

A Pathway to a Sustainable Real Estate Finance System

As our nation continues to recover from “the Great Recession” The Mortgage Bankers Association (MBA) is committed to working with policymakers, borrowers, industry participants and all other stakeholders to stabilize and rebuild our real estate finance system. The economic trials and tribulations of the past several years have put great stress on lenders and borrowers. Likewise, the uncertain regulatory environment spurred by implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) has created an environment that has inhibited lending for residential, multifamily and commercial real estate.

MBA’s 2012 advocacy agenda focuses on rebuilding a real estate finance system that ensures access to financing for qualified borrowers. At the same time it provides transparency and protection for those same borrowers. By enacting policies that appropriately balance these two objectives, policymakers can create a lending and borrowing environment that gives all market participants the confidence they need to make the decisions that will put us on the pathway to recovery.

Risk Retention

QRM

MBA strongly supports the intent of the risk retention provisions of Dodd-Frank and believes Congress appropriately threaded the needle in creating the Qualified Residential Mortgage (QRM) exemption for well-underwritten, fully documented, sound and sustainable mortgages.

However, the QRM rule proposed by the regulators in March of 2011 goes beyond Congress’ intent.

Regulators did the right thing by eliminating risky features and products and requiring sound underwriting, full documentation and verification. But by prescribing hard-wired downpayment, loan-to-value (LTV) and debt-to-income (DTI) requirements, the proposed regulations will ultimately hurt consumers by limiting access to affordable credit for well-qualified borrowers.

In finalizing the QRM rule, regulators should maintain the proposed underwriting and documentation requirements, including the prohibition against risky loan features and products, but should drop the downpayment and DTI requirements that will do little to guarantee better loan performance, yet will disqualify the majority of borrowers from qualifying for the most affordable mortgage offerings.

For more information, visit www.mortgagebankers.org.



PCCRA

MBA strongly opposes the Premium Capture Cash Reserve Account (PCCRA) included in the proposed risk retention rule because it would severely curtail the issuance of non-agency residential mortgage-backed securities (RMBS) and commercial mortgage-backed securities (CMBS) by requiring the economic return for structured securities to be placed in a first-loss position. We are concerned that while the PCCRA may have been proposed as a way to support the purposes of risk retention, the actual effect of the PCCRA has much broader and harmful consequences to consumers, investors and other participants in private securitization markets. The PCCRA, in effect, would severely restrict efforts to bring greater private capital to the residential and commercial/multifamily real estate markets. Given the fragile state of the U.S. economy, we would strongly urge the federal regulatory agencies to take into account the PCCRA's chilling impact on both the real estate sector and the broader economy.

QM/Ability to Repay

The Consumer Financial Protection Bureau (CFPB) has publicly stated that it plans to issue final Ability to Repay/Qualified Mortgage (QM) rule in the first half of 2012. Considering the enormous importance of this rule, which will largely determine which consumers will receive the most affordable mortgage financing for years to come, MBA is advocating that the rule incorporate rigorous bright line standards in the form of a safe harbor and exclude undue restrictions affecting settlement charges that would harm consumers.

National Standards for Residential Mortgage Servicing

MBA supports a reasonable national servicing standard. Creating a truly national servicing standard would streamline and eliminate many overlapping requirements, providing clarity and certainty for servicers, borrowers, lenders and investors alike. A national standard should recognize existing servicer requirements and consumer protections, as well as, state laws governing foreclosures. Development should include an open dialog with stakeholders in the servicing arena, all of whom must ultimately work together to ensure the standard achieves the dual goal of better serving borrowers while allowing for a sustainable mortgage servicing business model.

Secondary Market Reform

MBA believes the current real estate finance environment with the federal government in such a prevalent role is unsustainable and untenable. At the same time, we believe the necessary tools, materials and expertise currently exist to begin building a bridge toward a more sustainable real estate finance system.

As the discussion on the future of housing finance continues, MBA recommends that policymakers carefully consider the path by which private capital is brought back into the system — a pathway that maintains market stability while establishing a framework that ensures ongoing liquidity.

Three years ago, MBA emerged as a thought leader on the fundamental components of a stable and liquid secondary market for the long term. We believe the following three principles serve as the foundation of a safe and sound secondary mortgage market.

1. Secondary mortgage market transactions should be funded with private capital from a broad range of sources.
2. The importance of housing, whether owner-occupied or rental, to the nation's economic and social fabric warrants a federal government role in promoting liquidity and stability in the core mortgage market. This role should be in the form of an explicit credit guarantee on a class of MBS, and the guarantee should be paid for through risk-based fees.
3. Taxpayers and the system itself should be protected through limits on the mortgage products covered, limitations on the types of activities undertaken, strong risk-based capital requirements, and actuarially fair payments into a federal insurance fund.

Compensation Structure for Residential Mortgage Servicers

MBA is opposed to the proposal by Federal Housing Finance Agency (FHFA) to change servicer compensation from the current 25 bps of outstanding principal balance to a \$10 per loan per month flat fee for current loans and no incremental fees other than existing incentive compensation for the servicing of non-performing loans. MBA believes that FHFA's proposed fee structure would likely increase costs and reduce service to the borrower and would be extremely disruptive to the already fragile To Be Announced (TBA) market for Fannie Mae and Freddie Mac MBS.

If FHFA insists on changing servicer compensation, then MBA has proposed and supports a less radical change whereby a portion of the existing 25 bps would be set aside in a cash reserve account to compensate the servicer in the event of another catastrophic borrower default cycle. This cash reserve account would inure to the servicer and would be transferred with the servicing in the event of a transfer.

FHA

The Federal Housing Administration (FHA) is a vital component of the U.S. housing finance system and provides indispensable service to the underserved, low-to-moderate income, and minority homebuyer and renter. It is imperative that Congress support the agency so that it remains viable, relevant and sustainable during the housing recovery and well into the future. The significance of FHA in the housing finance system has been underscored with the recent mortgage crisis and resulted in the retreat of the private sector and an illiquid mortgage market. FHA's counter-cyclical role has proven invaluable to maintaining liquidity in the single-family, multifamily, and healthcare markets and has helped buttress the country's housing finance system.

Because of FHA's rapid growth in single-family market share and associated risks to the agency's financial stability, MBA strongly urges program support for FHA that puts the agency on a more stable footing and allows it to continue to support the housing market. MBA supports increasing single-family resources to enable FHA to effectively manage endorsements for the lifespan of the loans; leveraging new technology resources to improve operational efficiencies; prudently strengthening lender oversight and monitoring; and responsibly disposing of Real Estate Owned properties through methods that support local investors and encourage neighborhood stabilization.

With FHA's multifamily and healthcare programs, MBA believes that it is critical for FHA to have sufficient resources and flexibility to support rental markets, particularly at a time of unprecedented market demand that has placed strains on FHA's systems. In addition, MBA recommends that FHA build upon its efforts to optimize efficiency in its business processes. FHA also should work with its Multifamily Accelerated Processing (MAP) lender partners to efficiently and prudently delegate lending, risk analysis and asset management responsibilities, while strengthening the core skills of its workforce through training.

Loan Officer Compensation

MBA has been the advocacy leader regarding the loan officer compensation rule issued by the Federal Reserve, now under the authority of the CFPB, and changes to the Department of Labor's interpretation of the Fair Labor Standards Act (FLSA) respecting the payment of overtime to commissioned loan officers. Regarding the loan officer compensation rule, we have met with both the Federal Reserve and the CFPB, and recently submitted a list of areas for revision. We believe aspects of the rule and subsequent interpretations by Federal Reserve staff go far beyond the rule's purpose of prohibiting compensation and steering based on the rate or terms of loans. Additionally, MBA filed suit a year ago in January 2011 in the United States District Court to set aside the Department of Labor's March 2010 abrupt reversal of its interpretation of the FLSA. We are awaiting the judge's decision in the case.

Mortgage Disclosures

A key mission of the CFPB under Dodd-Frank is to combine and simplify RESPA and TILA home mortgage disclosures by July 21 this year. In May 2011, the CFPB began an iterative process of issuing prototypes of an initial disclosure for public comment. Since then, the CFPB has released seven more sets of prototype forms including both initial and settlement disclosure. MBA has taken a leadership role in responding to the prototypes with comments on layout, content, itemization, technological concerns, tolerances and the synchronization of the disclosures with existing RESPA and TILA rules. Considering our long commitment to greater transparency in the mortgage process, MBA will continue to dedicate significant resources to this undertaking.

Rationalizing Repurchase Requests

A key obstacle preventing many qualified borrowers from qualifying for a loan or being able to refinance is the loan repurchase demands made by Fannie Mae and Freddie Mac to lenders. Under normal circumstances, if a loan goes into default, the GSE may demand that the originator repurchase the loan if the originator cannot prove the loan was adequately underwritten. Currently, the GSEs are using repurchase requests to manage their own performance profile by requiring lenders to buy back loans even though the rep and warrant breach was unrelated to the performance of the loan. MBA believes legitimate repurchase requirements are an effective means of holding originators accountable for the quality of the loans they underwrite. However, MBA believes originators should not be held accountable for the performance of a loan if it met the GSEs' guidelines and all applicable laws and regulations, but failed due to changing economic circumstances. For these reasons, MBA believes policymakers should consider setting a clear limit on the duration of an originator's repurchase obligation following the origination date.

Regulation AB

Securitization is a critical tool that facilitates the provision of liquidity to the residential and commercial/multifamily real estate finance markets. MBA shares the goal of the Securities and Exchange Commission (SEC) to strengthen the asset-backed securitization market by restoring greater confidence to investors through its Regulation AB rulemaking. Toward this end, MBA supports a regulatory framework that promotes market efficiency, transparency, liquidity and an alignment of interests among parties through appropriate disclosure and practices that enable investors to make informed investment decisions. In particular, the SEC's proposed changes to Reg AB should be examined in light of the cumulative impact that they, along with other regulatory regimes, would have on securitization as a capital source for real estate finance. As market participants continue to face challenges in accessing the capital markets, MBA urges the SEC to carefully tailor its proposed changes to Regulation AB and the regulation of asset-backed securitization generally in order to reinvigorate the securitization markets while ensuring investor protection.

Transitional Licensing

MBA believes that if an originator is well qualified and federally registered and originating loans for a depository institution, he or she should be able to originate loans for a state regulated lender while completing the requirements for permanent licensure in that state. Similarly, MBA believes an originator licensed by a particular state should also be permitted to originate in another state, while meeting the licensing requirements for such other state.