

# 2009 MBA Policy Agenda to Stabilize the Housing and Mortgage Markets

By anchoring communities, providing jobs and building family wealth, the real estate finance industry has played an important role in bringing prosperity to American families. Recent turmoil in the industry and the markets has, however, threatened this critical responsibility. The Mortgage Bankers Association is eager to work closely with the 111th Congress and the Obama administration to help rebuild and justify the faith in our industry by restoring liquidity to the capital markets, assisting borrowers and renters and preventing reoccurrences of the recent troubles. In 2009, MBA will advocate for the following policy issues:

## RESTORING LIQUIDITY

### **Permanently Increase Conforming Loan Limits**

To help stimulate the mortgage market and increase lending to consumers, the standard conforming loan limit for single-family properties should be increased from \$417,000 to \$625,500 and the limit in high-cost areas should remain at the level established by the Economic Stimulus Act of 2008 (125 percent of the median home price for high-cost areas up to \$729,750.)

### **Use Tax Incentives to Reduce Real Estate Inventory and Stimulate the Economy**

There is an extremely large inventory of vacant properties on the market today. Tax incentives could encourage reluctant homebuyers to enter the market and individuals to rent vacant homes. The first-time homebuyer tax credit should be expanded to all homebuyers, increased, made available at closing and made more potent in other ways. Depreciation of single family rental properties should be accelerated to help convert vacant homes into rental properties. A variety of proposals will inject greater cash into the economy such as allowing taxpayers who claim a standard deduction to deduct their mortgage interest and targeting special tax credits to critical regions.

### **Ensure a Vibrant and Liquid Secondary Market**

MBA is committed to restoring vibrancy and liquidity to the secondary market in a manner that avoids the shortcomings of the current framework. Accordingly, MBA will work with Congress, the administration and the

industry at large to help design and implement multiple liquidity channels that will accommodate a variety of business models. In this way, the secondary market will evolve to provide numerous credit resources that will minimize the pro cyclicality that has exacerbated the current credit crisis. MBA will also work with Congress and the administration to resolve the status and structure of the government sponsored enterprises (GSEs). Covered bonds, and enhanced Federal Home Loan Bank access and liquidity powers are additional credit distribution channels that MBA will seek to promote through legislative and regulatory measures. MBA believes there must be enhanced clarity in the assignment of responsibilities and obligations among all market participants. Transparency and supervisory oversight must be bolstered so that all market participants fully comprehend and carry out their responsibilities and obligations. Additionally, the role of the federal government must be explicitly articulated to avoid any opportunism fostered by confusion about the government's role.

### **Troubled Assets Relief Program (TARP)**

MBA supports the work of Treasury to date but continues to encourage TARP to purchase and modify troubled whole loans from commercial and residential lenders and servicers, and to explore other initiatives that would stabilize the market conditions for residential mortgage-backed securities (RMBS) and commercial mortgage-backed securities (CMBS).

**Term Asset-Backed Securities Loan Facility (TALF)**

TALF is a credit facility operated by the Federal Reserve that currently is limited to the purchase of Asset-Backed Securities, such as securities collateralized by credit cards, automobile loans, etc. MBA supports the expansion of the TALF program to stabilize CMBS and RMBS market conditions and help restore liquidity to the capital markets.

**Re-evaluate Fair Value Accounting**

Fair value accounting for mortgage-backed securities in inactive markets compounds market crises by compelling institutions to mark down the value of held assets to fire sale prices. This pro-cyclical impact can be prevented if distressed sales specifically are excluded from fair value assessments during inactive markets and if fair value is based on projected future cash flows using discount rates that do not reflect the liquidity risk inherent in recent, distressed sales. The Securities Exchange Commission should encourage the Financial Accounting Standards Board (FASB) to issue clarifying guidance or suspend the current rules toward this end. MBA recommends that the FASB re-evaluate its fair value project to determine if a new model can be designed that will meet investor needs for a “liquidation value” at balance sheet date while allowing for valuation methods that reflect management’s current intentions to hold assets beyond the immediate future.

**Stimulate the Multifamily Sector**

To help restore activity to the multifamily housing sector that provides affordable rental housing and construction jobs to millions of Americans, the Federal Reserve should purchase construction loan-backed Ginnie Mae securities at the same price as the market prices for permanent loan multifamily MBS. In addition, HUD should rapidly implement the provisions of HERA related to the streamlining of HUD processes for low income housing tax credit properties. Finally, a program should be developed within the government to purchase (at a discounted interest rate) loans backed by multifamily properties assisted by low income housing tax credits.

**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, require larger down payments and raise interest rates.

**ASSISTING BORROWERS AND RENTERS****Implement a Government-Guaranteed Refinance Program**

An effective borrower assistance program could overcome existing obstacles to modification caused by the fiduciary or contractual duties of MBS trustees/servicers to investors. The ideal program would provide an outlet for performing and non-performing borrowers whose loans are “underwater,” but who have sufficient income to afford their mortgages under reasonable rate/term/principal scenarios. The government could use TARP funding or the \$300 billion allocated to the Hope for Homeowners program to purchase and hold whole loans, which would eliminate the bond feature and need for FHA insurance.

**Continue to Focus Assistance on No-contact Borrowers**

Most foreclosures today fall into one of three categories: (1) Borrowers who bought the house as a speculative investment and do not live in the house going into foreclosure; (2) Borrowers who have experienced a life-changing event that has made a previously affordable mortgage unaffordable even if modified; and (3) Borrowers who have had no contact at all with their servicer or lender. Efforts such as the HOPE NOW Alliance that are focused on this third group will have the most success.

**Preserve and Improve Affordable Rental Housing**

Many of the currently assisted multifamily properties that provide affordable rental housing are in need of substantial rehabilitation and could be lost to the affordable housing inventory at a time when such housing is needed by an increasing number of families. Congress should pass legislation that makes needed changes to existing statutes and HUD regulations and procedures that would facilitate rehabilitation of these properties and assure their long-term affordability.

**PREVENTING FUTURE PROBLEMS****Pass Mortgage Reform Legislation**

Congress should pass comprehensive mortgage reform legislation that will establish a single, nationwide consumer protection, anti-predatory lending standard; empower consumers by fixing our broken mortgage shopping and closing process; create a new federal mortgage regulator; and better regulate mortgage brokers.

**Ensure FHA's Future Viability**

Federal Housing Administration (FHA) programs have skyrocketed from being nearly irrelevant to the market two years ago to approaching half the single-family market and a significant share of the multifamily market today. FHA must be allowed to price its single-family premiums for risk and be given the financial resources and flexibility to hire the best people and use the best technology to monitor and manage its operational risk more effectively.

**Strengthen Financial Education and Mortgage Counseling**

Existing programs should be harmonized and well-funded to improve financial literacy and make help available to more consumers. Consumer finance curriculum, including credit and mortgage basics, should be required in every high school in America.

**Preserve the Current Accounting Rules Regarding Securitized Loans**

MBA opposes proposed changes to current accounting rules (FAS-140/FIN46R) that would prohibit off-balance sheet accounting treatment for loans that have been transferred into a securitization. The proposed change would require assets that had been contributed to a securitization to be maintained on the balance sheet of the contributing organization, despite the loss of operational control and cash flow from the loan. MBA supports the linked presentation accounting rule that would limit the balance sheet exposure to the amount of securitization that is owned.

**Real Estate Mortgage Investment Conduits (REMIC) Reform**

MBA supports REMIC modernization for CMBS transactions to keep pace with market conventions. There is currently a proposal pending with the Internal Revenue Service that would benefit both the bondholders and the property owners, by providing borrowers more options and the flexibility to manage their properties after the mortgages have been securitized. MBA and other real estate industry organizations have commented on the proposed IRS regulations suggesting revisions that would provide bright line, easily administered tests that would simplify this area of law.

**Preserve Current Tax Treatment of Carried Interest**

In the case of real estate development, carried interest is a share of the profits of a successful partnership that is paid to the manager of a partnership as a form of incentive compensation. Currently, carried interest for long-term investments is taxed at the capital gains tax rate of 15 percent. MBA opposes legislation that would increase carried interest taxation to the ordinary income tax rate, a maximum of 35 percent, because it would greatly reduce the financial incentive for partnerships to develop new and purchase existing residential and commercial real estate projects.

### **Maintain Consistent Credit Ratings for all Asset Classes**

Some have proposed replacing or modifying the existing credit ratings scale to create a unique rating system for structured finance products, such as MBS. Requiring structured securities to have a unique identifier would, however, create compliance burdens, confusion and volatility in the market and potentially discourage the purchase of all structured securities. MBA supports proposed regulations that would increase ratings and data transparency and information disclosure as an alternative to the unique structured securities identifier proposal.

### **End Mortgage Fraud**

Reported incidents of mortgage fraud in the U.S. increased by 45 percent in the second quarter of 2008 despite fewer loan applications at the same time last year. We must remain vigilant in fighting mortgage fraud, which hurts consumers, communities and lenders alike, by adequately funding enforcement activities.



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