



March 9, 2009

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410-0500

Re: HOPE for Homeowners Program: Program Regulations: Upfront Payment Incentive for Subordinate Mortgage Lien Holders and Other Program Changes, 74 Fed. Reg. 617, January 7, 2009.

Ladies and Gentlemen:

The Mortgage Bankers Association¹ (MBA) greatly appreciates the opportunity to respond to the request for comments on the interim final rule changes (“Rule”) to the HOPE for Homeowners Program (“H4H”) Regulations.

MBA appreciates the efforts of the Board of Directors of the H4H Program (“Board”) to amend these rules and make H4H accessible to a greater number of borrowers and to comply with changes made under the Housing and Economic Recovery Act of 2008 (HERA) and the Emergency Economic Stimulus Act of 2008 (EESA). MBA offers these comments on the Proposed Rule:

Upfront Payment in Lieu of a Future Appreciation Payment

As authorized by EESA, the Rule permits the holder of an existing subordinate mortgage to receive a cash payment at the time an H4H mortgage is refinanced in lieu of any share of future appreciation in the property. The Rule establishes the payment schedule for such upfront payments. As a condition of receiving the upfront payment the subordinate mortgage holder must release the borrower of all indebtedness under the loan and release the holder’s lien on the property.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

While MBA appreciates the Board's decision to provide an upfront payment option to subordinate lien holders, we believe that both the upfront payment of 3 to 4 percent and the future appreciation payment of 9 to 12 percent of the unpaid principal and interest amount eligible discourages participation and positions the Federal Housing Administration (FHA) to only receive loans where foreclosure is imminent. Further, we contend as a result of the upfront and future appreciation payments being so low, many subordinate lien holders will continue not to participate. We argue both payments should be significantly higher in order to encourage subordinate lien holder participation.

Increased Loan-to-Value and Income Ratios

MBA supports the loan-to-value ratio (LTV) increase to 96.5 percent for participation in the Program, however we believe the higher LTV should not be restricted to those with a debt-to-income ratio (DTI) of 31 percent, but should apply to borrowers with ratios above 31 percent as well. We believe the increased LTV could expand the Program to more borrowers.

Moreover, it is MBA's position that the Board should remove the hard 38 percent cap on the front end DTI and allow servicers to consider compensating factors as a basis for exceeding the current maximum DTI. These changes would make the program more accessible to borrowers in high cost areas such as California, where borrowers are accustomed to spending a higher percentage of their gross income on housing.

Shared Appreciation and Shared Equity

The Rule modifies the shared equity calculation. We agree that borrowers who have equity in the property prior to obtaining an H4H refinance should not be required to share that equity with HUD. This is especially true for delinquent borrowers who seek refinances of loans with LTVs of 90 percent or lower. We support the new calculation and also support the clarification that borrowers with LTVs below 90 percent are eligible for H4H refinances.

Although not addressed in the regulation, MBA respectfully requests that HUD consider eliminating the servicer liability for ensuring that the legal documents for the shared equity and appreciation mortgages are valid and enforceable in all states to the extent H4H continues in its current form. We believe that HUD should provide the appropriately vetted legal documents necessary to execute both types of subordinate loans. Today the burden of performing the necessary legal review and analysis falls on the servicer, and if the notes and mortgages are deemed unenforceable or otherwise deficient, the servicer bears the indemnification risk to HUD and the litigation risk of defending a foreclosure. This cost and risk has kept servicers from participating in H4H.

Endorsement Timeframe

Under the Rule, the Board will require the lender to include in the file evidence that the borrower has made the first payment within 120 days of loan closing and, if the

borrower fails to make such a payment, the loan would never be eligible for payment of a claim under H4H even if the borrower became current after the 120th day. This is inconsistent with the standard endorsement rule for FHA loans which allows loans that are endorsed late to receive insurance if such loans are current or brought current. Even more problematic is the possibility that a timely endorsed loan would be denied insurance benefits if the borrower failed to make the first payment by the 121st date (and the ability to document the first payment was made in a file already submitted to HUD).

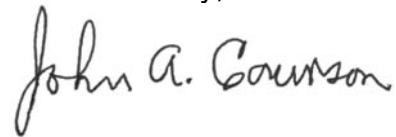
While we understand that HERA provides that insurance benefits will not be paid if there is a "first payment default", we believe the Board has considerable discretion in defining first payment default to be "a borrower who does not make the first payment or subsequent payments on the loan." This definition must be combined with retention of the current endorsement policy, which considers a borrower current during the period between closing and the first payment. The combination of these suggestions would limit servicers' exposure to those cases where a borrower fails to make the first and subsequent payments on a late endorsement. The alternative is that servicers must demand the first payment at closing with good funds. This may prevent some financially strapped borrowers from participating in H4H.

Conclusion

MBA greatly appreciates the opportunity to comment on the Rule. We urge the Board to consider the improvements outlined above to increase the viability and success of H4H. MBA members are eager to the work with the Board to help borrowers stay in their homes and avoid foreclosure.

For further information on these comments, please contact Vicki Vidal at vvidal@mortgagebankers.org and (202) 557-2861.

Most sincerely,



John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association