

# Commercial/Multifamily Policy Dashboard – March 2024

Category	Summary
<b>Climate/ESG</b>	<ul style="list-style-type: none"><li>• <b>SEC.</b> In March 2024, the SEC issued final rules requiring increased reporting around climate-related risks, and disclosure of greenhouse gas emissions. The final rules require disclosure of Scope 1 and/or Scope 2 greenhouse gas (GHG) emissions on a phased-in basis by certain larger registrants when those emissions are material; the filing of an attestation report covering the required disclosure of such registrants' Scope 1 and/or Scope 2 emissions, also on a phased-in basis; disclosure of material climate-related risks; and disclosure of the financial statement effects of severe weather events and other natural conditions including, for example, costs and losses. MBA submitted a comment letter in June 2022. A final rule is expected to be issued in March 2024.<ul style="list-style-type: none"><li>○ As a direct result of MBA's and others' successful advocacy, a proposed requirement for companies to report some indirect GHG emissions, known as Scope 3, was not included in the final rules.</li><li>○ 13 Republican state attorney generals have filed suit against the SEC claiming the final rules are beyond the scope and power of the SEC. 10 are in the Eleventh Circuit and 3 in the Fifth Circuit.</li></ul></li><li>• <b>California.</b> In October 2023, California Governor Gavin Newsom signed Senate Bill 253, the Corporate Climate Data Accountability Act, which requires companies operating in California to report various points of climate impact including Scope 3 greenhouse gas emissions. MBA and the California MBA opposed the legislation and urged Mortgage Action Alliance members in the state to tell the Governor to veto it. Scope 3 includes items that are outside of MBA members' control and are duplicative considering the sources within the value chain are likely already required to disclose under Scopes 1 and 2. This new type of data tracking will be costly to comply with because it is not based on known data and will instead be based on unknown industry averages or unreliable secondary sources.</li><li>• <b>New York.</b> In May 2023, the New York Senate introduced the Climate Corporate Accountability Act which is substantially similar to the California climate data law. The bill is currently in committee and MBA will continue to monitor progress and advocate for our members.</li></ul>

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<b>Banking Agencies</b>	<ul style="list-style-type: none"><li>• <b>Caution for Banks with Large Commercial Real Estate Concentrations.</b> In December 2023, the FDIC re-published an advisory urging banks to review concentrations of commercial real estate and to consider how to manage liquidity to mitigate risk. The advisory did not contain new policies or risk management practices.</li><li>• <b>Increased Capital Requirements.</b> In July 2023, the banking agencies issued interagency proposed changes to capital requirements for banks with assets of \$100 billion or more. The so-called “end game” proposed rules complete U.S. regulators’ implementation of the Basel III standards and make changes in response to the recent large bank failures. The comment period ended on January 16, 2024, and MBA submitted comments that focused on the numerous negative impacts these proposed rules would have on the commercial real estate market and the housing finance ecosystem. MBA continues to meet with the Banking Agencies and members of Congress to advocate our positions.</li></ul>
<b>CFPB</b>	<ul style="list-style-type: none"><li>• <b>Small business reporting.</b> On March 30, 2023, the CFPB released its small business loan reporting final rule that implements Section 1071 of the <i>Dodd-Frank Act</i>. Under the rule, lenders who originate at least 100 small business loans in each of the preceding two years are required to report certain demographic information. A small business has gross revenue of \$5 million or less in its most recent fiscal year and loans reportable under the Home Mortgage Disclosure Act will not need to be reported under the small business lending rule. In August 2023, a federal judge issued an order blocking enforcement of 1071 by the CFPB for only members of the American Bankers Association and/or Texas Bankers Association which will delay implementation dates for these entities. In October, the federal judge extended the order to all financial institutions until the Supreme Court’s final decision in the case <i>Community Financial Services Association v. CFPB</i>.</li><li>• <b>HMDA.</b> In October 2022, a US District Court ruled that the HMDA reporting threshold should be decreased from 100 to 25 closed-end loans. In December 2022, the CFPB provided guidance, stating that it does not plan to “initiate enforcement actions or cite HMDA violations for failures to report closed-end mortgage data collected in 2022, 2021, and 2020” for covered institutions that originated at least 25 closed-end loans, but less than 100 closed-end loans in each of the previous two calendar years.</li></ul>

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<b>Treasury/FSOC</b>	<ul style="list-style-type: none"><li>• <b>Non-Bank SIFI Designation.</b> In November 2023, the Financial Stability Oversight Council (FSOC or Council) finalized new nonbank financial company designation <a href="#">guidance</a> altering the process for the determination and designation of nonbanks as Systemically Important Financial Institutions (SIFIs). The guidance reinstates FSOC’s ability to directly pursue the designation of a market participant without first requiring the identification of a particular market activity, as adopted by the Trump Administration’s 2019 Interpretive Guidance. Under the Nonbank Designations Guidance, the Council generally expects to follow a two-stage process when determining whether a nonbank financial company should be subject to Federal Reserve supervision and prudential standards:<ul style="list-style-type: none"><li>➤ Stage 1 – preliminary analysis, based on qualitative and quantitative information available through public and regulatory sources, followed by a vote on whether to move to Stage 2.</li><li>➤ Stage 2 – In-depth evaluation involving significant engagement with the company and its primary financial regulator. At the end of Stage 2, a two-thirds vote by the FSOC voting members results in a proposed designation. Following a proposed designation, a company may request a hearing and then the FSOC can decide whether to hold a vote for final designation (also required two-thirds).</li><li>➤ The FSOC will evaluate designations at least annually and rescind if warranted.</li></ul></li></ul> <p>The Final Guidance removes three significant prerequisites to a designation that were created by the 2019 Interpretive Guidance, the removal of which MBA advocated against: prioritizing an “activities-based approach,” performing a cost-benefit analysis, and assessing a company’s likelihood of material financial distress. The FSOC has determined that these steps are not legally required, are not useful or appropriate, and would unduly hamper the Council’s ability to use the statutory designation authority in relevant circumstances.</p> <p>Nonbanks of concern to the FSOC include insurers, hedge funds, money market funds, crypto assets, payments system providers and IMB servicers.</p>

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<b>FHFA and GSEs</b>	<ul style="list-style-type: none"><li>• <b>Multifamily Caps/PSPA.</b> The 2024 multifamily caps are \$70 billion each, with a requirement that 50% be “mission-driven,” and recognition of cost-burden areas and some green lending. Also, loans classified as supporting workforce housing properties with self-imposed restrictions by the Borrower are exempt from the caps.</li><li>• <b>Affordable Housing Goals.</b> In December 2022, FHFA issued final 2023-24 goals and subgoals that use a new methodology based on a percentage of unit production for measuring progress.</li><li>• <b>Tenant Protections.</b> On May 30, FHFA issued a Request for Input (RFI) on multifamily tenant protections. The RFI was intended to help FHFA collect information on the tenant experience and solicit ideas for improved data collection to “better quantify the size and scope of the issues identified by tenants.” MBA submitted a response in July 2023. The letter highlighted MBA’s significant concerns about including additional enhancements for tenants and urged FHFA to refrain from enacting new or expanded obligations, like rent control, that would disincentivize participation in the Enterprises’ multifamily programs. In January 2024, FHFA released a summary of the responses received from the RFI and stated that industry engagement will continue in 2024.</li><li>• <b>Servicer Oversight.</b> Servicing oversight by the Enterprises has been increasingly over-zealous and inconsistent at times. MBA supports the adoption of one standard property inspection report and encourages efforts to further align scoring definitions.</li><li>• <b>GSE Capital Rule.</b> In November 2023, FHFA issued a Final Rule to modify certain provisions of the ERCF. Most notably, to better reflect the risk profile of government-subsidized, the final rule sets forth a risk multiplier of 0.6 (40 percent reduction) for multifamily mortgage exposure collateralized by properties with certain government subsidies like Low-Income Housing Tax Credits and Section 8 project-based rental assistance.</li></ul>

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<b>FHFA and Federal Home Loan Banks</b>	<p><b>Review of the Federal Home Loan Bank System.</b> In November 2023, after months of industry engagement, FHFA's released its findings in a report called "FHLBank System at 100: Focusing on the Future." The report outlined four key themes on the FHLB System, including its mission, liquidity, housing and community development, and operational effectiveness and governance. FHFA also said it plans to update and clarify its regulatory statement on the FHLB System to reflect the FHLBanks' two core objectives: 1) providing stable and reliable liquidity to their members, and 2) supporting housing and community development. MBA will remain engaged with FHFA, the FHLBs, and lawmakers on both sides and will continue to stress the importance of allowing a diverse set of eligible collateral types which is important for commercial real estate finance.</p>
<b>Property Insurance</b>	<p><b>Availability and Cost of Insurance.</b> The availability and cost of property insurance are becoming increasingly difficult across many states. FHFA announced a series of listening sessions to gain further insight into the challenges facing the insurance market. The first multifamily session took place on March 13, 2024. The event included many notable speakers, including FHFA Director Sandra Thompson, FHA Commissioner Julia Gordon, Virginia Insurance Commissioner Scott White, and HUD's Deputy Assistant Secretary Ethan Handelman. The discussion at the symposium centered around the new reality of elevated insurance costs, challenges in availability (particularly for affordable housing), and possible solutions to help ease some of the burden of rising costs. Also, MBA will work with the Administration and Congress to stress the importance of extending the National Flood Insurance Program which expires in March 2024.</p>
<b>Tax Policy</b>	<p><b>Tax policy.</b> The Inflation Reduction Act of 2022 did not change real estate related provisions of key importance to MBA members. The Act preserved the current 199A small business pass-through provision and the current tax treatment of 1031 "Like-Kind Exchanges" and did not include a provision to modify capital gains tax treatment of "Carried Interest". MBA will remain poised to respond to any possible future changes to tax policies that may impact our members.</p>

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<b>FHA/HUD</b>	<ul style="list-style-type: none"><li>• <b>Davis-Bacon.</b> In August, DOL released the final rule updating the Davis-Bacon wage rates. The rule failed to create a single residential wage decision for FHA-insured properties, as promoted by MBA and our coalition partners. The rule also did not affix the timing of wage rates to the date of application for firm commitment. However, DOL did leave the timing and definition of “residential” to later rulemakings. HUD has now committed to coordinating a listening session with lenders and DOL on split wages.</li><li>• <b>Floodplains/Flood Insurance.</b> HUD published a proposed rule to dramatically change the Minimum Property Standards for Flood Hazard Exposure; and the Building to the Federal Flood Risk Management Standard. MBA responded, urging HUD to withdraw the proposal which would significantly increase elevation requirements in expanded floodplain areas and require higher levels of flood insurance. MBA members met with OMB in January 2024, to express concerns about the impact of the rule on rental housing supply.</li><li>• <b>LIHTC Pilot Cap.</b> In June, following advocacy from MBA, HUD eliminated the \$25mm cap on LIHTC projects in their Pilot Program. The pilot provides streamlined processing for LIHTC transactions under the new construction and substantial rehabilitation programs. Removing the cap should incentivize more borrowers and lenders to use the program and produce more housing.</li><li>• <b>Energy Efficient Building Codes.</b> In May, HUD published a notice regarding new energy efficiency standards for new construction of HUD-insured or assisted properties. The proposal requires that all buildings be built to IECC 2021 and ASHRAE 90.1-2019 standards. The 2021 IECC has only been adopted in a handful of states and is a significant increase over the building codes required in most jurisdictions. MBA is reviewing the proposal and will provide comment.</li><li>• <b>Costs-Not-Attributable.</b> In September, after ongoing advocacy from MBA, FHA published a new calculation for costs-not-attributable. The previous requirement was antiquated and complex and added unnecessary burdens to calculate the costs of non-building features such as landscaping, recreation areas, etc. This new form streamlines the process by allowing for the use of standard percentages.</li></ul>

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<b>FHA/HUD</b>	<ul style="list-style-type: none"><li>• <b>Costs of FHA Multifamily Financing.</b> MBA leadership met with HUD Secretary Fudge in September, and MBA followed up with a letter expressing concern about the unnecessarily high costs of FHA multifamily financing. The letter enumerates a number of fees including the Mortgage Insurance Premium, application fees, inspection fees, insurance requirements, third-party reports and Davis-Bacon split wage requirements. The letter echoes the open letter to Landlords penned by HUD Secretary Fudge last Spring, urging reductions of unnecessary costs to multifamily housing residents. MBA will continue to push this issue with HUD and Congress.</li><li>• <b>Disbursements Waiver.</b> HUD regulations require that borrower equity be fully disbursed before the disbursement of any mortgage proceeds. This presents a timing challenge because disbursing the equity as construction activity occurs will take up to two months and mortgage draw activity must be postponed in the meantime. It creates a conflict when a mortgage lender pools a loan into a mortgage-backed security. The initial draw potentially violates the regulation in that FHA-insured mortgage proceeds are technically disbursed before all borrower equity is disbursed. After MBA advocacy, HUD provided an additional one-year waiver through July 5, 2024. MBA will continue to work with HUD on a regulation change.</li><li>• <b>FHA Large Loan Limit Threshold.</b> The Department of Housing and Urban Development places a Large Loan Limit threshold in the Multifamily Accelerated Processing (MAP) Guide for loans over \$75 million. This places more stringent underwriting requirements, including increased debt service coverage on loans over the threshold. In late June, after intense lobbying from MBA, HUD increased the threshold to \$120 million and also announced that it will review the threshold on an annual basis, with the possibility of increasing it in \$5 million increments, if warranted. MBA will now continue to push Congress for an increase to the statutory limits.</li><li>• <b>FFB.</b> In March 2024, the Biden administration announced action to extend the Federal Financing Bank Risk Sharing Program (FFB), which allows state and local housing finance agencies (HFAs) to offer FHA-insured multifamily loans if they retain a portion of the risk. MBA strongly opposes the FFB program, as it creates an unfair competitive advantage over lenders that participate in HUD's Multifamily Accelerated Processing (MAP) program and has less rigorous underwriting and fewer requirements. MBA has urged HUD to revise some of the FFB program requirements and create a level playing field for MAP lenders.</li></ul>

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<b>Biden Administration Tenant Initiatives</b>	<ul style="list-style-type: none"><li>• <b>Tenant Protections.</b> In early 2023, the Biden-Harris Administration announced a set of actions it will take in order to enhance tenant protections and further principles of fair housing. The announcement includes new actions by several federal agencies, a voluntary set of principles call the "Blueprint for a Renters Bill of Rights," and a voluntary challenge to the industry to adopt stronger policies and practices that better serve tenants. MBA will monitor developments closely and continue to work with members, Congress, and the Administration to ensure a constructive approach is taken to address the needs of tenants and the supply of safe and affordable housing.</li></ul>
<b>State and Local Advocacy Efforts</b>	<ul style="list-style-type: none"><li>• <b>Rent Control.</b> MBA continues to track closely and develop advocacy efforts to address state and local proposals to implement rent control measures. In addition, MBA has joined a coalition effort on rent control with several other trade associations. The group will conduct research, develop messaging and identify alternative solutions to rent control, including federal and state short and long-term solutions.</li><li>• <b>California.</b> In October, California Governor Gavin Newsom signed Senate Bill 253, the Corporate Climate Data Accountability Act, which requires companies operating in California to report various points of climate impact including Scope 3 greenhouse gas emissions. MBA and the California MBA opposed the legislation and urged Mortgage Action Alliance members in the state to tell the Governor to veto it. Scope 3 includes items that are outside of MBA members' control and are duplicative considering the sources within the value chain are likely already required to disclose under Scopes 1 and 2. This new type of data tracking will be costly to comply with because it is not based on known data and will instead be based on unknown industry averages or unreliable secondary sources.</li></ul>