

# Restructuring the Financial Regulatory System Must Protect Consumers and Support Access to Mortgage Credit

## MBA RECOMMENDS

Reform the nation's financial system to close regulatory gaps and facilitate free and open competition for sustainable mortgage finance. To achieve these objectives, reform should include: a new federal financial regulator for independent mortgage bankers, uniform standards that facilitate competition for sustainable mortgage products, not overbroad risk retention provisions; appropriate consolidation of regulatory agencies; protections against systemic risk; improvements to the ratings process; and other steps such as those suggested in MBA's own Mortgage Improvement and Regulation Act (MIRA) proposal to improve regulation and restore investor and consumer confidence.

## BACKGROUND

In the wake of the financial crisis, the nation faces a once-in-a-generation opportunity to improve the financial regulatory system and the mortgage lending process in particular. The current dual federal-state regulatory framework for mortgage lending has shown that it badly needs overhaul to provide effective oversight and better serve consumers. The scope and powers of financial services regulators have not kept pace with advances in the type, sophistication and delivery mechanisms of the financial products, services and providers they are tasked with regulating. There are broad supervisory gaps in some areas of the industry and costly redundancies in others.

The nation's mortgage financing needs have been served by both depository and nondepository mortgage lenders with the latter satisfying approximately 25 percent of financing needs. Federally chartered depository mortgage lenders are regulated by federal bank regulators while state depositories are regulated and examined by both federal and state regulators. In contrast, independent mortgage bankers are mainly regulated at the state level, though they confront an uneven patchwork of federal and state regulation. Some are well regulated and many are not.

The current regulatory structure has resulted in an unlevel playing field for competition, increased costs, allowed abusive practices and discouraged interstate competition. The establishment of uniform national standards would have precisely the opposite effects as long as the standards themselves

do not unnecessarily discourage competition. In this vein, proposals for overbroad risk retention are unnecessary as long as loans are well underwritten.

The financial crisis has also made clear that some lender and non-lender institutions, in the event of failure, can present out-sized risks to the national economy. Additionally, persistent concerns about the accuracy of agency ratings have hindered the return of private capital to the markets and these concerns are likely to persist until improvements are made.

## MBA'S RECOMMENDATIONS

In early 2009, at the beginning of the regulatory reform debate, MBA announced its MIRA proposal to establish uniform national mortgage lending standards that include a comprehensive set of substantive requirements and consumer protections. These standards would apply to all mortgage lenders and mortgage lending institutions and build on the Federal Reserve Board's new rules under the Home Ownership and Equity Protection Act (HOEPA). MBA believes MIRA should be consulted as the debate goes forward.

MBA supports the following as pillars of regulatory reform:

1. **Federal regulation of independent mortgage bankers by a federal financial regulator** — A federal financial regulator should have lead responsibility for regulation of independent mortgage bankers, establishing net worth,

bonding and other qualifications to ensure service to the public by qualified firms. In partnership, federal and state officials would supervise and enforce these qualifications and applicable lending standards.

2. **Establishment of national lending standards for consistent consumer protection** — The regulator should also implement national lending standards which would be developed in conjunction with a council of state and federal regulators. In order to ensure consistent protection, states should not be encouraged to establish additional standards and such standards would be preempted for federally regulated lenders as necessary. The regulator would assess independent mortgage bankers for the costs of regulation and these assessments would be shared with state regulators to defray their costs.
3. **“Risk retention” requirements should not unduly limit competition and harm borrowers** — Requirements that lenders retain a percentage of the “risk” of mortgages threaten the continued ability of nondepository lenders to serve borrowers. Lenders already have “skin in the game” by virtue of repurchase requirements. Moreover, where loans are soundly underwritten, pursuant to specified standards, such retention is unnecessary. MBA strongly supports exemption from “risk retention” for those loans that meet specified standards.
4. **Consolidation of regulatory authorities at the federal level, including combining OCC and OTS into a new federal bank regulator** — Economies will result from needed consolidation. In order to ensure continued housing finance under thrift charters, however, separate internal staffs should be established for banks and thrifts. A separate regulator for independent mortgage bankers could be housed in a consolidated agency.
5. **Protections against systemic risk** — There are a range of approaches to this concern. MBA believes such protections should be carefully crafted so that they (a) do not distort the market by conferring advantages or disadvantages on covered institutions and other market players, (b) the choice and powers of the regulator are appropriate, and (c) the criteria for selection of systemically risky institutions are carefully constructed and reasonable.
6. **Regulation of rating agencies that does not harm their ability to function and delay liquidity to the market** — Regulation requiring greater transparency concerning methodology and data disclosure can allow market participants to better assess the accuracy of ratings and provide the opportunity for other rating agencies to provide alternative approaches. Preventing conflicts of interest would also increase investor confidence.
7. **Other steps along the lines proposed in MBA’s MIRA proposal will complement regulatory reform initiatives** — In addition to assigning regulation of mortgage bankers to a new federal regulator, MIRA contains other key suggestions including assigning authority for mortgage counseling and financial literacy programs to the regulator.

See [www.mortgagebankers.org/mira](http://www.mortgagebankers.org/mira) for more information.

