2016 MBA Residential Issue Priorities

The real estate finance industry continues to deal with a host of complex policy challenges, from ongoing regulatory implementation of multiple Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) rules, to supervisory and enforcement challenges, to a potential restructuring of the housing finance system. The industry's ability to navigate and manage these changes is critical to our efforts to serve consumers and responsibly grow our businesses.

In 2016, MBA's residential policy efforts will be shaped by several key dynamics:

- Another massive regulatory implementation project stemming from a major expansion of the Home Mortgage Disclosure Act (HMDA);
- Continued challenges integrating the "Know Before You Owe" disclosures into the mortgage origination process;
- Uncertainty and risk created through the reliance on enforcement actions by the Consumer Financial Protection Bureau (CFPB) and other federal agencies to reinterpret the rules of the road and create new regulatory policy;
- Continued political gridlock over the possible reform of Fannie Mae and Freddie Mac (the GSEs), to end their conservatorship and establish a new foundation for the secondary mortgage market; and
- Housing market and credit conditions that continue to be adversely impacted by regulatory policies that constrain affordability and access to homeownership.

Against this backdrop, the following residential policy priorities will be a critical part of MBA's 2016 advocacy agenda:

PRIMARY MARKET ISSUES

FAIR LENDING AND HMDA IMPLEMENTATION

The CFPB has made clear that mortgage lending continues to be a key supervision, examination and enforcement priority of its Office of Fair Lending, which will focus on HMDA data integrity in addition to lender redlining, underwriting and pricing in 2016. Recent statements and enforcement actions also suggest that the CFPB is already using new metrics, including "peer comparisons," for these purposes. This landscape will require that lenders have sound fair lending programs and that they begin preparing now to implement the new HMDA rule — as it significantly increases 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 and releasing Compliance Essentials resource guides to help members operationalize model HMDA and fair lending policies and procedures.

"REGULATION BY ENFORCEMENT"

Five years after the enactment of Dodd-Frank, enforcement actions present very significant challenges to the residential mortgage industry. Unfortunately, the CFPB often appears to take an "enforcement first" approach, offering industry participants little guidance and simply instituting claims against them — often using new interpretations of old rules. Enforcement without guidance exposes industry participants to "regulation by enforcement action" and opens up activities not previously believed prohibited to potential challenge by state regulators, plaintiffs' attorneys, as well as the government.

When the legal and regulatory "fault lines" under laws assigned to the CFPB (and other regulatory and enforcement agencies) develop through case law rather than through clear rules of the road, they create uncertainty in the market and undue costs for consumers. In an era of unprecedented regulatory change, MBA and the industry as a whole will need to continue advocating for more frequent issuance of authoritative written compliance guidance and formal rulemaking processes when the rules are being changed.

EXPANDING AFFORDABLE HOUSING AND ACCESS TO CREDIT

As a result of the financial crisis, the government passed and enacted numerous laws and regulations to enhance consumer protections and reduce the risk of another severe housing market disruption. While many of these efforts were warranted, the pendulum has now swung too far. Today, credit availability is substantially more constrained than it was during the stable housing market of the early 2000's. Unfortunately, the borrowers most impacted by this lending environment are low-to-moderate income borrowers and first-time homebuyers — groups that were also most negatively impacted by the financial crisis. Accordingly, MBA will be supporting numerous initiatives in 2016 to enable these potential homeowners greater access to affordable, sustainable mortgage credit. These efforts include developing alternatives to Appendix Q for documenting income under the Ability to Repay / Qualified Mortgage rule.

Importantly, MBA will advocate for a strong Federal Housing Administration (FHA) program to preserve its role in helping low-to-moderate income and first-time borrowers become successful homeowners. To this end, MBA will work diligently to ensure the long-term financial viability of FHA and the single-family Mutual Mortgage Insurance (MMI) Fund. Specifically, this work includes supporting policies that keep FHA programs competitive, protect the MMI Fund against adverse selection, and continue to build the Fund's critical capital reserves. MBA will also continue advocating for congressional appropriations to fund the critical resources FHA needs — staff and technology — to effectively oversee its vital programs. MBA believes that a significant impediment to credit access is that lenders are unable to participate confidently in FHA programs without fear of unfair enforcement actions. In 2016, MBA will continue working with the Department of Housing and Urban Development (HUD) to develop clear, timely, and transparent single-family participation guidelines that will ensure that remedies and enforcement actions are fair and proportionate.

TILA-RESPA IMPLEMENTATION

The "Know Before You Owe," or TILA-RESPA Integrated Disclosure (TRID) rule, became effective on October 3, 2015. At its core, TRID represents the largest restructuring of the residential mortgage application-to-closing process in nearly 40 years. Implementing this new rule required major changes to industry systems and business processes as well as thousands of hours of training. In light of this complexity, the CFPB announced prior to the October 3 effective date that it would take into account "good faith efforts" by industry to comply with the rule. Unfortunately, the CFPB did not provide a timeline for this good faith window, nor did it define the scope of good faith compliance.

Since the TRID rule's implementation, a significant number of issues have emerged — mostly due to lingering misperceptions, differing interpretations, and technical ambiguities in the regulation. It also has become clear that, while the vast majority of lenders were educated about the rule, many other important actors in the real estate transaction process were unprepared for the transition. While some of these issues will be resolved by vendors and lenders over time, many issues can only be resolved by formal CFPB guidance or rulemaking.

In 2016, MBA will continue to urge the CFPB to provide clearer, more authoritative guidance on TRID, and to commit to engaging with industry in a robust dialogue about provisions of the rule that require additional clarity. In addition, MBA will continue to develop a wide array of compliance aids for members, including workshops, webinars, and the recently updated MBA Compliance Essentials resource guide that allows members to operationalize model policies and procedures. Building on these activities, MBA will continue surveying and conducting frequent discussions with members to identify compliance issues and — where necessary — to request further guidance from the CFPB.

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. Upon enactment, the SAFE Act created two parallel but asymmetrical regimes for MLOs. 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. Currently, a bank-employed MLO who moves to a non-bank lender 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, allowing bank MLOs moving to non-banks to continue to originate for a temporary period of time while simultaneously completing their Nationwide Mortgage Licensing System and Registry (NMLS) licensure. Transitional origination authority will provide improvements to MLO productivity, encourage MLO compliance, and prevent adverse selection of MLOs at banks, ensuring that non-bank lenders can fairly compete for talented MLOs. To this end, MBA last year secured congressional introduction of H.R. 2121, which if enacted would provide for at least a 120-day "transitional authority to originate" period for bank MLOs moving to a non-bank lender. Additionally, MBA helped secure related language in S. 1484, which has passed the Senate Banking Committee. In 2016, MBA will strongly advocate for additional sponsorship and passage of each bill.

THE FUTURE OF LOSS MITIGATION

The homeowner loss mitigation efforts that were launched following the recent financial crisis — the Home Affordable Modification Program (HAMP), Home Affordable Refinance Program (HARP) and other Making Home Affordable programs — are now winding down in the coming year. These programs have provided loss mitigation assistance to millions of Americans and developed standardized valuation models and communication tools to aid borrowers and ease industry application through years of trial and error. As the need for these crisis-specific programs begins to wane, the Treasury Department, Federal Housing Finance Agency (FHFA) and other key stakeholders have begun discussions to determine the future of loss mitigation. These discussions will focus on the lessons that should be drawn from the programs, how those lessons should apply to future loss mitigation efforts, and whether they should be permanently embedded in mortgage servicing requirements. In 2016, MBA and its members will be at the center of this dialogue, providing the servicing industry's views to relevant policymakers in order to shape the conclusions and possible programs that emerge.

SECONDARY MARKET ISSUES

GSE REFORM AND TRANSITION STEPS

More than seven years after they were placed into conservatorship, the GSEs continue to play a central role in the U.S. mortgage market. Although long-term reform remains elusive despite the introduction of several housing finance reform bills in both the House and Senate, MBA will continue to take a leading role in working with lawmakers to promote workable reform alternatives in 2016 and beyond.

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 Treasury Department's GSE rescue package, making it increasingly likely that they will require further taxpayer support. Finally, the GSEs are unable to simply or easily emerge from conservatorship via a recapitalization, as such a move would not carry an explicit government guarantee of their mortgage-backed securities (MBS), absent an act of Congress.

MBA strongly believes that an explicit federal guarantee is a critical component of any GSE reform proposal. In such a system, taxpayers should be protected through deep credit enhancements that put private capital in front of the government guarantee. To the greatest extent possible, the existing GSE infrastructure of people, processes and technology needs to be retained in the new system to ensure seamless connectivity between the primary and secondary market. Finally, guarantee fees (G-Fees) paid in exchange for this guarantee must be fair and transparent and should be used to fund a federal insurance fund (like the Federal Deposit Insurance Corporation) in the event of catastrophic losses.

While Congress is not expected to take up the issue of GSE reform again until 2017, there are significant steps that can be taken in 2016 and beyond to improve market dynamics, reduce taxpayer risk, and ease the way for final reform, including:

- Completion of the Common Securitization Platform, providing an infrastructure for standardizing MBS issuance parameters;
- Development of a single, fungible GSE security (expected by 2018);
- Development of more transparent risk sharing programs that will allow lenders of all sizes and business models to participate in these programs and benefit from reduced G-fees and Loan-Level Price Adjustments; and
- Completing the final reforms to the GSEs' representation and warranty framework to enhance certainty on the transfer of credit risk and improve processes for resolving disputes.

LEGAL ISSUES AND LITIGATION SUPPORT

MBA often represents the interests of the mortgage industry through litigation, amicus briefs and other proceedings. These cases may be federal or state matters, and areas of focus have ranged from foreclosure practices to various regulatory interpretations. Where appropriate, MBA will continue this important industry support in 2016.

FAIR LENDING AND DISPARATE IMPACT

MBA strongly supports the fair treatment of all consumers seeking a mortgage loan and lender compliance with the Fair Housing Act and the Equal Credit Opportunity Act. In 2015, the U. S. Supreme Court held in Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc., that disparate impact claims may be brought under the Fair Housing Act, but with some important limitations that will be defined and clarified through additional litigation. MBA anticipates that several important cases testing the scope of the Fair Housing Act will emerge in 2016. MBA will continue to take an active role in such litigation by providing support as amicus where appropriate.

ADMINISTRATIVE LAW AND REGULATORY ENFORCEMENT

MBA strongly believes that when a regulatory agency seeks to change a rule or its interpretation of a law it should do so in accordance with the requirements of the Administrative Procedure Act and the basic principles of notice and fairness. In 2015, MBA initiated its active role in PHH Corp et al vs. Consumer Financial Protection Bureau by joining as amicus in support of PHH Corp. In that case, MBA argues that the CFPB changed its interpretation of the Real Estate Settlement Procedures Act (RESPA), branding some common business relationships as impermissible, without providing advance notice of this important change. The District of Columbia Circuit Court of Appeals is scheduled to hear arguments in April, with a decision expected later in 2016. The Court's decision is likely to have an impact on the interpretation of RESPA and possibly impact how the CFPB operates in the future. MBA will continue to monitor enforcement actions and will participate in future amicus where needed.

STATE ISSUES

PRESERVATION OF 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 extinguish the first mortgage on a property. These actions have set an alarming precedent and are creating substantial risks to servicers and mortgage investors, as other courts may follow this interpretation of their own super lien statutes. Additionally, some state policymakers are seeking to further chip away at the "first in time, first in right" principle.

Similar concerns are created by the growth of Property Assessed Clean Energy (PACE) loans. While MBA supports green energy home improvements, borrower repayment of PACE loans in conjunction with their property taxes places these private loans in a de facto senior status with this public tax lien, improperly granting PACE loans super lien priority over the first mortgage.

MBA vehemently supports the concept of "first in time, first in right" — that any private lien attached to a property after the origination of the first mortgage should not be able to move ahead of that mortgage in recouping funds from the property's sale at foreclosure. Thus, MBA believes the granting of super liens to common interest communities (e.g., homeowners associations) or through PACE-type programs runs contrary to the very heart and nature of secured lending — undermining the value of the collateral securing a loan and leading to costs that will ultimately be borne by consumers. In 2016, MBA will continue seeking to reverse this lien priority policy trend by working with members, state associations and other stakeholders to reform existing state laws and defeat harmful state legislative proposals. Simultaneously, MBA will continue working with members to mitigate existing risks and guard against all state super lien dangers.

VACANT AND ABANDONED PROPERTY SOLUTIONS

While home sales, new construction, and property values have all been gradually improving from the recent housing market correction, full recovery for the residential real estate market remains an ongoing process. One area in particular that continues to plague certain communities is the backlog of vacant and abandoned properties. These properties harm communities by devaluing neighboring properties and increasing administrative and maintenance costs for local governments and mortgage servicers. It is also difficult for neighborhoods or communities that have suffered significantly to recover, as the "zombie" status of these properties attracts criminal activity and prevents new ownership opportunities.

MBA has sought to address this important issue through the development of a series of Principles that — if implemented — would responsibly expedite the foreclosure process for vacant and abandoned properties in both judicial and non-judicial state foreclosure jurisdictions. These Principles provide policymakers with sound recommendations and model language for developing state legislation to mitigate the impact of these properties on local communities. Throughout 2015, these principles were co-branded by numerous state associations and utilized in initial dialogue with state policymakers nationwide. In 2016, MBA and its state association partners will advocate for passage of viable legislative solutions to the vacant and abandoned property issue throughout the country.

STREAMLINING MLO STATE LICENSING REQUIREMENTS

MBA will continue to lead the effort to harmonize state licensing, examination, and reporting requirements amongst the 59 state regulators where possible. One example of effective harmonization has been implementation of the Uniform State Test (UST) — adoption of the UST eliminates the need for a state-specific MLO test, in addition to a national test. As a result of MBA's advocacy, the UST has now been implemented by 51 regulators representing 44 states, as well as Puerto Rico, the Virgin Islands, Guam, and the District of Columbia. MBA will continue to drive for nationwide adoption of the UST. MBA will also continue its work with the Conference of State Bank Supervisors to harmonize state mortgage call report requirements and to make the multistate mortgage exam process more efficient and effective. In 2016, MBA will continue to work with members, state associations and interested stakeholders to continue improving and streamlining the state licensing system.

MINIMUM STANDARDS FOR APPRAISAL MANAGEMENT COMPANIES

Dodd-Frank required the creation of minimum standards for state registration and supervision of appraisal management companies (AMCs). A corresponding interagency rule issued in 2015 outlined certain minimum requirements each state must meet, which include a variety of registry requirements and oversight controls. While the AMC rule does not compel states to establish such minimum standards, if states do not adopt an appropriate regulatory structure by August 10, 2018, certain non-federally regulated AMCs will be barred from providing appraisal management services for federally related transactions. Working with state associations and industry partners, in 2016 MBA will advocate for states that have not yet created an "appraiser certifying and licensing agency" for non-federally regulated AMCs within their state to pass such legislation prior to the end of the aforementioned 36-month window. MBA will also advocate that states which currently have some form of AMC licensing regime update their scheme to fully comport with the new minimum standards.

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 todays' policy environment, new issues and shifts in priorities are expected during 2016. MBA will continue to work with its membership to address the evolving policy challenges facing our industry.