The Beyond Agency Series: Multifamily Loans in a Higher for Longer World

Sep 28, 2026

Categories:

Dirt and Dollars
Finance Industry Blogs
Multifamily Matters
Publications

Authors:

Joshua (Josh) D. Brock
Andrew J. Camelotto
Matthew D. Fielding
John F. Glass
Andrew Mauro
Kendal G. Price
Geoffrey M. White

For 15 years, agency debt was the obvious answer for financing stabilized multifamily assets. It is still an excellent option under certain circumstances, but for a growing number of sponsors it is no longer the best choice, and the alternative loan programs function differently in ways that are easy to miss until it is too late.

While an experienced agency borrower has seen many of the concepts that appear in these other loan programs, there are significant differences: the documents are more complicated, with provisions that qualify each other across hundreds of pages and multiple agreements; requests that an agency servicer handles promptly under delegated authority become a months-long consent process; and these programs include some genuinely different structures, particularly around the deposit and handling of rents, including the possibility of ongoing financial covenants, the failure of which can result in cash being swept to a lender-controlled account, to be held on an indefinite basis (thereby halting distributions), even though the property cleared those same financial tests at closing.

At FBT Gibbons, we speak lender. Our team has spent decades working on these types of documents, having represented both lenders and borrowers on these types of deals, so we understand how the provisions operate and the concerns behind them. Knowing which lender positions reflect a non-negotiable credit issue and which are simply the form is what lets us propose workable compromise language instead of a wholesale redline. It also allows us to get borrowers meaningful protection without putting a closing at risk. *Beyond Agency* is a multi-part series from the FBT Gibbons Multifamily and Commercial Real Estate Finance teams focusing on some of the most important deal points and key differences for multifamily owners whose next loan will not be an agency loan, and who could use a translator.

Background

Let's start with a scenario indicative of broader trends in the lending market. A sponsor who has closed a dozen or so agency loans since 2011 needs to retire the construction loan on a property that cost more to build than anyone budgeted. The asset is doing fine. Lease-up is where it should be. But the agency quote comes back several million dollars short of what is needed to pay off the construction loan and other debt, not because of anything wrong with the property, but because at today's rates the debt service coverage test binds before the loan-to-value test does.

A commercial mortgage-backed securities (CMBS) or private credit lender can get to the number the borrower wants. The sponsor accepts the financial deal and treats everything other than the proceeds as paperwork. The proceeds are real, but so is everything else in those loan documents, and it's the "everything else" that will govern the asset every day until the loan defeases, pays off, or gets transferred to a special servicer.

What Actually Changed

It is tempting to describe the last two years as the agencies pulling back. That is not what happened. The Federal Housing Finance Agency set the 2026 multifamily purchase caps for the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the "Enterprises") at $88 billion each — a combined $176 billion, roughly 20% above the $146 billion combined cap for 2025. Agency capacity went up, not down.

What changed is on the other side of the table. Banks returned to multifamily lending in force on their balance sheets, and private credit kept growing, deploying through loan programs that expanded in the years after the 2008 financial crisis, as regulatory retrenchment left room for non-bank lenders to fill. For the first time in over a decade, the Enterprises are not capturing all of the good deals by default. Industry reporting puts agency debt at roughly 40% of CBRE's multifamily debt placements, down from a typical 50% to 60% in past cycles.

All of this is happening against a volume of maturing multifamily debt that dwarfs that $176 billion capacity. The Mortgage Bankers Association counts $875 billion of the $5 trillion in outstanding commercial and multifamily mortgages as scheduled to mature in 2026, with multifamily carrying a 13% maturity rate against $2.32 trillion of multifamily debt outstanding — on the order of $300 billion of apartment loans reaching maturity this year against $176 billion of combined Enterprise capacity. More follows in 2027.

A great many owners are refinancing into a market that looks nothing like the one they borrowed in, and relief is not in the forecast. On September 16, 2026, the Federal Open Market Committee raised the federal funds target from 3.75% to 4%, unanimously, citing inflation that “remains elevated.” This is no longer the “higher for longer” of this summer, which described a plateau. The September projections lifted every horizon and marked the third consecutive revision in the same direction, after March anticipated cuts and June withdrew them. Participants’ 2027 projections now span 3.1% to 4.4%. The committee is telling you it does not know where this ends either. Higher for longer now means even higher, for even longer, and nobody is yet certain how high or how long.

Why the Competition Is Over Proceeds, Not Price

Agency loans size to the lesser of two tests: a loan-to-value test and a debt service coverage test. When rates were low, the value test usually bound first, and a sponsor with a well-performing asset could get meaningful proceeds. At current rates, the coverage test binds first far more often. Debt service went up; the coverage ratio the agencies require did not come down.

For a stabilized asset with a conservative basis, this is not a problem. For a great deal of properties built over the past five years, it is. With runaway inflation, those projects carried cost overruns that nobody budgeted. They were underwritten against an exit that could not realistically have been predicted from where rates stood at the time. The basis is high, values have moved against it, and a coverage-constrained agency quote does not reach the number the sponsor needs.

That gap in proceeds is what CMBS lenders and private credit debt funds are winning on. They will go higher, sizing to debt yield rather than to debt service coverage, offering interest-only periods or full loan terms, and pricing risk in ways the agencies are not structured to price.

A sponsor moving off agency debt in this market is usually not chasing a slightly better rate. The sponsor is buying proceeds, and the price of proceeds is the more lender-friendly covenant package in the loan documents.

Is the Lender Actually Who You Think It Is?

An agency loan sits with a servicer that holds real delegated authority and expects to see the borrower again. Oftentimes, that delegated servicer underwrote/originated the loan and is a true relationship party that is looking for solutions for the borrower. They want to work hand-in-hand with the borrower, who was and will likely remain their client, and they work from published procedures for the things borrowers commonly need. When something comes up, there is someone who can actually make a decision.

A securitized CMBS loan sits inside a real estate mortgage investment conduit (REMIC) trust, governed by a pooling and servicing agreement with a master servicer and special servicer. The master servicer's discretion is bounded by that document, by rating agency confirmation requirements, and by tax constraints on the trust itself. It is not that the servicer is unreasonable. It is that the servicer frequently is not empowered to do what an agency servicer routinely does, no matter how sensible the request. If the property is in default or imminent risk of default, or if the special servicer has certain, specific rights under the pooling and servicing agreement, the master servicer is replaced by a special servicer, and the borrower is then working with a counterparty that does not have a relationship with the borrower and does not view the borrower as a potential future client. That counterparty may also have divergent goals and objectives from the borrower's, as it is looking to protect the bondholders while also extracting any fees that it is entitled to collect pursuant to the combination of the loan documents and the pooling and servicing agreement. It does this in order to achieve the return on investment it was expecting when it made the financial decision to purchase the rights to be the special servicer for a pool of loans. Borrowers should be mindful of that structural dynamic; it is business, not personal.

Alternatively, a loan made by a debt fund sits with a lender that negotiated with the borrower directly — and that can later sell the loan, syndicate it, participate it out, or pledge it on its own repo line. There are different terms utilized in describing debt fund deals, but the three terms we think most effectively frame this type of deal are private credit, commercial real estate collateralized loan obligations (CRE CLOs), and leveraged lender loans. It is important for borrowers to understand what these concepts are and mean as it impacts what happens after the deal closes. So, let us provide some quick background on each term:

- **Private credit**: The broadest term, and the one that most describes the lender in plain language, with loan programs sourced from non-bank capital committed by investors rather than deposits. There are two consequences with this type of debt: decisions are oftentimes made by an investment committee rather than a servicer reading a document, which is why these lenders can be less rigid when something unexpected comes up; and the vehicle has a finite life and a return target, so the lender's own timeline becomes part of the deal. A fund early in deployment behaves very differently from one approaching end of life and looking to return capital.
- **Leveraged lender**: The fund financing your loan with its own borrowed money, through a repo facility, warehouse line, or note-on-note financing. In simple terms, the lender for the borrower is obtaining a loan from another financial institution to make the loan to the borrower. This is where the party the borrower never meets, the underlying lender, comes into play. That financial institution holds your loan as collateral and can margin-call the borrower's lender if collateral value falls, so your lender can come under pressure driven by its own lender and the market rather than by anything at your property, which makes it reluctant to agree to a modification requiring a markdown. The facility may also require the financial

FBT Gibbons

institution's consent to material modifications, meaning the lender across the table needs permission before it can agree to any changes. And if your lender defaults under its facility, the financial institution ends up holding your loan.

- **CRE CLO**: The securitization of what are typically perceived as transitional floating-rate loans. Here, the originator typically retains the most subordinate position and continues managing the collateral, so the people who underwrote the loan generally stay involved, somewhat akin to a special servicer but with the benefit of being a relationship party. That continuity is real, and it is exactly why a CLO borrower is viewed as better positioned than a CMBS borrower. The constraints still exist — the indenture limits modifications, and some require rating agency confirmation or trigger a buyout obligation.

We believe that it is important for borrowers to understand this background before entering into such a transaction, as it will help one appreciate the risks and issues associated with each after closing. It is also worth noting that they are not mutually exclusive, as a single CLO loan is often all three at once, originated by a private credit fund, financed on its warehouse line, and ultimately later contributed to a CLO. The most useful question isn't which label applies but which structure is sitting behind the loan at any given moment.

The Clock Is Ticking Faster Than You Think

Long-time agency borrowers tend to carry a 10-year mental model. The most common CMBS term today is five years. Private credit loans are also typically two- to three-year terms with two or three one-year extension options.

That cuts both ways. The covenant package governs for a shorter stretch, which is genuinely good news. But the exit arrives far sooner, and it arrives whether or not the rate environment has cooperated. A sponsor closing a five-year loan in 2026 is refinancing in 2031, and the assumptions behind that refinance deserve the same scrutiny as the assumptions behind the 2026 financing. It can obviously be even more challenging for a private credit deal where there is no guarantee that the extension conditions are able to be met in year three or four.

The Form You Are Starting From

One point worth making is that CMBS loan documents are typically the most negotiable of the three. They are genuinely more open than an agency form, where the documents behind the term sheet will not meaningfully move and the term sheet therefore has to carry the entire negotiation.

Part of what makes CMBS documents negotiable is that they often begin from a lender-friendly draft originally built with retail, industrial or office deals in mind — so some of what a borrower wins in negotiation is simply changes that reflect reality rather than concessions. A number of CMBS lenders now start from multifamily-specific forms, which removes much of that, though those forms carry issues of their own.

Private credit deal documents sit closer to CMBS, oftentimes because of the potential CLO securitization. They have programmatic constraints of their own, can be just as, if not more, demanding, and the willingness to negotiate can vary enormously from lender to lender and be impacted by their source of capital, as leveraged lenders may be completely restricted by their ultimate financial institution.

Where the Leverage Actually Sits

At the application and term sheet stage, a sponsor has competing quotes and likely multiple lenders that want the deal. That is the best place for negotiating leverage, and it is spent primarily on deal economics. There are certain economic concepts with strong legal underpinnings that are most effectively negotiated at this stage. After closing, the sponsor has a servicer with no particular commercial incentive to accommodate anything and often no authority to do so. The window is wider than agency borrowers expect while it is open, and it closes harder than they expect. The instinct to call the lender and work it out is the single most expensive habit to carry from agency lending into a CMBS loan.

This *Beyond Agency* series is designed to cover these concepts, focusing on the following five areas that are either truly different from an agency deal or have the most friction and greatest potential risk:

- **Cash management and lockboxes**: How a coverage test you passed comfortably at closing ends up diverting your distributions, and why the type of cash management structure, and definition of the test and cure rights could matter as much as, if not more than, its number.
- **Transfers and estate planning**: Why the ownership structure you close with is, in practical terms, the ownership structure you keep, and what to negotiate on the front end if there is a succession plan or expected joint-venture exit anywhere in your future.
- **Recourse carveouts**: Which of the exceptions to non-recourse create liability for losses, and which can make a sponsor personally liable for the entire loan balance.
- **Special purpose entity (SPE) covenants, independent directors and non-consolidation**: The operating requirements that come with a structured loan, including some additional legal opinions, and why breaching them by accident is more consequential than most borrowers realize.
- **Debt funds and the exit**: Rate caps, future funding that turns out to be conditional, extension tests, and what it actually costs to leave.

What to Ask for in the Application

For the borrower: It's imperative to have counsel review the term sheet, not just the loan documents. The intent of these *Beyond Agency* posts is to provide practical perspectives from those of us that speak lender. Most of what will matter is decided in a document that many sponsors may treat as a pricing sheet. By the time the loan documents arrive, much of the leverage is gone. Borrowers need to be mindful that because these lenders are willing to provide higher loan proceeds, they need greater protection and more deal structure. That will obviously make it harder for the borrower to conduct its business after closing, but if the CMBS execution gets that extra $4 million that an agency quote would not, that is the trade. A hard lockbox, a springing full recourse trigger and more challenging servicing issues are part of what you are paying for it. Make the trade deliberately, rather than by default, and work with someone that speaks lender so you go in with eyes wide open.

For the mortgage banker: You may be the one in the room when your client discovers what they signed. Raising the covenant package at term sheet stage may cost you an uncomfortable conversation or slow the deal down a week or two. Not raising it could cost you the relationship in year three.

Five questions worth asking every sponsor before you submit an application: Does the borrower have counsel that speaks lender and can translate the deal documents to your client? Does the borrower truly understand how this cash management structure will practically work? Is there an estate plan in progress or is anyone in the ownership group over 65? Is any partner planning to exit? What is the real hold period? Each answer can have real implications.

The takeaway: The proceeds are negotiated once and delivered at closing. The covenants are negotiated from term sheet until the day the deal closes … and then delivered every day until maturity. Only one of them gets read that way.

If you have questions regarding multifamily financing, including CMBS and private credit options, or need help evaluating the terms and structure of a loan, please contact the authors or any member of the firm's Commercial Real Estate Finance and Multifamily teams.

FBT Gibbons