



MORTGAGE BANKERS ASSOCIATION

January 31, 2020

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

RE: White House Council on Eliminating Regulatory Barriers to Affordable Housing [FR-6187-N-01]

Ladies and Gentlemen:

On behalf of the Mortgage Bankers Association (MBA)¹, we are pleased to submit our comments in response to the Department of Housing and Urban Development's "Request for Information" on behalf of the White House Council on Eliminating Regulatory Barriers to Affordable Housing. MBA strongly supports this effort to collect stakeholder input on the range of federal, state, and local barriers to affordable housing, including ideas for potential solutions. The lack of affordable housing for rental and ownership has reached crisis proportions in many areas of the country. Absent thoughtful and coordinated policy interventions at multiple levels of government, this situation will only grow worse. We applaud HUD and the White House for its leadership in addressing this important issue.

Our members recognize that the affordable housing challenges facing our nation are complex and multifaceted, and solving them will require a collective effort by policymakers, industry, and non-profit stakeholders. In fact, in 2019 MBA launched an Affordable Housing Initiative for this very purpose. It in this spirit that we offer our comments to the RFI.

As part of its RFI, HUD requests comments that identify specific HUD regulations, statutes, programs, and practices that directly or indirectly restrict the supply of housing

¹The MBA is the national association representing the real estate finance industry, an industry that employs more than 280,000 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 over 2,300 companies includes all elements of real estate finance: mortgage companies, 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 Web site: www.mba.org.

or increase the cost of housing. We address separately those areas that affect affordable homeownership and those areas that affect affordable rental housing.

AFFORDABLE HOMEOWNERSHIP

Update standards for manufactured housing

The standards for manufactured housing should be revised to more closely match “stick-built” standards and zoning requirements. The affordability of factory-built homes enables first-time homebuyers, families, and retirees to obtain low-cost housing that is in many cases less expensive than renting or purchasing a site-built home. Manufactured housing is often popular in rural areas but expanding the prevalence of manufactured housing in all communities represents a significant opportunity to promote affordable housing.

A 2011 HUD report titled *Regulatory Barriers to Manufactured Housing Placement in Urban Communities* argued that “manufactured housing offers a technological solution to the affordable housing dilemma,” and details how “...many state policymakers have enacted provisions requiring localities to place manufactured housing on a level regulatory playing field...”² Accordingly, the Department should update its requirements to expand FHA eligibility of manufactured housing units in a safe and reliable manner by:

- Eliminating the one-time move restriction and replace it with an inspection requirement following relocation;
- Eliminating the Tiered Pricing structure and allow for greater flexibility in the Mortgage Charge Rate;
- Streamlining the process by which the engineer’s certification is obtained;
- Requiring all manufactured home title evidence be completed at and as a condition of closing;
- Aligning flood elevation requirements for existing manufactured homes with those for other types of existing construction.³

Promote models of positive state and local deregulatory efforts

Many state and local governments are taking innovative steps to overcome housing supply challenges – particularly in urban neighborhoods. Some city councils, for example, have adopted policy changes curtailing or eliminating the dominance of single-family home zoning. Such changes have the potential to allow greater density, thereby housing more people on existing lots at lower costs.

² US Department of Housing and Urban Development, “Regulatory Barriers to Manufactured Housing Placement in Urban Communities” (January 2011); https://www.huduser.gov/portal/publications/mfghsg_HUD_2011.pdf

³ Pete Mills to Secretary Carson, February 26, 2018, “RE: Regulatory Review of Manufactured Housing Rules [Docket No. FR-6075-N-01]”; [https://www.mba.org/Documents/MBA_HUD_Manufactured_Housing_Letter\(0\).pdf](https://www.mba.org/Documents/MBA_HUD_Manufactured_Housing_Letter(0).pdf)

Minneapolis represents an early example of this trend. In 2019, the City Council passed final approval on a comprehensive 2040 city plan that includes opening single-family residential zones to duplexes and triplexes. As reported, the new rules apply to “renovation and new construction: subdividing houses, building additions, new construction on vacant lots, and new construction after existing housing was torn down.”⁴ In addition to improving housing affordability, these reforms were intended to combat sprawl, increase diversity and sustainability, and lower emissions.

HUD should study the impact of state and local deregulatory efforts like Minneapolis’s to determine which land-use and supply-promoting strategies are most effective in increasing available units eligible for FHA insurance.

Streamline, enhance, and adequately staff processes that support FHA housing programs and modernize FHA information technology systems

A major impediment to greater lender participation in the FHA program is the antiquated information technology (IT) currently underpinning the program. MBA has long advocated for Congress to allocate adequate budgetary authority to support a well-functioning and technologically sound FHA insurance program. Significantly, after years of requests by multiple administrations, Congress has appropriated \$20 million dollars in additional funds – designated specifically for FHA IT upgrades – for both Fiscal Year 2019 and 2020. The Administration has signaled that it intends to petition Congress for an additional \$40 million over the next two years. These allocations are warranted to provide the necessary resources to upgrade FHA’s decades-old IT infrastructure.

With these funds, FHA should ensure that its IT systems are upgraded in a manner that improves the process for both borrowers and the industry participants that serve them. If implemented properly, these upgrades should reduce unnecessary delays and costs in programs crucial to supplying affordable housing in the United States – ultimately offering borrowers greater choices at lower costs.

MBA’s lender and servicer members are poised to provide feedback on any upgrades being considered or undertaken by HUD and hope that strong communication and partnership between HUD and external stakeholders results in a streamlined system. Decreased response times, more efficient transfer of documents, and a greater number of electronic processes would increase lender appetite for FHA participation. As such, HUD should continue to prioritize full funding for its IT modernization projects in its annual budget requests and implement these initiatives as quickly as possible.

⁴Trickey, Erick. “How Minneapolis Freed Itself from the Stranglehold of Single-Family Homes.” *Politico*, July 11, 2019. Accessed January 10, 2020; <https://www.politico.com/magazine/story/2019/07/11/housing-crisis-single-family-homes-policy-227265>

Increase lender participation in the FHA program by reducing unnecessary litigation and reputational risk

Greater lender participation in FHA, a key entry point for many first-time homebuyers, enhances competition and lowers mortgage costs. In the past decade, the decline in lender participation can be attributed in large part to increased uncertainty for liability under the False Claims Act (FCA). The risks associated with originating FHA-insured loans increased dramatically with the Department of Justice's (DOJ) reliance on loan-level and annual certifications to pursue lenders for treble damages under the FCA. These certifications have historically held lenders to an unreasonable standard of perfection, and the resulting liability has caused many lenders to retreat from the FHA program.

Over the past year, HUD undertook a rulemaking process to substantially revise the loan-level and annual certifications, along with the FHA Defect Taxonomy. MBA advocated extensively for changes to the loan-level and annual certification language, as well as for its connection to a more specific and responsive Defect Taxonomy. New versions of the certifications and the Defect Taxonomy largely reflect the spirit of the changes proposed by MBA and other stakeholders, representing progress toward much improved lender certainty.

Finally, the recent Memorandum of Understanding (MOU) between HUD and the DOJ outlines a framework that should provide for better coordination between the two departments. The MOU underscores that the DOJ, for example, will not move forward with FCA cases without corroboration from HUD. This structure provides lenders with greater confidence that they will not be aggressively pursued for minor defects on loans originated in good faith.

Together, these reforms should serve as tailwinds to promote greater lender participation in the FHA program, which in turn should promote greater access to credit at lower costs for borrowers.

Improve FHA Single-Family Servicing Requirements

Modernizing and streamlining FHA servicing requirements can help promote affordable housing by decreasing costs and encouraging more lender participation in the FHA program. While servicing costs have increased across the industry since the financial crisis, estimates indicate that the cost of servicing non-performing FHA loans is multiples above the cost of servicing non-performing conventional mortgage loans.⁵ The increased cost of servicing FHA loans, in large part due to outdated servicing policies that require FHA loans to be serviced differently than other loan portfolios, has resulted in a decreasing number of businesses willing to engage in servicing of FHA-insured loans, particularly depository institutions. This exodus from the FHA program increases the cost

⁵ Karen Kaul, Laurie Goodman, Alanna McCargo, and Todd M. Hill-Jones, Reforming the FHA's Foreclosure and Conveyance Processes, URBAN INSTITUTE (Mar. 1, 2018).

of originating FHA-insured loans and reduces access to credit for otherwise qualified borrowers. Improving servicing efficiency and reducing costs will encourage lenders to remain active in the FHA space.⁶ Just as important, aligning servicing standards – particularly in the loss mitigation arena – will improve outcomes for borrowers in need of forbearance and foreclosure alternatives.

Improve access to 203(k) renovation loans

FHA endorsements in the 203(k) renovation program have declined significantly over the last decade. The lack of lender participation in the program has contributed to a reduction in affordable housing inventory and a slowdown in the stabilization of many underserved communities. Factors such as restrictive consultant requirements, stringent project timelines, and outdated consultant fee schedules have made the program less attractive to lenders. MBA recommends that HUD:

- Consider re-evaluating the consultant fee schedule to account for current market conditions;
- Provide additional support and resources for the 203(k) non-profit product; and
- Offer additional training opportunities for lenders and consultants.

Work with stakeholders to standardize down payment assistance guidelines and documents

Down payment assistance (DPA) programs provide critical resources for low- to moderate-income homebuyers who may not have sufficient savings to meet minimum cash investment and closing cost requirements. With more than 2,500 different DPA programs nationwide, many borrowers and lenders are often overwhelmed with the number of options available and are likely to underutilize these programs or avoid them entirely. Lack of standards on the structure of assistance and required consumer disclosures also put borrowers and the Mutual Mortgage Insurance Fund at risk. Increasing the standardization of the program guidelines and documents to reflect the most common and sustainable features should increase lender participation and improve borrower performance. MBA recommends that HUD work in conjunction with lenders, state and local Housing Finance Agencies, nonprofits, consumer advocacy groups, and other government agencies to develop tools that will promote this standardization and thereby increase borrower access to high quality, sustainable DPA funding.

Reduce the cost of originating compliant mortgages

Standardization and other measures that reduce the cost of originating mortgage loans will ultimately lower costs to consumers. For example, one clear way to do this would be clarifying what constitutes compliance with the CFPB's RESPA-TILA Integrated

⁶ For a full list of recommended improvements to FHA's single-family servicing requirements, please see MBA's comment letter to HUD, dated July 14, 2017, re: Docket No. FR-6030-N-01, "Reducing Regulatory Burden: Enforcing the Regulatory Reform Agenda Under Executive Order 13777."

Disclosure Rule. The rule's prescriptive timelines and strict cost tolerances have resulted in high ongoing compliance costs and difficulties in disclosing certain products—like construction loans or rehabilitation loans. Also, the rule's lack of clarity has led to excessive due diligence costs that impede the return of the private mortgage-backed securities market. A vibrant and liquid private securitization market would result in greater consumer choice and lower costs⁷.

More accurately calculate borrower student loan debt obligations

The appropriate consideration of student loan debt during the qualification process is imperative to promote access to credit while also protecting HUD, lenders, and borrowers from potential risk. Currently, FHA presumes a monthly payment of 1 percent of the outstanding student loan balance if borrowers are actively participating in an income-based repayment plan resulting in a monthly obligation that does not fully amortize the debt. While Fannie Mae, Freddie Mac, and the VA qualify borrowers using the reduced monthly income-based repayment obligation, FHA is not aligned and continues to require lenders to underwrite to a monthly payment of 1 percent of the outstanding balance – which is almost always significantly larger than the actual payment being made by the potential borrower. This policy disqualifies creditworthy borrowers because of the inflated debt ratios that it produces.

In order to align with other government or government-sponsored enterprise policies, HUD should revise the FHA guidelines to allow for the use of the actual monthly student loan payment made by the borrower. Such a policy change would more accurately reflect the risk presented by the borrower while also improving access to credit. To incorporate this revision, MBA recommends that HUD modify the FHA Single Family Handbook 4000.1 to reflect the following:

“If a borrower is currently in an income-based repayment plan the lender shall use the actual payment documented on the credit report or the most recent student loan statement.”

As an alternative, HUD could consider revising the FHA guidelines to allow lenders to request a Verification of Student Loans (VOSL) provided by the student loan servicer. The verification would include a calculation of the borrower's proposed fully amortized payment based on the agreed-upon terms – that is, the monthly payment the borrower would be making if the loan was being fully amortized. This monthly payment will likely

⁷ MBA and four other trade groups submitted a comment letter on January 21, 2020, as part of the Consumer Finance Protection Bureau's "Request for Information Regarding the Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) Rule Assessment." This comment letter recommends changes to improve the rule and provide greater regulatory clarity, which we believe will result in lower costs for consumers.

be higher than the actual payment, but lower than the payment based on the 1 percent assumption. Because HUD allows for the use of the fully amortized payment for borrowers who are not utilizing income-based repayment plans, it is certainly feasible to use the same calculation to consider student loan debt when evaluating borrowers in income-based repayment plans.

To implement this revision, MBA recommends that HUD modify the FHA Single-Family Policy Handbook 4000.1 to reflect the following:

“If a borrower is currently in an income-based repayment plan and the monthly payment does not fully amortize the debt, the lender must determine the qualifying monthly payment using the lesser of:

- *a calculated fully amortizing payment provided by the student loan servicer using the documented loan repayment terms; or*
- *a payment equal to 1 percent of the outstanding student loan balance.”*

Under the alternative proposal, the lender must request (and receive) the fully amortizing payment calculation directly from the student loan servicer (similarly to a VOE, VOD, VOR, etc.) to mitigate the risk of fraud. This information can be requested by the lender using the standard borrower authorization form that is currently required in the initial disclosure packet.

AFFORDABLE RENTAL HOUSING

In response to your request, we organize our comments and recommendations into four different types of actions HUD could take to reduce barriers to affordable rental housing: (1) Davis-Bacon issues; (2) other cost savings; (3) updating/modernizing program requirements; and (4) improving processing efficiency.

Reduce the burden of Davis Bacon wage rate requirements on affordable housing

MBA recommends that the prior policy and practice of applying Davis-Bacon wage rates be restored, including its application to FHA-insured new construction and substantial rehabilitation multifamily rental projects under HUD’s Section 221(d)(4) program.

HUD-insured housing projects are subject to the Davis-Bacon Act.⁸ For FHA-insured projects that are subject to the Davis-Bacon Act, HUD’s Office of Davis-Bacon and Related Acts assigns Davis-Bacon wage rate schedules under the review and direction of the Wage and Hour Division (WHD) of the Department of Labor.

⁸ See 12 U.S.C. § 1715c.

Historically, the HUD and WHD policy and practice was to assign only a single Residential wage schedule to FHA projects of less than five stories in height, including all incidental items of work, consistent with the overall Residential character of the project.⁹ This policy was consistent with the Davis-Bacon Act and with WHD All Agency Memorandum (AAM) 130.¹⁰

- The Davis-Bacon Act requires contractors on projects subject to the Act to pay wages not less than those prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the project that is subject to Davis-Bacon,¹¹ and
- The AAM 130 definition of construction of a Residential character explicitly “includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.”¹²

Over the past several years, however, WHD has abandoned that policy and practice in favor of requiring HUD to assign non-Residential wage schedules for aggregations of incidental items of work on FHA-insured projects. This changed application of Davis-Bacon has resulted in an “overly complex labor requirement” that has created a regulatory barrier to affordable housing by increasing the construction costs, the cost of financing for both debt and equity as the increased cost creates a gap in the funding mechanism, the time, and the unpredictability of developing new affordable and workforce multifamily rental housing. For example, for one project, over a period that spanned 2018 and 2019, HUD initially assigned three wage rates (Residential, Building, and Heavy); on appeal from that decision, WHD assigned two wage rates (Residential and Building); on appeal from that decision (requesting a single Residential wage rate), WHD assigned all four wage rates (Residential, Building, Heavy, and Highway); and WHD later reversed that position, restoring the decision with two wage rates (Residential and Building). Under the prior policy, HUD would have assigned only a Residential wage schedule, to apply across all aspects of the project, and WHD would have accepted it.

⁹ This policy is reflected in prior HUD issuances prepared in consultation with WHD. See HUD Handbook 1344.1 Rev 2 (Feb. 2012) (“The primary component, which determines the character of work, is the housing. Elements such as site work, parking areas, etc., are incidental items and are included within the definition of residential construction. Generally, any housing development (four stories or less) is classified as ‘residential.’ This classification is not altered by the cost of incidental items, even if such costs reach the threshold guides (above) for ‘substantial.’ Except in the most extraordinary circumstances, such as where local industry practice clearly demonstrates otherwise, only residential wage decisions shall be assigned for housing development projects of four stories or less.”); see also HUD Labor Letter No. LR-96-03 (Dec. 2, 1996) (“HUD policy and practice is consistent with AAMs 130 and 131 in that HUD seeks to identify the (one) category of construction that best suits the proposed work and issues the (one) corresponding Davis-Bacon wage determination. Most HUD-assisted projects fit cleanly in a single construction category and incidental items are not ‘substantial.’ As a result, the issuance of multiple schedules has been rare for HUD-assisted construction projects and would represent a departure from the norm.”).

¹⁰ AAM 130 (March 17, 1978).

¹¹ See 40 U.S.C. § 3142(b).

¹² AAM 130 at p. 4 (“Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single-family houses or apartment buildings of no more than four(4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.”).

The resulting split-wage determinations (and late revisions to wage determinations) increase the cost of housing projects (which can increase rents) and create significant administrative burden and complexity. For example, a split-wage decision may require a developer to pay workers different wages to perform identical work, depending upon where on the project they perform that work. In some cases, the resulting administrative burden, disruption, and delays can make a project infeasible after a developer has expended significant amounts of time, effort, and funds.

Notably, this substantial and impactful change in WHD policy occurred by way of a gradual erosion of the prior policy, which has ultimately resulted in a complete abandonment of that prior policy. Notably, this change occurred without any WHD issuance or other communication on the nature of the change in policy, or the rationale for it, to the public or, to our knowledge, to HUD. Rather, this change occurred in the form of a pattern of WHD rejections of individual HUD wage decisions that had applied the prior policy.

While we recognize that the source of the change in policy is WHD, HUD and its ability to implement housing programs is adversely affected by that change. Accordingly, we recommend that HUD include this change in its report to the President under the Executive Order, as an “overly complex labor requirement” that has created a regulatory barrier to affordable housing, to help compel WHD and the Department of Labor to remove that regulatory barrier.¹³

In addition, to further reduce the adverse impact of Davis-Bacon on affordable rental housing, HUD should also work with the Department of Labor to modernize the story-limit for projects that may be assigned a residential wage schedule, by converting it to a height limit that is consistent with modern construction and building codes for apartment buildings.

Additional cost saving recommendations

- **Reduce HUD examination fees from 0.30% to 0.10%.** This recommended reduction in fees, which is already in effect for affordable properties located within Opportunity Zones, should be extended to cover all projects meeting the definition of “affordable.”
- **Reduce the Broadly Affordable Mortgage Insurance Premium (MIP) from 0.25% to 0.10%.** The MIP on Broadly Affordable properties (those with 90% of units covered by rent/income restrictions and a minimum of 10% rent advantage to market) should be reduced because they present an extremely low risk to the insurance fund.

¹³ MBA also has separately brought this matter to the attention of WHD.

- **Restore the reduced Mortgage Insurance Premium (MIP) category for Subsidized and other Affordable Properties that do not qualify for Broadly Affordable.** Prior to the 2016 MIP reductions, projects with a Section 8 HAP contract or other affordable use restriction with a remaining term of less than 15 years were eligible for a reduced MIP of 0.45% versus the MIP for market rate properties of 0.60%. This is consistent with the intent of reduced MIP for affordable housing projects as originally published in the April 10, 2012 and August 15, 2012 Federal Register, which was to distinguish between the risk associated with market rate properties versus affordable housing. The guidance in the April 10 and August 15, 2012 notices did not include a stipulation or requirement of 15 years for PBRA contracts or use restrictions. The guidance was simply, “These changes will not apply to loans combined with Low Income Housing Tax Credits, other affordable housing loans for HUD-assisted properties, or loans insured under FHA’s Risk Sharing Programs. ‘Other affordable housing loans for HUD-assisted properties’ include those for properties with an active project-based Section 8 contract covering any of its units.” This language was repeated in the August 15, 2012 Notice, “The term ‘other affordable housing loans for HUD- assisted properties’ includes those properties with an active project-based Section 8 contract covering any of its units.” Neither the April 10 nor the August 15, 2012 Notices referenced the need for a project based rental contract to have a term of 15 years to qualify under the MIP established for affordable housing projects.
- **Modify the treatment of certain costs.** HUD should allow costs associated with obtaining and syndicating LIHTCs, as well as those associated with tax-exempt bonds (in excess of currently allowed limits of 5.5% of the mortgage amount when combined with lender fees), to be mortgageable. This would reduce the need for a costly bridge loan and allow for more HUD-insured mortgage funds to be available during the construction period.
- **Clarify in the new MAP Guide that relocation costs for 223(f) transactions are mortgageable.** Relocation costs are mortgageable under Section 221(d)(4) and should be considered as such for section 223(f) transactions as well.
- **Eliminate CPD Notice 16-02, issued February 8, 2016 and its applicability to existing multifamily projects wishing to undergo moderate and/or substantial rehabilitation.** This notice when applied to existing multifamily projects attempting to refinance and undertake improvements and/or moderate rehabilitation requires an owner to undertake extensive and unnecessary environmental reviews that are typical of new construction. For example, if an owner is refinancing and the improvement plan includes roof, window, door replacement, or installation of solar panels or new landscaping, the Notice requires an environmental review that complies with NEPA to include potential archeological surveys, biological surveys, noise studies, and other unnecessary investigations that add to the cost and timing to refinance a project and

preserve housing. It effectively prevents an owner from using the HUD-insured programs to refinance and modernize the project without spending unnecessary funds on excessive environmental reviews and adding additional time.

- **As part of the Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), eliminate those portions of NEPA that are repetitive and not relevant to environmental risk.** For example, NEPA requires an Environmental Assessment Factors Review for all New Construction and most Moderate/Substantial Rehabilitation projects. This review is repetitive to evaluations that are already and best conducted by local municipalities.

This creates excessive review of projects tying the land development and demographic characteristics of a project to environmental risk. It requires evaluation and discussion on the plans, compatible land uses, zoning, urban design, soil suitability, erosion, storm drainage, employment and income patterns, and demographic characteristics. It requires that the reviewer comment on each of these and then provide “credible, traceable, and supportive source documentation” to conclude there are no issues.

The items being reviewed are best handled through local and state approvals, particularly as it relates to the plans, compatible land uses, urban design, soil suitability, etc. Real estate is local and is best evaluated and handled by the local authorities in which the project is located as that is the community that is impacted. This has no place in an environmental review. Further, each project with FHA-insured financing already must undertake specific reviews that already cover the areas in the Environmental Assessment Factors, making this requirement repetitive and outside the scope of environmental risk.

Update/modernize program requirements

- **Broaden the definition of “affordable” to include “naturally-occurring affordable housing” and “workforce” housing.** Due to the scarcity of LIHTCs, many local jurisdictions are encouraging the development of “workforce” housing to meet the increased demand for affordable housing. These projects typically have a significant rent advantage to market, but many of these projects have income restrictions at 80% or 100% of AMI and do not qualify for any beneficial underwriting parameters, reduced MIP, or fee savings under HUD programs. Allowing for increased leverage and reduced costs on these transactions would encourage the creation of more naturally occurring affordable housing without the use of federal or state tax credits.

HUD should also modify its requirements related to occupancy preference, which currently prohibit housing options such as “Hometown Heroes” affordable housing for teachers, firefighters, and police.

- **Increase the noise threshold at which an Environmental Impact Statement (EIS) is required.** The current “unacceptable” threshold of 75 dB does not consider modern-day traffic counts, rail traffic, transportation-oriented developments, etc., and it should be increased. As a result, the current threshold precludes HUD financing of truly transit-oriented developments (TOD). While an EIS waiver is possible, and such waivers have been approved, the additional time that the waiver process adds to the transaction is onerous. TODs should be encouraged because of their environmental benefits and the advantages they offer to low- and moderate-income families. Requiring an EIS on these projects adds unnecessary costs and delays.
- **Eliminate outdated environmental prohibitions.** Prohibitions such as prohibiting construction within the “engineered fall distance” of a tower or within 50 feet of rail do not account for modern engineering standards and prevent otherwise beneficial projects from being financed through HUD programs, they should be eliminated.
- **Set target closing date at issuance of Firm Commitment.** Setting the target closing date at issuance of Firm Commitment is the current practice for LIHTC Pilot transactions and should be extended to apply to all affordable transactions. The uncertainty created by a lengthy review by the Office of General Counsel (OGC) adds unnecessary time and cost to transactions.
- **Eliminate the requirement for full building permits to be delivered at closing.** Many jurisdictions issue “permit ready” letters or partial permits throughout the construction process. HUD’s requirement for a full permit is inconsistent with industry standard and, as a result, delays closing where a local jurisdiction will not issue a full permit (e.g., cases where demolition is required). Building permits are generally very costly and result in greater funding of the HUD-insured mortgage or equity bridge loan at closing, which results in higher interest costs for developers, which reduces the affordability of the resulting housing.
- **Expand the treatment of “public” subordinate financing to include financing from nonprofits and other similar entities.** The current definition of “quasi-public” in the MAP Guide should be broadened to include many of the foundations and non-profit entities that provide important subordinate financing to affordable transactions.
- **Allow for use of the 2014 version of the Subordination Agreement for all LIHTC transactions.** The 2014 form was generally accepted by state and local jurisdictions that provided subordinate financing for affordable transactions. The new form has presented challenges that are preventing these important sources of financing from being combined with HUD transactions.

- **Allow for delayed funding of Operating Deficit escrow on section 221(d)(4) transactions until construction completion.** The current requirement (for non-Pilot transactions) that the escrow be funded at Initial Endorsement results in a funded and unused escrow held by the lender through the construction period, though the Operating Deficit escrow is not needed until after Final Endorsement. The timing of the funding creates unnecessary interest carry costs when the equity bridge loan is used to fund the escrow.
- **Allow for hard-pay subordinate financing and eliminate surplus cash note for subordinate loans from public sources.** There are currently subordinate loan programs specifically for affordable housing in various jurisdictions that cannot be combined with HUD financing.

Increase process efficiencies

- **Expand pilot processing to all “affordable” transactions.** HUD should allow an early review of items such as the HUD Environmental Review Online System (HEROS), an Affirmative Fair Housing Marketing Plan (AFHMP), a Relocation Plan, and a Project Owner’s/Management Agent’s Certification form 9839B. etc., which will create better efficiency and allow for faster issuance of a Firm Commitment.
- **Increase the number of units for which CPD review is necessary to 300.** The current threshold of 200 units for Community Planning and Development (CPD) review adds an unwarranted time-consuming process to many transactions.
- **Reduce the level of plans and specifications required at Firm Application.** Currently, an 80 percent set of plans and specifications, a “draft” Architectural and Cost Review Report, and CNA e-Tool are required at Firm Application. These items are generally the largest source of delays on affordable projects. Moreover, the requirement of the e-Tool effectively negates the “deferred” submission that is allowed under the MAP Guide. Allowing these items to be delivered 30 days before closing would appear to provide HUD enough time to review and approve the plans and specifications prior to closing.

Require the HEROS (HUD Environmental Online Review System) review to be completed to the maximum extent possible at the earliest application submission. The current practice (by many HUD offices) of reviewing the HEROS at Firm Application results in delays in two-stage processing transactions.

Addressing State and Local Barriers to Affordable Housing Development

In response to the shortage of affordable housing, some states and cities have considered or enacted rent control measures. The approaches vary considerably by

state, but what they have in common is a limitation on a property owner's ability to increase rents in line with the market. Voices as diverse as the [Washington Post](#)¹⁴ and the [Wall Street Journal](#)¹⁵ have noted that rent control tends to exacerbate many of the very problems it is trying to alleviate. A detailed study conducted last year by Dr. Lisa Sturtevant for the National Multifamily Housing Council concluded as follows:

*Imposing limits on rents would seem to be a logical way to keep housing costs low for people who need affordable housing. However, there are significant problems associated with rent control programs. Economists nearly universally agree that rent ceilings reduce the quantity and quality of housing and that even more moderate forms of rent stabilization have efficiency challenges and negative housing market impacts.*¹⁶

Accordingly, we suggest that policy makers focus instead on policies that could increase the supply of affordable rental housing or that might provide governmental assistance to renters. For example, MBA has long supported policies and programs that can increase the supply of rental housing, including affordable rental housing. This approach includes supporting programs such as HUD's FHA programs, which support new construction and substantial rehabilitation of workforce and affordable rental housing, the Low-Income Housing Tax Credit program (LIHTC), and the Rental Assistance Demonstration (RAD) program. We suggest that HUD encourage state and local policymakers to those programs as models for more effective approaches to address affordable rental housing.

Another potential state-level barrier to affordable housing development is the consideration of changes in property tax regimes. Specifically, a ballot initiative that has qualified to be included on the 2020 ballot would amend the tax limitations of California Prop 13. As amended by the ballot initiative, Prop 13 would maintain current property tax limits for residential, small business, and agricultural property while eliminating those protections for business and industrial buildings and commercial land worth more than \$3 million, including multifamily rental properties. This change would dramatically reduce the incentives for developers and owners to develop, maintain, and preserve affordable rental housing and could require renters, including low-income renters, to effectively subsidize residential property owners, including high-income owners. Clearly, this outcome would create an additional state (and local) barrier to affordable housing development. While we have no recommendation for HUD on this issue, we describe it here as an element of the

¹⁴ Washington Post Editorial Board, "The economists are right: Rent control is bad," *The Washington Post* (Sept. 21, 2019); https://www.washingtonpost.com/opinions/rent-control-is-back-and-thats-bad/2019/09/21/31abb05c-dbdb-11e9-a688-303693fb4b0b_story.html

¹⁵ Wall Street Journal Editorial Board, "Bernie's National Rent Control," *The Wall Street Journal* (Sept. 29, 2019); <https://www.wsj.com/articles/bernies-national-rent-control-11569786061>

¹⁶ Sturtevant, Lisa, Ph. D., "The Impacts of Rent Control: A Research Review and Synthesis," National Multifamily Housing Council (May 2018); <https://www.nmhc.org/globalassets/knowledge-library/rent-control-literature-review-final2.pdf>

context in which MBA, HUD, and others seek to address the shortage of affordable rental housing.

Addressing Local Barriers to Affordable Housing Development

Our members often voice concerns that local zoning and land use restrictions create unnecessary barriers to the development of new affordable rental housing. Other local barriers to affordable housing development include burdensome application processes and fees, and long, complex, and costly approval processes. We urge HUD to encourage local policymakers to rethink zoning and land use restrictions through the lens of impacts on the supply of affordable rental housing.

CONCLUSION

MBA appreciates the opportunity to share our views on removing regulatory barriers to affordable housing. While there are no easy fixes to our nation's affordable housing challenges, the work of the White House Council on Eliminating Regulatory Barriers to Affordable Housing can play an important role in identifying some potential solutions. We look forward to working with the Council and other stakeholders in addressing our nation's affordable housing needs.

If you have any questions regarding this letter, please contact Steve O'Connor, MBA's Senior Vice President for Affordable Housing initiatives, at 202-557-2867.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "R. D. Broeksmit". The signature is fluid and cursive, with a long horizontal stroke at the end.

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