

## **ANTITRUST POLICY MORTGAGE BANKERS ASSOCIATION**

### **Policy of Full Compliance**

The Mortgage Bankers Association (the "Association") and its member companies are committed to full compliance with all laws and regulations and to maintaining the highest ethical standards in the way we conduct our operations and activities. Our commitment includes strict compliance with federal and state antitrust laws.

### **Responsibility for Antitrust Compliance**

Compliance with the antitrust laws is a serious matter. The main purpose of the antitrust laws is to prevent collective action by competitors to restrain trade. Trade associations, which are by definition collections of competitors, receive special scrutiny from the antitrust enforcement agencies. The Association wants to follow prudent approaches to antitrust compliance in order to avoid the harsh criminal penalties, the high costs of defending civil suits, and the devastating impact of private treble damage actions associated with antitrust violations. However, Members and staff should recognize that criminal antitrust enforcement is directed at the individuals involved. Individuals can be prosecuted and sentenced to financial penalties and prison terms for acts they commit on behalf of their company, employer, or association. Although the Association's General Counsel provides guidance on antitrust matters, Members and staff bear the ultimate responsibility for assuring that their actions, and the actions of any persons under their direction, comply with the antitrust laws.

### **Procedures and Conduct**

The following guidelines for the conduct of meetings of the Association, Boards of Governors, its committees, task forces and working groups ("committees") are designed to assist the Association in preventing even the appearance of engaging in activities that violate the antitrust laws. These procedures apply to meetings held in person or via conference call or other electronic means.

#### **A. NOTICE & AGENDA AND MINUTES**

Prior to a meeting, each member of a committee should receive a notice of the meeting and a copy of the draft agenda or other reasonably comparable written notice identifying the subject matter of the meeting. This notice will alert the members to the business to be considered and enable them to prepare for a productive meeting. Providing the agenda in advance can also alert Members and staff to potentially sensitive subjects from an antitrust perspective, furnishing them an opportunity to seek advice of counsel prior to the meeting. The draft agenda should be modified as necessary and then approved by the chair and staff prior to the meeting. Once the agenda is approved, it should be followed.

Minutes should be kept of all meetings of the Association's committees. Minutes are the official records of the Association's meetings, and ordinarily they comprise the principal contemporaneous evidence of what occurred at the meetings. They are one of the first types of documents that litigants and investigators will request.

All Association Board of Directors meeting agenda and minutes shall be reviewed by the General Counsel prior to being put in final form, if not prepared by the General Counsel in the first instance.

All meeting agenda and minutes of the Association's Boards of Governors and other committees shall be reviewed by designated staff before being put in final form. Staff shall consult with the General Counsel concerning such agenda and minutes when they deem necessary.

It is the Association's policy that Members should not generate and circulate meeting summaries related to any meeting. Members are asked instead to rely on the official minutes prepared by the Association staff, and to participate in the review and approval of those minutes. It is the staff's responsibility to prepare promptly after a meeting concise minutes that accurately describe the actions that were taken, the justification for those actions and, where appropriate, additional pertinent information. Minutes should be stored in an identified location. A copy of materials that were distributed at meetings should be appended to the minutes or referenced and stored with the minutes.

## **B. DISCUSSION GUIDELINES**

The limits of permissible discussion at formal meetings, roundtable discussions, and even in conversation at social functions related to meetings, cannot be precisely defined in the abstract. However, a prudent approach requires that you avoid the following unless the General Counsel is alerted in advance and approves the proposed discussion:

- Do not agree - or engage in any form of conduct from which it may be argued that you agreed - to fix interest rates, fees, third-party compensation, or any other element of the "price" or terms of loans.
- Do not share information concerning your current or future prices or costs, such as operational costs, that affect your price (Association research activities are structured with reference to antitrust concerns so that only historic data are collected).
- Do not agree to treat a particular individual or group of customers in one set manner or to boycott or stop lending to certain kinds of customers.
- Do not allocate customers or territories.
- Do not complain about inputs obtained from a particular vendor or class of vendors, or refuse as a group to continue purchasing from those vendors.
- Do not make announcements concerning what your institution may or may not do in the future concerning transaction terms for certain classes of customers, product development, and other proprietary information the sharing of which could limit competition.

Other discussion topics are not necessarily free from risk. Because it is difficult to specify what actions may present risks under the antitrust law's "unreasonable restraint of trade" standard, counsel should be consulted prior to discussion of any topics that could have the effect of reducing competition. These topics include:

- Expulsion of a Member from the Association or one of its committees.
- Institution of new or significant changes to existing standard-setting and certification programs.

- Institution of new or significant changes to existing statistics-gathering and information sharing programs.

#### **C. CONDUCT OF MEETINGS**

Meetings should be conducted in a manner such that all Members are afforded an opportunity to present their views. All opinions should be considered before actions are voted upon. The chair of the meeting should undertake this responsibility.

Each meeting should begin with an acknowledgement of the Association's antitrust policy. This may be accomplished by the reading of an antitrust statement provided by the General Counsel, by directing the participants' attention to a statement included in the meeting's materials, or in other ways reasonably calculated to establish awareness.

Counsel, staff Members and the meeting chairs have the responsibility to terminate any discussion or, if necessary, the meetings themselves if the discussion is diverted toward topics that may raise questions under the antitrust laws. The meeting chairs and the staff members with committee responsibilities are responsible for maintaining their familiarity with basic antitrust principles and the Association's antitrust guidelines. Staff members are responsible for informing unit chairs of the contents of this policy.

#### **D. PRESENCE OF A STAFF MEMBER**

Either the General Counsel or a staff member trained in antitrust compliance issues should attend all Board of Directors and committee meetings. Absent exceptional circumstances, if neither counsel nor a trained staff member can attend a meeting, either in person or by telephone, the meeting should be postponed unless the General Counsel has been consulted in advance and agrees that it is permissible to proceed.

#### **CONCLUSIONS**

Whenever competitors meet, the potential for antitrust compliance issues arises. The Association has established guidelines and procedures with the object of not only avoiding any violation of the antitrust laws, but also avoiding any activities that might give the appearance of illegality or that might lead to investigation or litigation. By following the guidelines set forth above, the Members can meet to transact lawful Association business without incurring significant antitrust risks.