

# 2009-2010 Year in Review

## **Successful Day on the Hill: February 24, 2010**

We had a very successful day at the state Capitol on Wednesday, February 24, 2010. Approximately 50 VMLA members spent a well-invested three hours meeting with legislators and attending the opening of the House of Delegates. Special thanks to Delegate Bob Purkey of Virginia Beach for introducing our group while in the House Chambers. This year was a good year for the VMLA, as our voice was heard and accordingly, our legislative agenda for the year was a success.

HB547(Marshall)/SB240(Watkins) regarding the SAFE Act looks to be headed for passage thanks to the diligent work of Delegate Danny Marshall and Senator John Watkins. We expect this bill to pass without objection.

VMLA opposed two pieces of legislation:

\* HB470(Watts)/SB411(Vogel); this legislation would have allowed property owner's/condo associations to conduct foreclosure sales for unpaid assessments subject to the lien of first trust.

\* HB1152(Scott, J.); placed a burden of disclosure on mortgage lenders when involved in the purchase of "affordable dwelling units."

We believe that both of these bills will be defeated or stricken.

It is quite scary to know that bills that affect our job and industry can be put into action without much knowledge about how they will truly affect an industry. I think that has been abundantly clear with several pieces of legislation that have been handed to us over the last year, and exactly the reason why our lobbyists are important. We need consistent input to our state legislators about what is going on in our industry, and one particular Delegate said it best, "What happens in Richmond affects your job every day." The State always has the ability to add to what the national laws are, which is exactly the reason why we need to continue the fight at the state level.

In fact, there was a bill that we helped to oppose and get killed; that was going to allow condo associations to foreclose for delinquent condo dues. They were also trying to impose additional Virginia requirements that would have made it harder for Virginia loans to be sold on the secondary market. These are hideous bills and luckily we have a great lobbyist up there that continues to be proactive to protect our interests.

Please consider giving a donation to VAMPAC. We still have a lot of bills to fight, and we are hoping to raise enough money this year to support the national chapters of MBA. They are actively fighting for us in DC and desperately need our help. RESPA has already been put in place; they are after your pay and pockets next! Please fight with me so that does not happen. Federal Residential Update

## **Financial Services Regulatory Reform**

President Obama and Congress made reforming the financial services industry, including the mortgage market, a top priority in 2009. This broadened the scope of legislative and regulatory change that had previously been focused solely on the mortgage industry. As described earlier, MBA has testified many times this year because of the role MBA plays in representing the industry in advocacy, research and education.

To help lead the discussion in 2009, MBA released its own proposed bill on financial system regulatory reform in March. The Mortgage Improvement and Regulation Act (MIRA), proposed new uniform national lending standards to replace the current patchwork of state and federal lending laws. MIRA also

proposed the establishment of a new federal regulator to implement and enforce these standards. The new regulator would be responsible for implementing and updating the new mortgage lending and servicing standards as well as regulating independent mortgage bankers and mortgage brokers in partnership with state regulators. Also, as part of MIRA, the Department of Housing and Urban Development (HUD) and the Federal Reserve would be required to work together in consultation with the new regulator to develop greatly simplified consumer disclosure forms, including combining Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) disclosures to help consumers better navigate the mortgage process. Additionally, MIRA would increase resources for investigating and prosecuting mortgage fraud and establish a national financial literacy and counseling program. As part of that program, MBA suggested there should be pre-purchase counseling required on certain mortgage products, primarily for first-time homebuyers.

Some of these elements were addressed in the House-passed bill H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, which was designed to reform the mortgage industry to provide new consumer protections. Unfortunately, H.R. 1728 did not provide a uniform national standard to preempt the patchwork of state and local laws. It also would require lenders to retain five percent of the risk of all loans they originate on their books.

Most significantly, the House passed H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, which has been described as the most sweeping overhaul of the nation's financial regulatory system since the Great Depression. H.R. 4173 is a combination of several pieces of legislation that were individually considered by the Financial Services Committee this fall, including provisions to create a Consumer Financial Protection Agency (CFPA), regulate financial derivatives and create new government powers to oversee large firms considered to pose "systemic risk." The bill also includes provisions from H.R. 1728 and language that sets aside \$3 billion in government funding to assist unemployed mortgage borrowers. While the House has now completed its work on this bill, the Senate is still developing its take on financial services regulatory reform. Even though Senator Chris Dodd (D-CT), the chairman of the Senate Banking Committee, released an initial draft of this legislation last month, the Senate Banking Committee is not expected to even begin its markup of regulatory reform legislation (which likely will differ from the original Dodd bill) until early next year, meaning that action by the full Senate will not come until sometime well into 2010.

As noted, H.R. 4173, among other things, would create a CFPA to consolidate the consumer focused regulations for the financial services industry into one agency. MBA is concerned that such an agency would have competing interests with the financial services regulators and would cause more difficulty for lenders to remain in compliance. The proposal would also limit lenders' ability to offer some products, and provide labels, such as "plain vanilla" products like 30-year fixed-rate mortgages. In September, Treasury Secretary Geithner agreed with MBA and testified that such labels "will lead to less competition and choice." House Financial Services Chairman Barney Frank (D-MA) has since indicated that it would not require the plain vanilla label and would seek to find a conflict resolution mechanism between the CFPA and the federal banking regulators, and it was not included in the House-passed H.R. 4173.

MBA will continue to advocate for a uniform national standard and a single regulator for mortgage bankers as well as to ensure that lawmakers understand that the risk retention requirements in the House bill will create new burdens and restrict access to credit.

### **MBA Releases Proposed Structure for the Secondary Mortgage Market**

In another effort to frame a future policy debate, on September 2, 2009, MBA released a new set of recommendations for policy makers on a proposed framework for a refined government role in the secondary mortgage market designed to ensure liquidity for mortgages without presenting unnecessary risk to the taxpayer. The paper, Recommendations for the Future Government Role in the Core

Secondary Mortgage Market , is the result of work by MBA's Council on Ensuring Mortgage Liquidity. The centerpiece of MBA's recommendation is the creation of a new line of mortgage-backed securities (MBS). Each security would have two components: 1) a loan-level guarantee provided by a privately-owned, government-chartered and regulated mortgage credit-guarantor entity (MCGE); and 2) a security-level, federal government-guaranteed wrap. The wrap would be an explicit government guarantee focused on the credit risk of these mortgage securities, similar to that on a Ginnie Mae security. Fannie Mae's and Freddie Mac's infrastructure, including their technology, human capital, standard documents and relationships, should be used as the foundation for one or more MCGE.

The proposal allows for a private label market because the MCGEs would support only products that are deemed "core" mortgage products with well-understood, well-documented risk characteristics. New products would be proposed by the MCGEs, recommended by the government guarantor and would require approval from the regulator before being included as a core product.

### **Congress Extends Higher Loan Limits for Fannie, Freddie, FHA**

This year, MBA urged Congress to extend the higher loan limits for Fannie Mae, Freddie Mac, and the FHA. Those limits were scheduled to expire on December 31, 2009, and when an appropriations bill that would extend them stalled in Congress for months over budget issues, lenders were forced to stop locking in interest rates beyond 60 days for loans over \$625,500. In urging action, MBA made clear the uncertainty surrounding the renewal of the loan limits was forcing lenders to stop underwriting certain higher value mortgages.

Congress responded to industry and the President by taking the unusual step of adding the legislation to the Continuing Resolution (CR) that had to be enacted in order to avoid a federal government shutdown in late October, and the President signed this important legislation extending the current loan limits one year, until the end of 2010.

### **MBA Defeats Bankruptcy "Cram Down"**

On several occasions this year, lawmakers lashed out against the industry in attempting to give bankruptcy judges the unilateral power to alter the terms of mortgage contracts for homeowners in bankruptcy to reduce, or "cram down," the amount of principal owed, as well as change the interest rate or other terms of the loan. Every time, MBA made clear that bankruptcy cram down is harmful to consumers overall and that it benefits a small minority at the expense of the vast majority of future home buyers and homeowners. MBA also made clear that cram down would make it harder and more expensive for all Americans to get mortgages. It would be particularly damaging in those parts of the country that are suffering the biggest drops in home prices. Cram down would also impede the current efforts to restore confidence and liquidity to the capital markets.

Even where supporters of cram down were able to move legislation forward, MBA was able to secure key changes that would narrow its reach and limit the disruption it could cause in the marketplace. Specifically, during March 2009, the House passed H.R. 1106, the House version of Helping Families Save Their Homes Act after the Speaker of the House suspended debate on the bill and instructed its sponsors to make further changes that would protect lenders and homeowners from the negative consequences of bankruptcy. As passed, the bill, which received no action in the Senate this year, would:

- \* Apply to all loans with special conditions for loans with existing claims;
- \* Allow lenders to share in any appreciation in property value if the home is resold during the first five years after a judicial modification;
- \* Allow FHA, VA and RHS to pay all or part of any claims on loans that are modified;
- \* Require borrowers to contact their servicer and request a loan modification at least 30 days prior to filing for bankruptcy; and

\* Require judges to use established FHA appraisal guidelines in determining the fair market value of the property and to deny judicial modifications to homeowners who can afford to make their payments and are simply "under water."

In April, the Senate defeated a cram down measure offered by Senator Richard Durbin (D-IL). The amendment was offered to S. 896, the Helping Families Save Their Homes Act, a larger housing bill that the Senate ultimately passed. MBA worked vigorously on this issue and the measure came up 15 votes short of adoption. This was a significant victory for the industry.

In December, the House considered an amendment that would have added similar bankruptcy cram down language to H.R. 4173. Thanks to MBA's persistent opposition and members of the Mortgage Action Alliance writing to House members to oppose the amendment, it failed by 188 for the amendment and 241 against. This was the first time cram down was defeated in the House of Representatives and is an encouraging sign as we look towards 2010.

### **President Signs S. 896, the Helping Families Save Their Homes Act**

In May, the President signed into law S. 896, the Helping Families Save Their Homes Act (not to be confused with H.R. 1106, a bill by the same title). The legislation contained a number of MBA-supported provisions, including a limited safe harbor for mortgage servicers that modify residential mortgages consistent with the administration's Homeowner Affordability and Stability Plan (HASP) programs or refinance a borrower into a HOPE for Homeowners (H4H) loan. The new law also provides FHA with enhanced authority to remove lenders that violate its rules, and authorizes HUD to impose penalties on entities that misuse FHA or Ginnie Mae designations.

A separate section of S. 896 increases the borrowing authority for the Federal Deposit Insurance Corporation and the National Credit Union Administration, and extends through 2013 the higher level of FDIC deposit insurance (\$250,000) for banks, thrifts and credit unions.

Of vital importance to MBA and its members, the final version of S. 896 did not include the harmful bankruptcy cram down provisions that were included in an earlier version of the bill.

### **MBA-Supported FHA Modernization Requests Advance**

Earlier this month, the President signed an omnibus spending measure encompassing six of the 12 annual fiscal year 2010 spending bills. It provided the FHA with flexibility to use its funds to pay for improvements to technology, and MBA continues to advocate for even greater resources for FHA to help it keep pace in the modern mortgage market. The omnibus spending bill also included resources for the Department of Justice to combat all types of financial fraud. Separately, earlier this year the House passed H.R. 3146, the 21st Century FHA Housing Act, which would provide FHA with even more resources to hire additional staff, further upgrade its technology, and review loan performance to mitigate risk. MBA believes that providing more resources for staffing and technology at FHA will allow that agency to continue to play its critical role in helping borrowers who may not have sterling credit or are unable to make a large down payment. For several years, MBA has asserted that FHA needs to be able to hire and retain top quality staff and utilize modern technology if it is going to meet the growing demand for its products and adequately manage risks to its programs.

### **MBA-Supported Extension of Homebuyer Tax Credit Enacted**

In early November, Congress approved and the President signed, H.R. 3548, the Unemployment Compensation Extension Act, which contains provisions expanding the homebuyer tax credit. The legislation extends the \$8,000 first-time homebuyer tax credit through April 30, 2010, and allows for a \$6,500 tax credit for "move-up" buyers who have lived in their current residence for five or more years. The bill also raises the income eligibility amounts to \$125,000 and \$225,000 for single and joint filers

respectively. Homebuyers who have entered into a binding contract before May 1, 2010, will have 60 days (until June 30th) to complete their transaction and still qualify for the credit. In addition, the legislation waives the recapture provision for members of the armed forces who are called on extended duty. Members of the military and uniformed services, who are out of the country for at least 90 days, will also be eligible to use the tax credit upon their return through April 30, 2011.

### **Home Affordable Modification Program - Over Half Million Trial Modifications Achieved**

In February, the Administration announced the Making Home Affordable Program (MHA), a federal program providing financial incentives and program parameters for servicers who offer modifications and other foreclosure avoidance remedies to eligible borrowers. As of the end of November 2009, over 728,000 trial loan modifications have been started by mortgage servicers under MHA. The program has been enhanced throughout the year and incorporated additional components including the Home Price Decline Protection Incentives, the Second Lien Modification Program, and the Home Affordable Foreclosure Alternatives (short sale and deed in lieu program). MBA provided input into these programs and continues to work with the administration on additional enhancements. In addition, servicers continue to offer large volumes of non-MHA modifications and other loan workouts to help struggling borrowers avoid foreclosure.

### **Warehouse Lending**

Throughout 2009, MBA worked diligently to help provide government assistance to facilitate warehouse lines of credit for independent, non-depository mortgage bankers. Understanding that there is no solution for all lenders and mortgage products, MBA developed proposed solutions for single-family conforming transactions, including a participation agreement, single-family government guaranteed business through Ginnie Mae, and a longer term solution to provide greater flexibility in risk-based capital requirements for warehouse banks. MBA also engaged with the agencies and regulators on providing relief for multifamily lenders needing warehouse lines for FHA-insured loans as well as loans to be purchased by the GSEs.

MBA sent five letters to the administration on proposed solutions, held 13 meetings with government or agency officials, which often included MBA members, and received support from Congress in H.R. 3146, which included a sense of Congress resolution encouraging the administration to provide relief for the warehouse crisis. MBA is continuing to monitor the warehouse lending situation and is pleased by the recent expansion of some existing programs and new entrants to the field. MBA will also continue to advocate for changes to the risk-based capital rules for warehouse lenders, which MBA believes is part of a long-term solution for warehouse lending and non-depository mortgage bankers.

### **RESPA Reform and RESPA-TILA Coordination**

Throughout this year, MBA has been addressing the changes from HUD regarding RESPA due to take effect on January 1, 2010. The changes, which are significant, include a new Good Faith Estimate (GFE) and HUD-1 Settlement Statement (HUD-1), as well as other requirements. While the industry was not successful in obtaining a delay in the implementation, MBA did succeed in obtaining from HUD a period of enforcement leniency by the Mortgage Review Board in order to allow mortgage lenders acting in good faith time to comply with the new requirements. To further assist its members, MBA worked with HUD to provide answers to key questions asked by the industry, and MBA also hosted one-day workshops on the RESPA changes with HUD open to all industry participants in various locations across the country.

The challenge of implementing the new RESPA reform requirements has been compounded by the Federal Reserve Board's efforts in 2008 to further regulate under the Home Ownership and Equity Protection Act (HOEPA) and now more so in 2009 when the Board is proposing amendments to the regulation implementing TILA to change the consumer disclosures at application, closing and during the life of a loan.

Throughout 2009, MBA encouraged HUD and the Federal Reserve Board (Board) to coordinate their efforts to reform their consumer disclosures. MBA believes consumers will benefit from the agencies' disclosures having a synergetic relationship, which does not presently exist. MBA was successful in obtaining support from the House of Representatives through passage of an amendment to H.R. 1728 that would require HUD to withdraw its RESPA rule and work jointly with the Federal Reserve to issue new, harmonized consumer disclosures. MBA will continue to advocate for coordination between the agencies in 2010.

### **Originator Compensation and Amendments to Regulation Z**

MBA submitted comments on December 21st to the Federal Reserve Board (Board) on its proposed amendments to Regulation Z, which implements TILA, and included proposed changes to consumer disclosures about mortgage products and prohibiting loan originator compensation based on rate and terms. MBA's comments urged the Board to coordinate efforts with HUD, especially in regards to the timing and information required by both TILA and RESPA, and recommended specific improvements to the new proposed consumer disclosures to be delivered to consumers at application, three days after application, three days prior to closing, and after closing through the life of the loan.

In regards to the Board's proposal to prohibit loan officer compensation based on rate and terms, MBA also requested that the Board limit the restrictions on compensation based on rate and terms to higher-priced loans and high-cost loans under the Home Ownership and Equity Protection Act (HOEPA) and loans with risky features, excluding products eligible for purchase by Fannie Mae and Freddie Mac, and government insured or guaranteed loans and prime jumbo mortgages. However, MBA also encouraged the Board that if it chooses not to limit the restriction to certain loan types with loan-type exceptions, then the Board must permit originator compensation based on rate and terms to pay loan officers less under some circumstances with certain restrictions to meet competitive offer, volume based compensation, payment based on loan amount, payments from the secondary markets, loan officer managers and supervisors and other exceptions that MBA believes are reasonable.

MBA expects the Board to publish a final rule in mid-2010.

### **Mortgage Fraud Prevention Funding**

This year, the federal government has emphasized the need for additional resources to address loss reduction and prevention in financial fraud including mortgage fraud, as it has not in decades. President Obama's budget proposal to Congress requested \$37 million of new funding for combating both abusive and fraudulent mortgage practices. President Obama also signed into law the Fraud Enforcement and Recovery Act (FERA), which authorized funding for all federal financial fraud law enforcement agencies to investigate mortgage fraud. However, much of these funds that have been promised in authorizations have not yet been fully appropriated, including money promised in 2008 through the Homeownership and Economic Recovery Act of 2008 (HERA). Regardless, MBA is pleased that the administration has made mortgage fraud a greater priority. This prioritization by the administration has also allowed the Federal Bureau of Investigation to assign more investigators to address mortgage fraud issues. MBA will continue to advocate for the mortgage fraud investigation authorizations to be fully appropriated in addition to the funds already provided in the omnibus spending bill.

### **MBA Succeeds in Correcting Fair Value and Accounting Rules**

During 2009, MBA spent a great deal of time encouraging the Financial Accounting Standards Board (FASB) to fix two fair value related accounting problems. MBA contends that fair value measures in an inactive market have resulted in an adverse, pro-cyclical impact on financial markets, including the market for RMBS and CMBS. This results from market participants marking their fair value assets down to the "fire sale" prices of distressed sales. Along the same line, the other-than-temporary impairment

(OTTI) rules require a company to recognize in income a full mark-to-market loss based upon the discovery of the first dollar of credit impairment. This too has had a pro-cyclical impact on many financial institutions. During the year MBA submitted close to a dozen comment letters or joint comment letters to FASB, International Accounting Standards Board (IASB), and the Securities and Exchange Commission (SEC) on fair value exposure drafts and studies. MBA representatives met with the Chief Accountant of the SEC three times, FASB board members and staff, Treasury Department representatives, and others in efforts to get the accounting rules fixed. In addition, MBA provided written testimony to the House Financial Services Committee in a hearing on "Mark-to-Market Accounting: Practices and Implications" on March 12, 2009. As a result of MBA's efforts and the efforts of other trade groups, FASB corrected the OTTI rules during the second quarter of 2009. FASB also issued additional guidance several times during 2009 on measuring fair value in an inactive market.

### **MBA Fights to Mitigate Damage of FAS 166 and 167**

In June 2009, FASB issued Statement of Accounting Standards No. 166, Accounting for Transfers of Financial Assets (FAS 166), and Statement of Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R) (FAS 167). FAS 166 eliminated the previous designation in FAS 140 of a Qualified Special Purpose Entity (QSPE), which exempted most MBS from being included in the issuer's or servicer's consolidated financial statements. FAS 167 required the issuer or servicer of an MBS to consolidate the MBS' assets and liabilities if it has the most power to direct those activities that impact the economic performance of an MBS and has a significant variable interest in the MBS (requirement to absorb losses or realize residual gains of an MBS). This will result in hundreds of billions of dollars in MBS, previously off-balance sheet, to come back on the balance sheets of issuers or servicers. MBA fought hard against these accounting pronouncements in a series of comment letters on exposure drafts issued by FASB and the IASB, in testimony in a FASB roundtable discussion, and a meeting with IASB project staff. Now that FAS 166 and 167 are a reality, MBA is working with its members to try to mitigate the problems. MBA has requested regulatory capital relief from bank regulators and has organized a group to work through various implementation issues. MBA continues to try to impact the IASB in its deliberations on new accounting standards for de-recognition and consolidation.

### **MBA Pushes Hard on FASB/IASB Financial Instruments Accounting Convergence Project**

FASB and IASB have embarked on a joint project to converge all accounting standards related to financial instruments. These include classification, measurement, impairment, hedging, de-recognition, and consolidation. So far, FASB and IASB are working on their own versions of these standards with the goal of converging the standards by the end of 2011. During 2009, MBA commented on each of the respective exposure drafts. In addition, MBA is working through a coalition of nine trade associations in joint letters, comment letters and meetings to try to influence the ultimate converged standard. Similarly, MBA is pushing hard for its members to only have to convert once (to a converged standard) not twice to a new FASB standard and then to a converged standard.

### **MBA Works on Issues Related to Accounting for Loan Modifications**

MBA drafted an initial white paper to summarize the accounting rules for loan modifications and troubled debt restructurings. In late 2008, MBA co-issued this white paper with the American Institute of Certified Public Accountants' (AICPA) Center for Audit Quality (CAQ). Additional accounting questions arose during the first quarter of 2009 when Treasury announced its loan modification program, HAMP. This year, on behalf of its members, MBA took issues related to the impact on QSPE status of loan modifications and how to account for various fees under HAMP to the SEC and the FASB. SEC and FASB did not take up the issues. The CAQ has since issued guidance favorable to MBA's members on the QSPE issues, and MBA is currently working with the CAQ on a joint white paper on the accounting for various HAMP fees. In addition to accounting issues, MBA identified several potential tax issues associated with HAMP. MBA sent a letter to the Internal Revenue Service (IRS) and the Treasury

Department and has had several conversations with senior tax policy representatives of the IRS and Treasury. Recently, MBA sent a letter to a senior tax policy representative of Treasury in an attempt to resolve the remaining issue. The issue relates to phantom income that may be reportable by investors in HAMP-modified loans.

### **Risk-based Capital Issues for Mortgage Products**

MBA continues to monitor the way mortgages and mortgage-backed securities are treated under bank regulatory capital rules. MBA issued comment letters during the year on various proposed risk-based capital (RBC) rules. It commented in favor of a rule that allows loans modified under HAMP to retain pre-modification RBC status after modification. Bank regulators recently made this rule change permanent. MBA is also advocating to bank regulators that MBS assets that must be consolidated under FAS 167 be exempt from RBC and excluded from regulatory leverage ratios.

### **MBA Releases Model Whole Loan Sale and Servicing Agreement**

During October 2009, MBA's Residential Board of Governors (RESBOG) adopted, as an MBA supported best practice, a model sale and servicing agreement, which is intended to become the standard form for industry participants to use voluntarily for whole loan purchases and sales made with an eye toward potential securitization. The model agreement was part of an MBA initiative to help increase liquidity and efficiency in the non-conforming residential mortgage market. The Agreement provides standard formatting and text for standard practices, reducing the time, effort and cost of legal and due diligence reviews. The Agreement also includes standard formats for transaction-specific terms. A working group of MBA's Secondary and Capital Markets Committee developed the model agreement by consolidating elements of existing whole loan servicing agreements. MBA released a draft in July for public comment in order to solicit feedback from all interested stakeholders. The current model agreement incorporated that input and was designed to increase transparency and efficiency in the private label mortgage backed security market.

### **MBA Prepares Policy Reports on HMDA and also Federal Home Loan Banks**

MBA released two important policy reports during 2009. During May, MBA released its Home Mortgage Disclosure Act handbook, which provides an overview of HMDA and offers lenders a guide to managing the regulatory, litigation and reputational risks associated with data reported under HMDA. The handbook also provides information which detail HMDA and related fair housing laws, and it illustrates the manner in which HMDA data can be used in enforcement actions or litigation involving discrimination in loan pricing and underwriting.

In April, MBA released a new guide for MBA members to access the Federal Home Loan Bank System. The guide, *Federal Home Loan Bank Membership Eligibility: A Guide for Mortgage Bankers*, made its debut at the MBA National Secondary Market Conference & Expo held in Chicago. The guide provides practical information for members not currently participating in the Federal Home Loan Bank programs about the system, its programs, membership eligibility criteria, stock purchase requirements and the advantages of membership. This guide serves as an important tool to not only educate MBA member companies on how to utilize the system, but also to help bolster the programs.  
Commercial and Multi-family Update

### **Multifamily Loan Limits Increase Passes House**

On September 15, the House of Representatives passed H.R. 3527, the FHA Multifamily Loan Limit Adjustment Act of 2009. The bill, with which MBA worked closely with its sponsors, provides for an increase in the elevator loan limits for all FHA multifamily insurance programs, setting the elevator limits at 50 percent above the non-elevator loan limits. The bill also provides authority for the Secretary of HUD to establish extremely high-cost areas other than Alaska, Guam, Hawaii and the Virgin Islands and to use the high cost factor available for those special limit areas. These changes would allow FHA insurance to

be used in high-cost areas where elevator construction is prevalent and should generate significant economic activity and construction/rehabilitation of affordable rental housing in these areas.  
Commercial Tax and Insurance Changes

### **House Approves Net Operating Loss Provision**

In early November, H.R. 3548 was signed into law, and it contained an MBA-supported provision that provides a five-year carryback period for Net Operating Losses (NOL) for all businesses (except TARP recipients). Specifically, the legislation gives all companies the option to carry back 2008 or 2009 losses for up to five years as an offset to prior pre-tax income. Any refund of taxes for the fifth year would be subject to a 50 percent haircut, but otherwise the provision has no other restrictions (except that a company that has taken TARP money would be ineligible, even if the money has been repaid). A full five-year NOL carryback will provide substantial assistance for the economic recovery.

### **IRS Issues Extensive Guidance for REMICs on CMBS**

During September 2009, the IRS issued three pieces of guidance for real estate mortgage investment conduits (REMICs) relating to commercial mortgage-backed securities (CMBS). MBA is working closely with members that are involved in the CMBS industry to evaluate the potential impact of these changes.

The IRS released Revenue Procedure 2009-45, which expands the circumstances in which modifications of commercial loans can be made without the IRS challenging the status of REMICs or investment trusts that the loans have been contributed.

In response to Notice 2007-17, IRS took final action to expand the types of permitted modifications allowed to be made to commercial loans held by a REMIC to include changes in collateral, guarantees, and credit enhancement of an obligation and changes to the recourse nature of an obligation. The final regulations expand the list of loan modifications that are not considered "significant modifications" of an obligation.

Lastly, the IRS and Treasury issued Notice 2009-79 and are requesting comments on what additional guidance, if any, is needed regarding modifications of commercial mortgage loans held by investment trusts. MBA has advocated for two pieces that have been accepted by the IRS: that an appraisal should not be the exclusive means of meeting the "principally secured" test; and that changes from nonrecourse to recourse should be included.

Also of note, during September 2009, the House of Representatives passed H.R. 2571, the Nonadmitted and Reinsurance Reform Act of 2009, a bill for which MBA advocated a way to provide additional insurance options for borrowers. The purpose of the legislation is to streamline the regulation of nonadmitted insurance and reinsurance. Among other things, the bill would prohibit any state other than the home state of an insured party from requiring a premium tax payment for nonadmitted insurance and allow states to establish procedures to allocate among themselves the premium taxes paid to an insured party's home state.

### **Commercial Participation in Legacy Loan Program**

During April, MBA responded to the Federal Deposit Insurance Corporation's (FDIC) Legacy Loan Program (LLP) - Program Description and Request for Comments. In its letter, MBA commended the FDIC for requesting banking industry input prior to LLP implementation. MBA strongly supported the position of FDIC Chairman Sheila Bair that the initial rollout of the program will include both single family and commercial real estate mortgages. Given the distinct but severe challenges faced by both of these real estate sectors, including them in the initial launch of the LLP is positively impacting the financial position of many banks and helping to facilitate the return of liquidity to the capital markets. In

its letter, MBA also called attention to issues of supervisory agency approval authority, data confidentiality, and additional servicing issues.

### **Enhancements to FHA Multifamily Insurance Programs**

Working with HUD, MBA was able to secure needed modifications to FHA multifamily programs to allow their expanded use in the current market environment when there are few financing options for multifamily properties-particularly affordable housing developments. HUD issued guidance allowing FHA insurance to help properties under construction that had lost their financing commitments (e.g., waiver of the three-year rule and early start prohibitions), facilitating the use of master lease structures, liberalizing environmental guidelines for remediation of site contamination, and streamlining processing of applications for properties assisted by tax credits. HUD also used the LEAN process to streamline processing of applications for insurance of loans on healthcare facilities, providing a viable financing option that is not available through other sources.

### **State Advocacy Update**

MBA's State Advocacy team worked diligently during 2009 to ensure the mortgage industry's voice was heard clearly by state legislators and regulators throughout the country. Through direct and grassroots advocacy with lawmakers, coordination with state associations, and outreach to third party groups, MBA again provided leadership in the states during a dynamic and turbulent legislative year.

Legislation affecting the mortgage lending industry moved rapidly at the state level in 2009. MBA focused its energy on the following major issues in an effort to educate legislators and the media on industry positions:

### **SAFE Act and Loan Originator Licensing**

This year, 49 states enacted laws related to the licensing of mortgage loan originators as mandated by the federal SAFE Act. MBA advocated against expanding the scope of state licensing schemes to include servicers and loss mitigation specialists. MBA will continue to focus on implementation issues in 2010, as states propose rules governing licensees covered by the SAFE Act.

### **Vacant Property Registration/MERS Alternative**

MBA convened a task force to address the concerns many cities raised about the maintenance of properties left vacant or abandoned following foreclosure. While several cities proposed increasing fines for code violations, others sought to create costly vacant property registries. The MBA task force, created a solution whereby information about vacant properties could be easily accessed by code enforcement officials through MERS. The "MERS Alternative" has proven to be a huge success in providing a bridge of communication between city officials and mortgage servicers throughout the country, and it will continue to be a valued tool throughout 2010 and beyond.

### **Foreclosure Moratorium**

MBA again led the fight in the states against foreclosure moratorium proposals in the statehouses throughout the country. MBA partnered with the MBA of Florida to defeat every adverse bill introduced in that state. In Ohio and Massachusetts, MBA has held back legislation imposing a moratorium on foreclosures.

### **Reverse Mortgage**

In 2009, both Minnesota and California introduced bills regulating reverse mortgages that included long rescission periods and problematic "suitability" requirements. MBA engaged and secured the Minnesota governor's veto on that state's reverse mortgage bill. Meanwhile, the legislation in California was amended to conform to MBA's Reverse Mortgage model bill. Governor Schwarzenegger signed that bill into law on October 11th, 2009.