

2017 MBA Residential Issue Priorities

With changing market conditions and an evolving policy landscape, in 2017 the real estate finance industry finds itself at a critical inflection point. Interest rates are trending upward for the first time in years, while market expectations point to lower mortgage volumes. Compliance and regulatory challenges must remain a focus, but the pursuit of “FINTECH” and “REGTECH” opportunities offer the possibility of game-changing efficiencies for companies and their customers. Finally, the November 2016 elections brought a potentially tectonic shift to the political and policy landscape, not only in our Nation’s Capital, but at the municipal and state levels as well.

The industry’s ability to navigate and manage these transformations and challenges is critical to our efforts to serve our customers and responsibly grow our businesses. In such a demanding landscape, the importance of speaking with a unified industry voice is critical.

Our message and influence stands out when we stand together — as one voice, one vision, one resource. Against this dynamic backdrop, the following residential policy priorities will be a critical part of MBA’s 2017 advocacy agenda:

MAJOR POLICY INITIATIVES

REMOVING HOMEOWNERSHIP BARRIERS

As a result of the recent financial crisis, the government passed laws, enacted regulations and increased lender enforcement with an aim to enhance consumer protections and reduce the risk of another severe housing market disruption. While some of these efforts were warranted, the pendulum has now swung too far and today credit availability is substantially lower than it was during the stable housing market of the late-1990s and early-2000s. Regulatory, operational and market obstacles have caused many responsible lenders to constrict their credit box and only lend to borrowers with the most pristine credit. The borrowers most impacted by this lending environment are low- to moderate-income borrowers, minorities and first-time homebuyers. These groups were the most negatively impacted by the financial crisis and now are the ones having the most difficulty recovering.

MBA will be identifying existing regulatory, operational and market barriers to “normalizing” credit availability and expanding access to homeownership — and recommending appropriate solutions. The solutions identified will be the basis for MBA’s advocacy on various issues before Congress, state legislatures and state and federal regulatory agencies. More specifically, MBA will continue to lead advocacy efforts

in 2017 for policies and reforms to federal housing programs that will allow lenders to responsibly expand affordable credit and create opportunities for sustainable homeownership.

REGULATORY CLARITY

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) created the Consumer Financial Protection Bureau (CFPB) — a federal regulator tasked with protecting consumers with regard to financial products and services. The CFPB was assigned new regulatory responsibilities, as well as jurisdiction over nineteen current consumer financial laws and a vast number of financial services companies.

In carrying out its responsibilities, the CFPB’s approach has differed significantly from the approach of the agencies that previously held responsibility for the laws it was assigned. Rather than offering ongoing, authoritative written guidance — as well as stewardship and supervision to ensure compliance — it has chosen to use enforcement actions and consent orders as the preferred method for issuing guidance on new rules and for new interpretations of long-standing rules. This “enforcement first” approach and the CFPB’s lack of clear rules and supervision have resulted in uneven consumer protection and uneven competition in the marketplace.

While the CFPB has brought some positive changes to the market in the wake of the crisis, the regulatory pendulum is in need of “re-centering” — some rules need fine-tuning while others need to be reexamined. The November 2016 elections and the PHH v. CFPB litigation can be expected to bring about changes to CFPB leadership that have a strong potential to be both structural as well as cultural. Whether or not these changes are immediate, work is needed to refocus the CFPB and offer recommendations for its improvement. In 2017, MBA will advocate for these changes while continuing to push for more frequent issuance of authoritative written rules and guidance.

GSE REFORM AND TRANSITION STEPS

More than eight years after Fannie Mae and Freddie Mac (the GSEs) were placed into conservatorship, their long-term status remains an open question. While the GSEs continue to play a central role in the U.S. mortgage system, comprehensive reform is necessary to ensure a stable and liquid mortgage market. To this end, MBA will be working with lawmakers and others to promote workable reform alternatives in 2017.

The current state of conservatorship presents substantial risk to the housing finance system and taxpayers generally. While the GSEs appear to be profitable, both have seen substantial earnings volatility in recent quarters. Moreover, the GSEs remain unable to build or retain capital under the terms of the U.S. Treasury Department’s GSE rescue package, increasing the likelihood that they will require further taxpayer support. Finally, absent legislation, the GSEs are unable to easily emerge from conservatorship via a recapitalization, as such a move would not carry an explicit government guarantee of their mortgage-backed securities (MBS). MBA’s thought leadership on this issue is a top priority.

In mid-2017, MBA will release a policy paper outlining its plan for a new secondary market regime. This plan will explain why Congress needs to act, define the core principles that need to be addressed in a new system, outline a preferred “end state” option, discuss key steps for an orderly transition and outline an affordable housing strategy.

The MBA plan is predicated on an explicit government guarantee for certain MBS — paid for by the private sector — with a series of “guardrails” to ensure the new system can be a stable source of liquidity in all economic cycles, protect taxpayers, provide credit access to a range of borrowers and provide equitable access to lenders of all sizes and business models. MBA will engage with policymakers, industry stakeholders and others in an effort to address this important issue.

MSR LIQUIDITY SOLUTIONS

Mortgage Servicing Rights (MSR) are an important part of the current mortgage value chain, and a deep and liquid MSR market supports access to credit by lowering up-front pricing and allowing mortgage companies options to finance their operations. Recent regulatory and market events have resulted in decreased liquidity for MSRs — particularly for Ginnie Mae. Already, many lenders have exited government lending or added credit overlays. Should this trend continue, it could significantly impact pricing or access to Federal Housing Administration (FHA), U.S. Department of Agriculture (USDA) and U.S. Department of Veterans Affairs (VA) loans for first-time, low-to moderate-income and veteran homebuyers that rely on these loans.

Concurrent with the changes in Ginnie Mae liquidity, the general mortgage market has seen the rise of “non-bank” mortgage originators and servicers. Non-banks have always been an integral part of a healthy mortgage market, but the last few years have seen a dramatic increase in their market share — particularly in the Ginnie Mae space. Citing insufficient staffing to manage new and expanded counterparty risk, Ginnie Mae has expressed concerns about their ability to effectively manage and monitor its growing issuer base. Concerns about non-bank liquidity have also spurred the Conference of State Bank Supervisors (CSBS) — and some state regulators independent of the multi-regulator CSBS process — to consider the enactment of “prudential standards” for state regulated non-bank servicers.

In 2017, MBA will seek to identify the key issues impairing Ginnie Mae liquidity, to generate possible solutions and work with agencies whose loans make up these securities to address the issues that are increasing government servicing costs and risks and driving servicers away. MBA will also advocate within the U.S. Department of Housing and Urban Development (HUD) and before Congress to ensure Ginnie Mae receives the funding necessary to modernize and ensure proper stewardship of the program. In addition, MBA will be identifying other regulatory constraints, including bank capital rules, that continue to weigh on the servicing business. Finally, MBA will collaborate with CSBS to develop uniform standards for reporting and capital/liquidity oversight that align with existing Ginnie Mae and GSE standards.

FHA STABILITY AND REFORM

The current support structure for FHA within HUD does not provide FHA with the appropriate resources and staffing necessary for efficient and effective portfolio management. Current FHA policies and practices have diminished lender confidence to lend to the full extent of the FHA credit box, particularly due to liability concerns under the False Claims Act. This has ultimately increased the cost of credit for the first-time and low- to moderate-income borrowers that FHA is intended to serve.

In 2017, MBA will develop and advocate for FHA policy reforms to ensure affordable credit access for low- to moderate-income borrowers and first-time homebuyers, while sustaining the actuarial soundness of the Mutual Mortgage Insurance (MMI) Fund. MBA will also make recommendations to address the fundamental flaws in the FHA's servicing requirements that are not only impacting Ginnie Mae MSR values, but also narrowing the FHA credit box. Finally, MBA will work with HUD's new leadership to develop clearer standards for assessing the materiality of, and remedies for, processing and underwriting defects in order to mitigate False Claims Act and indemnification risks for participating lenders.

FAIR LENDING AND HMDA IMPLEMENTATION

The CFPB has made clear that the mortgage market continues to be a key supervision, examination and enforcement priority of its Office of Fair Lending. In 2017, the CFPB will be focusing on Home Mortgage Disclosure Act (HMDA) data integrity, in addition to lender redlining and disparate impact resulting from underwriting and pricing policies. Recent statements and enforcement actions also suggest that the CFPB will be using new metrics — including “peer comparisons” — to evaluate compliance. To ensure clarity in the fair lending arena, in 2017 MBA will urge HUD to revise its disparate impact rule to conform with recent U.S. Supreme Court precedent, and MBA will work with the CFPB to provide greater transparency on peer grouping, redlining and other evolving fair lending theories.

This landscape continues to require that lenders have sound fair lending programs and that they focus resources on completing implementation of the new HMDA rule, as it will significantly increase the amount of data that must be collected and reported by lenders. In addition to advocating before the CFPB to obtain clarity on implementation issues, MBA will be conducting a series of webinars and workshops in 2017 and releasing updates to MBA's Compliance Essentials Resource Guide to help members operationalize HMDA and fair lending policies and procedures.



OTHER KEY POLICY INITIATIVES

SAFE ACT LICENSING CHANGES

MBA continues to believe that the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act of 2008 should be amended to require that all mortgage loan originators (MLOs) meet uniform national testing standards and other relevant qualifications. While MLOs who work for state-regulated entities are subject to rigorous education, testing and licensing requirements, registered MLOs employed by banks and bank affiliates do not have to meet the same standards. Inconsistent standards have also made it difficult for non-bank lenders to hire talented MLOs — who must cease all sales activity in order to complete pre-licensure education, pass required testing and undergo a background check — to ultimately achieve licensure.

MBA's proposed SAFE Act amendments would create a more seamless transition by requiring the states to allow bank MLOs moving to non-banks to continue to originate for at least a 120-day temporary period of time by granting them "transitional authority to originate." In the 114th Congress, MBA secured introduction of H.R. 2121 — which passed the House of Representatives by voice vote on May 23, 2016. Additionally, MBA helped secure related language in S. 1484, which in 2015 passed the Senate Banking Committee. In 2017's new Congress, MBA will be seeking bicameral introduction of legislation similar to H.R. 2121.

PROHIBITING PACE FINANCING

In July 2016, HUD authorized guidance which — for the first time — permits FHA financing to be used to purchase or refinance properties with green energy home improvements that have been financed with a Property Assessed Clean Energy (PACE) loan. Simultaneously, the VA issued parallel guidance. Serious concerns exist over the absence of important consumer protections (e.g., CFPB ability-to-repay considerations), the undermining of the lender's (and the government's) collateral position and the exposure of FHA's MMI Fund and VA's loan guaranty program to increased loss severities as a result of the PACE obligation.

In 2017, MBA will advocate for rescission of the FHA and VA guidance and will urge a PACE prohibition for FHA, VA, and USDA's Rural Housing Service that parallels the Federal Housing Finance Agency's (FHFA's) existing PACE prohibition for the GSEs. And, MBA believes PACE lending activities should be covered by existing federal mortgage lending rules and will advocate for this standard. Concurrently, MBA will work with members, state associations and other stakeholders to repeal/reform existing state PACE laws. Importantly, MBA will

also continue encouraging mortgage product innovations that responsibly incorporate green energy home improvements without the flaws of the PACE financing structure.

FINTECH ADVANCEMENT

Innovations in financial technology are evolving rapidly and these new products, tools and services hold great promise for the real estate finance industry. Efforts are already underway to modernize the application and underwriting process, and other emerging technologies — like artificial intelligence and blockchain — have significant potential for the secondary market and mortgage servicing. MBA is committed to providing its members with opportunities to learn more about these new developments and how they can be integrated into business operations, as well as responding to related policy issues and questions as they emerge in 2017.

LEGAL ISSUES AND LITIGATION SUPPORT

MBA actively represents the interests of the mortgage industry through litigation, amicus briefs and other proceedings. Typically, MBA engages where questions of federal or state law may have broad ramifications for the industry. In the last year alone, MBA participated in several landmark cases — argued before courts ranging from the DC Circuit Court of Appeals (e.g., PHH v. CFPB) to the U.S. Supreme Court (e.g., Spokeo v. Robins and Wells Fargo v. City of Miami).

It is important to note that existing case involvement can extend for multiple years. For example, MBA filed a 2016 amicus brief in PHH arguing that the CFPB violated due process when it strayed from longstanding guidance, published by HUD, related to compliance with the Real Estate Settlement Procedures Act (RESPA). A three-judge panel of the DC Circuit Court agreed with MBA's argument in October 2016, and now the case is pending before the full DC Circuit Court with a decision expected by the end of 2017. For its part, MBA will file a new amicus brief in support of the panel's RESPA ruling. And in City of Miami — a case challenging whether municipalities have standing to bring suit under the Fair Housing Act, despite falling outside the zone of interests intended to be addressed by the statute — MBA opposed this standing through a 2016 amicus brief and will continue to engage where needed in 2017 to advocate for this position. The Supreme Court heard oral arguments in late 2016 and a City of Miami decision is expected by the end of the year.

In 2017, MBA will identify additional opportunities to represent the industry on important cases that could form supportive law and precedent, or overturn adverse rulings.

STATE POLICY INITIATIVES

VACANT AND ABANDONED PROPERTY SOLUTIONS

While home sales, new construction and property values have all been steadily improving, recovery of the housing market remains uneven. Many communities continue to struggle with vacant and abandoned properties that devalue neighboring properties, attract criminal activity, erode the local tax base and increase costs for local governments and mortgage servicers. MBA has sought to address this important issue through the development of principles that — if adopted — would responsibly expedite foreclosure proceedings and allow vacant and abandoned properties to be put back into productive use. In 2017, MBA will continue to work with members, state associations and other stakeholders to secure reforms to the foreclosure process that conform with MBA's principles.

STREAMLINING STATE LICENSING AND REPORTING REQUIREMENTS

MBA will continue to lead industry efforts to harmonize state licensing, examination and reporting requirements amongst the 59 state mortgage regulators. For example, only five regulators within four states have not yet adopted the Uniform State Test (UST), which eliminates the need for a state-specific MLO test — in addition to a national test — in order to achieve state licensure. In 2017, MBA will work to complete UST adoption in all 50 states. Additionally, MBA will continue its work with state regulators and CSBS to harmonize state data reporting requirements via the centralized Nationwide Mortgage Licensing System and Registry (NMLS)

It is important to emphasize that MBA is working on a wide range of residential policy issues, only some of which are highlighted in this document. Also, due to the dynamic nature of today's policy environment, new issues and shifts in priorities are expected during 2017. MBA will continue to work with its membership to address the evolving policy challenges facing our industry.

Mortgage Call Report — to make the multistate mortgage exam process more efficient and effective for state-regulated mortgage companies.

PRESERVING LIEN PRIORITY

Recent court decisions by the Nevada and Rhode Island Supreme Courts and the District of Columbia Court of Appeals have allowed common interest communities to initiate foreclosure to recover certain unpaid assessments through "super liens," and to potentially extinguish a property's first mortgage in the process. These actions have set a dangerous precedent and created substantial risks for servicers and mortgage investors, as other courts may follow this interpretation of their own super lien statutes.

MBA vehemently supports the concept of "first in time, first in right" — that any private lien attached to a property after the origination of a prior mortgage should not be able to move ahead of that mortgage in recouping funds from the property's sale at foreclosure. In 2017, MBA will continue to work with members, state associations and other stakeholders to reform existing state laws and to defeat harmful state legislative proposals that undermine lien priority. Notably, in states where super liens are entrenched in law, MBA will advocate for refinements akin to recently enacted Tennessee legislation — safeguards for mortgage lien interests that were championed in 2016 by MBA and the Tennessee MBA.