MORTGAGE BANKERS ASSOCIATION

May 4, 2015

Tony Hernandez
Administrator
United States Department of Agriculture, Rural Development
1400 Independence Avenue, SW
Washington, D.C. 20250

RE: Docket No. RIN 0575-AD00; Single Family Housing Guaranteed Loan Program

Dear Mr. Hernandez,

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the proposed amendments to the Rural Housing Service's (RHS) Section 502 Single Family Housing Guaranteed Loan Program (Guaranteed Program). The Proposal suggests a change in the scope of RHS' indemnification authority, creates new refinance options and requirements, and clarifies the definition of a qualified mortgage.

Specifically, the RHS is proposing to: 1) expand the lender indemnification period for loss claims for noncompliance with applicable loan origination requirements from two years to five years; 2) allow lenders to reduce the principal balance on behalf of borrowers in amounts up to 30 percent of the unpaid principal balance of the loan as of the date of default, inclusive of any Mortgage Recovery Advance, after the lender has exhausted all other traditional loss mitigation options; 3) remove the requirement that, in order to refinance, the new interest rate must be at least 100 basis points below the original loan rate; 4) add a new refinance option called a "streamlined assist" that will not, in most cases, require an appraisal or credit report; and 5) clarify that a loan guaranteed by the RHS is a qualified mortgage if it meets the requirements established by the Consumer Financial Protection Bureau. With respect to this proposal, MBA:

1) Urges RHS to maintain the current lender indemnification period of 24 months;
2) Believes that the mortgage recovery advance procedure remains the best way to effectuate a principal reduction and that separating out a principal reduction advance raises operational and practical questions;
3) Encourages RHS to eliminate the January 1, 2001 – January 1, 2010, timeframe restriction on principal reduction programs;
4) Supports allowing borrowers to refinance an RHS loan as long as the interest rate does not exceed the original loan being refinanced; and

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

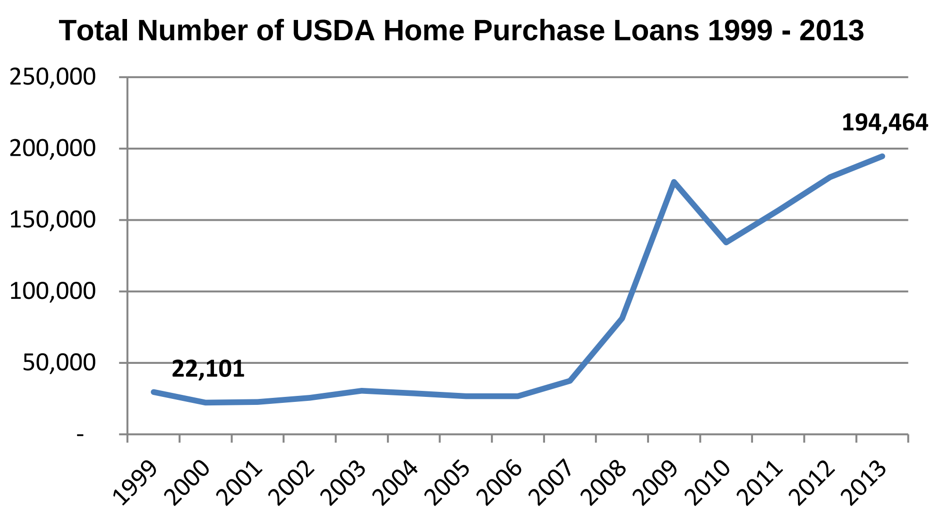
5) Urges RHS to update program guidance to incorporate new points and fees limitations, explicitly define all RHS loans as safe harbor Qualified Mortgages (QM), and increase the points and fees limits for smaller balanced loans.

Increased demand for the Guaranteed Program has revealed the need to expand and modernize the program's systems and operations. MBA strongly supports the RHS' efforts to reexamine its Guaranteed Program and ensure that it is able to effectively meet this demand for safe and affordable mortgage credit in rural areas. While these improvements can—and should—be made, MBA urges the RHS to consider the following comments and refine the Guaranteed Program thoughtfully and deliberately so as to minimize any disruptions in access to, and the cost of, Section 502 guaranteed loans.

I. Background on the RHS' Section 502 Single Family Housing Guaranteed Loan Program

The Guaranteed Program is overseen by the Rural Housing Service--a component of the United States Department of Agriculture (USDA)--and is designed to create access to safe and affordable mortgage credit for low- to moderate-income rural residents. In fact, approximately 30 percent of guaranteed 502 loans are made to families earning less than 80 percent of the area median income.[2] The RHS does not lend directly to the borrower under the Guaranteed Program; rather, the RHS guarantees up to 90 percent of the value of a loan offered by a RHS-approved private lender. By guaranteeing this value, the Program reduces the risk to lenders and creates an incentive to offer loan products to rural residents who are otherwise unable to obtain credit through conventional financing.

The Guaranteed Program has taken on an increasingly important role in the housing market in recent years. In the wake of the financial crisis, private capital largely abandoned the marketplace constricting access to affordable mortgage credit. The USDA emerged as an access point for affordable mortgage credit for rural borrowers and utilization of the Program skyrocketed. According to Home Mortgage Disclosure Act (HMDA) data, in 2000 the USDA guaranteed 22,101 home purchase loans. In 2013, the USDA guaranteed 194,464 home purchase loans. Demand for the program remains high.



Source: MBA analysis of HMDA data

[2] USDA's Guaranteed Rural Housing Loans (Section 502) Fact Sheet

This rapid expansion has not come without growing pains. As the number of guaranteed loans has increased, so have the number of foreclosures, and loss claims paid.[3] This result is not unique to the Guaranteed Program. Every government-backed lending program, including the Federal Housing Administration and the Veterans Administration, suffered increased losses as these programs stepped up to assume their countercyclical role in the marketplace.

The increased demand on the Guaranteed Program revealed the need to expand and modernize the program infrastructure. While these improvements can—and should—be made, MBA encourages RHS to consider the following comments and refine the Guaranteed Program thoughtfully and deliberately so as to minimize any disruptions in access to, and the cost of, these Section 502 loans.

II. RHS' Proposal to Expand Indemnification Authority

The RHS is proposing to expand its indemnification authority. Under current regulation, if a loan defaults within 24 months of the loan closing--requiring the RHS to play a claim--and the RHS determines that a lender did not originate a loan in accordance with program requirements, the RHS can require the lender to indemnify the loss, and may revoke the lender's eligibility status. In this proposed rule, the RHS is seeking to expand the time period lenders may be required to indemnify from "24 months after loan closing"[4] to "within five years of loan closing." The RHS will continue to require lenders to indemnify the Agency for losses--regardless of when the loan closed or the default occurred--if the Agency determines that fraud or misrepresentation was involved with the origination of the loan.

Expanding this period from two years to five years could constrict access to Section 502 guaranteed mortgages and drive up the cost of those loans for consumers. The more than doubling of the indemnification period represents a dramatic increase in risk for lenders and would be a disincentive to lenders to make these loans to all but the least risky borrowers. This change could also increase the cost of these loans to consumers if lenders feel compelled to layer this additional risk into the cost of the loan.

Moreover, a five year indemnification period does not align with the RHS' regulations governing the borrower's ability to repay. Currently, regulation requires that the "lender must establish an applicant's anticipated amount of repayment income and the likelihood of its continuance for at least the next three years…"[5] This rule appears to acknowledge that, beyond this three year period, the problems that occur with the loan typically are not due to underwriting or other origination issues, but are due to other life changing events beyond the lender's control, including unemployment, divorce, or death.

Finally, the proposed language suggests that lenders will be asked to indemnify losses if a defect is discovered, regardless of the nature of the defect. In contrast, the Federal Housing Administration limits its five year indemnification period to incidents in which the, "mortgagee knew or should have known of serious and material violation of HUD requirements such that loan should not have been approved and endorsed…"[6] MBA has noted its concerns with this

[3] According to an audit by the USDA's inspector general, in fiscal year 2008, the program paid $103 million in loss claims and had 3,369 foreclosures; in fiscal year 2011, the program paid $295 million in loss claims and 18,808 foreclosures.
[4] 7 CFR 3555.108(1)
[5] S.3555.152(2)
[6] P. 53 http://portal.hud.gov/hudportal/documents/huddoc?id=13-12mlatch.pdf

standard[7] but it does acknowledge the important difference between minor administrative errors and those material errors that could impact a loan's performance. Without any flexibility or forgiveness, the rule is a disincentive for lenders to serve the full scope of eligible borrowers.

MBA believes that five years from the loan closing is too long a time period and strongly urges the RHS to maintain the current indemnification period of 24 months after the loan closing. The proposed five-year period is overreaching, inconsistent, and could restrict the availability of a loan product critical to rural homeowners, even as it comes to play an increasingly important role in the marketplace. If RHS must increase the indemnification period, MBA recommends a maximum of three years because it aligns with current regulations dictating underwriting requirements with the proviso that it must be clear which errors will require indemnification.

III. RHS' Proposed Principal Reduction Advance

The RHS is proposing to allow for principal reduction advances separate from a mortgage recovery advance. Currently, the principal reduction is part of the mortgage recovery advance and is calculated to ensure that a borrower's total mortgage payment is 31 percent of his or her gross monthly income. Under the proposal, any principal reduction advanced would be separated out and require the borrower to sign an unsecured promissory note for RHS. If the borrower remains in good standing for three years — no periods of more than 60 days late — then the principal recovery advance is forgiven and the amount reported to the IRS as income.

MBA supports the decision to allow for a mortgage recovery advance with or without principal reductions and believes that this additional flexibility will benefit rural housing consumers and partners. We also believe, however, that the mortgage recovery advance procedure remains the best way to effectuate a principal reduction and that separating a principal reduction advance out into a distinct procedure raises operational and practical questions.

As an initial matter, a bifurcated procedure could complicate special loan servicing efforts. Making the principal reduction claim into a separate and unsecured note raises loss mitigation underwriting challenges; a servicer would now presumably have to consider two different obligations. There also needs to be clarification on how these obligations should be understood if a servicer needs to consider a borrower for a modification in the event that the first modification re-defaults. It may also be confusing to a borrower who previously understood their mortgage to be a secured transaction and may not fully comprehend that one 60-day late payment could result in the borrower being forced to pay back the full amount of principal reduction within a short period of time.

This proposal may create adverse tax consequences for borrowers that may lead to financial problems down the road. Principal forgiveness after three years in good standing could create a potential tax burden for the borrower as it would be reported as taxable income to the IRS (absent legislative intervention). This outcome could be disruptive to some borrowers and result in a loss of income-indexed benefits or a tax bill that could result in other financial consequences.

It is also possible that the requirement that borrowers pay back the note in three years may, in some cases, be harmful to borrowers and contrary to RHS's mission of financial health. One 60-day late payment period may represent a period of financial hardship that could have been remedied without causing the borrower to go into foreclosure. However, under this proposal, it

[7] MBA Comments to FHA Single Family Lender Insurance Process: Eligibility, Indemnification, and Termination. December 6, 2010.

would result in the borrower incurring another significant financial obligation. Depending on collection, this could lead to the paradoxical result of a borrower being severely financial stressed or delinquent on their mortgage payment due to the need to satisfy their obligation under the principal reduction advance. Should this borrower lose his or her home, RHS would be forced to pay the guarantee on the larger part of the existing mortgage due to the borrower's financial distress in trying to satisfy the smaller principal reduction advance.

RHS proposes that these program changes apply only for those who purchased property between January 1, 2001 – January 1, 2010. While we understand the RHS rationale that these borrowers were particularly affected by the 2008 financial crisis, none of the Department of Treasury programs such as HAMP are limited to this particular cut-off. MBA suggests that any program changes apply for a period of time greater than the proposed 2001 – 2009 timeframe. Following timeframes similar to HAMP would serve more borrowers and would not require servicer systems changes to add a new cut-off for borrower assistance and loss mitigation options.

While the intention is likely for the unsecured obligation to be forgiven after three years, MBA believes that the best solution to aid borrowers and RHS is to allow for mortgage recovery advances that feature principal reductions and those that do not while maintaining the current recording procedure. Recording these advances as subordinate mortgages will ensure that RHS will be made whole for their advance in the event of a property sale, or satisfaction of the first mortgage should the principal reduction advance not be forgiven. It will also allow the borrower more financial flexibility without the fear that one period of financial hardship will lead to a significant future obligation prior to payoff or sale of the property. Finally, recording advances or partial claims as an interest free subordinate mortgage is consistent with other government lending programs as this is how the Federal Housing Administration handles their partial claims.

Should RHS proceed with the proposed unsecured principal reduction claim, we request clarification on the intended collection process. MBA suggests that RHS should be the principal collector because requiring servicers to collect these advances would introduce third party debt collection issues that could complicate the servicing relationship in ways that could negatively impact the ability of the consumer to pay their RHS mortgage going forward.

In a related matter, MBA notes that our members have reported significant issues when making claims and then having their RHS guarantee claims paid in a timely manner. According to reports, claims can routinely take months to be paid, creating uncertainty and administrative burdens. Such delays, if continued, could raise questions about the participation in the program for some entities. We urge RHS to work to pay claims in a more timely fashion. Please feel free to contact us if there is any way we could assist in that effort.

IV. Changes to the RHS Refinance Options

MBA is grateful for the proposed changes to the RHS refinance program, in particular the streamlined-assist refinance and its changes to the required interest rate for a RHS refinance. The streamlined assist program appears very promising and will enable eligible borrowers to benefit from the ability to conveniently refinance their RHS loan. We do request additional information about the eligibility requirements and whether these streamlined refinance will allow the borrower to roll in closing costs and lender compensation. Our understanding is that the pilot program allowed for these costs to be included and we would encourage RHS to continue this practice to ensure broad access to this program for RHS borrowers.

MBA supports allowing borrowers to refinance an RHS loan as long as the interest rate does not exceed the original loan being refinanced. This is a positive change that will allow more borrowers access to refinancing at a time of historically advantageous interest rates. Indeed, we feel that RHS should explore the possibility of allowing other borrowers that meet USDA eligibility requirements and can provide documentation the ability to refinance their loans into RHS guaranteed loans. Such a change could expand both the number of rural borrowers that could benefit from the RHS program and increase the number of lenders participating in the program.

V. RHS' Qualified Mortgage Definition

MBA appreciates USDA's efforts to implement a qualified mortgage (QM) definition which allows lenders participating in the RHS program to manage to one consistent definition of qualified mortgage. In order to ensure that RHS insured financing is available widely to qualified borrowers MBA suggests USDA address the following points in its final rule.

Update program guidance to incorporate new points and fees limitations

MBA urges that 3555.101 (b) Eligible Costs should include reference to the allowable points and fees requirements. Additionally, the Handbook Chapter 6.2 Eligible Loan Purposes, section C Reasonable Lender Fees should also be revised to remove the previous USDA fees limitation and solely reference the final rule's points and fee limitation.

Explicitly define all RHS loans as safe harbor QMs

The CFPB ATR/QM rule established a safe harbor and conclusive presumption of compliance with the ability to repay requirements for QMs that have an Annual Percentage Rate (APR) that is less than 1.5 percentage points over the Average Prime Offer Rate for a first lien; and a rebuttable presumption of compliance for QMs that exceed the APOR by 1.5 percentage points or greater for a first lien. MBA appreciates RHS not establishing a division; however absent further guidance there may be confusion if the safe harbor or rebuttable presumption applies to RHS QM loans.

Considering that significant potential liability and litigation expenses for an ATR violation, many lenders will not make QM rebuttable presumption loans and have limited themselves to making only QM safe harbor loans. RHS loans are subject to stringent underwriting standards, consumer safeguards, and regulation by the federal government through USDA oversight. Consequently, MBA believes that USDA should explicitly define all RHS insured loans as QM safe harbor loans.

Increase the points and fees limits for smaller balanced loans

RHS's proposed rule incorporates the CFPB's limit on points and fees for qualified mortgages at 12 CFR 1026.43(e)(3)(e)(3). Under that rule, for loans equal to or greater than $101,593, points and fees must not exceed three percent of the total loan amount.[8] The CFPB rule also provides adjustments to the points and fees limit up to eight percent of a loan amount for lower balance loans under $101,953 using a tiered points and fees structure.

MBA has urged CFPB to increase the threshold for all loans since the $101,593 adjustment point is well below the national average loan application amount of approximately $267,000.[9]

[8] The threshold for smaller balance loans is adjusted annually for inflation. 12 CFR Part 1026.43(e)(3)(ii).
[9] MBA Weekly Applications Survey

MBA believe the need for such an increase is even more compelling for the RHS program. In 2013, the average size of a USDA purchase mortgage was $136,017.[10] Lower balance RHS loans provide access to credit for traditionally underserved rural populations. At the same time, the points and fees calculation is expansive and includes fees to lenders and mortgage brokerages, affiliates and others.

Smaller loans have proportionately higher points and fees due to the fixed costs to originate a loan. Considering that three percent of a loan amount between $101,593 and $200,000 ranges from approximately $3,050 to $6,000, we are concerned that if the CFPB's lower balance loan adjustment threshold is permanently adopted by USDA, over time too many of these loans will be regarded as uneconomical to originate.

To address these concerns, MBA urges USDA to adjust the points and fees threshold by raising the cap to three percent for loans that are $200,000 and above and making the adjustments suggested by the following chart comparing the current adjustments to MBA's proposal:

2015 QM Points and Fees Caps		**Recommended QM Points and Fees Caps**	
Loan Amount	Points and Fees Cap	Loan Amount	Points and Fees Cap
		$200,000 and up	3%
		$150,000 to $199,999	$6,000
$101,953 and up	3%	$100,000 to $149,000	4%
$61,172 to $101,952	$3,059	$80,000 to $99,999	$4,000
$20,391 to $61,171	5%	$20,391 to $79,999	5%
$12,744 to $20,390	$1,020	$12,744 to $20,390	$1,020
Less than $12,744	8%	Less than $12,744	8%
		New tiers/caps	

Denying RHS insured credit to smaller balance loans threatens to lessen the availability of safe sustainable credit to populations it is the agency's mission to serve. Accordingly, we support adjustment of the CFPB points and fees limits for the RHS program.

Conclusion

MBA appreciates the opportunity to comment on this proposal and the RHS' ongoing work to improve the Single Family Housing Guaranteed Loan Program. This Program plays a critical role in meeting the mortgage credit needs of rural borrowers and, with continued refinements, will continue to enhance the ability of the mortgage market to provide safe, sustainable and affordable financing to as many creditworthy borrowers as possible.

[10] MBA analysis of HMDA data

Should you have questions or wish to discuss any aspect of these comments further, please contact Tamara King, Associate Vice President for Loan Production, at (202) 557-2758 or at tking@mba.org; or Elizabeth Kemp, Assistant Director for Loan Production, at (202) 557-2941 or at ekemp@mba.org.

Thank you for your consideration of these views.

Sincerely,

Pete Mills
Senior Vice President, Residential Policy and Membership Engagement