

Mortgage Bankers Association's 2011 Legislative and Regulatory Priorities

With 2010 behind us, the real estate finance industry leaves a year that signaled the start of recovery and rebuilding and the beginning of a regulatory reform process that will completely reshape our industry. The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (The Dodd-Frank Act) started the clock on hundreds of required rulemakings, about half of which will impact commercial or residential mortgage finance. While regulators write the rulebook for the mortgage finance system of the future, Congress will begin considering the future role of government in the secondary mortgage market. Put all that in front of a backdrop of continuing macroeconomic challenges and efforts to re-examine the tax code, and 2011 will remain a time of intense uncertainty and rapid change for the mortgage business.

MBA's 2011 advocacy agenda is focused on creating a system designed to revive residential, multifamily and commercial real estate markets that best serve the greater good for borrowers and lenders alike — ensuring responsible lending practices, while not restricting credit for qualified borrowers.

Described below are some of the major legislative, regulatory and industry issues on which MBA will work in 2011. While this list is not exhaustive, it highlights those issues which are of the highest priority to our membership today.

FINANCIAL REFORM LEGISLATION

Dodd-Frank Act Implementation

The Dodd-Frank Act established a blueprint for the most significant overhaul of the financial services regulatory landscape since the Great Depression. The law requires

financial regulators to write hundreds of new regulations, many of which will be developed jointly by multiple agencies and will need to be synchronized with other simultaneous or sequential rulemakings. This process must proceed in a way that creates necessary reforms while preserving an efficient financial system that provides sustainable, affordable credit to qualified borrowers for all types of real estate transactions. The following issues are MBA's top priorities with respect to Dodd-Frank Act implementation.

Risk Retention

The Dodd-Frank Act requires the federal banking agencies and other regulators to develop rules requiring securitizers to retain a portion of the credit risk of assets they securitize and to determine the allocation of risk between the originator and the securitizer.

For more information, visit www.mortgagebankers.org



RESIDENTIAL REAL ESTATE. The Dodd-Frank Act calls on regulators to establish a specific exemption from the risk retention requirements for “qualified residential mortgages” (QRM) using criteria that demonstrate a lower risk of default. MBA will continue to stress the importance of not constraining credit for qualified borrowers and preserving reasonable levels of lender discretion by exempting loans with lower risk characteristics, such as fully documented underwriting, reduced risk of payment shock and mortgage insurance or other credit enhancements.

COMMERCIAL REAL ESTATE. When evaluating risk retention regulations applicable to CMBS, MBA supports a flexible approach. This includes a five percent vertical risk retention slice, structured in such a way as to not cause a prudent originator or issuer to consolidate the entire CMBS issuance on their balance sheet. The required allocation of risk retention between issuers and originators by the regulators should honor third-party, arms-length agreements to foster competition and recognize different business models in the marketplace. The terms of such allocation should be disclosed in a transparent fashion to investors. MBA also supports provisions of the Dodd-Frank Act that would permit the reduction of the five percent retained risk. These include: 1. an investor holding a first-loss position that is five percent or greater of the CMBS issuance that is held for a duration in which most of the loan defaults are expected to occur, and 2. loans that meet standards that allow them to be defined as “low risk” loans, accompanied by industry-supported representations and warranties.

RESPA/TILA Residential Mortgage Disclosure Reform

MBA strongly supports provisions of the Dodd-Frank Act requiring the new Consumer Financial Protection Bureau (CFPB) to integrate Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) disclosures and we applaud indications by the Obama administration that this is among the first priorities of the CFPB.

Piecemeal efforts of the Federal Reserve Board, Congress and other government agencies to modify TILA and RESPA disclosures should be suspended in order to avoid unnecessary costs for programming and reprogramming lender systems — costs which ultimately are borne by consumers.

Qualified Mortgage “Rebuttable Presumption” for Residential Mortgages

The Dodd-Frank Act requires the CFPB to prescribe regulations prohibiting lenders from making residential mortgage loans unless the lender makes a good faith determination that the consumer has a reasonable ability to repay the loan. While the law provides very significant liability where there is a failure to make such a determination, it also permits lenders to presume that a loan meets the ability to repay requirement if the loan is a “qualified mortgage.” The law includes several criteria to define a qualified mortgage but assigns significant discretion to the CFPB to add to or subtract from the statutory criteria.

Because of the legal liability that may accompany a nonqualified mortgage, loans which do not meet the criteria will be much costlier, if available at all. For this reason, the criteria should be shaped very carefully to ensure the availability of sustainable credit to qualified borrowers. Also, it is essential that the definitions of qualified mortgage and QRM be consistent and their implementation synchronized in order to avoid undue regulatory burden and unnecessary costs that will ultimately be borne by consumers.

CFPB’s Impact on Residential Real Estate Finance

The Dodd-Frank Act established the CFPB with extraordinarily broad powers and jurisdiction, including responsibility for the regulation, supervision and enforcement of nearly every major federal law affecting the mortgage lending industry.

There are benefits to establishing the CFPB to consolidate responsibility for diverse laws and a key priority of MBA will be to seek a coordinated and rational plan for implementation of laws. Such a plan would ensure consumer protection without unduly burdening the industry and choking off credit to the very consumers the CFPB is designed to protect.

At the same time, we are concerned about several aspects of the regulatory design, including whether, in light of the breadth of the CFPB responsibilities, there will be sufficient oversight of the CFPB’s activities. We encourage the CFPB to coordinate with the states to ensure its regulations are uniform across the industry and create harmony with state regulations.

Removal of Credit Ratings for RMBS and CMBS Risk-Based Capital

MBA supports the use of internal risk analysis as well as external risk analysis (including rating agencies) as long as the latter had been reviewed and deemed credible by the security purchaser. Such an approach would be consistent with the intent of the Dodd-Frank Act of eliminating overreliance on credit ratings in securities purchase decisions.

VIBRANT MORTGAGE MARKETS

Future Government Role in the Residential and Multifamily Mortgage Market

Early in 2011, the administration is due to unveil its proposal for the government role in the mortgage market going forward. In 2009, MBA developed a set of recommendations on how this should be accomplished.

The centerpiece of our recommendations is a new type of mortgage-backed security (MBS) for residential and multifamily properties. Each new security would have two components. First, a security-level, federal government-guaranteed “wrap” similar to that on a Ginnie Mae security. The government backstop would be explicit and focused on the credit risk of these mortgage securities. Second, the security would be backed by loan-level guarantees provided by privately owned, government-chartered and well-regulated mortgage credit guarantor entities (MCGEs).

The infrastructures of Fannie Mae and Freddie Mac, including their technology, human capital, standard documents and existing relationships, should be used as a foundation for one or more MCGEs. A strong federal regulator would oversee the MCGEs and would charter new MCGEs to provide competition in the market. MCGEs would stick to securitizing standard loan products for single family and multifamily housing, and there would remain plenty of room in the market for the return of private label securities and continuation of government programs such as the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA) and USDA rural housing lending.

Loan Limits

In this time of market turmoil, it is important for Fannie Mae and Freddie Mac to provide secondary market support to the broadest spectrum of home prices possible. Therefore, MBA urges Congress to keep the government-sponsored enterprises’ (GSEs) standard conforming loan limit at \$625,500, and up to \$729,750 in high-cost areas, until house prices stabilize. Similar temporary limits should be maintained for FHA-insured loans (i.e. \$625,500, and \$729,750 in high-cost areas) until the market more fully recovers.

Additionally, FHA multifamily programs are currently being negatively impacted in many urban areas due to unnecessarily low mortgage loan 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 senior housing in urban areas.

Streamline CMBS/RMBS Regulatory Requirements

MBA shares the Securities and Exchange Commission’s (SEC’s) goals of improved underwriting standards, enhanced and transparent disclosure and most importantly, reviving the CMBS market. However, MBA will continue to work to minimize the unintended negative consequences of the proposed Reg AB rule, as well as other asset-backed securities (ABS) regulations, in order to promote a balanced approach that would eliminate duplicative requirements and burdensome costs.

Strengthen FHA and Ginnie Mae

MBA supports many of the efforts FHA has made to strengthen its risk management and lender approval processes. We continue to advocate for increased staffing and technology resources for FHA, as well as greater flexibility in hiring and compensation practices and training staff so they can better manage the risk in the pipeline of applications. These changes are needed to facilitate the short- and long-term health and effectiveness of FHA’s single-family, multifamily and healthcare programs.

TAX ISSUES

Residential Mortgage Interest and Property Tax Deductions

MBA supports preserving the deductibility of residential mortgage interest. MBA also supports reinstating, and making permanent, the law that allows low- and middle-income homebuyers to deduct their mortgage insurance premiums. MBA also supports preserving the deductibility of real estate taxes. MBA is opposed to any legislation that would phase out or weaken itemized deductions such as mortgage interest, mortgage insurance premiums and real estate taxes.

Carried Interest for Commercial Real Estate

MBA opposes any legislative initiatives that would tax carried interest as ordinary income. Taxing carried interest at the capital gains tax rate provides an incentive that attracts much needed capital to this industry segment.

ACCOUNTING ISSUES

Lease Accounting Rules for Commercial Real Estate

MBA opposes proposed accounting rules that would require the balance sheet treatment of commercial real estate leases. The proposed accounting change will greatly complicate the accounting treatment of commercial leases without offering any corresponding user benefit. We fear that tenants will seek shorter term leases in order to minimize the impact of this accounting rule change on their balance sheets, which could negatively impact commercial property values. Accounting standards bodies should consider less radical changes to existing accounting, including providing information generally included in the lease note to financial statements on no less than a quarterly basis.

CAPITAL ISSUES

Risk-Based Capital for Commercial Real Estate

MBA supports a risk-based capital (RBC) framework that reflects the long-term performance history of loans secured by commercial real estate and commercial mortgage-backed securities (CMBS). RBC requirements should be adequate to meet the anticipated losses of CMBS and commercial real estate loans held in portfolio and reflect the asset's performance. The analysis of qualified and experienced third-party providers of CMBS risk analysis can be taken into consideration when setting RBC requirements for CMBS.

Reduction of Mortgage Servicing Rights (MSRs) in Tier 1 Capital Calculation

MBA believes that the treatment of MSRs under the Basel Annex should reflect the maturity and sophistication of each nation's mortgage and servicing markets. The one-size-fits-all approach to MSRs proposed by the Basel Annex would unnecessarily penalize depository institutions in nations with well-established and efficiently functioning mortgage servicing industries. MBA recommends that the Basel Annex not be adopted by U.S. bank regulators. This issue impacts both residential and commercial MSRs.

RESIDENTIAL MORTGAGE SERVICING FOR THE 21ST CENTURY

MBA's Council on Mortgage Servicing

Late in 2010, MBA established the Council on Residential Mortgage Servicing for the 21st Century (Council). This Council of high-level executives will take a comprehensive look at the current state and next evolution of the mortgage servicing business. The Council will examine, through a public summit and private discussions, key issues inherent to servicing. The Council will then design recommendations for government and industry to improve the future state of mortgage servicing. The Council will seek input from key stakeholders in crafting its recommendations. The Council's focus includes, but is not limited to, the economics of mortgage servicing, loss mitigation practices and foreclosure processes.