MORTGAGE BANKERS ASSOCIATION

July 9, 2021

Ethan Handelman
Deputy Assistant Secretary for Multifamily
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Re: Follow-up to discussion on FFB/risk-share program

Dear Ethan:

Thank you for taking the time to meet with members of the Mortgage Bankers Association's (MBA's) FHA Committee Risk Share Working Group and other industry stakeholders on May 13, 2021 to hear our concerns about the Federal Financing Bank (FFB) program that was in place from 2014-2018. We appreciate the opportunity to share our perspectives and views, and to better understand HUD's perspectives as well.

We wanted to follow up by responding to some of the main points covered in the conversation and by providing some data that MBA or our members have collected. We hope you find this to be helpful.

1. **The FFB program was an extraordinary use of the FFB to address specific temporary conditions that followed the financial crisis of 2007-2008.**

We discussed how the FFB program was targeted to certain conditions that existed at one time, and we thought it would be useful to collect those thoughts and link them to original sources.

Congress established the Federal Financing Bank in 1973 "to assure coordination of [Federal and federally assisted borrowing programs, including the US Postal Service] with the overall economic and fiscal policies of the Government, to reduce the costs of Federal and federally assisted borrowings from the public, and to assure that such borrowings are financed in a manner least disruptive of private financial markets and institutions."[1]

In 2014, the U.S. Treasury and the Department of Housing and Urban Development entered into a partnership under which the Federal Financing Bank (FFB) would be utilized in an extraordinary way, to provide financing for multifamily mortgage loans made by state housing finance agencies that are also insured by HUD's Federal Housing Administration (FHA) under its Multifamily Mortgage Risk-Sharing program.[2]

Under the Multifamily Mortgage Risk-Sharing program, HUD provides 100 percent FHA mortgage insurance to enhance HFA bonds to investment grade, and HFAs may elect to share from 10 to

[1] Federal Financing Bank Act of 1973, Public Law 93-224; 93rd Congress, H.R. 5874, sec. 2, *Findings and Declaration of Purpose* (Dec. 29, 1973); https://ffb.treasury.gov/assets/files/1973act.pdf

[2] US Treasury-HUD, *Q&A: Treasury-HUD Affordable Rental Housing Financing Partnership* (June 26, 2014); available at: https://www.treasury.gov/initiatives/Documents/FHA-FFB%20QA%207%201%2014.pdf.

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90 percent of the loss on a loan with HUD (50 percent under the FFB program). The HFA is obligated to reimburse HUD in the event of a claim.[3]

As HUD has described it, the FFB/risk-share program was put into place to address specific unusual conditions that followed the extraordinary conditions of the Great Financial Crisis.

> *The FFB Risk Share Initiative was started in 2015 to stimulate affordable housing production in response to tightening bond markets and lack of private sector funding and liquidity that followed the financial crisis*.[4]

The partnership was ended in 2018, about a decade after the end of the financial crisis of 2007-2008. We understand that the Obama administration had scheduled the partnership to sunset September 30, 2018, but during the next administration, HUD granted an extension through the end of 2018. As a result, the Treasury-HUD partnership expired, and the FFB funded no new commitments after December 31, 2018.

2. The once-in-a-century conditions that prompted the extraordinary use of the FFB are well past, and multifamily markets are now extremely liquid and competitive.

Using the FFB to provide debt capital for financing multifamily housing is an extraordinary use of the FFB that should be used only to address extraordinary market conditions. We believe the conditions that may have warranted such actions are well past and that no such needs currently exist.

There currently is an abundance of capital available to finance affordable housing: In 2019, multifamily lenders extended $364 billion in multifamily mortgages – an all-time record. In 2020, when mortgage bankers' originations of commercial (non-multifamily) mortgages fell 46 percent, originations of multifamily mortgages fell just 5 percent – to the second highest annual level on record.

- With questions about office, retail, hotel and other property types, interest in – and competition among – banks, life companies, GSEs and FHA lenders, CMBS and other lenders for multifamily mortgages is extremely strong.
- Low long-term Treasury rates mean that mortgage rates are currently at some of the lowest levels in history.
- Affordable multifamily deals are being specifically targeted:

[3] HUD, Housing Finance Agency Risk-Sharing: Section 542(c); available at: https://www.hud.gov/program_offices/housing/mfh/progdesc/riskshare542c; and HUD presentation, *NALHFA Conference Federal Financing Bank-HUD Risk Sharing Program Financing*, slide 25 (May 1, 2015); available at: https://cdn.ymaws.com/www.nalhfa.org/resource/resmgr/2015_Conference_Speakers/Diana_Talios_and_Larry_Flood.pdf

[4] See HUD FY 2021 Budget Funding Request, Office of Housing, FHA-Mutual Mortgage Insurance Fund, p. 28-7; available at: https://www.hud.gov/sites/dfiles/CFO/documents/31_FY21CJ_FHA_Fund.pdf.

  - FHA's Multifamily lending programs have $30 billion per year in commitment authority (plus carryover) and a large pipeline of financings to process.
  - At least 50 percent of Fannie Mae's and Freddie Mac's combined $140 billion in multifamily purchase volumes in 2021 must be "mission-focused," and a minimum of 20 percent of Enterprise multifamily loan purchases must be affordable to residents at 60 percent of AMI (area median income) or below. [5]
  - Banks actively seek opportunities to finance affordable multifamily rental housing to satisfy requirements under the Community Reinvestment Act.
- This capital availability has helped fuel a building boom in multifamily. There are more units under construction at present than at any time since the mid-1970s and the value of multifamily construction put-in-place, as measured by the Census Bureau, is at a record high.
- The mortgage market is seeing record volumes, record low rates and record levels of construction activity, which hardly seems to support extraordinary actions such as tapping the FFB.

3. **It would be inappropriate to reinstate the FFB partnership as an interim measure to bridge the gap between the current state and legislation giving HFAs access to GNMA before such legislation is enacted.**

The HUD 2022 Budget in Brief describes HUD's intent to resume the FFB partnership temporarily as an interim bridge to legislation to make HFA loans Ginnie Mae eligible:

> The Budget proposes Ginnie Mae authority to securitize affordable multifamily loans made by Housing Finance Agencies (HFAs) and insured under the Federal Housing Administration's (FHA) 542(c) Risk-Sharing program. As an interim measure that will sunset three years after implementation, HUD is resuming its partnership with Treasury's Federal Financing Bank (FFB) to provide "Ginnie-like" financing for HFA Risk-Sharing loans. The proposed Ginnie Mae securitization authority would provide a permanent source of low-cost capital for these affordable housing loans once FFB financing expires.[6]

We believe it is inappropriate to create an interim bridge to a future state that may or may not occur. If the Ginnie Mae legislation is not enacted, there will likely be pressure to continue the FFB partnership indefinitely, which would be contrary to HUD's stated purpose.

In any case, if HUD determines to resume the FFB partnership as described in the HUD 2022 Budget in Brief, we urge HUD to do so only if it implements a few guardrails to help create a level playing field for all lenders. In that regard, we understand that HUD had virtually no visibility into the credit risk of the mortgages HUD guaranteed under the FFB partnership. Accordingly, we

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[5] See FHFA Conservatorship Scorecard, Appendix A: *Multifamily Definitions* (Nov. 17, 2020); https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/2021-Appendix-A.pdf

[6] HUD, Budget in Brief, Fiscal Year 2022, p. 5 (May 28, 2021); available here: https://www.hud.gov/sites/dfiles/CFO/documents/2022_Budget_in_Brief_FINAL.pdf

would urge HUD to take steps to better monitor the credit risk it is taking under this program, similar to current programmatic requirements contained in the Multifamily Accelerated Processing (MAP) Guide. HUD might look, for example, to how Fannie Mae oversees the risk of multifamily mortgages it guarantees under its Delegated Underwriting and Servicing (DUS) risk-sharing program. For example, HUD should condition growth in the number of HFAs that can participate in the FFB program on HUD's confidence in its counterparty risk management systems. HUD could also consider limiting both the size and the duration of the program.

4. **HUD should ensure that it is clear to developers that tax credits cannot be conditioned on obtaining financing from an HFA.**

HFAs allocate available tax credits and soft money and may also offer financing for housing projects. It is impermissible for HFAs to condition the granting of Low-Income Housing Tax Credit (LIHTC) program tax credits upon a developer's also obtaining financing from the HFA.[7] However, because HFAs both allocate tax credits and offer financing, there will always be a concern about the perception or appearance of the tying of the allocation of tax credits and obtaining financing from the HFA that allocates those very same tax credits.

The additional HFA financing that may be facilitated by the FFB partnership or from Ginnie Mae eligibility will only amplify the need to ensure that developers do not have reason to harbor the misimpression that tax credits from an HFA will be available only if they commit to obtaining financing from that HFA. We therefore urge HUD to ensure that there is no misunderstanding as to the lack of any relationship between the availability of tax credits and the source of financing, across all participants and stakeholders.[8] Similarly, to maintain a level playing field across lenders, HFAs should be restricted from conditioning access to soft money resources, a resource that is unavailable to MAP lenders, on a developer's also obtaining FFB-program financing from the HFA.

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Finally, some time ago, MBA asked HUD staff for a copy of the prior FFB partnership document, technically an interagency agreement between Treasury and HUD. We have not yet received a copy of that document. Because HUD has referenced that partnership in its 2022 Budget in Brief and because it is also referenced in legislation that has been introduced,[9] we believe it would be

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[7] See Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1986* ("Blue Book"), JCS-10-87, p. 171 (May 15, 1987) ("Credit allocating agencies may not condition the allocation of credit to the source of financing for a low-income building."); available here: file:///C:/Users/boliver/Downloads/jcs-10-87-3367.pdf

[8] We understand that all Risk Share Agreements using the FFB execution included the following statement: "For projects using Low Income Housing Tax Credits (LIHTC), whose mortgage insured hereunder, the HDC shall ensure that the project's LIHTC allocation is not conditioned on the use of such mortgage insurance." See HUD presentation, *Federal Financing Bank-HUD Financing*, slide 5 (July 17, 2014).

[9] See *Federal Financing Bank Risk-Sharing Act of 2020*, H.R. 8842, 116th Cong. (2020); available here: https://velazquez.house.gov/sites/velazquez.house.gov/files/VELAZQ_113_xml%20%28002%29.pdf

in the public interest to provide MBA and other interested members of the public with the documentation of that partnership.

Again, thank you for taking the time to hear our concerns and perspectives regarding the FFB program that was in place from 2014-2018. We hope you find this letter to be helpful, and we hope to continue our dialogue.

Sincerely,

Robert D. Broeksmit, CMB
President and Chief Executive Officer
Mortgage Bankers Association