MORTGAGE BANKERS ASSOCIATION

January 3, 2014

VIA ELECTRONIC SUBMISSION

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

Re: MBA Response to HUD's Request for Comment on Small Multifamily Building Risk Share Initiative (Docket No. FR-5728-N-01)

Ladies and Gentlemen:

The Mortgage Bankers Association[1] appreciates the opportunity to provide our comments in response to the Department of Housing and Urban Development's Request for Comment ("Notice") on its proposed Small Multifamily Building Risk Share Initiative ("Small MF Initiative").[2] As the national association of the real estate finance industry, MBA represents a broad range of sectors and capital sources in commercial/multifamily finance[3] and the single-family mortgage market.

MBA commends HUD's focus on strengthening small multifamily rental housing. The Small MF Initiative is intended to increase the flow of credit to small multifamily properties in the 5–49 unit size or properties that would benefit from a loan that is $3 million or less. Although the Notice states "[t]he purpose of this Notice is to invite certain mission-oriented lenders (Applicants) to

---

[1] The Mortgage Bankers Association (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 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 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit: www.mba.org.

[2] 78 Fed. Reg. 66043 (Nov. 4, 2013), Docket No. FR-5728-N-01.

[3] Our commercial/multifamily real estate finance members include FHA multifamily lenders, Fannie Mae and Freddie Mac lenders, commercial banks, life insurance companies, CMBS issuers, REITs, servicers and a broad range of service providers to the real estate finance industry.

comment on the section 542(b) Risk Share Program initiative described in this Notice, and to participate in the proposed initiative," MBA has a strong interest in programs that would enhance the small multifamily rental market.

As HUD is aware, section 542(a) of the Housing and Community Development Act of 1992 (1992 Act) directs HUD to "carry out programs through the Federal Housing Administration to demonstrate the effectiveness of providing new forms of Federal credit enhancement for multifamily loans."[4] The proposed program, authorized under section 542(b), seeks to effectuate this mandate with a focus on small multifamily rental properties.

The demonstration of "effectiveness" through the proposed FHA program, we believe, necessarily involves dual purposes: The Initiative should promote efficient delivery of financing to small multifamily properties in markets with capital scarcity; and the risks associated with the small multifamily market (and the risk to the Federal Government) must be carefully managed. Our comments seek to support these objectives.

First, we provide a brief overview of multifamily research and data relevant to the Small MF Initiative. Second, while CDFIs and nonprofits are critically important to the financing of affordable rental properties, we recommend an expansion of the institutions eligible to participate in the Small MF Initiative, including Multifamily Accelerated Program (MAP) lenders. Finally, we believe that several design modifications to the Small MF Initiative would enhance the effectiveness of the program. MBA recommends a number of changes below.

I. Overview of Small Multifamily Housing Finance

Multifamily rental housing is critically important to our housing system, providing homes to more than 16 million households.[5] Multifamily housing is affordable by its very nature, with the vast majority of multifamily rental housing providing homes for over 16 million households earning modest incomes, with 93 percent of multifamily rental apartments having rents affordable to households earning at or below the area median income (AMI).

As an important segment of multifamily rental housing, small multifamily properties, and the financing thereof, present unique market and policy considerations. HUD cites preliminary results of the 2012 Rental Housing Finance Survey (RHFS), which indicates there are 587,000 small multifamily properties in the 5-49 unit size. HUD further indicates that these "properties tend to be older, located in low-income neighborhoods, and to have lower median rents and higher shares of affordable units than larger multifamily rental properties. The RHFS also suggests that 58 percent of the landlords for this stock are individuals, households and estates compared to 8 percent of larger properties."[6]

[4] Pub. L. No. 102-550.

[5] 2011 American Housing Survey, US Census Bureau.

[6] 78 Fed. Reg. at 66044.

The importance of the small multifamily loan market is clear, and MBA supports HUD's efforts through this Initiative. As the final Small MF Initiative is developed, we encourage HUD to continue to examine relevant market data. MBA's Annual Report on Multifamily Lending,[7] which discusses 2012 multifamily originations, examined originations in the small multifamily market, as well as across all of multifamily finance. Overall, the average loan size in 2012 was $3.6 million based on 41,106 multifamily loans ($146 billion in total dollar volume), with loan size varying considerably by investor group. In terms of number of loans, the greatest share (80 percent) went to commercial bank, thrift and credit union portfolios.

In particular, "small loan lenders" who had average loan sizes of $1 to $3 million collectively made 48 percent of the total loans in 2012 for a total volume of $34.2 billion (23 percent of the total). In addition, of the loans of $1 million or less originated in 2012, there was considerable penetration into secondary, tertiary and non-MSA markets.

These data, we believe, can help inform HUD's steps to support the small multifamily market as part of the Small MF Initiative and other programs. In order to meet the needs of the small multifamily market — which, in part, can address the growing "worst case housing needs" cited by HUD[8] — the challenge is to design the Initiative in a manner that targets properties and markets with capital scarcity that can benefit from the types of financing offered by the Initiative. We would be pleased to assist HUD as it continues to engage in and devote resources to this Initiative.

II. Eligible Institutions

MBA supports the eligibility of CDFIs and nonprofits as institutions to participate in this Initiative. We do not, however, believe that the Small MF Initiative should be restricted to such institutions (or to joint ventures or consortia working with CDFIs). The organizational or ownership structure of a lending institution should not be dispositive as to program eligibility. Whether nonprofit or for-profit, a lender that can effectively deliver capital to targeted markets, effectuate prudent underwriting, and manage credit risk (in partnership with FHA) should be eligible to apply to the Small MF Initiative. Indeed, section 542(b) of the 1992 Act underscores the "market-oriented" nature of the programs to be developed under that provision.

MAP Lender Eligibility. We recommend that MAP lenders be eligible to participate in the Small MF Initiative as QPEs. While the decision to participate in the Initiative will be that of each lender, the universe of eligible institutions should include MAP lenders, whether or not organized as for-profit or nonprofit entities.[9] Some lenders, through affiliated business lines,

---

[7] MBA Annual Report on Multifamily Lending 2012.

[8] 78 Fed. Reg. at 66044.

[9] The network of MAP lenders that partner with HUD has been essential to the strong performance and broad liquidity provided to the multifamily housing market, having delivered $18 billion in multifamily

have significant experience and capabilities with risk sharing arrangements.[10] Some MAP lenders have expertise in the small and targeted affordable segments of the multifamily market.[11] Allowing MAP lenders to be QPE-eligible institutions that can choose to participate in the Small MF Initiative could enhance both the expertise in the sector and increase the geographic reach of the program.

As part of the evaluation criteria, HUD could review whether the applicant institution has a demonstrated history of financing small and/or affordable multifamily properties. With MAP lenders, HUD would have lender history information through its Lender Qualification and Monitoring Division. We also recommend that the criteria for eligibility — which should be flexible enough to provide an incentive for lenders to apply and qualify — be made available to enable MAP lenders to evaluate their eligibility and assess whether to seek participation in the Initiative.

Expand Potential Partnership and Joint Venture Opportunities. The proposed Small MF Initiative makes it unnecessarily difficult for qualified CDFIs to partner with experienced FHA MAP lenders. Allowing a CDFI to establish a joint venture (or other formal arrangement) with an FHA lender only if there are two or more for profit private lenders in the joint venture is unduly restrictive.[12] To the extent that a CDFI and one for-profit lender enter into a joint venture or other formal arrangement for purposes of the Small MF Initiative, that venture should be eligible to be a QPE.

Other Potential Institutions. Finally, we suggest that HUD provide in the final notice that it will consider other types of institutions as potential QPEs, as it evaluates the Small MF Initiative going forward.

III. Program Design Recommendations

To enhance the viability and success of the Small MF Initiative, we offer the recommendations below.

Underwriting Standardization. MBA recommends some degree of standardization of the underwriting under this Initiative. Standardized lending parameters and strong oversight would contribute to the success of the program. Without standardized parameters (including among HUD offices), it will be more difficult for HUD to monitor performance under the program.

---

originations in Fiscal Year 2012. Loans originated for FHA by MAP lenders have performed extremely well with a very low delinquency ratio.

[10] Some lenders with a MAP platform also have a Fannie Mae Delegated Underwriting & Servicing (DUS) platform, which incorporates risk-sharing.

[11] For instance, 37 MAP lenders are approved to participate in HUD's LIHTC pilot program (as of July 2013), and a number also plan to participate in HUD's Rental Assistance Program (RAD).

[12] 78 Fed. Reg. at 66045 (IV.A.3).

Substantial Rehabilitation and New Construction Loans. MBA strongly supports the inclusion of substantial rehabilitation loans as part of the Small MF Initiative. HUD should also consider allowing shorter term substantial rehabilitation loans under the Initiative. This could facilitate capital improvements for the small multifamily housing stock in geographic areas where lenders may be reluctant to take rehabilitation or construction loan risk. In addition, we recommend that HUD include new construction loans in the Initiative in geographic areas where there has been limited multifamily construction.

Financial Capacity of Applicant Lenders. The financial capacity of applicant lenders — and the criteria by which they would be approved — should be carefully considered. While a program that encourages broad lender participation would be desirable, the calibration necessary to both increase capital flows to small multifamily properties and effectively manage program risk (and risk to taxpayers) is a substantial undertaking. An applicant new to risk sharing who initially qualifies as a QPE may not have the resources necessary to absorb losses generated over time by the new line of business. Given that multifamily loans generally have a seasoning period prior to default, there is the potential that future defaults may overwhelm the financial capacity of some applicants, creating additional risk to HUD and to taxpayers. Such risks should be closely monitored.

Asset Management Capacity of Applicant Lenders. The servicing and asset management capacity of lender applicants should be a consideration. For a risk-sharing program, some minimal, standardized level of reporting would be appropriate for Initiative participants.

Streamline Reporting Requirements Where Appropriate. Notwithstanding the importance of standardization, we recognize that the small multifamily market presents unique considerations. For instance, requiring audited financials for the Small MF Initiative could be problematic for some individual (rather than corporate) owners of small multifamily properties. Some degree of flexibility would be necessary to the extent the program seeks to reach this market segment. By contrast, HUD should maintain its standard reporting requirements for corporate and more sophisticated borrowers, particularly those with experience working with HUD.

Flexibility in Occupancy Requirements. The required 93 percent occupancy threshold[13] will present difficulties for small multifamily properties and owners. This is one of the inherent risks in small multifamily lending – when one or two units go off-line for repair or are vacant for a month or more, it can significanty impact net operating income for the property. Given that supporting small multifamily properties is the core purpose of the program, we believe that some flexibility with the occupancy requirement is warranted.

Third-Party Reports. The process of hiring and compensating third-party report providers (such as environmental, appraisal, architectural and engineering firms) may exceed the capacity and budget of individual small multifamily property owners. HUD should provide flexibility for such borrowers.

[13] See 78 Fed. Reg. at 66048 (VI.D.2.d.i).

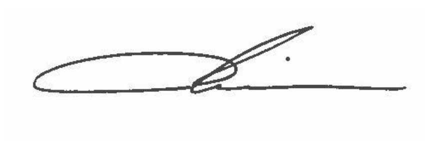
Clarity Regarding Unit Size. Some additional clarity regarding the eligibility of loans for $3 million or less on properties with 50 or more units may be warranted. As the Initiative appears to be designed to support small multifamily buildings, we believe that the core focus of the program should be on small multifamily properties.

HUD Data Collection and Publication. We recommend that HUD publish data on a regular basis (e.g., quarterly) on the Small MF Initiative for public review. As the program develops, a reporting cohort for this subset of loans within section 542(b) should be established, providing information on the aggregate numbers of participants, loans, originations, unit size of properties served, delinquency ratios and claims, as well as by geographic concentration by state and/or MSA.

* * *

Thank you for your consideration of our comments. We look forward to engaging in further discussions with HUD on these important matters. If you have any questions, please contact me or Eileen Grey, MBA Associate Vice President of Multifamily, at egrey@mba.org or 202-557-2747.

Sincerely,



Thomas T. Kim
Senior Vice President
Commercial & Multifamily Policy

cc: Steve Wendel, Chair, MBA FHA Committee