



## **Suggested Improvements to TARP Legislation**

The Mortgage Bankers Association (MBA) strongly supports efforts to allow the U.S. Department of Treasury to purchase distressed mortgage-related assets to help resolve the ongoing financial crisis. This legislation is critically important to addressing a fundamental threat to the United States and global economies and should be enacted as soon as possible. MBA offers the following suggestions to improve the draft bills:

### **1. Bankruptcy Cram Down**

Allowing bankruptcy court cram downs will undermine the stabilization effort and will increase costs for taxpayers. Although the House version limits the provision to “nontraditional” or “subprime” loans, MBA believes even a measure like this would establish troubling precedent and promote further confusion.

### **2. Definition of Financial Institution**

It is not clear whether mortgage originators or servicers are included in the definition of “financial institution.” These institutions are liable for mortgages they sell to or service for Fannie Mae, Freddie Mac or Ginnie Mae according to contractual agreements. In order to ensure these institutions receive the same relief as banks, savings associations and other financial institutions, MBA recommends the definition be altered to include “any entity that is an approved seller or servicer of Ginnie Mae, Freddie Mac or Fannie Mae.”

### **3. Contingent Shares/Warrants**

The requirement for Treasury to receive contingent shares (Senate version) or warrants (House version) in the selling institution raises questions about the accounting treatment for these transactions. Without further clarification, GAAP may require the transactions to be treated as “financings,” not “sales” because the selling institution has not transferred all the significant risks and rewards.

### **4. Consumer disclosures**

Some types of loan refinancing, modification or loss mitigation transactions trigger the full panoply of consumer disclosure requirements. While MBA endorses measures to assist consumers in making informed choices through transparency and accuracy in loan terms, we also recognize that streamlining loan modification transactions will hasten the relief to consumers provided by the legislation. We request that Congress articulate an approach to accommodate these issues in the legislation.