



Commercial Real Estate/Multifamily Finance Board of Governors (COMBOG)
ASSET ADMINISTRATION COMMITTEE
Committee Conference Call
Friday, December 2, 2005

Conference Call Notes

Chair: Judith King, TIAA-CREF

Vice Chairs: David M. Croskery, Holliday Fenoglio Fowler, L.P.
Kathy Marquardt, GMAC Commercial Mortgage Corporation
James P. Shevlin, CWCapital Investments, LLC

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I. Welcome and Introductions King

II. **Standardization of Servicing Terms / MBA Policies & Procedures Manual** Marquardt

MBA will start in January 2006, a year long conference call series on the policies and procedures used by Servicers in specific areas of their business. These discussions are to share information with your peers and learn about new and different ways to achieve maximum efficiency and accuracy.

All MBA members are welcome to participate – we encourage you to participate on as many discussion topics as you want. A full schedule of the discussion topics will be available on the Asset Administration Committee Web page at <http://www.mortgagebankers.org/cref/index.cfm?STRING=http://www.mortgagebankers.org/cref/about/committees.html>.

MBA is looking for volunteers to facilitate each discussion topic – a potential discussion leader is someone in the industry who actually performs the function/specific area designated for discussion.

MBA and the members will also look at each process for education, research and standardization opportunities. This is an opportunity to discuss your operations, learn about new ideas for streamline process and potentially decrease the amount of negotiations required in transaction agreements. In the end we will have written policies and procedures for each Servicer process.

III. Insurance Ramifications – After a disaster, what next?

Croskery

Insurance continues to be a critical and important factor for Servicers. After the experiences during the hurricane season this year, there are new challenges.

Discussion

We are more efficient at gathering data on insurance now

Review of Flood Certifications – not all properties were in a “flood” zone

Still dealing with how to administer situations where there are multiple lenders named on one policy

Are the insurance companies standing behind their policies? What are the real world examples and can we include an insurance expert on a panel at Asset Administration & Technology? What are the statistics on the response time?

What are 2006 premiums going to look like? On reinsurance, one can expect an increase in price on property insurance, flood and windstorm policies. Availability may also be an issue – especially in coastal areas. We may see limits and sub-limits change.

IV. Survey Opportunities

King

What kind of new research/information are Servicers interested in receiving?

Discussion – Suggestions:

Fees – not what amount is charged, instead a look at loan documents and permitted fees in the market

Errors and Omissions information on Fidelity Bonds – coverage and what is enough

V. Protecting Servicers from Litigation - Solutions

Shevlin

How can we better protect ourselves as Servicers?

Discussion:

There are really 2 types of litigation issues, which are a very different focus:

1. Risk Management within the Servicing Operation – this is a training and process issue, typically between the Servicer employee and outside customer
2. Dispute resolution among the Parties within a Transaction – this is an issue of the parties (Servicer vs. Issuer; Master Servicer vs. B-Piece Investor; Correspondent vs. Lender) looking to each other for liability

Servicers should continue to discuss these issues – train employees to better communicate

Companies should clearly outline the controls and process

More education of borrowers

Production should not offer promises after closing – Servicers are expected to uphold those promises (which is not always possible)

Education on prepayment language

VI. MBA Updates

a. **Regulation AB – Servicer Disclosure, Servicer Attestation**

Marquardt

On January 7, 2005, the SEC issued a final regulation to clarify the requirements for the registration, disclosure and reporting for asset-backed securities (ABS), by definition including all public deals in commercial and residential mortgage-backed securities (CMBS and RMBS).

Regulation AB affects all parties of public transactions including Master and Primary Servicers, Trustees, Special Servicers and in some instances vendors. Fannie Mae and Freddie Mac are exempt.

The regulation has a transition period, with full compliance required by January 1, 2006.

MBA, under Asset Administration Committee, created the SEC ABS Working Group earlier this year to specifically focus on the issues for Servicers and to educate and inform its members on the impact of Regulation AB. The working group consists of a broad industry community with over fifty members. Kathy Marquardt chairs the Working Group.

MBA hired a consultant, Heil & Associates, to draft a guidance document for Servicer compliance with the Regulation AB disclosure requirements. The document was vetted with all CMBS industry participants (issuers, investors, mortgage bankers, rating agencies, counsel) to ensure consistency and application of the Servicer compliance measures in all transactions. The final White Paper is now available on the MBA website at: <http://www.mortgagebankers.org/cref/WhitePaper/PDF/White%20Paper%20-%20Final%20REGAB.pdf>

MBA plans to issue an additional White Paper in the coming months addressing the revised public accountant review, 1122 Attestation, requirements for annual reporting.

MBA also plans to continue in its leadership role on this topic by providing education/training and by conducting various forums in which Regulation AB can be further discussed.

In addition, MBA, in conjunction with Keith Dunsmore, partner, Akin, Gump, Strauss, Hauer & Feld, LLP, issued a comprehensive overview of the full regulation - *Impact of CMBS Servicing, Regulation, Disclosure, and Reporting*. This memorandum is a companion document to MBA's interpretive White Paper. The memorandum provides a detailed summary of the full regulation for use as a reference and is a non-interpretive document. The memorandum can be found on the MBA website at: http://www.mortgagebankers.org/cref/WhitePaper/PDF/Akin%20White%20Paper%20-%20Effect%20on%20Servicers%20_Final.pdf

b. **Legislative Update**

Denny

i. **TRIA**

On December 7, by a vote of 371-49, the House passed a bill to extend the Terrorism Risk Insurance Act for two years. The House took up the Senate bill, [S. 467](#), which passed on November 18, struck its language, and inserted a modified version of [H.R. 4314](#), the House TRIA bill. The Senate will not accept this change, as the two chambers' bills are significantly different, so there will be a conference committee to resolve the differences this week.

The White House on Thursday issued a *Statement of Administration Policy* strongly opposing the House-passed bill. That fact, coupled with the fact that political parties, the Senate and the White House carefully negotiated the Senate bill, leads the Mortgage Bankers Association to believe that the final conference product will look more like the Senate bill than the House bill.

MBA and its industry partners are concerned with the way in which one aspect of the Senate bill is drafted as it would cause what we believe to be unintended damage to the "make available" provision of TRIA. In S. 467, the Secretary of the Treasury, in concurrence with the Secretary of State and Attorney General, is not allowed to "certify" a terrorist event until it reaches a level of \$50 million in total insurance losses in 2006 or \$100 million in total insurance losses in 2007. This means that terrorist events under these threshold levels cannot be "certified" as terrorist events, and as such makes claims ineligible for payment with the way policies are currently written. This is because insurers would only pay out on claims when an event is certified and the TRIA backstop is triggered, which is \$5 million under current law but would become much higher (\$50 million in 2006 and \$100 million in 2007) under the renewed TRIA.

Over the December 17-18 weekend, the Senate and House approved a compromise bill that, to the satisfaction of the Mortgage Bankers Association (MBA) and other industry trade groups, extends the federal terrorism risk insurance program for two years through **December, 31, 2007**. The President is expected to sign the bill before year end.

MBA has developed a side-by-side review of the 2002 TRIA legislation and the proposed Senate and House Terrorism Risk Insurance Extension Act of 2005. For more information, contact MBA staff, Katie Schwarting or Josh Denny.

ii. **REMIC**

MBA and other industry partners lobbied for the REMIC modernization legislation all year. Unfortunately, the proposed language was not included in any bills passed in 2005. MBA will continue to work on this effort in 2006.

iii. National Flood Insurance Program (NFIP)

On November 16, the House passed [H.R. 4133](#), which would boost NFIP's line of credit to \$8.5 billion. However, prompt claims payments will reportedly exhaust that pending \$5 billion increase by the end of this month. To remedy the situation, the House Financial Services Committee passed [H.R. 4320](#), the National Flood Insurance Program Commitment to Policyholders and Reform Act, on November 16 and President Bush signed the bill into law on November 21. That bill increases the NFIP borrowing authority to \$22 billion, updates coverage limits (which have not increased since 1994), authorizes additional staff for FEMA and calls for a study the impact and feasibility of changing the program to include all homeowners and businesses with mortgages in the 500-year flood plain.

The \$18.5 billion in borrowing authority will likely run out by mid-January or early February. MBA will continue to lobby Congress for additional borrowing authority, which solely to pay claims for Hurricanes Katrina, Rita and Wilma, will need approximately an additional \$7 billion (estimates are that a total of 24.6 billion is needed for the Hurricane affected areas).

c. MISMO – Servicing Standards

Szparaga

The Mortgage Industry Standards Maintenance Organization (MISMO), which promotes and maintains data transfer standards for the mortgage industry to increase process efficiencies in data capture, definitions and consistency, has developed a *Commercial Servicing Transfer Standard*. The standard is designed to transmit information from one company/business unit to another – this may be used for loan portfolio acquisitions, third party servicing relationships or even loan boarding a single loan.

The MISMO Commercial Servicing Working Group is seeking industry feedback/comments on their work product. Please send your responses directly to MBA staff, Dan Szparaga at dszparaga@mortgagebankers.org. MISMO anticipates having a final version of the standard available at the CREF Convention in February 2006.

d. Loan Origination Committee Seismic Working Group

Schwartzing

Current methods for determining the impact of a seismic event to real property utilize various calculation methods. The different approaches have lead to much confusion and inconsistency in the industry. There are multiple definitions of Probable Maximum Loss (PML) in the market place and ASTM has developed its own Standard Guide, which complicates consistency since it introduces new terminology for calculating losses.

MBA, through the Loan Origination Committee, has put together a Seismic Working Group to address the needs for clarity, education and consistency for seismic risk assessment. MBA intends to develop a Handbook on seismic due-diligence investigation. The Handbook will help lenders understand the impact of the seismic calculation outcome; the technical review background and offer suggestions on how to mitigate seismic risk. The Handbook offers greater education, communication and clarity around conducting a seismic assessment and the resulting consultant's report.

VI. Emerging Issues and Concerns

Shevlin

Are there new topics and ideas that are affecting your business?

1. Tenants in Common (TICs) and Delaware Statutory Trusts (DST)
2. Documents and storage – places to go to get documents (especially at the deal level), to get them in a timely manner and not have to store everything in-house. Identify vendors who have developed a product to help with this issue.
3. Interest Only Loans – impact on the market
4. Defeasance – information on whether it is good or bad for the market

VII. Other Business

King

None reported