MORTGAGE BANKERS ASSOCIATION

September 29, 2023

The Honorable Marcia Fudge
Secretary
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

RE: Fees and Charges

Dear Secretary Fudge,

In March of this year, you penned an open letter to housing providers (and others) that stated that "any fees charged to renters should be fair and transparent," and that "fees limit options for renters and strain household budgets, particularly for renters with low and modest incomes who already face high rental cost burdens." The Mortgage Bankers Association[1] (MBA) agrees and believes in fairness and transparency in fees charged to consumers. We also believe that these same burdens are placed on renters today by unnecessarily high fees charged by HUD to developers and providers of housing. These costs result in fewer units being developed and higher rents for tenants.

Not only are the costs of HUD loans more than the private market and those charged by Fannie Mae and Freddie Mac (the GSEs), but together, these costs are far higher than are needed to cover the risk to the American taxpayer.

Mortgage Insurance Premium

The mortgage insurance premium (MIP) charged to FHA borrowers is designed to protect taxpayers and is meant to reflect the risk to the FHA General Insurance and Special Risk Insurance (GI-SRI) Fund. However, during the last 12 years, HUD has insured $170 billion of multifamily loans, incurred a loss of $27 million on multifamily loans, and collected premiums of $3 billion from FHA multifamily borrowers. Clearly, the premium rate far outweighs the risk to the

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 300,000 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 2,200 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

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taxpayer. The overage paid could be used to create more rental housing, which is sorely needed.

In February 2023, when HUD lowered the single-family MIP, it stated that “FHA periodically re-evaluates the appropriate level of MIP pricing based on the state of the Mutual Mortgage Insurance Fund (MMI Fund) and housing and economic conditions. FHA has determined that a reduction for certain programs to the annual MIP rate it charges pursuant to NHA Section 203(c)(2)(B) is **necessary and appropriate to the execution of FHA’s mission and role in the mortgage market.”** MBA believes the same review and consideration is due in the multifamily program as well.

Fees and Charges

HUD’s application fee adds additional cost to the already high price of FHA financing. Per the MAP Guide, HUD’s non-refundable application fee for a multifamily FHA loan is $3 per $1,000 of the requested mortgage amount. This fee is unnecessarily high and adds to the increasing difficulty of developing FHA-insured properties, especially during these challenging times of high inflation and high costs.

HUD loans also come with a significant list of fees both at closing and through the servicing of a property. Not only are these fees costly, but they are also sometimes duplicative. For example, Mortgagee Letter 2013-13, “Lender Delegation of Non-Critical Repair Administration,” clarifies that for projects when the HUD lender is delegated responsibility for non-critical repairs, the inspection fee “… will be waived if the total cost of repairs is less than $100,000. Otherwise, the inspection fee paid to HUD may not be waived.” The Mortgagee Letter further confirms that the servicing lender must engage a third-party inspector and those fees are allowed as a third-party mortgageable cost. Therefore, the borrower ends up paying an inspection fee for <u>both</u> the third-party inspector who does the work, and HUD, who does not do the inspection. These fees are not nominal, and often are more than $10,000. This policy is particularly perplexing as HUD requires payment of a fee with no benefit or service provided.

Insurance Requirements

HUD’s insurance requirements also add significantly to the costs of an FHA loan. Property insurance costs are climbing alarmingly nationwide, but HUD should not add to that challenge with excessive requirements. FHA could ease burdens on borrowers by reducing their wind/named storm requirements, which are significantly higher than the private sector and the GSEs. FHA deductible levels are far lower than the rest of the industry, and any waiver of the requirements is accompanied by significant escrows, unlike waivers granted by GSEs. Fannie Mae has a maximum deductible of 10% of the insurable value, and Freddie Mac has a 5% maximum insurable value requirement. HUD’s maximum is 1%, which is often impossible to place in the market. MBA believes HUD should increase deductibles to 5%, a figure reflective of current insurance industry standards. FHA should also eliminate escrows, when required for waivers. These are not required by the GSEs and add to the cost of the project. Easing these requirements will make obtaining adequate insurance easier for FHA borrowers and reduce costs for rental housing properties.

Third Party Reports

Third party reports for MAP loans are more expensive than the same reports for other lending sources. Reasons for the increased cost include additional requirements such as completing HUD forms and the extended time third parties must remain engaged to address questions, and individual HUD staff idiosyncrasies during processing. Inconsistencies between HUD offices allow review staff to question industry standard reports. HUD staff preferences for approaches to market studies, capital needs assessments, and appraisals have required multiple revisions to reports and weeks of additional processing time. For example, a HUD 223(f) refinance appraisal report will cost $2,000-3,000 more than its GSE counterpart.

Miscellaneous Fees

FHA deals are also burdened with numerous costly requirements to provide specialty capital needs and environmental reports for issues that other lending sources do not consider necessary, such as:

- noise survey for all new construction and sub rehabilitation loans ($1,000)
- cultural resources desktop analysis for all new construction or sub rehab ($2,000)
- Operations and Maintenance (O&M) plan for all age projects without original roof installation documentation ($250)
- baseline asbestos (ACM) screening (cannot presume with O&M plan) for pre-1989 properties ($3,000)
- lead-based paint testing/risk assessment (cannot presume with O&M plan) for pre-1960 properties ($10,000)
- intrusive electrical panel assessment if property is 30+ years old ($1,000-1,500)
- wood destroying organisms report if located in CA, WA, OR, NV, UT, AZ ($500-1,000)
- fall study if located proximate to certain free-standing structures such as a water tower, cell tower, high voltage utility pole ($5,000 to10,000)
- vibration study, if within 100 feet of rail line ($4,000 to 6,500)
- accessibility report ($3,000 to 10,000)
- permits and approval reports ($500 to 1,500)
- full seismic survey by an engineer (as opposed to simpler seismic/Probable Maximum Loss calculation) if located in certain areas ($2,500 to 4,000)
- pipeline engineering report if located within Potential Impact Radius (PIR) of a high-pressure pipeline ($7,500) – affects TX and OK deals heavily

Capital Needs Assessment (CNA) e-Tool

The difficulty of using HUD systems and technology also increases third-party costs. The required use of the CNA e-Tool costs HUD borrowers an extra $1,000 per CNA report to cover the additional work. Similarly, report costs increased when additional time was required to complete the HUD Environmental Review Online System (HEROS) report ($1,500). Additionally, a third party is often needed to complete an Active Partners Performance System (APPS) submission, as the system is too difficult for borrowers to navigate on their own ($1,000-1,500). Each one of these requirements adds time and costs that make FHA loans more cumbersome than other loan programs.

Escrow Requirements

Excessive escrow requirements add to the capital needed for a HUD loan and reduce liquidity available for owners and developers to take advantage of other housing opportunities. Often, escrows are used as a blanket method to “mitigate” a variety of unnamed risks even if the risk is non-monetary. Regional offices develop a preference for many additional months of debt service for 221(d)4 initial operating deficit escrows that are applied without regard for the specific characteristics of the project. Escrows are often required for perceived risks such as less experienced or lack of HUD experienced development teams, insurance deductibles that do not meet requirements, and a variety of potential market-related issues. The 50% cash holdback escrow required to be retained for 223f refinance loans with repairs that will be completed post-closing is an example of an excessive escrow. MAP Guide 8.11.1.A.2.c requires the lender to “withhold fifty percent (50%) of the cash-out proceeds in a dedicated account until all repairs are completed…”. When the sum withheld exceeds $1,000,000, the amount can be reduced by a waiver request if certain conditions are met. The guideline of 50% of cash-out proceeds is an arbitrary amount that has no relation to the cost of the repairs. Consequently, millions of dollars may be held in escrow for a relatively small dollar cost of repairs. The ability to request a waiver can provide relief, but the interest and requirements of regional HUD offices to approve these waivers varies. Escrows should only be required to address a specific risk, and the calculation of the escrow amount should be determined by the relevant data. For example, if completion of repairs is determined to be at risk, the amount to be withheld should be tied to the cost of the repairs. MBA requests that HUD be judicious in the use of escrows and ensure the requirements and amount of capital retained be appropriately sized to the relative risk. Excessive capital retained in accounts is capital that is not providing liquidity in the markets and reduces opportunities for additional housing to be developed.

Davis-Bacon Wages

Although out of HUD’s direct control, the recent changes to the Davis-Bacon wage determination add to the costs of FHA-insured properties. The determination of split wages adds significant complexity, paperwork, and recordkeeping requirements for housing developers, often without cause. For example, the same electrician installing hallway lights outside apartment units and those same lights in the on-site clubhouse could require two different wage determinations.

Wage determination reviews are delaying issuance of Firm Commitments and/or coming in after HUD issues its FHA Firm Commitment. In some cases, determinations are changed after a transaction closes. This situation causes issues for Developers and Lenders in the following ways:

- Creates uncertainty of execution for the FHA programs
- Makes it difficult for Developers to obtain reliable construction bids
- Makes it difficult to maintain cost estimates

- Creates difficulties for Developers to keep General Contractors and subcontractors committed to a project.

The definition of "residential" has not been modernized since 1985, creating a financial burden on the construction costs of work-force and affordable multifamily housing. Since 1985, modern construction techniques and international building codes have evolved, increasing permissible building height for wood-framed multifamily construction (Type VA and VB). Specifically, the expansion of the story-height standard can be justified via modern day building code definitions. This seemingly simple change to reflect current HUD Multifamily-accepted building codes (e.g., International Building Code is referenced in the MAP Guide) would have a substantial economic impact in reducing rental housing construction costs. This would encourage new construction and be a catalyst for preservation of public, affordable, and workforce housing.

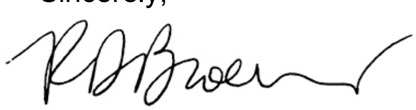
HUD must serve as a leader with the Department of Labor (DOL) to address these issues since they have a significant impact on the construction of FHA-insured properties, exacerbate the housing supply shortage, and lead to higher rents for residents.

Conclusion

To further the mission of providing decent, safe, and sanitary housing to American families, HUD must work to reduce unnecessary fees that are charged to multifamily borrowers. Today, housing providers face significantly increased costs in labor, construction materials, and interest rates. HUD charges significant fees, despite the strong performance of its loan portfolio. Many of these costs could be eliminated or reduced, without any risk to the taxpayer. Reducing the cost of FHA financing would have a direct and positive impact on the ability for multifamily borrowers and developers to add units and increase the nation's multifamily housing stock.

Thank you, and we look forward to continuing to work with the extremely dedicated HUD staff to create clean, safe, and affordable rental housing.

Sincerely,



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

cc: Julia Gordon, Assistant Secretary for Housing
Ethan Handleman, DAS, Multifamily Housing