



July 19, 2010

Joaquin Tremols  
Acting Director, Single Family Housing Guaranteed Loan Division  
USDA Rural Development, Room 2241  
1400 Independence Avenue SW  
Washington, DC 20250

Re: **RIN No. 0575-AC83**  
**U.S. Department of Agriculture**  
**Single Family Housing Guaranteed Loan Program**

Dear Mr. Tremols:

The Mortgage Bankers Association (MBA)<sup>1</sup> appreciates the opportunity to comment on the proposed guidance for the U.S. Department of Agriculture (USDA), Rural Housing, Single Family Housing Guaranteed Loan Program (SFHGL). Upon final completion of the rule, USDA will issue regulations that make two significant programmatic changes. The first proposed rule change would eliminate the published Veterans' Administration (VA) rate for first mortgage loans with no discount points as an option for a maximum interest rate on loans. Lenders would be required to use the Fannie Mae index. The second proposed rule change would allow the USDA Secretary to seek indemnification from the originating lender, under certain circumstances.

#### MBA's Position

MBA supports USDA's position to limit the index used for the SFHGL to the Fannie Mae published rate. The Fannie Mae index is used by a much broader base of investors than the VA index, so creating this uniform standard would cause only minimal disruptions in business while lenders implement the new policy. We do request that the final rule provide at least a 60-day implementation period for necessary system changes. Additionally, given that the future structure of the government sponsored enterprises (GSEs) is currently uncertain, we recommend that the final rule contain a provision that mandates that the Ginnie Mae index be used if the Fannie Mae index is not available.

MBA supports indemnification of lenders when the governing policy is fair, clear, transparent, and allows lenders opportunities to appeal. Lenders take indemnification very seriously and incorporate sophisticated quality control systems to minimize their exposure to these liabilities. Our members recognize and accept accountability for instances of fraud and negligence within their control; however they should not be held liable for unforeseen or uncontrollable

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<sup>1</sup> 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 2,200 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](http://www.mortgagebankers.org).

circumstances beyond their domain. We, therefore, request the following changes be included in the final rule:

1. Lender indemnification for fraud should exclude fraud committed by a third party, including borrower, real estate agent or seller.
2. There should not be automatic indemnification just because USDA paid a claim within 24 months of loan closing. Lenders should not be responsible for borrowers who default on their loans due to external circumstances beyond lenders' control, including major life events such as loss of employment, illness, and death.
3. Misrepresentation standards should state that alleged misrepresentation must be proven by clear and convincing evidence and that the misrepresentation must have been discoverable prior to loan closing.
4. Program violations should be specifically defined to include only material program violations that adversely affect the program.

Additionally, we request that USDA provide the following clarification:

1. Will USDA have the same indemnification standards for loans manually underwritten and those which are submitted through the Guaranteed Underwriting System (GUS)?

We also want to emphasize that the USDA's indemnification policy should be similar to the Federal Housing Administration's policy of only applying to the originating lender, and not to the servicer.

#### Conclusion

MBA appreciates the effort of the USDA to simplify its single family housing program and hold lenders accountable for the loans they originate. We look forward to working with you to advance this important program. Please contact Tamara King at (202) 557-2758 or [tking@mortgagebankers.org](mailto:tking@mortgagebankers.org) with any questions.

Sincerely,



John A. Courson  
President and Chief Executive Officer