



2005

ADVOCACY AGENDA

PROGRESS REPORT

During 2005, MBA accomplished many of its regulatory and legislative priorities and made significant headway on several others. Below is an overview of those accomplishments.

2005 PRIORITIES ACCOMPLISHED

- **TRIA** - In a major victory for MBA, Congress passed a two-year extension of TRIA on December 16 and President Bush signed the bill into law on December 22. The final bill requires property-and-casualty insurers to continue to offer terrorism insurance policies and requires the federal government to back up private insurers if insurance losses due to a terrorist attack exceed \$50 million in 2006 and \$100 million in 2007.
- **BANKRUPTCY LAW** - President Bush signed the MBA-backed "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" into law on April 20. The bill included a long-sought MBA provision that removed the \$4 million cap on single asset bankruptcies, which will help reduce MBA commercial and multifamily members' vulnerability on assets valued over \$4 million.
- **CLASS ACTION REFORM** - The President signed MBA-supported class action reform legislation in February. The bill revised the rules governing class action lawsuits and will move class action suits with plaintiffs from multiple states out of state courts and into the federal system.
- **FLOOD INSURANCE** - MBA strongly advocated for passage of a law in 2005 that would prevent the National Flood Insurance Program from running out of funds to pay claims. President Bush signed such legislation in November, increasing the federal flood insurance program's borrowing authority to \$18.5 billion and allowing it to continue to pay out on claims.
- **DO-NOT-FAX LEGISLATION** - MBA supported the "Junk Fax Prevention Act of 2005", which President Bush signed on July 9. This bill allows mortgage lenders to continue to fax "rate" sheets without obtaining prior permission from mortgage brokers with whom they do business. MBA was instrumental in achieving passage of the legislation.
- **FHA HECM CAP EXTENDED** - Thanks to MBA efforts, FHA's Home Equity Conversion Mortgage (HECM) program was never shut down as the program fast approached the loan cap established by Congress. MBA worked to identify a supplemental appropriations bill in conference and reached out to Congressional staff to push for the inclusion of an amendment that raised the HECM cap. The bill signed by President Bush expands the loan cap to an amount sufficient to preserve the program until spring 2006.

- **SEC REGULATION AB** - MBA held a number of conference calls and a fly-in meeting in October to discuss issues facing the residential mortgage-backed securities (MBS) sector in complying with Securities Exchange Commission (SEC) Regulation AB. MBA distributed a letter and matrix to all members relating to Item 1122, *Compliance with applicable servicing criteria*, of new SEC Regulation AB, Asset-Backed Securities, and MBA's publication, *The Uniform Single Attestation Program* (the USAP). The letter alerted mortgage company management of the need to consult with their auditors, legal counsel and users of the USAP Report regarding the advantages and disadvantages of performing only an Item 1122 engagement in the future. The Regulation, which was released on December 22, 2004, and goes into effect for most transactions on January 1, 2006, addresses the registration, disclosure and reporting requirements for non-agency mortgage-backed securities that are publicly registered.
- **FASB LOAN COMMITMENTS** - The FASB staff concurred this year with MBA's position that only "rate lock" commitments should be accounted for as derivatives. In July 2005, MBA sent a letter to the FASB Chairman seeking confirmation of MBA's position that FAS 133 requires only "rate lock" loan commitments to be accounted for as derivatives.
- **FHA HYBRID ARM RULE** - After several years of urging by MBA, FHA published the "Eligibility of Adjustable Rate Mortgages Interim Final Rule" on March 29, 2005. This rule changed the interest rate cap structure for 5/1 hybrid ARMs. Under the long-expected rule, the initial and annual interest rate cap is 2% and the lifetime cap is 6%. These changes are effective for loans endorsed on or after April 28, 2005.

2005 PRIORITIES – ONGOING

- **HURRICANE KATRINA ISSUES** - MBA is leading an industry-wide effort to ensure that: borrowers are treated fairly at all steps of the process, that lenders are part of any solution to solve the problems of the impacted areas, to attract new investments after the clean up is completed, and to prevent inappropriate legislation, regulation or precedents. As part of our efforts, on September 15, MBA testified before the House Financial Services Subcommittee on Housing and Community Opportunity at a hearing on "Emergency Housing Needs in the Aftermath of Hurricane Katrina." MBA hosted an audio program on FHA's 203(h) program, which provides zero downpayment financing for victims in Presidentially-declared disaster areas. An MBA delegation also participated in a trip to New Orleans to survey the damage wrought by Hurricane Katrina.
- **TAX REFORM AND THE MORTGAGE INTEREST DEDUCTION** - MBA loudly and vigorously opposed the early November 2005 recommendations of the President's Advisory Panel on Federal Tax Reform to slash the mortgage interest deduction. Congressional reaction to the recommendation has been consistently negative.

- **TAX RECONCILIATION BILLS INCLUDE MBA PRIORITIES** - The Senate and the House have passed tax-reconciliation bills that include a number of MBA-backed provisions: a one-year deduction for mortgage insurance premiums; a one-year extension of brownfields expensing, which broadens the definition of hazardous substances to include petroleum; and a one-year extension of the 15-year depreciation for leasehold improvements. The final bill resolving differences between the House and Senate versions is expected to be taken up in early 2006.
- **GSE OVERSIGHT REFORM** - The House has passed MBA-backed legislation to reform GSE oversight, and similar legislation, passed by the Senate Banking Committee, awaits full Senate action in 2006. Both bills include MBA-supported language that addresses MBA's concern with maintaining a clear boundary between the primary and secondary markets.

On April 19, 2005 MBA testified at a Senate Banking Committee hearing on GSE reform, which was MBA's third opportunity to testify in Congress on this issue. MBA's testimony emphasized MBA's solid support for creation of a strong and effective GSE regulator modeled after banking regulators, a clear distinction between the primary and secondary mortgage markets, funding the regulator outside the Congressional appropriations process, and the benefits of Federal Home Loan Bank securitization.

MBA also hosted a meeting in Washington of a cross-section of its membership in April to discuss the "bright line" separating the primary and secondary markets. There was broad consensus that the legislation must lead to a better definition of boundaries and that Fannie Mae and Freddie Mac should be held to the secondary market. MBA hosted another membership meeting in January 2006 to reassess and reaffirm its priorities.

- **REMICs** - In March, MBA-backed bills were introduced in the House and Senate, H.R. 1010 and S. 580, respectively, that would modernize Real Estate Mortgage Investment Conduits (REMICs). Shortly after the bills were introduced, MBA contacted all Members of the House and Senate urging them to cosponsor the REMIC bills, pointing out that passage will help to spur new economic growth and employment by enhancing the ability of commercial property owners to upgrade buildings after the mortgage has been securitized without the need for costly tax opinions.
- **PREDATORY LENDING** - In March, Rep. Bob Ney (R-OH) and Rep. Paul Kanjorski (D-PA) introduced bipartisan legislation, H.R. 1295, that MBA supported. This legislation would create a uniform national standard to combat abusive lending.

In May, MBA testified before the House Financial Services Subcommittees on Housing and Community Opportunity and Financial Institutions and Consumer Credit at a hearing on "Legislative Solutions to Predatory Lending Practices." MBA also testified in September before the House Financial Services Subcommittee at a hearing on Title V of H.R. 1295, which would give states three years to pass uniform statutes for the licensing of mortgage brokers, create

federal mortgage broker requirements for those states that do not pass legislation, and establish a national database of licensed mortgage brokers.

- **RESPA REFORM** - During the summer 2005, HUD conducted a series of roundtable discussions on Real Estate Settlement Procedures Act (RESPA) reform. MBA attended three of these events. During the roundtables, HUD described the 2004 rule that it submitted and later withdrew including the revised Good Faith Estimate (GFE) and offered a Section 8 exemption for guaranteed Mortgage Package Offers (MPO). HUD then facilitated discussions to obtain participants' views on these and other provisions including the disclosure of yield spread premiums. MBA was an active participant in these HUD discussions where it has offered approaches to reform that will foster industry innovation and a simpler mortgage process to lower costs to the lending industry and consumers.
- **ZERO DOWNPAYMENT LEGISLATION** - Earlier this year, Rep. Pat Tiberi (R-OH) and Rep. David Scott (D-GA) introduced MBA-supported legislation, H.R. 3043, the "Zero Downpayment Pilot Program Act of 2005", which would authorize FHA to insure no downpayment mortgages originated by FHA-approved lenders.
- **VA HYBRID ARM LEGISLATION** - On September 29, 2005 the Senate passed S. 1235, "The Veterans Benefits Improvement Act of 2005." The bill contains an MBA-supported provision that authorizes the Secretary of the Department of Veterans Affairs to determine the annual interest rate cap adjustment for VA hybrid adjustable rate mortgage (ARM) products. The bill is currently under consideration by the House VA Committee.
- **BROWNFIELDS REDEVELOPMENT ENHANCEMENT ACT** - On December 13, 2005 the House of Representatives approved MBA-supported legislation, H.R. 280, the "Brownfields Redevelopment Enhancement Act". The legislation would provide greater access to capital for local governments that have traditionally had difficulty obtaining financing for Brownfields redevelopment activities. H.R. 280 would authorize appropriations for the Brownfields Economic Development Initiative (BEDI) and eliminate the requirement that local governments obtain section 108 loan guarantees as a condition for receiving BEDI funding.
- **HMDA** - MBA took an active role in 2005 in educating policymakers about what conclusions could be drawn from newly-released 2004 Home Mortgage Disclosure Act (HMDA) data. The data release was accompanied by a 50-page report from Federal Reserve staff, which specifically warned against making unwarranted conclusion of industry bias based on HMDA data. The report explains that such accusations can discourage lenders from participating in the non-prime segment of the market, denying non-prime borrowers lower cost financing options that come through competition.