



TO: Board of Directors; RESBOG; COMBOG; MBA Legion;
Multifamily Steering Committee; Washington Reps; MBA
Residential Committees; State MBA Leaders
FROM: Steve O'Connor, MBA SVP Government Affairs
DATE: March 12, 2010
SUBJECT: MBA Advocacy Update

Capitol Hill and the financial community are anticipating the long-awaited re-release of Senate Banking Committee Chairman Christopher Dodd's (D-CT) financial services regulatory reform proposal, which he will unveil on Monday, with a committee mark-up scheduled to begin the following week (the week of March 22nd). In the House, MBA President and CEO John Courson testified on the future of the Federal Housing Administration (FHA) along with FHA Commissioner David Stevens, who discussed the Obama Administration's recently proposed reforms to FHA. Prior to the hearing, Congresswoman Shelley Moore Capito (R-WV) introduced an FHA reform bill modeled on many of the Administration's recommendations.

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Recent MBA Action:

MBA Testifies before House Financial Services Subcommittee on FHA Reform Act; Capito introduces FHA Legislation

On March 11, 2010, MBA President and CEO John Courson testified before the House Financial Services Subcommittee on Housing and Community Opportunity on FHA reform. The purpose of the hearing, which also included testimony from FHA Commissioner David Stevens, was to examine the FHA Reform Action of 2010, a package of legislative changes sought by the Obama administration. In his testimony, Courson pointed out that MBA has always been a proponent for a strong and vibrant FHA, and that MBA has worked with FHA to create public policy that strikes a balance between prudent risk management and providing needed mortgage credit to qualified borrowers. MBA's testimony offered support for many of the regulatory and operational changes recently proposed by HUD, such as increasing the downpayment requirement for borrowers with credit scores below 580, raising the upfront mortgage insurance premium, and enhancing the monitoring of lender performance and compliance with FHA guidelines and standards. MBA also indicated

its support of raising the cap on annual premiums, to be implemented with a corresponding reduction of the upfront premium. MBA's testimony expressed concerns, however, with some of FHA's other recommendations, such as expanding indemnification to include all Direct Endorsement (DE) lenders, the authority to withdraw approval for a lender's nationwide operations on the basis of its performance at a regional branch, and reducing allowable seller concessions.

Also at this hearing, Rep. Shelley Moore Capito (R-WV) announced the introduction of the FHA Safety and Soundness and Taxpayer Protection Act. Rep. Capito stated that her bill builds on legislation proposed by FHA by making the Chief Risk Officer a permanent member of the FHA Commissioner's team, giving the Commissioner the ability to contract out to properly analyze risk, and enhancing the Commissioner's ability to temporarily suspend lenders who have high rates of early defaults. Rep. Capito's legislation also includes a pilot program for risk based pricing.

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Regulatory Reform Update: Dodd to Release New Bill Next Week

On Thursday, March 11, 2010, Senate Banking Committee Chairman Christopher Dodd (D-CT) announced that he would introduce a new regulatory reform bill on Monday without the support of Republican members of the Committee. Over the last several weeks, Chairman Dodd has been immersed in negotiations with Senator Bob Corker (R-TN). As these discussions moved forward, it appeared the two sides were getting very close to a bipartisan agreement until Thursday's announcement. Both Senator Dodd and Senator Corker made statements on Thursday that they intend to continue to negotiate despite next week's release of a partisan bill. Chairman Dodd also indicated that the Committee will hold a formal markup of the regulatory reform bill the week of March 22nd. MBA will continue to work with members of the Banking Committee on issues important to MBA's membership.

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MBA Meets with HUD on Property Preservation Issues

On March 10, 2010, 19 members of MBA's Property Preservation Workgroup met with staff from the Department of Housing and Urban Development (HUD) to address three primary issues surrounding an upcoming Mortgagee Letter implementing the new Management and Marketing (M&M) contract and process: definition of conveyance condition; line item fee schedule, overall property cap, and the process for "over allowable".

First, HUD clarified that it is not redefining the definition of conveyance condition. HUD explained that recent language used would be removed because it inappropriately referenced rules relevant only to conveying occupied properties, which are rare.

Further, HUD clarified that it will publish an allowable fee schedule for property preservation (P&P) work. If a P&P expense is within the allowable amount, permission is not needed to perform the work. If a particular cost exceed the published line-item maximum, however, the servicer can perform the work without pre-approval, but must document why the cost was more (e.g., initial grass cut on

an overgrown property versus maintenance cut). HUD would then determine if the cost was reasonable and reimbursable in full. MBA expressed concern that servicers will perform work that is not reimbursed. MBA seeks additional clarification on how to get permission to exceed these per item allowables rather than risk being denied after incurring the cost.

HUD also reiterated a \$2,500 maximum per property cap. MBA expressed concern that the cap was over inclusive and would require far more pre-approvals on routine work than necessary when one large repair cost exceeds the cap. MBA suggested removing large repairs from the \$2,500 cap to reduce the servicer's and HUD's cost/time of processing approvals for routine maintenance. HUD is now contemplating this change. The Workgroup also suggested that HUD stay engaged in pre-approving large repairs, so it can determine if the repairs improve HUD's return on investment. HUD was receptive to this recommendation.

HUD also agreed it will not require overallowables to be submitted as a supplemental claim. This provides for a more streamlined, consolidated process and saves the servicer and HUD significant money and staffing.

Finally, HUD agreed it would not require the use of the "Property Inspection Report" (HUD 9519-A) at this time. All information required on the form, however, must still be transmitted to HUD. HUD plans to require the form in the future when systems are capable of populating the form.

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MBA Joins Letter on Natural Catastrophe Insurance for Commercial Properties

This week, MBA joined other members of the National Catastrophe Policyholders Coalition (NCPC) on a letter (attached) encouraging the House Financial Services Committee to expand its examination of the availability of natural catastrophe insurance to include the commercial real estate market. On Wednesday, The House Financial Services Subcommittee on Housing and Opportunity and the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a joint hearing to examine the availability of affordable natural catastrophe insurance for residential and multifamily properties. In addition, the NCPC letter urged consideration of a five-year reauthorization and strengthening of the National Flood Insurance Program (NFIP).

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MBA's 2010 National Policy Conference to Feature Remarks from House Majority Whip Clyburn, Treasury Assistant Secretary Barr and FHA Commissioner Stevens

MBA's annual legislative lobbying event on Capitol Hill will feature remarks from a strong line up of Washington insiders; Majority Whip James Clyburn (D-SC), Assistant Treasury Secretary for Financial Institutions Michael Barr and Federal Housing Commissioner David Stevens are among the speakers who will address the participants at the National Policy Conference on April 13, 2010. The conference is

your opportunity to speak directly with policymakers that are deciding the future of the real estate finance industry. It has never been more important for you to attend the conference and be personally involved in the industry's grassroots advocacy efforts. Our success in the weeks and months ahead will only come with strong participation from you. It is crucial that you bring the industry's message to Capitol Hill by attending the National Policy Conference in Washington, DC on April 13-14, 2010.

To register for the National Policy Conference, click [here](#).

Industry Regulatory Developments:

- **FDIC Extends its Safe Harbor for Securitizations**

FDIC Extends its Safe Harbor for Securitizations

On March 12, 2010, the FDIC extended through September 30, 2010, the Safe Harbor Protection related to asset backed securities and participations of failed depository institutions. Under the safe harbor, the FDIC will not repudiate securitizations or participations when a bank is placed into conservatorship or receivership and the securities/participations comply with the existing terms of FDIC regulations at 12 C.F.R. Part 360.6. The existing safe harbor was set to expire on March 31, 2010. According to the FDIC, the extension provides additional time for the agency to develop a more permanent solution.

On June 12, 2009, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 166, Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140 (FAS 166) and Statement of Financial Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R) (FAS 167). FAS 166 and FAS 167 removed the concept of a qualifying special- purpose entity (QSPE) from generally accepted accounting principles (GAAP) and altered the criteria under which special purpose entities, like mortgage-backed securities (MBS) trusts, must be included in the issuer's or servicer's consolidated financial statements. The impact will be for hundreds of billions of dollars of MBS, previously accounted for off-balance sheet, to come onto the balance sheets of banks nationwide. If a securitization is not given sale accounting treatment under these changes to GAAP, it would be treated as a secured financing and could prevent the security holders from recovering monies due to them for up to 90 days in an FDIC receivership. During that time, interest on the securitized debt theoretically could remain unpaid.

The FDIC issued an advance notice of proposed rulemaking in December 2009. The proposed rule would put some very onerous restrictions on what types of loans and securitization structures would qualify for the safe harbor.

MBA issued a comment letter to the FDIC in February 2010 asking that the FDIC withdraw the proposal and work with other bank regulators and the SEC on a rule that would not impede the recovery of the mortgage and mortgage-backed security market.

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Next Week:

March

- 17 House Financial Service Committee Hearing - *Examining the Link between Fed Bank Supervision and Monetary Policy*
- 17 House Financial Services Committee Hearing - *The Administration's Proposal to Revitalize Severely Distressed Public and Assisted Housing: the Choice Neighborhoods Initiative*
- 17 Senate Commerce, Science, and Transportation Committee Hearing - *Financial Services and Products: The Role of the Federal Trade Commission in Protecting Consumers, Part 2*

Upcoming MBA Events:

March

- 15 [FACTA Furnisher Rule LIVE Online Workshop](#)
Format: LIVE Online Workshop
2:00 p.m.-3:30 p.m. EST
Cost: MBA Member: \$175, Nonmember: \$225
- 17 [Leveraging Resources to Maximize Potential Value LIVE Online Workshop](#)
Format: LIVE Online Workshop
2:00 p.m.-3:30 p.m. EST
Cost: MBA Member: \$175, Nonmember: \$225

April

- 13-14 [MBA's National Policy Conference](#)
Washington DC
- 25-28 [MBA's National Technology In Mortgage Banking Conference & Expo](#)
Chicago, Ill.
- 26-28 [MBA's National Fraud Issues Conference](#)
Chicago, Ill.

May

- 2-5 [MBA's Legal Issues and Regulatory Compliance Conference](#)
Coronado, Calif.
- 23-26 [MBA's Commercial/Multifamily Servicing and Technology Conference](#)
New York, NY
- [MBA's National Secondary Market Conference & Expo](#)
New York, NY
- 24-26 [MBA's Government Housing and Loan Production Conference](#)
New York, NY

For more information on all of MBA's activities, including how to register, please visit MBA's [Web site](#).

Top Industry News Headlines This Week

Program Will Pay Homeowners to Sell at a Loss— *New York Times*

In an effort to end the foreclosure crisis, the Obama administration has been trying to keep defaulting owners in their homes. Now it will take a new approach: paying some of them to leave.

Battle Inside Fed Rages Over Bank Regulation — *Wall Street Journal*

The worst of the banking crisis may be long over, but the political contest over the Federal Reserve is entering a crucial phase in which its personality and role will almost certainly be redefined.

Key vacancies give Obama a chance to steer financial reform — *Washington Post*

President Obama has the chance during his first term to appoint leaders for each of the federal agencies that oversee banks, an important opportunity to reshape the government's approach to regulation even as the White House struggles to push structural reforms through the Senate.

Jordan: New Mortgage Protection Plan Misses the Mark - *Roll Call*

The Obama administration has already implemented a program to bring relief to Americans — and much like government-run health care, it's costly and complex. The Home Affordable Modification Program has become yet another example of how massive government programs fail the American people.

So Where's Consumer Protection? – *New York Times*

If six of the biggest banking industry lobbying groups are in perfect lockstep on an issue, do they most likely have the best interests of consumers at heart?

Frank to Banks: Write Down Second Mortgages— *American Banker*

House Financial Services Chairman Barney Frank urged four of the nation's top banks to adopt principal writedowns on second-lien mortgages to allow borrowers to keep their homes.

Can't make your mortgage? Get an emergency loan — *CNNMoney.com*

The jobless may not be getting much help from President Obama's loan modification program, but those in Pennsylvania have another place to turn.

The Shoe That Refuses to Drop: Home Equity Losses - *American Banker*

The mortgage crisis is once again subverting the traditional understanding of consumers' debt-payment priorities.

Shiller: Should We Keep Subsidizing the Housing Market? — *Wall Street Journal*

*Is the government's massive support of homeownership nothing more than a "sacred cow in American society?" asks Robert Shiller in the *New York Times* this weekend.*

FHA considers down payment requirements - *Washington Post*

The Federal Housing Administration has concluded that its loan volume would have dipped by 40 percent in the next fiscal year and that 300,000 first-time home buyers would have been shut out of the housing market if it had raised its down payment

requirements, as critics have pressured it to do, a top housing official plans to tell Congress on Thursday.

Politics, shaky economy create no rush to restructure Fannie and Freddie —
Washington Post

The federal government has spent the past half year seeking to roll back its emergency efforts at propping up the financial markets -- with the notable exception of its involvement in mortgage giants Fannie Mae and Freddie Mac.

New round of foreclosures threatens housing market – *Washington Post*

The housing market is facing swelling ranks of homeowners who are seriously delinquent but have yet to lose their homes, and this is threatening a new wave of foreclosures that could hit just as the real estate market has begun to stabilize.

Administration Said to Settle on No. 2 at Fed — *New York Times*

The Obama administration has settled on Janet L. Yellen, president of the Federal Reserve Bank of San Francisco, to serve as vice chairwoman of the Federal Reserve, a senior administration official said on Thursday night.

FHA Says Higher Down Payments Risks Double-Dip Price Decline — *Wall Street Journal*

Responding to critics, officials of the Federal Housing Administration are set to warn in Congressional testimony Thursday that a double-dip decline in housing prices may result from even a slight increase in minimum down payments on FHA-backed loans.



March 10, 2010

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Chairman Barney Frank
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Congressman Spencer Bachus
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Frank and Ranking Member Bachus:

Thank you for conducting today's hearing on Approaches to Mitigating and Managing Natural Catastrophe Risk: H.R. 2555, The Homeowners' Defense Act.

The Natural Catastrophe Policyholders Coalition (NCPC) is an alliance of organizations representing the interests of commercial insurance policyholders joined together to address issues related to the availability and capacity of commercial catastrophic risk insurance. Over the last several years, the NCPC has been monitoring legislation related to insurance availability during and after a major natural disaster for commercial real estate interests.

Unfortunately, in the wake of a severe hurricane season, residential and commercial property owners experience severely inflated property insurance pricing and restricted property insurance availability. Some coastal homeowners and business owners experienced rate increases on their property insurance from 100 percent to over 600 percent. These policies were often accompanied by hurricane provisions with high deductibles resulting in significant financial exposure to policyholders even with insurance. In addition, the lack of available and affordable commercial property insurance post-Katrina, put a further strain on state-operated insurance pools that serve as the insurer of last resort in the impacted areas.

Residential and commercial real estate sales transactions and development projects were adversely impacted due to the lack of available or affordable insurance coverage, significantly slowing down economic recovery. This condition had a disproportionate impact on small property owners with a concentration of property(ies) in a single market area. Although property insurance pricing has receded from their post-Katrina highs, there was significant damage to local businesses and job creation due to the lack of affordable or available insurance. Without natural catastrophe insurance reform, this cycle is certain to repeat itself.

NCPC continues to believe that this issue is an important matter for the committee to consider in greater detail. While H.R. 2555 does not directly address the concerns of commercial insurance policyholders, the discussion surrounding this issue is important to the long-term financial well-being of our communities. We also support efforts to expand and modernize risk retention pools to give commercial insurance policyholders additional options.

American Hotel and
Lodging Association

American Resort Developers
Association

Building Owners and
Managers Association

Chamber Southwest Louisiana

CCIM Institute

Commercial Mortgage
Securities Association

Greater New Orleans, Inc.

International Council of
Shopping Centers

Institute of Real Estate
Management

Mortgage Bankers Association

National Apartment
Association

National Association of
Home Builders

National Association of
Industrial and Office Properties

National Association of Real
Estate Investment Trusts

National Multi Housing
Council

In addition to supporting further deliberation of H.R. 2555, NCPC urges swift consideration of a 5-year reauthorization and strengthening of the National Flood Insurance Program (NFIP). The NFIP provides property owners with needed insurance to protect their homes and businesses from losses due to flooding. Specifically, we request special consideration to the following important provisions:

- **Floodplain Mapping** Any attempt to map the 500-year floodplain should not delay completion of the 100-year floodplain maps.
- **Increased Policy Limits** We support increasing the outdated limits on policy indemnities. Increasing the amount of coverage a policyholder can purchase will infuse confidence in the lending industry, insuring mortgages at a rate closer to fair market value.
- **Reform of Premium Rate Structure To Protect Certain Properties Receiving Subsidized Premium Rates** -- We support changes to the Premium Rate Structure provision to protect multifamily properties and rental properties. In addition, we support a study to consider the impact of phased-in actuarial rates on non-primary residences and nonresidential properties to identify the effect that increased insurance rates would have on land values, property taxes, renters and the overall surrounding economy.
- **Business Interruption Insurance** -- We encourage inclusion of a provision that will allow the purchase of optional business interruption (BI) coverage, including residential and multifamily properties that also serve as a place of business.

The NCPC appreciates the opportunity to comment on these important issues and looks forward to working with you to strengthen the country's insurance markets. For additional questions or follow-up, please contact Jennifer Platt at jplatt@icsc.org or 202-626-1404.

Sincerely,

Natural Catastrophe Policyholders Coalition