

MBA Commercial and Multifamily Finance Legislative and Regulatory Priorities

The \$3.5 trillion commercial and multifamily mortgage market provides essential capital for the development, improvement and maintenance of apartment properties, office buildings, shopping centers, industrial facilities, healthcare facilities and other commercial properties in communities throughout the United States.

A well-functioning real estate finance market supports property values and operations, and also provides pension funds, insurance companies, banks and other lenders and investors with stable, long-term returns.

Commercial real estate plays a vital role in every community by housing the businesses that serve as the engines for the local economy. In addition, commercial and multifamily real estate generates the majority of property tax revenue that fund essential community services. Consequently, a downturn in commercial property conditions not only negatively impacts real estate investors, including pensioners, but reverberates throughout the local community as well.

Tailoring legislative and regulatory reform proposals to avoid a “one size fits all” approach to the credit markets will support efforts to restore commercial real estate lending. Such a tailored approach would avoid potentially severe unintended consequences that a generic approach to legislative and regulatory reform could foster. In addition, reform efforts should take into consideration that the current commercial real estate market challenges are due primarily to the downturn in economic conditions, not from a systemic failure of the legislative and regulatory structure.

MBA urges legislators and regulators to help support the commercial real estate finance market through challenging economic conditions and market disruptions in three ways:

- Promote Liquidity During the Market Disruption
- Support the Fundamental Structure of the System
- Improve Government Programs

MBA has developed specific policy recommendations to help achieve these ends, and will continue to work closely with legislators and regulators to support credit availability for commercial real estate in communities throughout the United States.

PROMOTE LIQUIDITY DURING THE MARKET DISRUPTION

- **Extend TALF Legacy and New Issue CMBS Programs to December 31, 2011** — The Term Asset-Backed Loan Facility (TALF) program has played an important role in restarting the CMBS market by providing an active market for the purchase of super senior CMBS. In order to continue this revitalization, MBA supports the continuation of this program until December 31, 2011.
- **Ramp Up the FDIC Legacy Loan Program** — In early 2010, the FDIC plans to expand the Legacy Loan Program to loans from performing banks. This program is anticipated to increase bank commercial real estate lending activity because they will have the ability to sell existing loans which will in turn provide the capacity to make new commercial loans.
- **Increase Funding for Rental Assistance** — If rent subsidies are made available to the tenants or to a new owner for assistance in preserving the property as affordable housing, many distressed properties could be saved. MBA supports increased funding for rental assistance.

SUPPORT THE FUNDAMENTAL STRUCTURE OF THE SYSTEM

- **Support Flexible Approach to Required Risk Retention for CMBS Issuers and Loan Originators** — A one size fits all approach to risk retention that fails to recognize various structures of the CMBS market would inadvertently stem market liquidity. When evaluating risk retention options for CMBS, MBA encourages policy makers to take into consideration that risk retention can be addressed in various ways. For example, risk retention has been addressed for most CMBS through a specialized purchaser category (B-piece buyer). The B-piece buyer, or equity holder, takes on the risk retention role by assuming the first loss position of a CMBS. In addition, other measures such as representations and warranties already provide skin in the game at the origination level. There are various methods used to more closely align the interests of the issuer and investor. Legislation approved by the House in 2009 represents a step in the right direction by allowing the regulatory agencies to take the B-piece buyer's role into consideration when promulgating risk retention regulations. However, the proposed Senate legislation offers no such recognition. Consequently, MBA supports an exemption to risk retention requirements for commercial and multifamily mortgages in the Senate bill.
- **Oppose Imprudent Rating Agency Reform** — MBA supports Security and Exchange Commission (SEC) efforts to increase transparency and reliability in credit ratings of securities backed by real estate. Consequently, MBA has strongly supported efforts to increase the transparency of the ratings process and ratings data. However, rating agency reform legislation in both the House and Senate would place onerous burdens on rating agencies that would greatly complicate the ratings process and dramatically increase their pricing structure. Rating agency requirements that would have serious unintended consequences include: (1) unique identifier of structured securities (House legislation only); (2) required disclosure of preliminary ratings; and, (3) exposure to prospective frivolous lawsuits.
- **Avoid Negative Consequences of Risk-Based Capital Changes for CMBS Holders** — FAS 166 and FAS 167 are accounting rules that became effective on January 1, 2010 that require CMBS issuers, servicers, or special servicers to place all of the assets of a securitization on their balance sheet if certain conditions are met. For most static pool structures, like CMBS, the appropriate regulatory capital treatment is to continue to require risk-based capital (RBC) and leverage ratio treatment for only the assets of a securitization that a bank currently holds, not all of the assets of the securitization. There is no business case for the sponsors to provide credit support for all of the assets of the securitization when they only own a partial interest; therefore, MBA continues to oppose the inclusion of assets coming back on the books as a result of FAS 166 and FAS 167 in the RBC calculation. Such inclusion would negatively impact banks because they would have to hold RBC for all assets of the securitization when they only had a partial interest in the securitization. This RBC treatment would discourage banks from issuing CMBS which would curtail the available capital for commercial lending.
- **Support Covered Bonds** — MBA supports legislation that provides for equal treatment of covered bonds with other qualified financial contracts. Covered bonds are debt securities backed by cash flows from mortgages that remain on the issuer's consolidated balance sheet. Covered bonds could provide an additional source of commercial real estate financing.
- **Oppose Carried Interest Tax Rate Increase** — In the case of real estate development, carried interest is a share of the profits a successful partnership pays to the manager of a partnership as a form of compensation. This incentive is designed to motivate the manager to maximize performance of the property. Currently, carried interest for long-term investments is taxed at the capital gains tax rate of 15 percent. MBA opposes a proposed tax law change that would subject carried interest to the ordinary income tax rate of up to 35 percent. Such a large tax increase would actively discourage partnerships from developing new properties or purchasing existing properties.

IMPROVE GOVERNMENT PROGRAMS

- Support a Prudent Government Role in the Secondary Market and a Smooth Transition to the New Model** — During the current market disruption, Freddie Mac and Fannie Mae (the GSEs) have been an essential source of liquidity in the multifamily market. Reform of the GSE model is necessary and MBA has a proposal which addresses many of the weaknesses of the current model. Transitioning to a new model must be accomplished carefully and prudently, with a view toward maintaining the human capital and other infrastructure of the existing GSEs and minimizing disruption in the secondary market for mortgages on rental housing.
- Support FHA Modernization** — It is crucial that FHA keep pace with changes in the U.S. mortgage markets. MBA recommends approval of adequate appropriations for HUD to improve technology and processes and provide appropriate staffing.
- Support the Low Income Housing Tax Credit** — To stimulate the production of affordable rental housing, MBA supports legislation and regulations that will improve the utility of low income housing tax credits. In addition, MBA supports the streamlining of the FHA mortgage insurance programs.
- Increase FHA Multifamily Loan Limits** — The FHA multifamily programs are being negatively impacted in many urban areas due to unnecessarily low mortgage limits for elevator buildings. These limits should be increased to recognize the significantly higher costs of high-rise construction. This change would encourage the production and preservation of workforce and seniors housing in urban areas.

The Mortgage Bankers Association looks forward to working with Congress, the Obama administration and financial regulators to support commercial real estate in communities around the United States.

For more information visit www.mortgagebankers.org or call **(202) 557-2700**.