

# Commercial/Multifamily Policy Dashboard – November 2024

## Category

## Summary

### Biden Administration Rent Control and Tenant Initiatives

- **Tenant Protections.** In early 2023, the Biden-Harris Administration announced a set of actions it will take to enhance tenant protections and further principles of fair housing. The announcement included new actions by several federal agencies, a voluntary set of principles called the "Blueprint for a Renters Bill of Rights," and a voluntary challenge to the industry to adopt stronger policies and practices that better serve tenants.

In July, the FHFA announced new resident-centered practices that will be required in new multifamily loan agreements backed by Fannie Mae and Freddie Mac (the GSEs) beginning in February 2025. The practices stopped short of rent control or rent caps, but require multifamily borrowers to give: 1) a five-day grace period for non-payment of rent before late fees can be charged; (2) a written notice of a rent increase at least 30 calendar days before said increase; and (3) a written notice of the scheduled expiration of the lease at least 30 calendar days before said expiration (provided that such notice is not required if the existing term of the lease is two months or less). In August, the GSEs announced that they will both leverage the existing property inspection and reporting process to confirm borrower compliance with the new requirements. The GSEs also plan to provide training to lenders and servicers before the implementation date.

- **Federal Rent Control Proposal.** In July, President Joe Biden announced new actions to help lower rental housing costs, including proposals to cap rent increases and repurpose public land to construct more affordable housing. Biden called on Congress to pass legislation that would force corporate landlords to choose between capping rent increases on existing units at 5% or losing valuable federal depreciation tax credits.

MBA's President and CEO swiftly issued a press statement pushing back on the proposal. Also, MBA joined a coalition letter to the White House urging the Administration to avoid failed policies like rent caps and focus on proven solutions like regulatory and financial incentives to increase affordable housing supply. The proposal requires legislation to be passed by Congress, which may prove to be difficult regardless of the outcome of the election. MBA will continue to engage with Congress, the Administration, and other industry stakeholders to advocate for sound and proven solutions that will help boost the supply of affordable housing.

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<b>FHFA and GSEs</b>	<ul style="list-style-type: none"><li>• <b>Multifamily Caps/PSPA.</b> The 2025 multifamily caps are \$73 billion each, with a requirement that 50% be “mission-driven,” and recognition of cost-burden areas and some green lending. Also, loans classified as supporting workforce housing properties with self-imposed restrictions by the Borrower are exempt from the caps.</li><li>• <b>Affordable Housing Goals.</b> In August, FHFA proposed the multifamily housing goals for 2025 through 2027. The benchmark levels proposed for each of the three years are 61% of annual loan acquisitions (in units) for the low-income goal (80 Area Median Income [AMI]), 14% for the very low-income subgoal (50 AMI), and 2% for the small multifamily low-income subgoal (80 AMI). This is only a very slight change from the 2023 and 2024 housing goals. MBA supported the multifamily goals, and recommended that FHFA help the Enterprises balance their affordable housing goals with a focus on, and liquidity support for, market-rate units. MBA also expressed concern with the recent increase in processing times for quotes.</li><li>• <b>Servicer Oversight.</b> Servicing oversight by the Enterprises has been increasingly over-zealous and inconsistent at times. MBA supports the adoption of one standard property inspection report and encourages efforts to further align scoring definitions.</li><li>• <b>GSE Capital Rule.</b> In November 2023, FHFA issued a Final Rule to modify certain provisions of the ERCF. Most notably, to better reflect the risk profile of government-subsidized, the final rule sets forth a risk multiplier of 0.6 (40 percent reduction) for multifamily mortgage exposure collateralized by properties with certain government subsidies like Low-Income Housing Tax Credits and Section 8 project-based rental assistance.</li><li>• <b>Tenant Protections.</b> See Slide 1.</li></ul>

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<b>FHFA and Federal Home Loan Banks</b>	<p><b>Review of the Federal Home Loan Bank System.</b> In November 2023, after months of industry engagement, FHFA’s released its findings in a report called “FHLBank System at 100: Focusing on the Future.” The report outlined four key themes on the FHLB System, including its mission, liquidity, housing and community development, and operational effectiveness and governance. FHFA also said it plans to update and clarify its regulatory statement on the FHLB System to reflect the FHLBanks’ two core objectives: 1) providing stable and reliable liquidity to their members, and 2) supporting housing and community development. MBA will remain engaged with FHFA, the FHLBs, and lawmakers on both sides and will continue to stress the importance of allowing a diverse set of eligible collateral types which is important for commercial real estate finance.</p>
<b>Property Insurance</b>	<p><b>Availability and Cost of Insurance.</b> The availability and cost of property insurance are becoming increasingly difficult across many states. FHFA held a multifamily insurance symposium on March 13, 2024. The discussion at the symposium centered around the new reality of elevated insurance costs, challenges in availability (particularly for affordable housing), and possible solutions to help ease some of the burden of rising costs. In July, HUD held an Insurance Summit to discuss the impacts of rising insurance costs on housing. Acting Secretary Adrienne Todman spoke of the need to develop solutions, as the impact on rental housing is high, because needed repairs and maintenance on properties are being deferred because the funding must be used on insurance. MBA held the annual Insurance Conclave in October to discuss solutions like blanket policies, and state incentive programs. MBA will continue to work with the Administration and Congress to stress the importance of extending the National Flood Insurance Program.</p>
<b>Tax Policy</b>	<p><b>Tax policy.</b> The tax provisions implemented as part of the Tax Cuts and Jobs Act of 2017 will expire in 2025. In March, President Biden released his Fiscal Year 2025 budget recommendations, which included a familiar proposal that Congress limit the amount of capital gains that may be deferred through the use of Section 1031 like-kind exchanges. In April, MBA joined a broad coalition of industry trade groups to defend the benefits of Section 1031 Like-Kind Exchanges and urge Congress to reject placing restrictions on the provision’s current law application.</p> <p>MBA will remain poised to respond to any possible future changes to tax policies that may impact our members.</p>

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### FHA/HUD

- **DSCR.** In October, HUD published two draft mortgagee letters to roll back the DSCR and LTV requirements for some FHA multifamily loans. HUD's first proposal would lower the DSCR and the Loan to Value (LTV) and Loan to Cost (LTC) ratios for 221(d)(4)s and 223(f)s. MBA strongly supports this move and urged HUD to finalize the notice expeditiously. The second proposal would reduce underwriting standards for middle-income housing. MBA also supports this notice, and provided several comments in response to the draft, urging them to allow compliance through the annual audit, and to reduce the targeting requirement from 50% to 20% of units.
- **232 Healthcare Loans.** In July, HUD's Office of General Council internally circulated an opinion that has significant negative impact on 232 refinances. 232 loans financing nursing homes, skilled nursing facilities and assisted living facilities. For more than 30 years, the program has allowed the inclusion of critical repairs, non-critical repairs and capital expenditures when refinancing a property with a 232. OGC has prepared a decision stating that the statute limits 232 refinances to "retire the existing indebtedness and pay the necessary cost of refinancing". MBA worked with other industry partners to send a letter to HUD, reminding that just because a repair is deemed "non-critical" (ie, an urgent health and safety issue), does not mean it is unnecessary. OGC backed off the original decision. In November, OGC again stopped allowing non-critical repairs for new applications, and a memo on the drafting table is expected in December. MBA will continue to fight this interpretation.
- **Wind/Named Storm Deductibles.** In April, after lengthy advocacy by MBA, HUD published a notice updating the Wind/Named Storm insurance deductibles to 5% (from 1%). This change will make it easier for property owners to obtain appropriate coverage without enormous expense, or requiring a waiver.
- **Floodplains/Flood Insurance.** In April, HUD published the final rule to significantly increase the Minimum Property Standards for Flood Hazard Exposure; and the Building to the Federal Flood Risk Management Standard. MBA had strongly urged HUD and the Administration to withdraw the proposal, which significantly increases elevation requirements in expanded floodplain areas. HUD has now clarified that to meet the January 2025, projects must be submitted by September 1, 2024. MBA led a coalition letter asking HUD to push the date, which was extended until October. However, HUD still has yet to develop any clear guidance for implementation. MBA sent a follow up letter, urging them to provide guidance and delay the rule until lenders and HUD staff know how to comply with the rule.

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<b>FHA/HUD</b>	<ul style="list-style-type: none"><li data-bbox="356 207 2433 428">• <b>Costs of FHA Multifamily Financing.</b> MBA leadership met with then HUD Secretary Fudge in September 2023, and MBA followed up with a letter expressing concern about the unnecessarily high costs of FHA multifamily financing. The letter enumerates a number of fees including the Mortgage Insurance Premium, application fees, inspection fees, insurance requirements, third-party reports and Davis-Bacon split wage requirements. The letter echoes the open letter to Landlords penned by HUD Secretary Fudge last Spring, urging reductions of unnecessary costs to multifamily housing residents. In March 2024, MBA CEO Bob Broeksmit met with Acting Secretary Todman to reinforce this message, and in July 2024, he delivered the same message to the White House.</li><li data-bbox="356 471 2433 692">• <b>Disbursements Waiver.</b> HUD regulations require that borrower equity be fully disbursed before the disbursement of any mortgage proceeds. This presents a timing challenge because disbursing the equity as construction activity occurs will take up to two months and mortgage draw activity must be postponed in the meantime. It creates a conflict when a mortgage lender pools a loan into a mortgage-backed security. The initial draw potentially violates the regulation in that FHA-insured mortgage proceeds are technically disbursed before all borrower equity is disbursed. Following MBA advocacy, HUD provided an additional one-year waiver through July 5, 2025. They have also now published a proposed rule to change the regulation to allow a 1% draw. MBA sent in a formal comment letter arguing for proportional draws to reduce the impact on the Ginnie Mae interest rate.</li><li data-bbox="356 735 2433 921">• <b>Build Near Transit.</b> DOT has two loan programs that can help provide much-needed housing near transit. These loans are meant to close funding gaps with low-cost, long-term financing and can be used for multifamily development. However, DOT has struggled to create parameters for the program. The requirements of DOT’s loans and those of MAP loans are remarkably similar. These programs could easily synchronize and provide incentives for developers to expand housing opportunities for millions of Americans. MBA is strongly advocating that DOT work with HUD and accept HUD MAP underwriting in place of creating their own guidelines.</li><li data-bbox="356 1006 2433 1192">• <b>Energy Efficient Building Codes.</b> In April, HUD published the final rule requiring new energy efficiency building standards for new construction of HUD-insured or assisted properties. The proposal requires that all buildings be built to IECC 2021 and ASHRAE 90.1-2019 standards. The 2021 IECC has only been adopted in a handful of states and is a significant increase over the building codes required in most jurisdictions. MBA strongly opposes the requirements, which will cause delays in inspections, add significant costs to construction, and could result in delays in the availability of materials. The compliance date for most multifamily properties is April of 2025.</li></ul>

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<b>State and Local Advocacy Efforts</b>	<ul style="list-style-type: none"><li>• <b>State and Local Rent Control.</b> MBA continues to track closely and develop advocacy efforts to address state and local proposals to implement rent control measures. In addition, MBA has joined a coalition effort on rent control with several other trade associations. The group will conduct research, develop messaging, and identify alternative solutions to rent control, including federal and state short and long-term solutions.</li><li>• <b>New York.</b> In April, in collaboration with the New York MBA, the MBA achieved significant wins on several housing bills in New York State. These new laws extend existing tax incentives and introduce new ones for affordable housing, while also establishing "good cause eviction" policies, albeit with notable restrictions compared to the initial proposals.</li><li>• <b>California.</b> MBA partnered with the California MBA on a successful campaign to stop Proposition 33, which was on the November ballot, and would have allowed rent control throughout the state.</li></ul>
<b>Banking Agencies</b>	<ul style="list-style-type: none"><li>• <b>Increased Capital Requirements.</b> In July 2023, the banking agencies issued interagency proposed changes to capital requirements for banks with assets of \$100 billion or more. The so-called "end game" proposed rules complete U.S. regulators' implementation of the Basel III standards and make changes in response to the recent large bank failures. The comment period ended on January 16, 2024, and MBA submitted comments that focused on the numerous negative impacts these proposed rules would have on the commercial real estate market and the housing finance ecosystem. MBA continues to meet with the Banking Agencies and members of Congress to advocate our positions.</li></ul> <p>In July 2024, Federal Reserve Chairman Jerome Powell testified in front of the Senate Banking Committee and said that the Federal Reserve wants to publish a re-proposal of the rule and that the Fed is close to an agreement with the other banking agencies on the changes needed from the original proposal.</p>

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<b>Climate/ESG</b>	<ul style="list-style-type: none"><li>• <b>SEC.</b> In March 2024, the SEC issued final rules requiring increased reporting around climate-related risks, and disclosure of greenhouse gas emissions. The final rules require disclosure of Scope 1 and/or Scope 2 greenhouse gas (GHG) emissions on a phased-in basis by certain larger registrants when those emissions are material; the filing of an attestation report covering the required disclosure of such registrants’ Scope 1 and/or Scope 2 emissions, also on a phased-in basis; disclosure of material climate-related risks; and disclosure of the financial statement effects of severe weather events and other natural conditions including, for example, costs and losses. As a direct result of MBA’s and others’ successful advocacy, a proposed requirement for companies to report some indirect GHG emissions, known as Scope 3, was not included in the final rules.<ul style="list-style-type: none"><li>○ 19 state attorney generals and other trade groups have filed lawsuits against the SEC claiming the final rules are beyond the scope and power of the SEC. All of the suits have been consolidated and will be heard in the 8<sup>th</sup> Circuit. Implementation of the rule has been paused until the case is resolved.</li></ul></li><li>• <b>Building Performance Standards.</b> A growing number of states and localities are enacting laws to address climate change known as <a href="#">Building Performance Standards (BPS)</a>. One example is New York City’s Local Law 97. These policies generally set mandates on residential and commercial buildings to meet annual “efficiency targets” limiting how much energy they can use, and “emissions targets” limiting how much greenhouse gases (GHGs) they can emit. BPS targets become increasingly stringent over time, with a general goal for buildings to approach “zero emissions” around the middle of this century.<p>MBA is currently working with other trade organizations to develop and share a BPS advocacy primer to serve as a valuable tool to guide BPS development. We are also urging the U.S. Department of Energy to include the BPS primer on its <a href="#">webpage</a> assembling resources for policymakers. This primer can help inform legislators, regulators, and stakeholders as they consider climate-related building performance mandates.</p></li></ul>

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<b>Climate/ESG cont'</b>	<ul style="list-style-type: none"><li><b>California.</b> In October 2023, California Governor Gavin Newsom signed Senate Bill 253, the Corporate Climate Data Accountability Act, which requires companies operating in California to report various points of climate impact including Scope 3 greenhouse gas emissions. MBA and the California MBA opposed the legislation and urged Mortgage Action Alliance members in the state to tell the Governor to veto it. Scope 3 includes items that are outside of MBA members' control and are duplicative considering the sources within the value chain are likely already required to disclose under Scopes 1 and 2. This new type of data tracking will be costly to comply with because it is not based on known data and will instead be based on unknown industry averages or unreliable secondary sources.  In January 2024, various business groups filed a lawsuit against California and the proceedings are underway. In July 2024, Newsom released a proposal to extend the implementation dates to 2028 for Scope 1 and 2 emissions (originally 2026) and 2029 for Scope 3 emissions (originally 2027). The Governor expressed concern that detailed regulations could not be drafted in time to meet earlier implementation timelines. In September, the California legislature passed a 6-month extension to the implementation dates.  Note: <a href="#">Senate Bill 253</a> requires companies who do business in California and have an excess of \$1 billion in revenue, defined as "reporting entities", to submit an annual report for Scope 1 and Scope 2 emissions. <a href="#">Senate Bill 261</a> requires companies that do business in California and have an excess of \$500 million in revenue, defined as "covered entities", to submit a climate-related financial risk report.</li><li><b>New York.</b> In May 2023, the New York Senate introduced the Climate Corporate Accountability Act which is substantially similar to the California climate data law. The bill is currently in committee and MBA will continue to monitor progress and advocate for our members.</li></ul>



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<b>CFPB</b>	<ul style="list-style-type: none"><li>• <b>Small business reporting.</b> On March 30, 2023, the CFPB released its small business loan reporting final rule that implements Section 1071 of the <i>Dodd-Frank Act</i>. Under the rule, lenders who originate at least 100 small business loans in each of the preceding two years are required to report certain demographic information. A small business has gross revenue of \$5 million or less in its most recent fiscal year and loans reportable under the Home Mortgage Disclosure Act will not need to be reported under the small business lending rule. In August 2023, a federal judge issued an order blocking enforcement of 1071 by the CFPB for only members of the American Bankers Association and/or Texas Bankers Association which will delay implementation dates for these entities. In October, the federal judge extended the order to all financial institutions until the Supreme Court’s final decision in the case <i>Community Financial Services Association v. CFPB</i>.<ul style="list-style-type: none"><li>○ In May 2024, the Supreme Court ruled that the funding of the CFPB is constitutional and the CFPB released a notice that the 1071 implementation dates will be extended with the first compliance date being July 18, 2025.</li></ul></li><li>• <b>HMDA.</b> In October 2022, a US District Court ruled that the HMDA reporting threshold should be decreased from 100 to 25 closed-end loans. In December 2022, the CFPB provided guidance, stating that it does not plan to “initiate enforcement actions or cite HMDA violations for failures to report closed-end mortgage data collected in 2022, 2021, and 2020” for covered institutions that originated at least 25 closed-end loans, but less than 100 closed-end loans in each of the previous two calendar years.</li></ul>