



**Statement for the Record of John A. Courson
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Before the
Committee on Banking, Housing and Urban Affairs
United States Senate
Meeting on
“Homeowner Affordability and Stability Plan”
February 26, 2009**

Chairman Dodd, Ranking Member Shelby, and Members of the Committee, thank you for allowing the Mortgage Bankers Association (MBA)¹ to submit a statement for the record on the Homeownership Affordability and Stability Plan (HASP), which was announced by the administration on February 18, 2009. MBA appreciates the efforts of the administration to restore vitality to the U.S. financial system and the housing market. While the economic challenges facing this country are historic in magnitude, MBA believes they can be conquered with a combination of determination and cooperation of public and private sector resources. MBA stands ready to work with this committee and the administration to return the housing finance system to health.

MBA agrees with the majority of the conceptual underpinnings of HASP, and we are pleased that the administration's plan is a multi-faceted approach to a vexing and complex challenge. We also share the administration's desire to direct assistance to the neediest of qualified borrowers and, where possible, to help "at risk" borrowers avoid falling behind on their financial obligations.

MBA believes that transparency and clarity are critical to HASP's success. In an effort to assist Treasury in shaping the specific parameters of HASP, MBA solicited input from its members on areas within HASP that would benefit from further specificity. MBA has already communicated an overview of MBA's member concerns and suggestions to Treasury, and the remarks that follow closely mirror the same issues.

I. Uniform Industry Guidelines

MBA strongly supports the efforts of the administration to develop "clear and consistent guidelines for loan modifications." Servicers have worked hard in the face of an extraordinary workload to modify loans where appropriate and help troubled borrowers in a variety of ways. Moreover, the industry, through HOPE Now and other initiatives, has invested considerable resources to better reach and assist borrowers prior to their loan going into foreclosure. Development and implementation of uniform guidelines for resolving troubled mortgages across the single-family real estate finance industry is an important initiative to help restore the confidence of borrowers, lenders and investors. MBA would welcome the opportunity to work with Treasury and provide input from practitioners' perspectives from all sectors of the housing finance system.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 370,000 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.

II. Loan Refinancing Through Fannie Mae and Freddie Mac

Loan to Value Restrictions – MBA endorses HASP’s feature that would enable a borrower to refinance a mortgage even if the loan amount exceeds the property’s current market value (i.e. loan to value or “LTV”) up to 105 percent. However, MBA urges Treasury to expand this program in order to provide assistance to a broader spectrum of financially troubled borrowers. Specifically, MBA requests eliminating the 105 percent LTV cap, or at a minimum raising the cap to a higher LTV ratio. Industry data consistently shows that areas of the country hardest hit by real estate price depreciation are also the areas with the highest mortgage delinquency rates, such as California, Nevada, Arizona, Florida, Ohio, Michigan and portions of the Atlantic seaboard. Many borrowers in these areas would be precluded from the benefits of the HASP refinance program if the LTV ratio on their loan is over 105 percent.

In the event that Treasury does not modify the current 105 percent LTV cap, MBA requests Treasury consider an alternative, complementary program for borrowers with LTV’s in excess of 105 percent. Under the alternative program, the mortgage servicer would calculate the maximum loan amount that would result in a LTV at or below 100 percent with an interest rate that would provide a targeted debt-to-income (DTI) ratio. Eligible borrowers would refinance their current mortgage into a new 100 percent LTV first mortgage and a priority second lien mortgage for the balance that would not fit under the 100 LTV cap. The priority second lien mortgage would be purchased by the government through a new or recently created lending facility. The second lien would have the right of first repayment from any gain on the future sale of the residence or upon the future refinancing of the first lien mortgage.

Private Label Securities – Like the high LTV borrowers discussed above, financially troubled borrowers whose mortgages are pooled into non-agency mortgage-backed securities (private label MBS) currently are ineligible for HASP refinance assistance. MBA believes otherwise eligible borrowers should not be denied a refinance simply because Fannie Mae and Freddie Mac do not own or guarantee their loans. Because borrowers have little choice over the destination of their loans in the secondary market, MBA strongly urges Treasury to revise this HASP requirement so that government assistance is made available to borrowers based on consistent, relevant factors. The program suggested above involving a first and a priority second mortgage would be a good way to reach these borrowers.

III. Homeowner Stability Initiative

“At Risk” Borrowers with High-Cost Conforming Loans Also Should Be Assisted Under HASP – Fannie Mae and Freddie Mac are permitted by law to purchase loans with values up to \$417,000, and, temporarily, up to \$729,750 in so-called “high-cost

areas.” As a result, the market recognizes two types of conforming loans – (1) standard and (2) high-cost. MBA notes that HASP currently does not differentiate between these two conforming loan types. While it is reasonable to assume that both standard and high-cost loans qualify for HASP assistance, MBA believes it would be prudent to expressly indicate this is the case.

MBA further requests HASP be modified so that financially troubled or at risk borrowers are eligible for assistance even if their loan amounts exceed the conforming loan limits. In many parts of the country, loans exceeding the conforming limit are a function of area housing costs rather than a borrower’s socioeconomic profile. Moreover, MBA believes that robust levels of liquidity will not return to the market unless the crisis across the entire housing finance continuum is addressed.

Government Loans – The administration indicates its intentions to work with the government to apply the modification guidelines to all loans owned or guaranteed by the federal government, including Ginnie Mae, FHA, VA and Rural Housing. In doing so, the federal agencies should address the cost of buying loans out of Ginnie Mae securities and modifying them. In order to apply this program to government loans, two key statutory and regulatory changes must be made to allow the servicer to participate. They include:

1. **Expanded Partial Claim and Other Claim Authority:** FHA, VA and RHS must be permitted to pay servicers a partial claim for interest rate or principal modifications (including deferrals of principal). Statutory language also must be changed to allow the borrower to be current in order to qualify for a partial claim and to allow a claim in excess of 12 months of principal, interest, tax and insurance payments. If the loans remain in Ginnie Mae pools after they are modified, which is not permitted today, the agencies must provide an ongoing payment for the differential between the scheduled pass-through payment and the actual modified payment.
2. **Assignment Program:** In combination with partial claims, we believe that FHA, VA and RHS should provide for an assignment program whereby servicers would assign loans to the agencies. The assignment approach alleviates the capital constraints and borrowing constraints that servicers encounter when required to buy modified loans out of Ginnie Mae pools.

Until the complexities of the government lending programs are addressed, we do not believe FHA, VA and RHS loans will be able to benefit from the Home Stability Initiative as designed.

A Workable Safe Harbor Must Be Established to Enable Mortgage Servicers to Work with More Borrowers – As indicated, MBA appreciates that Treasury will develop uniform guidance for loan modifications across the mortgage industry.

However, establishment of an effective safe harbor protecting servicers from legal liability for modifications is also essential to assuring that securitized loans can be modified. Any such safe harbor should also assure that funds are available to defray the costs of servicer liability through indemnification or other means. We would like to work with Treasury and Congress on developing a safe harbor that will allay servicer concerns and clear the way for modification of loans in certain securities.

Accounting Issues May Affect Bank Capital – MBA has identified several accounting issues associated with the proposed loan modification plan that may affect bank capital. The proposed modification plan may preclude a securitization vehicle from qualification as a Qualifying Special Purpose Entity (QSPE), which would require the MBS's assets and liabilities to come back on the balance sheet of the transferor. MBA believes that two triggers within paragraph 35 of Statement of Financial Accounting Standards No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* (FAS 140) may disqualify sale treatment: 1) added servicer discretion not anticipated in the pooling and servicing agreement (PSA) or voted on by a majority of beneficial interests held by a majority of holders other than the transferor (paragraph 35 b of FAS 140), and 2) the government guarantee or government interest rate subsidy that is put in place after securitization (paragraph 35 c of FAS 140). This would serve to reduce equity as a result of reversal of gain on sale, and increase assets as the securitization's assets come back on the balance sheet of transferors.

For financial institutions, these factors compound the issue because they would decrease the numerator (capital) and also increase the denominator (assets) in risk-based capital. Further, the losses associated with the loan modifications under the troubled debt restructuring rules will increase losses and may require additional capital under the capital adequacy rules. MBA has asked Treasury to request the Securities and Exchange Commission (SEC) to encourage the Financial Accounting Standards Board (FASB) to temporarily suspend certain portions of paragraph 35 of FAS 140, and MBA supports Treasury requesting that bank regulators provide capital rule relief if such securitization assets do have to be put back on the balance sheet.

IV. Industry Capacity

Industry Capacity Will be Strained – Neither the quantity of work required by the proposed refinance and loan modification plans nor the time to implement them should be underestimated. First, performing manual transactions on the millions of mortgages Treasury anticipates will be reviewed and/or modified by various government programs is difficult. Accordingly, the industry must move quickly to build systems to screen for qualification under each of the programs in order to automate the process. Second, current information on borrower income and debt and current value information for mortgaged properties will have to be obtained and put in these models so that front-end and back-end debt to income ratios and loan to value ratios can be determined. This

process will necessarily be manual. Millions of credit reports, income verification correspondence and appraisals or broker opinions of value will have to be processed.

Servicing systems are generally mainframe applications. They currently are not programmed to track and record the proposed servicer compensation or reductions in indebtedness based on future borrower performance. These systems changes will take time. MBA likewise is concerned about capacity constraints to handle the added workload for industry partners in the loan refinance or modification process including appraisers, title companies, closing agents and county recorders.

As you work to keep interest rates low and encourage refinancing and home purchases, consider that meeting the increasing mortgage demands of consumers has become an increasingly challenging problem due to the lack of adequate warehouse lines of credit for independent mortgage companies. Many warehouse lenders have gone out of business or terminated or added restrictions to their lines of credit, drastically limiting the ability of many mortgage bankers to serve their customers. MBA strongly urges the administration to consider solutions that would provide additional liquidity to independent mortgage bankers so that they can help support the administration's efforts to stabilize the housing market, especially in underserved areas. We have written separately on this issue to the Treasury and other government agencies.

An additional problem involves implementation of the S.A.F.E. Mortgage Licensing Act (S.A.F.E.). Under S.A.F.E., states are encouraged to enact licensing and registration laws for lenders and mortgage brokers by July 30, 2009. The Act was not designed or intended to cover mortgage servicers. Unless the Department of Housing and Urban Development (HUD), which has regulatory authority under the law, clarifies this point, a new patchwork of state laws governing servicing may be enacted relatively quickly. MBA and others are writing to HUD urging guidance to avoid unnecessary regulation that may impair loan modification efforts and make them much more costly as servicers seek to comply.

MBA notes that the proposed programs can be expected to result in a need for additional employees and contractors for the industry and utilize some excess capacity which is good for industry, the economy and ultimately consumers. However, MBA wants the government and borrowers to have realistic expectations of how quickly all of the loans eligible under the program can be identified and processed.

V. Judicial Modification

HASP, as announced, indicates it will "seek careful changes to personal bankruptcy provisions so that bankruptcy judges can modify mortgages written in the past few years when families run out of other options." It is well known that MBA opposes revisions to the bankruptcy code to allow judicial modification of mortgage indebtedness on primary residences as harmful to the market and expensive for consumers. We continue to

strongly support alternatives. Considering the options available to borrowers under HASP, especially with the modifications we suggest in this statement, MBA would respectfully urge that the addition of bankruptcy modification to the plan is unnecessary and will likely have unintended negative consequences.

However, should Congress continue to pursue judicial modification as part of the plan, MBA would strongly support the limitations contained in the plan released last week and any additional limitations. Judicial modification should be a last resort and only available where other non-judicial options have been exhausted or are not available. Where a borrower has been offered a non-judicial modification under HASP, the ability of the borrower to seek a judicial modification, or at the very least, the ability to shop for a more favorable modification in bankruptcy court, should be precluded. Where a judicial modification takes place, MBA believes that the lien should not be *reduced* to the fair market value of the property, but instead principal beyond the fair market value should be *deferred* to ensure affordability similar to what the HASP anticipates in its modification program. This will create a more level playing field between modification and bankruptcy. At a minimum, bankruptcy modification legislation should provide for a recapture provision that would allow the lender to recover the amounts written down to avoid unjust enrichment of the borrower upon sale or refinance of the property should the value of the home increase.

VI. Conclusion

Once again, thank you for the opportunity to submit this statement for the record. MBA believes the Homeownership Affordability and Stability Plan has great promise to achieve its important purposes and we are committed to helping it succeed. On behalf of the Mortgage Bankers Association, we look forward to working with the administration and this committee to see that this program helps the mortgage market and at risk borrowers.