



**Statement of John A. Courson  
President and Chief Executive Officer  
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for the Record of the  
Committee on Finance  
United States Senate  
Hearing on  
“The President’s Proposed Fee on Financial Institutions  
Regarding TARP”  
April 20, 2010**

Chairman Baucus, Ranking Member Grassley, and Members of the Committee, thank you for holding this very important hearing on the impact of the proposed Financial Crisis Responsibility Fee (FCRF). As you develop policy responses to this issue, the Mortgage Bankers Association<sup>1</sup> (MBA) believes that you should consider a number of key points outlined below.

### **The Fee**

On January 14, 2010, President Obama proposed assessing a fee on the largest banks and Wall Street firms as a method for offsetting funds disbursed under the Troubled Asset Relief Program (TARP). The fee would be in place for ten years and would provide the U.S. Government up to \$117 billion from financial institutions with greater than \$50 billion in consolidated assets. The fee would be assessed at 0.15 percent of covered liabilities defined as:

Covered Liabilities = Assets minus Tier 1 capital minus  
FDIC-assessed deposits (and/or insurance policy reserves, as appropriate)

Covered liabilities would be reported by regulators, but the fee would be collected by the Internal Revenue Service. Revenues would be contributed to the Treasury general fund to reduce the deficit.

### **Direct Impact on Mortgage Market**

There are many households that cannot qualify for single family conventional mortgage loans eligible for delivery into securities issued by Federal National Mortgage Corporation (Fannie Mae) or Federal Home Mortgage Corporation (Freddie Mac) or for FHA or VA loans eligible for mortgage-backed securities (MBS) guaranteed by the Government National Mortgage Association (Ginnie Mae). These households include but are not limited to foreign national residents and households requiring loan amounts higher than the Fannie Mae, Freddie Mac or Ginnie Mae maximum levels. They also include families with prior credit history resulting from past unemployment or large medical bills needed to fight life-threatening illness or injury. In the past, these individuals were served by financial institutions who securitized these loans into private label residential MBS (RMBS).

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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 2,400 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](http://www.mortgagebankers.org).

Likewise, many multifamily housing projects cannot be financed through the Fannie Mae, Freddie Mac, or Ginnie Mae multifamily programs. Further, much of the funding for warehouses, office buildings, retail, and other commercial properties has traditionally been financed using private label commercial MBS (CMBS).

The following are the direct impacts to the mortgage market:

- The fee imposes a tax primarily on non-depository liabilities of banks. These liabilities would include the hundreds of billions of dollars of liabilities that returned to banks' balance sheets January 1, 2010 as a result of Statement of Financial Accounting Standards No. 166, Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140 (FAS 166) and Statement of Financial Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R) (FAS 167). These pronouncements require financial institutions to include in their consolidated balance sheets assets that they do not own and liabilities that they do not owe. As a result of the interaction of the proposed FCRF and FAS 166 and FAS 167, large financial institutions may be discouraged from entering into new residential or commercial mortgage backed security (MBS) transactions — especially transactions that would require consolidation of a securitization's assets and liabilities on-balance sheet. It would also impose a stiff tax on liabilities not owed by the bank. MBA believes that assets and liabilities that are linked, such as MBS transactions, should be excluded from the proposed FCRF's assessment base.
- The FCRF would dramatically reduce the profitability of private label MBS servicing. For example, if a bank is required to capitalize under FAS 167 a securitization liability because of its role as servicer, it would put the mortgage principal in its consolidated assets and the outstanding MBS in its liabilities. The primary revenue from these additional assets and liabilities is the servicing fee. Assuming a normal servicing fee of 0.25 percent, the proposed tax would reduce that fee by 60 percent.

### **MBA's Other Observations and Concerns**

The following are MBA's other observations and concerns with respect to the proposed fee:

- Financial institutions already are subject to a pro rata corporate income tax on their earnings. If a bank's profits increase, its taxes increase. Assessing the FCRF on top of the corporate income tax is tantamount to an industry-specific penalty for being profitable. If the FCRF is intended to serve as a penalty for inappropriate risk-taking, MBA believes regulatory modifications to financial

institution risk-based capital standards are a better and more appropriate means of influencing inappropriate risk taking than ad hoc tax penalties.

- If the proposed FCRF is not passed on to consumers, every dollar impact the FCRF has on bank capital reduces the bank's lending capacity tenfold. Thus, a \$90 billion FCRF impact could reduce loans to consumers and small businesses by \$900 billion.
- The tax is likely to reduce new loans available to consumers and businesses as regional banks fight to keep assets below the \$50 billion threshold.
- A significant portion of the potential losses to the Troubled Asset Relief Program (TARP) fund relate to TARP funds advanced to the automotive industry. Yet there is no fee on liabilities proposed to recover those losses. Most banks have paid back the TARP funds with interest, and the U.S. government has earned a profit on that segment of the TARP. The tax is punitive in nature to large financial institutions. This comes at a time when economic recovery is dependent on the health of these industries.
- The FCRF is an ex post facto change to the terms of the TARP agreement financial institutions entered into with the government. When banks agreed to participate in TARP, the upside to the U.S. Government was in the form of stock warrants. TARP recipients did not sign up for the added burden of the proposed FCRF.
- The imposition of the tax on foreign financial institutions could lead to U.S. financial firms facing similar taxes around the world, compounding the above impacts.

In summary, MBA recommends that the Senate Finance Committee should not approve the proposed FCRF. MBA believes the FCRF will reduce the availability and increase the costs of real estate loans to consumers and small businesses. The FCRF also would discourage large financial institutions from entering into new, private label commercial mortgage backed securities (CMBS) and residential mortgage backed securities (RMBS) transactions and significantly reduce the profitability of non-agency servicing.

MBA appreciates the opportunity to present the above points for your consideration and we look forward to working with you as you evaluate and implement policy responses.