August 28, 2024

The Honorable Adrianne Todman
Acting Secretary
Department of Housing and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410

Dear Acting Secretary Todman,

FHA MAP loans are essential to the production and preservation of rental housing across the nation. Access to these loans is now significantly threatened by the impending implementation of the Federal Flood Risk Management Standard (FFRMS) rule. According to HUD's Administrative Memo, lenders have less than one week until the September 1st threshold date to submit a pre-application or straight-to-firm new construction or substantial rehabilitation application – or be subject to the new Rule. Additionally, 223(f) refinance applications will also be significantly negatively impacted.

For new construction or substantially rehabilitations, the new FFRMS rule will require a significant redesign of projects, a dramatic increase in costs related to fill or floodproofing methods for non-residential space and will impact the development of much needed housing nationwide. The new rule, published in April 2024, provided an optional extended compliance date for FHA multifamily mortgage borrowers through January 1, 2025. Before that date, applicants could choose to either follow the new FFRMS rule or the old requirements. This optionality gave borrowers time to adjust their project plans.

Additionally, for a 223(f) refinance, a currently-insured FHA project may be categorically excluded from a FHA refinance because it is now within the FFRMS. As stated by HUD staff on industry calls, for some projects "there is no path forward." This will have dramatic effects on the preservation of affordable housing as there are very limited financing options for these projects outside of HUD. The implementation of this rule runs directly counter to the Department's mission to create quality affordable housing.

It is apparent that there remain many unanswered questions about the implementation of the new rule and the availability of the tools necessary to even determine whether a property is affected. This will cause significant confusion, costs and substantial delay for properties submitting applications after September 1 in order to comply with the January 1, 2025 final implementation date of this new rule. We urge you to extend or delay the January 1 deadline until a period of time after implementation details are finalized and the industry has been provided with more direction and the tools needed to make the required determinations.

HUD's recent Administrative Memo establishes a September 1, 2024 threshold date, meaning that the borrower must submit a pre-application or straight-to-firm new construction or substantial rehabilitation application by that date in order to underwrite to the existing floodplain rules and requirements. But in fact, even for properties that meet that date, HUD acknowledges that they will do what they can to "avoid potential issues after January 1, 2025", but there could be delays in their approval, requiring significant and costly redesign to meet the new standards. For projects that are submitted on September 2nd and beyond, all applications must conform to the new standard.

We have participated in numerous listening sessions, trainings, and meetings with HUD staff to get questions answered on the new rule. On a recent industry call, there was a question on how to demonstrate a property is outside the 500-year floodplain in cases where the floodplain is not clearly mapped. This point is vital to determining applicability of the new rule. HUD staff did not have an answer and contemplated whether a quarter mile radius was sufficient or if a full mile radius would be required. They concluded by saying that 1 mile would be “safe” but less than that may also be appropriate. This is just one example of impactful decisions being made on the fly without scientific basis or true analysis being completed. Additionally, HUD’s preferred resource for determination of the FFRMS, CISA maps, are not available for most of the country. It is clear that the FFRMS rules are not ready for nationwide production status.

Borrowers and lenders cannot comply with a rule whose parameters and implementation tools remain under discussion or unavailable. Until there is clear, solid guidance on how to determine a property’s status in the floodplain, with sufficient tools and data to do so, this rule must be delayed. Without more time, HUD’s dramatically low production levels will plummet further, as housing providers struggle to meet these new environmental compliance requirements and further reducing the availability of multifamily housing. Given the many other factors limiting housing production including inflation, interest rates, labor and material costs, the date on which this rule should be implemented should be at least 12 months from its publication, or not until a specific period of time in which ALL appropriate tools and guidance are available for the industry’s use and reference.

Sincerely,

AGM Financial Services, Inc

Arbor Agency Lending, LLC

Bellwether Enterprise Real Estate Capital

Berkadia Commercial Mortgage LLC

Berkeley Point Capital LLC d/b/a Newmark

Blew & Associates

Bonneville Mortgage Company, LLC

Capital Funding, LLC

CBRE HMF, Inc.

Century Health and Housing Capital

Churchill Mortgage Investment, LLC

Colliers Mortgage

ColumbiaNational Real Estate Finance, LLC

Davis-Penn Mortgage Co.

Dominion Due Diligence Group (D3G)

Dwight Capital LLC

Eastern Mortgage Capital

Forbright Bank

Gershman Investment Corp..

Harper Capital Partners, LLC

Highland Commercial Mortgage

JLL Real Estate Capital, LLC

Legacy Capital

Lument Real Estate Capital

M&T Realty Capital Corporation

Mason Joseph, LLC

Merchants Bancorp

NorthMarq

Rockport Mortgage Corporation

Sims Mortgage Funding, Inc

Walker & Dunlop

Wells Fargo Bank

X-Caliber Capital LLC

Ziegler Financing Corporation