MORTGAGE BANKERS ASSOCIATION®
Investing in communities

July 28, 2009

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington, DC 20219
regs.comments@occ.treas.gov
Docket No. OCC-2009-0007

Jennifer J. Johnson
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov
Regulation H and Y, Docket No. R-1329

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
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comments@FDIC.gov
RIN # 3064-AD42

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
regs.comments@ots.treas.gov
Attention: OTS-2009-0007

Subject: MBA's Comments for "Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital- Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program"

Ladies and Gentlemen:

The Mortgage Bankers Association[1] (MBA) welcomes the opportunity to comment on the proposed changes to regulatory capital requirements for financial institutions (hereby banks) set forth in the recent Notice of Rulemaking, "Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital- Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program (proposed rule)."

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[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 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

Background

On March 4, 2009, the Department of Treasury (Treasury) announced guidelines under its Making Home Affordable Program (MHAP) to promote sustainable loan modifications for homeowners at risk of losing their homes to foreclosure. On June 26, 2009, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Fed), Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) issued a joint request for comment on the proposed rule that provides that mortgage loans modified under the MHAP program will retain the same risk weight applicable before modification.

Generally, under existing rules, to qualify for a 50 percent risk weight, a mortgage loan must have been made in accordance with prudent underwriting standards and may not be 90 days or more past due or carried in non-accrual status. Mortgage loans that do not qualify for a 50 percent risk weight are accorded a 100 percent risk weight. Each agency has its own rules with respect to risk weightings for modified loans. Under the OCC general risk-based capital rules, "not restructured" is among the criteria for a loan to qualify for a 50 percent risk weighting. Under the Fed's existing risk-based capital rules for bank holding companies and state member banks, mortgage loans must be "performing in accordance with their original terms" in order to receive a risk weighting of 50 percent. Under the FDIC's risk-based capital rules, a state nonmember bank may assign a 50 percent risk weight to any modified mortgage loan if it, as modified, is not 90 days or more past due or in non-accrual status and otherwise meets other applicable criteria for a 50 percent risk weight. Under the OTS' risk-based capital rules, a savings bank may apply a 50 percent risk weighting to any modified loan as long as the loan, as modified, is not 90 days or more past due and meets other applicable requirements for a 50 percent risk weight.

Under the proposed rule, the OCC, Fed, FDIC and OTS have adopted an interim final rule to provide that mortgage loans modified under MHAP will retain the risk weight appropriate to the mortgage loan prior to the modification, as long as other applicable prudential criteria remain satisfied.

MBA's Comments

MBA lauds the OCC, Fed, FDIC and OTS for providing regulatory capital relief based upon public policy considerations relative to promoting the use of the MHAP program as well as promoting the stability of the banking organizations and banking system. MBA believes the rule change will provide additional incentive for banks to participate in the MHAP program. **Accordingly, MBA whole-heartedly supports the proposed rule.**

MBA has the following specific comments with respect to the proposed rule:

Troubled Debt Restructurings (TDRs): Many modified mortgages will have to be reported as troubled debt restructurings under generally accepted accounting principles. This classification carries forward into quarterly regulatory reporting, as the various agency forms require the reporting of TDRs. Rising TDRs can adversely impact bank ratings including IDC ratings. This could ultimately have an adverse impact on a bank's ability to hold deposits of various federal, state and local governments and agencies, including servicing related deposits held for Fannie Mae and Freddie Mac. MBA requests that the proposed rule be modified to allow loans modified under MHAP or similar programs that continue to qualify for 50 percent risk weighting be excluded from TDR's reported in quarterly bank regulatory reports.

Reducing Risk Weight Category Upon Performance: MBA would like to confirm its presumption that past due and nonaccrual residential mortgage loans that receive a 100 percent risk weight may be eligible for a 50 percent risk weight after demonstrating a sustained period of repayment performance, including that based upon a modified payment schedule under MHAP.

MBA greatly appreciates the opportunity to share its comments with the regulators on the proposed capital rules associated with loans modified under MHAP. Any questions about MBA's comments should be directed to Jim Gross, Associate Vice President and Staff Representative to MBA's Financial Management Committee, at (202) 557-2860 or jgross@mortgagebankers.org.

Most sincerely,

John A. Courson

John. A. Courson
President and Chief Executive Officer
Mortgage Bankers Association