October 7, 2024

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410–0500

RE: 24 CFR Part 200; [Docket No. FR–6423–P–01]; RIN 2502–AJ72; **Disbursing Multifamily Mortgage Proceeds: Permitting Mortgagees To Disburse Mortgage Proceeds With Mortgagor-Provided Funds**

The Mortgage Bankers Association (MBA)[1], and the lenders listed below, respectfully submit these comments on HUD's proposed rule on disbursing multifamily mortgage proceeds. We appreciate this proposal, to allow all mortgagees to pool mortgages into mortgage-backed securities guaranteed by the Government National Mortgage Association (GNMA) prior to the funds provided by the mortgagor being disbursed in full. The proposed rule would allow 1% of mortgage proceeds to be drawn before equity is exhausted. We believe this is insufficient and urge HUD to allow mortgage proceeds to be drawn on any construction draw proportional to the amount of debt relative to total cost. Without this change, the costs of multifamily construction lending through the 221(d)(4), 220, 231 and 213 programs ("Construction Loans") will continue to be negatively impacted.

Negative Impact on FHA-Insured Construction Loan Interest Rates from Proposed 1% Mortgage Amount Limit

Since the Federal Government provides full mortgage insurance on FHA-insured loans, the interest rates on Construction Loans are largely higher than those on FHA-insured refinance loans (ie 223f, 223a7, and IRRs) not because of risk, but because of timing differences in issuance and delivery of the GNMA securities. On a refinance loan, a single GNMA in the full mortgage amount is issued and delivered to the GNMA Investor at endorsement. On a Construction Loan, there are multiple GNMAs issued and delivered in various amounts to the GNMA Investor over the length of the construction period (typically 18-24 months). In the Construction Loan scenario, a monthly GNMA is delivered to the Investor in an amount equal to

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 275,000 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 to 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 more than 2,000 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

the mortgage proceeds disbursed. In months where no mortgage proceeds can be disbursed, no GNMA is delivered.

In both the FHA-insured refinance and construction scenarios, the interest rate is typically "locked" 2-months prior to endorsement. For a refinance loan, this means that the GNMA Investor pricing is based on delivery in 2-months for the full mortgage amount as shown below for a hypothetical six million 223f loan.

FHA-Insured Refinance Loan GNMA Delivery Schedule*

$ in 000's	Sep-25	Total
GNMA Draw	$6,000	**$6,000**

**Assumes a July 2025 rate lock of a $6 million 223(f) loan*

For a Construction Loan, this means that the GNMA Investor pricing is based on a series of deliveries over the construction period, the first of which will be delivered in 2 months. Under the proposed rule, the first delivery can be no more than 1% of the mortgage and no subsequent deliveries are allowed until equity is exhausted.

In today's environment, borrower equity makes up 30-40% of the total sources of funds in a Construction Loan. Therefore, it often takes 5-12+ months to fully exhaust all borrower equity before any additional mortgage proceed draw activity takes place. Taking into account the 2-months between rate locking and endorsement, this means the GNMA Investor has to price into the agreed interest rate the cost of waiting 7-14+ months for issuance of GNMA in any substantive amount. This is shown below with a hypothetical six million 221(d)(4) loan that is 60% Loan to Cost (LTC).

FHA-Insured Construction Loan GNMA Delivery Schedule (1% Proposed Rule)*

$ in 000's	Start	Sep-25	Oct-25	Nov-25	Dec-25	Jan-26	Feb-26	Mar-26	Apr-26	May-26	Jun-26		May-27	Total
Total Costs		950	450	450	450	450	450	450	450	450	450	...	500	
Cumulative Costs		950	1,400	1,850	2,300	2,750	3,200	3,650	4,100	4,550	5,000	...	**10,000**	
Source of Draw														
GNMA Draw	1%	60	-	-	-	-	-	-	40	450	450	...	500	**6,000**
Equity Drawdown		890	450	450	450	450	450	450	410	-	-	...	-	**4,000**
Balances														
HUD Loan Balance	$0	**60**	**60**	**60**	**60**	**60**	**60**	**60**	**100**	**550**	**1,000**	...	**6,000**	
Cash Equity Balance	$4,000	3,110	2,660	2,210	1,760	1,310	860	410	-	-	-	...	-	

**Assumes a July 2025 rate lock of a $6 million 221(d)(4) loan that is 60% LTC*

In general, the longer the period between rate lock and issuance of the GNMA, the higher the interest rate required by the GNMA Investor. This is due to both the time value of money cost and the increased interest rate risk hedged over a longer period. The delay in the issuance of the second and subsequent GNMA securities causes an increase in interest rates of approximately 10-50bps. Through the proposed rule, HUD has the opportunity to lower interest rates on Construction Loans to encourage supply of much needed housing without any corresponding increase in risk.

Requested Modification - Proportional Debt/Equity Mortgage Proceed Draws

To prevent unnecessary increases on interest rates for HUD-insured construction loans and promote the supply of needed multifamily rental housing, we urge HUD to make a change to 24 CFR 200.54(b) that allows loan proceeds to be drawn on each construction draw without requiring that borrower equity first be fully exhausted. The amount of loan proceeds allowed on each draw should be proportionate to the overall amount of debt in the HUD transaction. This change would promote multifamily rental housing supply by reducing interest rates on construction loans without increasing HUD's risk, as described in the next section. A GNMA delivery schedule demonstrating proportional draws for the same hypothetical of a six million 221(d)(4) loan that is 60% Loan to Cost is shown below.

FHA-Insured Construction Loan GNMA Delivery Schedule (Proportional Draws)*

$ in 000's	Start	Sep-25	Oct-25	Nov-25	Dec-25	Jan-26	Feb-26	Mar-26	Apr-26	May-26	Jun-26		May-27	Total
Total Costs		950	450	450	450	450	450	450	450	450	450	...	500	
Cumulative Costs		950	1,400	1,850	2,300	2,750	3,200	3,650	4,100	4,550	5,000	...	**10,000**	
Source of Draw														
GNMA Draw	60%	570	270	270	270	270	270	270	270	270	270	...	300	**6,000**
Equity Drawdown	40%	380	180	180	180	180	180	180	180	180	180	...	200	**4,000**
Balances														
HUD Loan Balance	$0	**570**	**840**	**1,110**	**1,380**	**1,650**	**1,920**	**2,190**	**2,460**	**2,730**	**3,000**	...	**6,000**	
Cash Equity Balance	$4,000	3,620	3,440	3,260	3,080	2,900	2,720	2,540	2,360	2,180	2,000	...	-	

**Assumes a July 2025 rate lock of a $6 million 221(d)(4) loan that is 60% LTC*

No Increased Risk to HUD or the Mortgage Insurance Fund

Unlike other construction financing sources, FHA-insured construction loans under the MAP programs require that the borrower equity needed over the entire construction period be funded in full at initial closing (the "Equity Escrow"). The Equity Escrow is held with the MAP Lender or Title Company, cannot be recalled by the Borrower, and is "Mortgaged Property" pledged as collateral for the loan. Thus, the borrower has already contributed their equity in full at initial endorsement and those funds are fully controlled by the MAP lender and HUD.

Should the project happen to default during construction, the Building Loan Agreement (HUD-92441M) gives the lender and HUD the right to offset any losses or claim on disbursed loan proceeds with any remaining equity escrow. Therefore, HUD would be in the same position whether or not they require equity to be exhausted before loan proceeds are disbursed. For example, take a project that costs $10 million total to build and whose funding sources include a $6 million 221(d)(4) loan and $4 million of borrower equity that, as required, is escrowed in full at closing. Assume this loan defaults half-way through construction after $5 million has been spent. HUD's exposure would be $1 million under both the proposed rule and proportional funding scenarios as detailed below.

Proposed Rule (1% on first draw then equity exhausted): $4 million in borrower equity and $1 million in HUD loan proceeds disbursed. HUD's exposure is $1 million.

$ in 000's	Start	Sep-25	Oct-25	Nov-25	Dec-25	Jan-26	Feb-26	Mar-26	Apr-26	May-26	Jun-26	...	May-27	Total
Total Costs		950	450	450	450	450	450	450	450	450	450	...	500	**10,000**
Cumulative Costs		950	1,400	1,850	2,300	2,750	3,200	3,650	4,100	4,550	**5,000**	...	10,000	
Source of Draw														
GNMA Draw		60	-	-	-	-	-	-	40	450	450	...	500	**6,000**
Equity Drawdown		890	450	450	450	450	450	450	410	-	-	...	-	**4,000**
Balances														
HUD Loan Balance	**$0**	60	60	60	60	60	60	60	100	550	1,000	...	6,000	
Cash Equity Balance	**$4,000**	3,110	2,660	2,210	1,760	1,310	860	410	-	-	-	...	-	
HUD Exposure		-	-	-	-	-	-	-	100	550	**1,000**	**...**	6,000	**6,000**

Proportional Debt/Equity Draws: $2 million of borrower equity and $3 million in loan proceeds disbursed with $2 million in borrower equity escrow remaining. HUD uses the $2 million remaining escrow to offset the $3 million in disbursed loan proceeds. HUD's exposure is $1 million ($3 million less $2 million).

$ in 000's	Start	Sep-25	Oct-25	Nov-25	Dec-25	Jan-26	Feb-26	Mar-26	Apr-26	May-26	Jun-26	...	May-27	Total
Total Costs		950	450	450	450	450	450	450	450	450	450	...	500	**10,000**
Cumulative Costs		950	1,400	1,850	2,300	2,750	3,200	3,650	4,100	4,550	**5,000**	...	10,000	
Source of Draw														
GNMA Draw	**60%**	570	270	270	270	270	270	270	270	270	270	...	300	**6,000**
Equity Drawdown	**40%**	380	180	180	180	180	180	180	180	180	180	...	200	**4,000**
Balances														
HUD Loan Balance	**$0**	570	840	1,110	1,380	1,650	1,920	2,190	2,460	2,730	3,000	...	6,000	
Cash Equity Balance	**$4,000**	3,620	3,440	3,260	3,080	2,900	2,720	2,540	2,360	2,180	2,000	...	-	
HUD Exposure		-	-	-	-	-	-	-	100	550	**1,000**	**...**	6,000	**6,000**

Equity Escrow is Mortgaged Property Pledged as Collateral

For specific reference, the HUD-92441M and HUD-94000M forms with relevant sections highlighted have been attached to this letter. Excerpts from these forms detailing HUD's security interest in the Equity Escrow have been provided in the three points below.

- The Building Loan Agreement (HUD-92441M) provides that in the event of a default, the lender can use "*any funds on deposited with it by Borrower […] in such a manner and for such purposes as HUD may prescribe*."

- The Mortgaged Property pledged as security under the Security Instrument (HUD-94000M) includes escrows held by the lender under Collateral Agreements (eg the Building Loan Agreement) in section "w", item #16:

(16) all deposits and/or escrows held by or on behalf of Lender under Collateral Agreements

- A Collateral Agreement is defined in the Security Instrument (HUD-94000M):

  (e) "*Collateral Agreement" means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing an account to assure the completion of repairs or Improvements specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account including but not limited to those reserves and escrows required by HUD*.

HUD has Extensive Experience with Proportional Debt/Equity Construction Draws

HUD already has experience with allowing flexibility in construction loan draws that include proportionate amounts of borrower equity and loan proceeds through their extensive involvement with Low Income Housing Tax Credit (LIHTC) projects. Due to the requirements of the HERA act, Borrower equity in the form of tax credit syndication proceeds and equity bridge loan does not need to be exhausted prior to the disbursement of mortgage proceeds. The flexibility HUD has been able to offer construction draws on LIHTC projects been crucial to the success of pairing FHA-insured construction loans with LIHTCs and promoting the supply of new housing units. This has been done without negative impact to the Mortgage Insurance Fund. In the case of non-LIHTC construction draws to which the proposed rule applies, allowing proportional debt/equity construction draws presents even less risk than the already allowable and proven LIHTC proportional construction draws. This is because the LIHTC equity and/or bridge loan proceeds are not funded in full nor are they held by the lender as they are in non-LIHTC situations.

Conclusion

We urge HUD to revise 24 CFR 200.54(b) to allow construction draws that include a proportionate amount of borrower equity and loan proceeds. In an extremely challenging time of multifamily construction financing, this change will facilitate the supply of new rental housing by reducing interest rates on 221(d)(4), 220, 231 and 213 FHA-insured construction loans without presenting an increased risk to HUD or its mortgage insurance fund.

Sincerely,

Mortgage Bankers Association

AGM Financial Services, Inc.

Bellwether Enterprise Real Estate Capital

Berkadia

Bravo Capital

CBRE HMF, Inc.

Century Health and Housing Capital

Churchill Stateside Group, LLC

Colliers Mortgage LLC

Davis-Penn Mortgage Co.

Dwight Capital LLC

Forbright Bank

Gershman Investment Corp

Grove Street Investment, LLC

Harper Capital Partners, LLC

JLL Real Estate Capital, LLC

Merchants Capital

Northmarq

Rose Community Capital

Sims Mortgage Funding, Inc.

Attachments: 1. Form HUD-92441M (highlighted) 2. Form HUD-94000M (highlighted)