



July 31, 2024

Via E-Mail: GINNIEMAEHMBS@HUD.GOV

**Sam I. Valverde
Acting President
Government National Mortgage Association
425 Third Street, S.W., Suite 500
Washington, DC 20024**

Re: Comments/HMBS 2.0 Draft Terms

Dear Mr. Valverde:

Please accept this letter on behalf of the National Reverse Mortgage Lenders Association and the Mortgage Bankers Association (the "Associations") in response to Ginnie Mae's DRAFT HMBS 2.0 Term Sheet.

The Associations wholeheartedly agree with your comment, upon the release by Ginnie Mae of Draft Terms for a new HMBS 2.0 Program, that it is "critical" for "supporting Issuer liquidity while protecting taxpayers." For that reason, among others, the Associations (including their Ginnie Mae Issuer Members) very much appreciate this opportunity to comment upon, and through consideration of our comments that follow, hopefully even further strengthen and clarify key terms and provisions of this all-important proposed new Ginnie Mae HMBS Program initiative.

The Associations' comments concerning the Draft Terms follow, below.

95% Pooling Maximum Participation Rate Limitation.

The Draft Terms for the HMBS 2.0 Program provide for a "Maximum Participation UPB at pooling" of "95% of HECM UPB," and further that "Tail Participations will also be subject to the 95% limit."

Respectfully, and for reasons noted below, the Associations strongly recommend that such pooling limitations both be increased from "95%" to "100%," accompanied by a new and additional requirement that "Issuers of HMBS 2.0 pooling 100% UPB also be required to retain a risk-retention asset equal to the amount of 5% of the relevant HMBS 2.0 pool issued."

Adopting the first part of this proposed change--setting the HMBS 2.0 Maximum Participation UPB at pooling at 100%"—would mirror the requirement of the current HMBS 1.0 Program. Concurrently adopting the second part of this proposed change—requiring 5% risk-retention—would mirror Dodd-Frank Act requirements for non-Agency securitizations, in similar (we respectfully suggest) circumstances.

Imposing such a risk-retention requirement would mean that Issuers of HMBS 2.0 Pools at 100% UPB would be required to hold 5% of outstanding HMBS for each such pool they issued. Effectively,

such Issuers thereby would be limited to selling 95% of such HMBS 2.0 Pool balances—though doing so while utilizing a similar securitization process to that is in place for HMBS 1.0 Pools --and also, and importantly, utilizing the same required risk-retention Dodd-Frank Act approach also used today for non-Agency securitizations.

We believe that HMBS investors will better understand 100% pooled Participations at issuance (with an accompanying 5% Issuer retention requirement) as opposed to 95% pooled Participations and that this structure will, in turn, lead to improved liquidity. The current servicing and investor reporting systems do not contemplate issuing “partially securitized” HECM Loans and would require development. In contrast, allowing 100% of the HECM Loan to be participated and pooled will be the same process Issuers utilize for HMBS 1.0 and, therefore, operationally streamlined and less burdensome.

Adoption of these two concurrent companion changes to the Draft Terms, accordingly and respectfully, would improve the execution by HMBS 2.0 Pool Issuers and their liquidity and stability, and, by relying upon the successful and widely accepted Dodd-Frank Act framework for capital and risk retention in such securitization markets, also help assure a more robust one for such HMBS 2.0 securities—all the while and importantly protecting Ginnie Mae and taxpayers.

Participation Loan Advances.

The Associations also respectfully request that Ginnie Mae revise the definition of Participation in the Ginnie Mae MBS Guide (and thus as applicable to the HMBS 2.0 Program) to specifically include all “Loan Advances” as defined in HUD’s HECM Model Loan Agreement.¹

Ginnie Mae has recognized that due and payable loans must be resolved via home sale or foreclosure, and that can take years. This necessitates a stable source of liquidity available over the medium- to long-term and through economic cycles.² The Draft Terms, however, provide for the adoption for the HMBS 2.0 Program of the current definition of “Participation” in the *MBS Guide* Glossary. Participation is defined as “an interest in the principal balance of a HECM loan” with the “outstanding principal balance of a HECM loan [including] funds provided by the Issuer on behalf of mortgagors, including for instance, funds to pay taxes and insurance, servicing fees, mortgage insurance premium (MIP) payments and interest accruing on the HECM note.”³

The Associations, respectfully, are of the view that this definition would benefit from greater clarity, particularly as to amounts that Issuers may include as “Loan Advances” in such HMBS 2.0 Participations. For example, while the MBS Guide defines the term Servicing Fee to mean “the fees that accrue to the Issuer for servicing the HECM pools and securities as set forth in Chapter 35,” it is not clear whether the reference to “servicing fees” in the definition of Participation is a reference to the term Servicing Fee as defined in the MBS Guide, or to any servicing advances or other costs incurred by the Issuer pursuant to the HECM Model Loan Agreement.⁴ For due and payable loans,

¹ *HECM Fixed Rate Loan Agreement*, Article 1.1 (“‘Loan Advances’ means all funds advanced from or charged to a Borrower’s account under the conditions set forth in this Loan Agreement, whether or not actually paid to Borrower.”).

² Karen Kaul, *Ginnie Mae Proposes New Pool Type to Improve HECM MBS Liquidity*, Ginnie Mae (June 27, 2024), available here: <https://www.ginniemae.gov/newsroom/HAPS/Pages/Post.aspx?PostID=83>.

³ *MBS Guide*, Glossary.

⁴ *Id.*

those amounts could include items such as property preservation fees, attorney’s fees, or other advances.⁵ Under the terms of the HECM Model Loan Agreement, these advances ordinarily become part of the HECM’s Principal Balance,⁶ and the Associations therefore believe those amounts expressly should be made eligible for such pooling.

Clarifying this point is especially important for the HMBS 2.0 program, because some of the HECMs that will be pooled under the program will be due and payable, and thus incur and accrue additional Loan Advances. As a result, the Associations respectfully request that Ginnie Mae revise the definition of Participation for the HMBS 2.0 program to include the following underlined language: “original principal balance of a HECM loan may include . . . mortgage insurance premium (MIP) payments, all other Loan Advances as defined in the HUD Model HECM Loan Agreement, and interest ...” Without this additional language, Issuers participating in the HECM 2.0 program will be faced with potential uncertainty regarding which Loan Advances can be pooled in each Participation.

Furthermore, and given the inclusion in HMBS 2.0 Pools of HECM loans that are Due and Payable, the Associations also respectfully suggest that Ginnie Mae expressly clarify that certain mortgage eligibility requirements described in Part 6 of Chapter 35 of the MBS Guide do not apply to the HMBS 2.0 Program. Specifically, the requirement that a “Participation is not eligible for pooling if . . . the mortgagor has not performed an obligation of the mortgagor as stated in the terms of their mortgage or note,” appears to contradict the purpose of the HMBS 2.0 program as a pooling mechanism for due and payable HECMs. As a result, the Associations urge Ginnie Mae to consider clarifying that this provision in the *MBS Guide* does not apply to Participations pooled in HMBS 2.0 securities.

Pool Certification Requirements.

The Draft Terms provide that “Each HECM must have received FINAL Certification from the respective Document Custodian.”

Respectfully, appropriate and required Certification requirements for HECM Loans and Participations included in HMBS 2.0 would be clearer if additional and clarifying details with respect thereto and as described below are included.

The Associations respectfully suggest that appropriate Certifications required for HECM loans pooled under the HMBS 2.0 Program are unique and different in certain key respects from those with respect to HECM loans pooled under the HMBS 1.0 Program, particularly because HMBS 2.0 Pools will include HECM loans that are not assignable to HUD/FHA and may be in various stages of resolution.

Under these circumstances, to help avoid “inconsistency” through the “life” of such HECM loans, and to provide Issuers with liquidity that Ginnie Mae has indicated is a critically important goal of this HMBS 2.0 Program, the Associations also respectfully request that Ginnie Mae revise its

⁵ *HECM Fixed Rate Loan Agreement* at Articles 1.11 and 2.4.

⁶ *See id.* at Article 1.19.

requirements for Initial Certification and Recertification of HECM loans specifically pooled under the HMBS 2.0 Program, as follows:

- Initial Certification
 - Instead of requiring the “original note or other evidence of indebtedness endorsed in blank and without recourse,” Ginnie Mae should also allow Issuers to provide a copy of the original note along with an attorney bailee letter or evidence the note has been filed with a court.⁷ This revision is important in the context of the HMBS 2.0 Program, because some states require lenders to file the original note with the court to initiate foreclosure.⁸ Similarly, it is standard practice for Issuers to provide the original note to foreclosure firms in certain states, even if the note is not required to be filed with the court. Ginnie Mae already recognizes this practical reality and has a mechanism for transferring possession of the original note for loans already pooled in HMBS when required by legal proceedings.⁹ This request simply applies Ginnie Mae’s current practices to loans that would be re-pooled in HMBS 2.0 securities.
 - Similarly, Ginnie Mae should allow Issuers to provide a copy of the original note along with a lost note affidavit to account for situations in which the original promissory note cannot be located. Lost note affidavits are enforceable,¹⁰ so this change would not impact Ginnie Mae’s rights in the event it took over an Issuer’s portfolio.
- Recertification
 - As with Initial Certifications, Ginnie Mae should allow for a lost note affidavit or an attorney bailee letter with a copy of the original note, instead of solely requiring the original note.¹¹

To illustrate the proposed changes above, and other related ones that similarly would be helpful, we enclose [Exhibit A](#) with suggested revisions to Ginnie Mae’s MBS Guide Appendix V-01, Document Custody Manual Chapter 10: Home Equity Conversion Mortgage Loan Pools. Adopting these provisions will prevent a significant number of HECM loans from being ineligible for pooling in HMBS 2.0, which will in turn provide Issuers the much-needed liquidity for which the Program is intended. Furthermore, we believe that it would be consistent with the intent of the program to allow for a waiver for these above-referenced certification requirements if a mortgage loan was purchased out of an HMBS 1.0 certified pool and promptly issued into an HMBS 2.0 pool, and so respectfully request that the HMBS 2.0 Program expressly permit that as well.

In addition, Ginnie Mae should permit Issuers with legacy portfolios to request specific waivers on files that are enforceable but have certain document defects which prevent such legacy assets

⁷ *Ginnie Mae Mortgage-Backed Securities Guide* (the “MBS Guide”), App’x V-01, Ch. 10, Pt. C, Sec. 1(c).

⁸ See *Deutsche Bank Nat. Tr. Co. v. Clarke*, 87 So. 3d 58, 62 (Fla. 4th Dist. App. 2012).

⁹ See *MBS Guide*, App’x V-01, Ch. 7, Pt. A, Sec. 1(f)(ii)(B)(2).

¹⁰ See U.C.C. § 3-309 (UNIF. L. COMM’N 1977); *Inv’rs Bank v. Torres*, 233 A.3d 424, 433-37 (N.J. 2020).

¹¹ *Id.* at Pt. E, Sec. 2(b)(i).

from being pooled. Certain issuers have indicated that over 50% of otherwise eligible HECM Loans would fall out of HMBS 2.0 due to such issues and a streamlined process to consider exceptions would be helpful.

Additional HECM Loan HMBS 2.0 Pooling Requirements.

The Draft Terms provide that HECM loans eligible for HMBS 2.0 must (among other things) and at pooling have a Maximum Adjusted Property Value Ratio of 60%, and that subsequent Participations from eligible HECM loans also be eligible collateral.

Respectfully, and for reasons described below, the Associations request the following revision to the related calculation of the Adjusted Property Value Ratio (the revision is noted in bold, italics and double underline):

The Adjusted Property Value Ratio is determined through a two-step process. First, determine the Adjusted Property Value by multiplying the Property Value by the Valuation Adjustment Factor of 90%. Next, divide **(a) the lesser of (i) the HECM Loan UPB and (ii) 98% of MCA for the subject loan, by (b)** the sum of (i) the Adjusted Property Value plus (ii) 100% MCA Value. FHA appraisals dated within 180 days of the **initial HMBS 2.0** pool issue date will be accepted at 100% of valuation for this calculation.

The Adjusted Property Value Ratio requirement of 60% should apply at the initial buyout of the related HECM loan from a HMBS 1.0 pool and should be calculated only once in connection with the initial pooling of the related HECM loan into HMBS 2.0 Pools. As a HECM loan negatively amortizes from 98% of MCA to 150% of MCA (which would apply to seasoned buyout loans and tails in an Issuer's portfolio), it becomes increasingly challenging to satisfy the Adjusted Property Value Ratio condition even though the HECM loan would have qualified for pooling at the time of initial buyout. This clarification is intended to provide consistency--regardless of when such HECM loan is pooled post buyout as long as it is prior to when such HECM loan reaches 148% of its MCA.

Consistent with the above, the Associations also request that it be clarified that the eligibility of subsequent Participations in a HECM Loan be determined as of the initial pooling date of the related HECM Loan into a HMBS 2.0 pool for as long as the initial Participation relating to such HECM Loan is otherwise eligible to remain in such HMBS 2.0 Pool. This will address Issuer costs of obtaining a series of valuations for the same HECM Loan after its initial pooling into HMBS 2.0. The interests of Ginnie Mae and taxpayers still will be protected given that the Issuer is required to buy out such HECM Loans at 150% MCA in the ordinary course.

Alternatively, and for the same reasons described above concerning material fallout of legacy portfolios, in the event that the above-referenced Ratio calculation revision is not accepted, the Associations request that Ginnie Mae consider an "exception" for HECM Loans bought out of their respective Pools prior to implementation of HMBS 2.0. For such loans, and under the terms of such an exception, the Maximum Adjusted Property Value Ratio would be set at their initial pooling at "80%" rather than "60%," with the further clarification that the eligibility of subsequent Participations then would be determined as of the initial pooling date of their related HECM Loans

for as long as such otherwise eligible HECM Loans remain in such HMBS 2.0 Pools. Setting that ratio at 80% rather than 60% would permit a materially significant number of additional HECM Loans to be eligible for HMBS 2.0 Pools while at the same time not appreciably increasing the risk to Ginnie Mae or taxpayers since such HECM Loans would be relatively aged and so would reach the 148% of MCA no longer eligible for pooling limit (and the 150% of MCA pool buyout requirement) relatively earlier during their remaining terms.

Conclusion.

In conclusion, the Associations are deeply appreciative of HUD and Ginnie Mae proposing this thoughtful, critically important HMBS 2.0 Program, and hope and trust that upon consideration of these additional comments, it can be even further strengthened and clarified, and then implemented, as soon as may be feasible.

Steve Irwin, President
NRMLA
1400 16th Street, Suite 420
Washington, DC 20036
202-939-1776
sirwin@dworbell.com

Pete Mills, Senior Vice President of Residential Policy and Strategic Industry Engagement
Mortgage Bankers Association
1919 M Street NW, 5th Floor Washington, DC 20036
202- 557-2700
pmills@mba.org

Attachment: Exhibit A [Proposed HMBS 2.0 Revisions to Final Certification Requirements—
Appendix V-01 Document Custody Manual, Chapter 10, Ginnie Mae HECM MBS Guide]

cc: James A. Brodsky, Weiner Brodsky Kider PC (NRMLA General Counsel)