. The condominium approval process can be laborious. MBA suggests streamlining the approval process to allow for larger numbers of projects to obtain approval, quicker. Often, the knowledge that a prospective project is approved for FHA-insured loans will move a project along because the builder and lender can proceed with greater confidence that prospective unit purchasers will be able to receive financing.

# **III. MULTIFAMILY REGULATORY/POLICY PROPOSALS** (see attached letter)