



MORTGAGE BANKERS ASSOCIATION

June 6, 2023

The Honorable Marcia Fudge
Secretary
U.S. Department of Housing and Urban Development
Regulations Division, Office of General Counsel
451 7th Street SW, Room 10276
Washington, DC 20410

RE: HUD's Proposed Rule on Floodplain Management and Protection of Wetlands;
Minimum Property Standards for Flood Hazard Exposure; and Building to the Federal
Flood Risk Management Standard [Docket No. FR-6272-P-01]

Dear Secretary Fudge,

The Mortgage Bankers Association (MBA)¹ respectfully submits these comments on HUD's proposed rule on Floodplain management. HUD's Proposal is extensive and will impact the construction and substantial improvement of a significant number of residential properties throughout the United States.

To qualify for FHA's mortgage insurance programs, single-family homes within the 100-year floodplain would be required to be elevated an additional two feet above base flood elevation when they are newly built or substantially improved. Properties utilizing FHA's multifamily mortgage insurance or HUD grants would have to comply with additional elevation or flood-proofing requirements for new construction and substantial improvement projects located in the newly defined FFRMS floodplain. The FFRMS floodplain will be based on a Climate Informed Science Approach (CISA), which will greatly expand coverage requirements for multifamily properties nationwide, despite not being available in many areas of the country. MBA has significant concerns with the proposal and urges its reconsideration. Specific concerns are outlined below and in Exhibit A to this letter.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 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.

Costs vs Benefit of Flood Insurance

The proposed rule, if adopted, will likely create a significant increase in construction costs that will not be outweighed by reductions in insurance costs. In the proposal, HUD stated that “By elevating additional feet above the base flood elevation, homeowners may benefit from flood insurance premium reductions that will increase long-term affordability.”

However, HUD has not provided any evidence that insurance costs will decline, instead relying on a prospect that the insurance industry may reduce costs over time. It is unlikely insurance costs will decrease materially based on the proposed rule, and in any event will certainly not do so sufficiently to off-set the significant increase in construction costs that will result. The same can be said for multifamily properties, thus increasing rents for residents. Many of the comments below will demonstrate these costs.

Use of CISA Tools & Freeboard Value Approach (FVA)

Implementation of CISA tools should be delayed until the CISA maps are available nationwide and scientifically accepted. MBA agrees that it is prudent to address forward-looking floodplain risk predictions, taking into consideration climate change and ensuring resiliency and equity in floodplain management practices. However, there is currently a lack of CISA maps, with national coverage predicted to take years to achieve. Furthermore, CISA tools have less clearly defined criteria. Relying on CISA as the “best available data” will not be feasible for quite some time.

The proposed rule states that agencies using CISA may find that flood elevations are lower than those shown on the FEMA FIRM or Flood Insurance Study and, in this scenario, cannot be used. Many sites also do not have mapped 0.2% chance flood zones/elevations. It seems that using the FVA approach across the board results in a more consistent approach.

Challenges with Elevation

MBA objects to the proposed rule’s requirements related to elevating sites under certain circumstances. Elevating a property may negatively impact adjoining sites as previously established drainage patterns will be altered. Cities and counties may reject developments of HUD-insured or HUD-assisted housing if the sites are required to be elevated above neighboring sites. MBA objects to this requirement due to the negative impact it will have on the construction of necessary housing in communities.

The requirement of adding additional fill material to elevate structures two- to three feet above the base flood elevation will add significant cost to new construction. Soil import from certified fill sites may require additional transport costs if distances for such are farther from the site. Earthwork and compacting costs of the additional fill may increase project costs above an affordable level for the development. These costs will impact both homeowners and renters. Furthermore, the addition of fill dirt to create elevation is considered an Unusual Site Condition, which reduces the valuation of a site in comparison to other neighboring sites.

For multifamily properties, the elevation requirement may also result in reduced density allowable on the site in order to accommodate increased retention requirements. A reduction in density will result in a further reduction in the value of the property.

Requiring elevation of existing structures undergoing substantial rehabilitation to 2 feet above the Base Flood Elevation may result in significant pushback from borrowers, particularly borrowers associated with affordable housing transactions. Much-needed repairs and upgrades to such housing may be foregone in order to avoid the substantial costs associated with elevating homes or large multi-family structures.

Also, existing multi-family structures that include a basement will be negatively impacted. It will often be practicably impossible for such a property to be elevated 2 feet above the Base Flood Elevation. This requirement for a substantial rehabilitation project seems to eliminate a significant number of projects from HUD consideration.

Lastly, the 500-year floodplain elevation is not noted on FIRMs, determining this elevation will require a technical eye that is familiar with navigating Flood Insurance Studies/Flood Profile graphs. This may create a limitation, and the elevation may become subjective due to certain configurations of some floodplain maps.

Removing the Exception for Sites with LOMA or LOMR

HUD is proposing to remove the exception in § 55.12(c)(8)(ii) on conditional LOMAs and conditional LOMRs, using the reasoning that the exception can incentivize adding fill in a floodplain in a manner that reduces floodplain function in adjoining areas. The addition of fill to floodplains is cited throughout this proposed language as necessary for any site up to and including the 500-year 0.2% floodplain areas, without any apparent regard for the impact on adjoining areas. The CLOMR and LOMR process is a more effective way for FEMA and the municipalities, along with the civil engineers to determine the flood risk to the adjoining sites. HUD's proposal to disincentivize the use of sitewide fill, in this section, while requiring it elsewhere, is contradictory.

Notification of Floodplain Hazard

MBA objects to the proposal's expansion of notification requirements for property owners, buyers, developers, and renters which will result in an administrative burden on the property owners and management agents and could result in lower renter rates or higher vacancy rates at properties required to provide such notifications. The proposal would define and expand notification and identify specific hazards and information that should be included in these notices based on the interests of these parties. Should this provision move forward, HUD should provide a standard tenant notification form.

The proposal also suggests that any notice must include "the requirement or option to obtain flood insurance, the approximate elevation of the FFRMS floodplain, proximity of the site to flood-related infrastructure including dams and levees, ingress and egress or evacuation routes, disclosure of information on flood insurance claims filed on the property, and other relevant information such as available emergency notification

resources.” Significant more specificity would be required to provide any such information. For example, the proximity of dams and levees that should be included in the analysis, and where other information can be located. Property owners may not have this information and would need guidance on where to obtain such from a reliable source. This requirement may place a significant administrative burden on those required to notify.

Identifying Wetlands and Limitations on HUD Assistance in Wetlands

MBA objects to the proposal’s expanded definition of wetland. The proposal would “broaden the wetlands definition beyond NWI screening alone and would address the potential for data gaps or outdated information by requiring that HUD and responsible entities supplement the NWI with a visual observation of the property to assess wetlands indicators.”

HUD should follow a consistent federal definition of a wetland, and a visual observation should only be conducted by a wetland professional. If a wetland is suspected, sites should be evaluated by the NWI, state, and local wetland and stream maps; hydric soil maps, topographic maps; and historical imagery. Hydric soil maps should be included in the Environmental Review as part of Wetlands Protection, similarly to the USDA requirements. If suspect wetlands are identified through these desktop methodologies, the property should be reviewed by a wetlands consultant and receive comment from the Army Corps of Engineers.

Conclusion

MBA appreciates the opportunity to comment on this proposal but must respectfully ask that it be withdrawn. MBA strongly supports efforts to combat the impact of climate change on real estate, especially housing. But dramatic changes without full review of the impacts will result in less housing being constructed, at a time when the need is so great.

FHA mortgage insurance and HUD housing assistance are paramount to meeting the housing needs of the American people. This proposal will curtail new construction, increase housing costs, and will result in reduced property values for FHA-insured properties compared to similarly located properties. MBA welcomes a continued dialogue with HUD about flood insurance and floodplain management in these changing times. We look forward to working with you. Please refer to Exhibit A for the detailed comments from our industry stakeholders.

Sincerely,



Megan H. Booth
Associate Vice President, Commercial/Multifamily
Mortgage Bankers Association

EXHIBIT A
FLOODPLAIN RULE CHANGE COMMENTS

SECTION III, THIS PROPOSED RULE

This rule would expand HUD's floodplain of concern from the 1 percent-annual-change floodplain to the FFRMS floodplain, designated based on projected future risk, to ensure that HUD projects are designed with a more complete picture of a proposed project site's flood risk over time. <https://www.federalregister.gov/d/2023-05699/p-50>

Requiring additional elevation above the base flood elevation may also lead to a net reduction of expected housing costs over time. HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. Flood insurance is a key financial tool to manage potential rebuilding costs but can make homes in risky areas less affordable. By elevating additional feet above the base flood elevation, homeowners may benefit from flood insurance premium reductions that will increase long-term affordability. <https://www.federalregister.gov/d/2023-05699/p-55>

Therefore, in this proposed rule, the required level of flood resilience for floodplain management decision-making, elevation of structures, and floodproofing would be established using CISA for areas where CISA analysis following the Guidelines has been approved by HUD. HUD intends to rely on CISA tools and implementation resources being developed by a subgroup of the White House Flood Resilience Interagency Working Group to implement CISA analysis. Where CISA data is not available to define the FFRMS floodplain, the level of flood resilience would be based on the FEMA-mapped 0.2percent-annual-chance (500-year) floodplain or a freeboard height above the FEMA-mapped 1-percent-annual-chance floodplain depending on the criticality of the action, based on available data. <https://www.federalregister.gov/d/2023-05699/p-57>

- HUD has not provided any evidence that insurance costs will decline, instead relying on the prospect that the insurance industry *may* reduce costs over time. This possibility does not offset the current and real additional expense in construction costs.
- FEMA has provided detailed flood maps, defining floodplains. CISA maps have less clearly defined criteria and are not available for a majority of the country. Implementation of this rule should be delayed until the CISA maps are available nationwide and scientifically accepted.
- It would be helpful if HUD could move all definitions at the top of 24 CFR Part 55.
- It is impossible to examine the potential impacts and implications of the proposed rule change without the CISA mapping being available to review. The proposed rule changes should not be implemented before the public can review the CISA mapping tools and provide informed public comments on the anticipated impacts and implications of the proposed rule (which relies heavily on the CISA method for determining floodplain boundaries).
- The proposed rule indicates that HUD will approve the CISA maps. As indicated in Section III of the proposed rule, "...the required level of flood resilience for floodplain management decision-making, elevation of structures, and floodproofing would be established using CISA for areas

where CISA analysis following the Guidelines has been approved by HUD.” HUD should provide these guidelines and approval process for public review and comment.

- CISA maps are a futuristic view and information as to how CISA maps will be updated over time and/or how they will be validated is an important concern that needs to be addressed and detailed to the public. Additional concerns regarding the longevity of CISA maps include the following: how will these maps be updated in the future and/or over time? Much like FEMA maps, CISA maps should require changes and re-evaluation over time since futuristic views will change as more data becomes available. Will there be a future budget for maintaining these maps so they remain up to date and accurate?

SECTION III, A. FEDERAL FLOOD RISK MANAGEMENT STANDARD (FFRMS) FLOODPLAIN

2. 0.2 Percent-Annual-Chance Flood Approach (500-year Floodplain Approach): For non-critical actions, where CISA maps or other types of CISA analysis are not available, but FEMA has defined the 0.2percent-annual-chance floodplain, the FFRMS floodplain would be defined as those areas that FEMA has designated as within the 0.2-percent-annual-chance floodplain, and structures would need to be elevated to or above the 0.2-percent-annual-chance floodplain. <https://www.federalregister.gov/d/2023-05699/p-63>

- This proposed requirement could require developers to import fill to the site which will introduce additional environmental concerns and costs which will lead to more expense housing in the form of higher rents to offset the costs. Additionally, the requirement to elevate the site may negatively impact adjoining sites as previously established drainage patterns will be altered. It is highly likely that local municipalities will object to this and decline to support FHA-financed projects.
- It is prudent to address forward-looking floodplain risk predictions, taking into consideration climate change and ensuring resiliency and equity in floodplain management practices. However, there is currently a lack of CISA maps, with national coverage predicted to take years to achieve. This proposal should be delayed until these maps are available and generally accepted.
- The requirement for elevation of a site to or above a 500-year floodplain with no known or previously occurring flood risk poses significant negative impact on the construction of necessary housing in communities. Concerns with this requirement include:
 - Such an elevation may not be approved by a municipality due to secondary effects on adjoining sites. Areawide drainage will be impacted by elevating one site above others. Cities and counties may reject developments of HUD-insured or HUD-assisted housing if the sites are required to be elevated above neighboring sites.
 - The requirement for elevation will be prohibitively expensive. Soil import from certified fill sites may require additional transport costs if distances for such are farther from the site. Earthwork and compacting costs of the additional fill may increase project costs above an affordable level for the development.

- The requirement will have additional negative impacts on the valuation of property. The addition of fill dirt to create elevation is considered an Unusual Site Condition, which reduces the valuation of a site in comparison to other neighboring sites.
- The requirement may result in reduced density allowable on the site in order to accommodate increased retention requirements. A reduction in density will also result in a further reduction on the value of the property.
- It is unclear if the requirement for elevation of a site to or above a 500-year floodplain with no known or previously occurring flood risk will result in the requirement for completion of the 8-step process before adding fill to modify a floodplain per § 55.12(c)(8). If this results in a requirement for an 8-step process, we object due to the administrative burden it would place on borrowers, lenders.
- Additional information is required around the e-data used to determine the flood elevation of the 500-year floodplain. The rule should clearly define what 500-year floodplain can be used—will its limits need to contain the structure, be within the subject property parcel, or within 500-feet of the nearest structure, etc.? As the 500-year floodplain elevation is not noted on FIRMs, determining this elevation will require a technical eye that is familiar with navigating Flood Insurance Studies/Flood Profile graphs. This will create a limitation, and the elevation may become subjective due to certain configurations of some floodplain maps.

3. Freeboard Value Approach (FVA): If neither CISA nor FEMA-mapped 0.2-percent-annual-chance floodplain data is available, for non-critical actions, the FFRMS floodplain would be defined as those areas that result from adding an additional two feet to the base flood elevation as established by the effective FEMA FIRM or FIS or—if available—a FEMA-provided preliminary or pending FIRM or FIS or advisory base flood elevations, whether regulatory or informational in nature. However, an interim or preliminary FEMA map could not be used if it is lower than the current FIRM or FIS. <https://www.federalregister.gov/d/2023-05699/p-64>

- The requirement for adding an additional two feet for noncritical actions, or three feet for critical actions, to the base flood elevation, on sites with no known or previously occurring flood risk, creates a number of concerns. These include:
 - The elevation may not be approved by a municipality due to secondary effects on adjoining sites. Areawide drainage will be impacted by elevating one site above others. Cities and counties may reject developments of HUD-insured or HUD-assisted housing if the sites are required to be elevated above neighboring sites.
 - The requirement will be prohibitively expensive. Soil import from certified fill sites may require additional transport costs if distances for such are farther from the site. Earthwork and compacting costs of the additional fill may increase project costs above an affordable level for the development.
 - The requirement will have additional negative impacts on the valuation of property. The addition of fill dirt to create elevation is considered an Unusual Site Condition, which reduces the valuation of a site in comparison to other similar neighboring sites. on neighboring sites.

- The requirement may result in reduced density allowable on the site in order to accommodate increased retention requirements. A reduction in density will also result in a further reduction of the value of the property.
- It is unclear if the requirement for adding an additional two feet for noncritical actions, to the base flood elevation, on sites with no known or previously occurring flood risk will result in a requirement to complete the 8-step process before adding fill to modify a floodplain per § 55.12(c)(8). If so, this would result in a significant administrative burden on borrowers and lenders.
- The base flood elevation is generally easier to determine, and this method would leave less room for conjecture than the 0.2PFA. As such, for properties within the 100-year floodplain, the FVA method should be considered as the precedent over the 0.2PFA floodplain. Additionally, there should be an option for a site-specific flood study to take precedent over the 0.2 PFA and FVA.
- The proposed rule change will result in an expanded floodplain and therefore reduce opportunities to develop HUD projects in low-lying areas with flat terrain (often associated with areas of floodplain). Individuals living in poverty are less likely to be able to afford to move/relocate if HUD housing in these areas diminish; as a result, the proposed rule could adversely impact individuals living in poverty by reducing available HUD housing in these flood-prone communities. Many low-income families are likely to face homelessness with a reduction of HUD housing in communities with extensive areas of floodplain.
- Approximately 40% of the U.S. population resides in coastal communities that are often characterized by flat, low-lying terrain; many of these areas are densely populated urban areas with extremely limited alternative locations to developing in a floodplain. In many cases, raising a building several feet above the Base Flood Elevation is not technically feasible due to current elevations and neighboring properties. Exceptions should be made for cases where a building may be elevated above the Base Flood Elevation or to the current HUD MAP standard of BFE +2 ft (FVA), but not as high as the FFRMS flood elevation.
- Elevating new construction higher than what is required to raise residential living space above the 100-year Base Flood Elevation (BFE) or the current HUD MAP standard of BFE +2 ft (FVA) could in many cases exacerbate the potential for flooding by incentivizing excessive fill material in any watershed; this could result in unfair adverse impacts to other properties in the community, especially in cases where the proposed rule may require elevating proposed buildings several feet above the BFE.
 - HUD should provide additional alternatives that would allow exceptions through which the local Floodplain Administrator may provide input or other design considerations that could be done to promote flood resiliency for the life of the loan. Currently, the only option is to elevate residential structures above the FFRMS. This should not be the only option.

- Additional considerations should be made for floodproofing residential buildings. The proposed rule only allows floodproofing to be used on non-residential buildings or residential buildings where there are no units below the FFRMS floodplain. This could potentially result in reducing the number of garden-style multifamily residential communities in urban locations that can't elevate to the FFRMS. The floodproofing language only seems to assist high-rise structures that can afford to have commercial or other uses below the FFRMS floodplain. HUD should include additional provisions for allowing floodproofing on structures that are residential that will have units below the FFRMS floodplain, such as elevated machinery through design initiatives.
- In many instances, it will be infeasible to elevate an existing property to the FFRMS elevation, if it isn't already, so the proposed rule would leave existing HUD housing stock in disrepair due to the inability to comply with the proposed rule. A different set of strategies altogether should be explored for projects to be substantially rehabilitated that would allow for more design upgrades to promote flood resiliency rather than simply elevating, which will not be feasible in most cases.
- Supplementary Information in Federal Register III.B revises definitions for floodplains and wetlands. HUD is now proposing to use a different definition of "floodplain" than is used by the Federal Emergency Management Agency (FEMA) to establish Flood Insurance Rate Maps (FIRMs). As there is only one federal government, HUD should utilize consistent terminology and standards among all governing agencies. The FVA is familiar to insurance agents, developers, municipalities and most stakeholders and was the previously selected option in 2016.

For critical actions where CISA data is not available, the FFRMS floodplain would be either the area within the 0.2-percent-annual-chance floodplain or the area that results from adding an additional three feet to the base flood elevation, whichever is higher. The larger floodplain and higher elevation would need to be applied where the 0.2-percent-annual-chance floodplain is mapped. <https://www.federalregister.gov/d/2023-05699/p-65>

- The requirement for adding an additional three feet for critical actions, to the base flood elevation, on sites with no known or previously occurring flood risk, causes many concerns, mirroring those outlined above regarding elevation issues.
- The Proposed Rule indicates that documentation of the FFRMS flood elevation will be required for HUD approval of mortgage insurance. Many communities do not have available data to establish elevations even at the third tier, free-board value (FVA) method. The lack of local, state, or federal elevation data available to establish the FFRMS elevation with any of the three options could discourage developers from building in these communities and would disproportionately impact rural communities, most of which have wide-spread poverty and lack of affordable housing. HUD should consider a practical alternative for developing in floodplains in these areas to avoid excluding rural communities in need of affordable housing.
- Supplementary information included in the Federal Register II.A.1. states that CISA methodology would be the required methodology to define the FFRMS floodplain "if HUD-approved maps are available." However, the Regulatory Impact Analysis (RIA) provided in the HUD Docket describes the proposed process as the developer being able to enter the project location, the anticipated life of the project, and the project criticality to generate an appropriate amount of climate-informed freeboard (the user would be able to generate a map showing the FFRMS floodplain).

The process or requirements for HUD-approval of the FFRMS floodplain is not clear in the Federal Register. CISA maps should be open to the same public review and comment as FEMA maps.

- Supplementary information included in the Federal Register III.3 describes a Freeboard Value Approach, if CISA maps are not available and FEMA FIRMS, FIS, preliminary and advisory base flood elevations (ABFE) are insufficiently detailed to determine the base flood elevation, other Federal, State, local, or Tribal data could be used as “best available information” to define the 1-percent annual chance floodplain. Many communities that do not have FEMA mapping also do not have a State or local base flood elevation; many of these communities are rural and/or do not have funding to establish flood boundaries. Lack of local, state, or federal elevation data is a commonly encountered issue.
- The preference for use of the preliminary FIRM or ABFE to establish the FFRMS is not clear if the FVA is used; however, Advisory Base Flood Elevations established after major flood events are often much higher than the 500-year flood elevation. The RIA prepared for the proposed rule states that all three approaches (CISA, 0.2% chance, FVA) are all thought to result in similar FFRMS elevations. In this case, use of the ABFE may well result in situations where development would be required to elevate well above what would otherwise be the FFRMS elevation. HUD must consider using the ABFE to assess risk but excluding it from use to establish elevations for development as they may not be representative of the true FFRMS and could result in excessive fill in the floodplain, unequitable prescription of elevation requirements, and even loss of opportunities to develop affordable housing in communities that have recently experienced a major disaster and are likely experiencing an increased need for additional affordable housing units.
- It is unclear if developers will be required to complete flood studies to determine flood elevations in these situations where no elevation data is available at a local, state, or federal level. Flood studies are very costly and requiring flood studies could be a disincentive and disadvantage for development in these communities.

If CISA maps are not available and FEMA FIRMS, FIS, preliminary maps and advisory base flood elevations are unavailable or insufficiently detailed to determine base flood elevation, other Federal, State, local, or Tribal data could be used as “best available information” to define the 1-percent-annual-chance floodplain. For non-critical actions, the FFRMS floodplain would be the area that results from adding an additional two feet to the base flood elevation based on best available information. For critical actions, the FFRMS floodplain would be the greater of either the 0.2-percent-annual-chance floodplain based on best available information or areas that result from adding an additional three feet to the base flood elevation based on best available information. Where the 0.2-percent-annual-chance floodplain is mapped, the larger floodplain and higher elevation must be applied. When these cases arise, HUD will provide guidance regarding what other Federal, State, local, or Tribal data may be sufficient to be used as “best available information.” <https://www.federalregister.gov/d/202305699/p-66>

- Part 55.20(e)(1) would require that the FFRMS elevation be documented on an Elevation Certificate or Floodproofing Certificate prior to construction, or “by other means as HUD may from time to time direct.” HUD should explain the need to use a FEMA Elevation Certificate or

FEMA Floodproofing Certificate to document elevations when CISA mapping is used. These tools are to be used in conjunction with floodplain elevations obtained from FEMA maps and that does not include CISA maps.

- As discussed in previous comments, CISA data or FEMA FIRMs that establish the Base Flood Elevation are not available in many communities and many communities do not have local freeboard elevations established. Furthermore, FEMA maps do not usually provide an elevation for the 0.2% annual-chance flood. Professional Surveyors generally will not provide the 500-year flood elevation without a formal Flood Study, which is not only very expensive but is also time-consuming. Please consider an alternative elevation for use in these circumstances.
- The proposal uses phrases such as “by other means” and “from time to time” which will create inconsistent or unequitable prescription of unknown data requirements such as flood studies where sufficient data is not available to establish the FFRMS flood boundary with one of the three proposed approaches. The final rule should provide clear direction.
- Part 55.20(d)(ii)(C) indicates that “damage to surrounding properties from increased runoff in floodplain functions during a flood event due to modification of the subject site” would be required in the impact analysis as part of the 8-Step Process. Addition of fill material to any floodplain would result in changes to a watershed, including neighboring properties. Many, but not all, local ordinances require that the total post-construction stormwater volume not exceed the pre-construction stormwater volume; however, stormwater volume in many cases may exceed the pre-construction volume. HUD must clarify what type of information would be needed to demonstrate that runoff from a proposed development would not impact surrounding properties.

D. NOTIFICATION OF FLOODPLAIN HAZARD

Under the proposal, 24 CFR 55.4 would define notification requirements for property owners, buyers, developers, and renters and identify specific hazards and information that should be included in these notices based on the interests of these parties. <https://www.federalregister.gov/d/2023-05699/p-78>

- The expansion of notification requirements for property owners, buyers, developers, and renters will result in an administrative burden on the property owners and management agents and could result in lower renter rates or higher vacancy rates at properties required to provide such notifications.

For HUD-assisted rental properties where flood insurance is required, new and renewal leases would be required to include acknowledgements signed by residents indicating that they have been advised that the property is in a floodplain and flood insurance is available for their personal property. Renters would also be informed of the location of ingress and egress or evacuation routes, available emergency notification resources, and emergency procedures for residents in the event of flooding. <https://www.federalregister.gov/d/2023-05699/p-78>

- Per MAP Guide §9.6.6.E, flood insurance can also be required at the discretion of the regional HUD office and does not necessarily indicate that the property is within the 100-year floodplain. The additional administrative burden and reporting requirements can have the effect of reducing occupancy or rents compared to similarly located housing.

- Proposed Part 55.20(a), which is Step 1 of the 8-Step Decision-making process and the step where a determination of the FFRMS floodplain boundary will be made, states that an “action” includes “areas required for ingress and egress, even if they are not within the site boundary.” The term ingress/egress should be defined to eliminate aggregating the ingress/egress to be inclusive of public thoroughfares, which could stretch the area of ingress/egress out farther than necessary. Egress out of the area of floodplain in many cases may be miles away from a development.

This proposed rule would revise HUD's regulations requiring notification of floodplain hazard. It would move notification requirements from the current 24 CFR 55.21 (<https://www.ecfr.gov/current/title-24/section-55.21>) and conveyance restrictions from the current 24 CFR 55.22 (<https://www.ecfr.gov/current/title-24/section-55.22>) to a new 24 CFR 55.4 (<https://www.ecfr.gov/current/title-24/section-55.4>) to emphasize the importance of providing notice as early in the process as possible.

- The proposed rule does not define the conveyance restrictions clearly. More guidance is required.
- Supplementary Information in Federal Register III.D. establishes requirements for Public Notice of floodplain hazards. Permitting online posting of public notices is certainly reasonable. Consideration of resources that are free to the public should be considered in disseminating information to the public. The proposal should include additional information as to who will decide what is an approved resource in which to publish the Public Notice.
- Proposed Part 55.20(b) indicates that the public and agencies responsible for floodplain management or wetlands protection should be notified at the “earliest possible time of a proposal” to consider an action in the FFRMS. HUD should provide clarification as to when this Initial Notice would need to be sent, while also taking into consideration that development of detailed plans needed to prepare the Initial Notice and response to comments may not be available until later in the project’s timeline. HUD must consider the steps in a developer’s planning process when setting this requirement and clarifying as “earliest as possible” in the Final Rule.

This section would retain the requirement that HUD (or HUD's designee) or the responsible entity must ensure that any party participating in a financial transaction for a property located in a floodplain and any current or prospective tenant is notified of the hazards of the floodplain location. In addition, the new 24 CFR 55.4 (<https://www.ecfr.gov/current/title-24/section-55.4>) would define notification requirements for property owners, buyers, developers, and renters and identify specific hazards and information that should be included in these notices based on the interests of these parties.

- In this section, it is unclear if the definition of floodplain applies to a FEMA-recognized 100-year floodplain or the HUD-recognized FFRMS floodplain. Assuming this requirement is defined by the latter, this represents an additional administrative burden and can result in reduced property values compared to similarly located multifamily properties.
- The proposal must define the proximity of dams and levees that should be included in the analysis and notification.

E. FLOOD INSURANCE

This section would also include new language clarifying that HUD or the responsible entity may require flood insurance beyond the minimums established in the FDPA or by a state, locality, Tribe, or this part when necessary to minimize financial risk. <https://www.federalregister.gov/d/2023-05699/p-81>

- HUD must define the criteria in which HUD or the responsible party would require flood insurance beyond the minimums established in the FDPA or by a state, locality. Clarity is required as additional flood insurance will result in additional operating costs. This will have the effect of reducing affordability because these costs must be passed along to residents in the form of higher rents.

While nothing in this part requires flood insurance outside of the SFHA, HUD strongly encourages that flood insurance be obtained and maintained for all structures within the FFRMS floodplain to mitigate future financial losses. <https://www.federalregister.gov/d/2023-05699/p-81>

- By “strongly encouraging” flood insurance beyond what is required by regulation, HUD *may* mitigate future financial losses, but in so doing is mandating current financial losses in the form of higher operating expenses. This will negatively affect tenants in that rents will have to be increased to offset the increased cost of operating the property.
- Stories of multifamily buildings are usually elevated ten or more feet. If the first floor of a multifamily building is already elevated 2-4 feet above the Base Flood Elevation per the FEMA flood elevation, providing increased flood coverage for units located some 22-24 feet+ above the Base Flood Elevation would create unnecessary financial burdens to developers of multifamily projects in cases where no practical alternative to locating a project in the floodplain may be identified. The RIA prepared for this project does not detail aspects of the cost benefit analysis completed for the proposed rule that relate to the value of requiring flood coverage up to the full replacement cost of a building compared to a lesser degree of flood insurance. HUD must provide more detailed information regarding the value of full replacement cost coverage versus limiting the amount of flood insurance.

The proposal states “It may also be appropriate for high-value structures to maintain more flood insurance than is available under the NFIP: as of 2021, the maximum available building coverage through the NFIP is \$250,000 for single-family structures of one-to-four units and \$500,000 for multifamily structures with five or more housing units and commercial structures. For example, for FHA multifamily programs, the MAP Guide provides for flood insurance in an amount at least equal to the greater of the maximum flood insurance available for that type of property under the NFIP or an amount equal to the replacement cost of the bottom two stories above grade. [26] For larger structures in more expensive areas, it may be necessary to obtain private flood insurance to insure up to the full replacement cost of the structure or risk catastrophic financial losses even with NFIP coverage.” <https://www.federalregister.gov/d/202305699/p-81>

- HUD must define when this additional insurance will be required. What agency/official will have the authority and training to determine when additional insurance will be required. HUD must define “larger structures in more expensive areas..” Will training be provided for the authorized HUD (or other agency official) in order to make this determination? The requirement that more flood insurance than is available under the NFIP be obtained and maintained for all structures within the FFRMS floodplain, on sites with no known or previously occurring flood risk, will be prohibitively expensive.

- The use of the words “may be necessary” could create unequitable requirements for flood insurance for some but not all developments. The final rule should read more clearly in a way that developers know exactly what will be required for flood insurance when making decisions to acquire or develop land for housing use. There is too much discretion allowed in the proposed rule for determine an appropriate amount of flood insurance for a property.

This proposed rule would create a new section on complying with the floodplain management and protection of wetlands regulations in a new § 55.6 that would outline the process HUD or the responsible entity must follow to determine whether compliance with these regulations is required, and whether the 8-step decision making process is required, as well as whether the proposed action would require notification and flood insurance. This section would not create any new requirements, but it would provide a roadmap to complying with this part, to assist practitioners. It would also move a summary of documentation requirements from § 55.27 to § 55.6(d).

- The compliance roadmap should be made available for public review and comment prior to implementation.

G. INCIDENTAL FLOODPLAIN EXCEPTION

2. Where all structures and most improvements are removed from the floodway and a permanent covenant or comparable restriction would prevent future development or most new improvements in the floodway and/or wetland. This exception would combine aspects of the existing exceptions for floodplain restoration activities and incidental floodplains and would allow for limited improvements in the floodway, including functionally dependent uses, utility lines, de minimis improvements, and removal of existing structures or improvements.

- Municipality utility mains are often areas of lower elevation, which can contain floodways, and development codes often require tie ins within these areas. Coupled with the temporary impact of utility line installation, the allowance of utility lines within the floodway should be permitted in a safe manner. HUD should provide explicit details as to what kind and what methods of installation are/are not allowable. Also, please define “de minimis improvements” in detail.

This option would allow for a broader range of activities in the floodway than is permitted under the current incidental floodplain exception. However, it would require projects with onsite floodways to complete the 8-Step decision-making process in § 55.20 and determine that there are no practicable alternatives before approving any proposed activity that would modify or occupy the floodway.

- HUD should defer to NFIP/local regulations for actions within floodway.

This proposed rule would maintain a narrower version of the existing incidental floodplain exception as applied to the FFRMS floodplain (not including floodways, coastal high hazard areas, or within the LiMWA) in proposed § 55.12(g). This section would allow projects to proceed without completing the 8-Step decision making process where an incidental portion of the project site includes the FFRMS floodplain.

- HUD must provide a clear definition of the incidental floodplain for public comment.

H. IDENTIFYING WETLANDS AND LIMITATIONS ON HUD ASSISTANCE IN WETLANDS

This proposed rule would add new sections discussing wetlands identification and HUD's limitations on work impacting wetlands to address questions HUD has received over the years from practitioners. New

§ 55.9, “Identifying Wetlands,” would build on the definition of “wetland” in § 55.2(b)(11) to clarify common areas of confusion and remove unnecessary procedural requirements. This section would revise HUD’s current regulations to address limitations associated with exclusive use of the National Wetlands Inventory (NWI) for wetlands screening. This rule would broaden the wetlands definition beyond NWI screening alone and would address the potential for data gaps or outdated information by requiring that HUD and responsible entities supplement the NWI with a visual observation of the property to assess wetlands indicators.

- HUD should use the consistent definition of a wetland as defined by the NWI. A visual observation should only be conducted by a wetlands professional.

Where these sources do not provide a conclusive answer, then practitioners may use one of three methods to determine the presence or absence of a wetland: (1) consultation with the U.S. Fish and Wildlife Service (FWS), which maintains the NWI, (2) reference to other Federal, state, and/or local resources and site analysis by the environmental review preparer, or (3) a wetlands evaluation prepared by a qualified wetlands scientist. This process would increase flexibility and avoid unnecessary consultation with FWS without increasing the risk that wetlands will not be accurately identified.

- The USFWS’ role is NOT to consult on wetlands. Furthermore, the USFWS does not consult with wetland consultants and will only consult with HUD.
- Sites should be evaluated by the NWI, state, and local wetland and stream maps; hydric soil maps, topographic maps; and historical imagery. Hydric soil maps should be included in the Environmental Review as part of Wetlands Protection, similarly to the USDA requirements, if suspect wetlands are identified through these desktop methodologies.
- The property should be reviewed by a wetlands consultant and receive comment from the Army Corps of Engineers.

Revised § 55.10, “Limitations of HUD Assistance in Wetlands,” would explicitly define the procedural requirements for projects with the potential to directly or indirectly impact on- or off-site wetlands. The current part 55 is subject to interpretation on these requirements, and these revisions are intended to codify and clarify existing policies on wetlands compliance without imposing new requirements.

- HUD must define the one-acre mitigation policy; if impact to 1+ acre of non-jurisdictional wetlands is proposed, how will HUD going to manage the mitigation requirements/process?
- The definition for wetlands are revised per proposed changes to Part 55.2(b)(13). HUD’s use of a different “wetland” definition than that used by the U.S. Fish and Wildlife Service (USFWS) U.S. Army Corps of Engineers (USACE) and the Environmental Protection Agency (USEPA), combined with various “Waters of the U.S.” definition changes and state-to-state definitions, has caused wide-spread confusion and frustration, perhaps even contempt, for wetlands. Wetlands would likely be better protected if the definition of wetlands among federal agencies could be consistent. Human error based on misunderstanding of what a wetland is likely results in compliance issues related to unauthorized filling of wetlands.
- The Supreme Court recently ruled on the definition of a wetland. The final rule should consider this ruling.

- Per the proposed revised definition of wetlands in Part 55.2(b)(13), the definition of wetlands would not include “ponds that do not conform to the definition or deep-water aquatic habitats such as streams, creeks, and rivers.” The definition does not differentiate between ephemeral, intermittent, or perennial streams. The status of stormwater ponds, ephemeral streams, and intermittent streams as wetlands is not clear. Please include the definition of deep-water aquatic habitat in the final rule. The USFWS manual on deep-water aquatic habitat is extensive and various definitions of “deep-water” habitat can be found on the internet. Including a definition for deep-water habitat in the final rule would be helpful to avoid confusion as to whether these mentioned aquatic resources qualify as wetlands.
- Supplementary Information in Federal Register IV for Part 55.9(b) (Identifying Wetlands) states that HUD may determine whether the action involves new construction in a wetland by assessing the site for “visual indication of the presence of wetlands.”
- The meaning and intent of “visual indication” is not clear. Are there any qualifications of the personnel performing the visual screening? Would the Environmental Review consultant be acceptable? HUD must clarify the “visual indication” requirement as such vague terminology may lead to wide-spread inconsistency in the application of the wetland identification process.
- Where the primary screening is inconclusive, potential wetlands should be further evaluated using one *or* more of the following: consultation with the USFWS, reference to the NRCS National Soil Survey and further site study by the environmental review preparer with reference to Federal guidance on field identification of the biological characteristics of wetlands, *or* a wetland delineation. The use of the word “or” implies that after a site has screened inconclusive for potential wetlands, that the developer may rely on just citing one of these to conclude no wetlands are onsite. Please clarify if the use of just one of these evaluations (FWS consultation OR NRCS Soil Survey with further evaluation performed by the Environmental Review Preparer) would be sufficient to rule out the presence of wetlands, without the need to complete a wetland delineation.
- Part 55.20(e)(3)(ii) would require “appropriate and practicable” compensatory mitigation for unavoidable adverse impacts to more than one acre of wetlands. Compensatory mitigation for jurisdictional wetlands is a well-established and widely understood process; however, the prescription of compensatory mitigation for disturbance to more than one acre of non-jurisdictional wetlands is not clear in the proposed rule. Please indicate compensatory mitigation is not required for non-jurisdictional wetlands.

I. CLARIFICATION AND REVISIONS OF EXCEPTIONS

1. Exceptions in Proposed §55.12

Two exceptions would be removed under this proposed rule. The exception for sites where FEMA has issued a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) in the current § 55.12(c)(8) would be removed. HUD proposes to remove § 55.12(c)(8)(i) because a FEMA determination, through the LOMA/LOMR process, that a location is outside of the 1-percent-annual-chance floodplain or above base flood elevation is not intended to state whether the location is or is not within the FFRMS floodplain. HUD proposes to remove § 55.12(c)(8)(ii) on conditional LOMAs and conditional LOMRs, because this exception can incentivize adding fill in a floodplain in a manner that reduces floodplain function in adjoining areas

by excepting such actions from compliance with part 55. HUD proposes to change that policy to disincentivize the use of sitewide fill and require completion of the 8-step process before adding fill to modify a floodplain. <https://www.federalregister.gov/d/202305699/p-102>

- Removing the exception for sites where FEMA has issued a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) in the current § 55.12(c)(8) would result in an unnecessary administrative burden on the borrowers and lenders. HUD must define which of the governmental agencies would have the final authority to determine if a change is warranted? The addition of fill to the existing floodplain determined by FEMA effectively removes the site from the 1% annual chance floodplain. Currently, FEMA provides the necessary oversight of the change to the floodplain along with civil engineers, and the reviewers at the municipalities, counties or states who understand the impact a change would have on adjoining sites. Adding two more governmental agencies to this process – HUD and the Army Corps of Engineers is an unnecessary bureaucratic process.
- HUD should not remove the exception in § 55.12(c)(8)(ii) on conditional LOMAs and conditional LOMRs, using the reasoning that the exception can incentivize adding fill in a floodplain in a manner that reduces floodplain function in adjoining areas by excepting such actions from compliance with part 55. The addition of fill to floodplains is cited throughout this proposed language as necessary for any site up to and including the 500-year 0.2% floodplain areas, without any apparent regard for the impact on adjoining areas, which is more appropriately decided by FEMA, civil engineers and the municipal authorities. The CLOMR and LOMR process is a more effective way for FEMA and the municipalities, along with the civil engineers to determine the flood risk to the adjoining sites. HUD's proposal to disincentivize the use of sitewide fill, in this section, while requiring it elsewhere, does not make any sense. We object to this proposed language due to the administrative burden it would create for borrowers and lenders, and the lack of need for the additional governmental oversight. Adding two more governmental agencies to this process – HUD and the Army Corps of Engineers is an unnecessary bureaucratic process.
- Supplementary Information in Federal Register III.I.1 describes that the exception for sites where FEMA has issued a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) would be removed. The current process that allows for this exception allows a developer to anticipate and mitigate floodplain impacts in advance of completing detailed civil plans that are required as part of the 8-Step process. We disagree that allowing for this exception incentivizes filling floodplain areas and urge you to retain the current exception, which allows developers to plan to minimize floodplain impacts in the early stages of their conceptual development.
- Supplementary information in Federal Register III.I describes that certain structures and improvements designed to be compatible with the beneficial floodplain or wetland function would be excepted from Part 55.12 to provide flexibility for floodplain-compatible parks and recreation uses routinely combined with floodplain and wetland restoration and preservation work. This aspect of the proposed rule would provide tenants of HUD housing opportunity to connect with nature and enjoy viewing the unique plant and animals that occur in these areas, without significantly disrupting the functions or values of the floodplain and wetland. HUD's consideration of the value added to tenants' quality of life with increased opportunity to

connect with the natural environment through the addition of this exception is commendable. Please retain this proposed exception in the Final Rule.

- Special projects dedicated entirely to improving energy efficiency or installing renewable energy that do not meet the threshold for substantial improvement would be excepted from the 8-Step process. Application of this exception would likely result in increased use of energy-efficient technology and renewable energy at HUD developments. HUD’s consideration of energy efficiency and renewable energy is forward-thinking and commendable. Please retain this proposed exception in the Final Rule.
- As related to exceptions for development in floodway per proposed rule Part 55.8(a)(1), HUD would allow functionally dependent uses, utility lines, de minimis improvements (such as landscaping, sports courts, or trails), and removal of buildings and improvements in areas of floodway. This exception would allow increased flexibility compared to the current exclusionary standards while incurring de minimis impacts to the regulatory floodway. Please retain this proposed exception in the Final Rule.

J. 8-STEP DECISIONMAKING PROCESS

3. Adding an option to publish public notices in Steps 2 and 7 on an appropriate government website as an alternative to a printed news medium.

- HUD must define “appropriate government website.” For example, would a local government or state/federal government site be appropriate?

5. Adding a requirement to coordinate the 8-step process with any public engagement process associated with environmental justice, where project planners are also engaging stakeholders in compliance with E.O. 12898 (/executive-order/12898), “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” HUD intends to issue updated guidance on complying with E.O. 12898 prior to this proposed rule going into effect.

- If the 8-Step is part of a full Environmental Review, this information is being addressed under the NEPA review. Efforts should not be repeated.

K. ELEVATION, FLOODPROOFING, MINIMIZATION AND RESTORATION

In addition to the revisions to § 55.20 described above, HUD would significantly expand step 5 in § 55.20(e) to implement FFRMS. Section 55.20(e) of the proposed rule would provide that, in addition to the current mitigation and risk reduction requirements, all new construction and substantial improvement actions in the FFRMS floodplain subject to the 8-step process must be elevated or, in certain cases, floodproofed above the FFRMS floodplain. If higher elevations, setbacks, or other floodplain management measures are required by State, Tribal, or locally adopted code or standards, HUD would require that those higher standards apply. The revised section would also provide more specific guidance on minimization and floodplain restoration measures, which are a key component of increasing flood resilience and must be considered in the 8-step process. <https://www.federalregister.gov/d/2023-05699/p-114>

- The requirement for floodproofing, on sites with no known or previously occurring flood risk, such as those within the 500-year 0.2% floodplain, will be prohibitively expensive.

Q. SPECIFIC QUESTIONS FOR COMMENT

1. HUD invites comments on alternative approaches to define the FFRMS floodplain. Specifically, HUD seeks comments on whether to prioritize an alternative method among the three approaches to define the FFRMS floodplain, such as FVA as contemplated in the 2016 proposed rule, rather than CISA as discussed in this proposed rule.

2. HUD also invites comments on whether HUD should rely on the following alternative approach that HUD considered when developing this proposed rule: where CISA resources are not available, but the 0.2-percent-annual-chance floodplain has been mapped, the FFRMS floodplain for non-critical actions would be defined as either the 0.2-percent-annual-chance floodplain or the base flood elevation plus two feet of freeboard, whichever is lower. This alternative approach would reduce costs in the short term and the potential for overbuilding but may result in higher flood risk and costs in the long term than the proposed approach of selecting the higher standard for non-critical actions.

- The base flood elevation is generally easier to determine, and this method would leave less room for conjecture than the 0.2PFA. As such, for properties within the 100-year floodplain, the FVA method should be considered as the precedent over the 0.2PFA floodplain. Additionally, there should be an option for a site-specific flood study to take precedent over the 0.2 PFA and FVA.
- With the current lack of available CISA data, it seems as though moving to relying on CISA as the “best available data” will not be feasible for quite some time. In light of that, relying on the FVA approach seems to make more sense to ensure reliable and consistently documented building elevations.
- The proposed rule states that agencies using CISA may find that flood elevations are lower than those shown on the FEMA FIRM or Flood Insurance Study and, in this scenario, cannot be used. Many sites also do not have mapped 0.2% chance flood zones/elevations. It seems that using the FVA approach across the board results in a more consistent approach.
- Requiring elevation of existing structures undergoing substantial rehabilitation to 2 feet above the Base Flood Elevation may result in significant pushback from Borrowers, particularly Borrowers associated with low-income housing transactions. Much-needed repairs and upgrades to low-income housing may be foregone in order to avoid the substantial costs associated with elevating large multi-family structures. This requirement seems to place an undue burden on existing low-income housing.
- Clarification on what would be classified as an “approved government website” for public notices associated with the 8-Step would be appreciated., as well as who, at HUD, has the authority to determine what is or is not an “approved” site. Lack of access to, or knowledge of, these government sites is a concern and may make the public notification process unproductive.
- We support the proposed allowance for utility lines to cross regulatory floodways where it is the most practical method of connecting to existing utility lines.
- We support the proposed change to allow for the continuation of HUD assistance for existing properties that are found to be located within a floodway based on updated FEMA FIRMS.

However, the proposed rule indicates that “HUD will take a close look at the site and determine whether the best option to improve flood resilience would be financing improvements at the existing site or rejecting HUD assistance at the site.” Please clarify the stage at which HUD would be conducting this “close look,” as applicants will be reluctant to proceed with applications without some level of assurance that HUD mortgage insurance will be possible. It would be preferable to have some level of confidence conveyed at Concept.

- Please clarify how an existing multi-family structure with a basement could be practicably elevated 2 feet above the Base Flood Elevation. This requirement for a substantial rehabilitation project seems to eliminate a significant number of projects from HUD consideration.
- In response to HUD seeking comments about whether to prioritize an alternative method among the three approaches to define the FFRMA floodplain (Supplementary information included in the Federal Register III.Q.1): Please consider selecting the Freeboard Value Approach (FVA) as the most practical alternative considering CISA mapping is not currently available for public review. Per the Federal Register IV (Findings and Certification), the proposed rule was determined to be a “significant regulatory action.” We assert that the NEPA process cannot be correctly completed when the public has not been provided adequate information (access to the CISA mapping) to assess the impacts and implications of the CISA method and provide meaningful, informed comments.
- In response to HUD seeking comments about whether HUD should rely on the alternative approach considered when developing the proposed rule: where CISA resources are not available, but the 0.2% annual-chance floodplain has been mapped, the FFRMS floodplain for non-critical actions would be defined as either the 0.2% annual-chance floodplain or the base flood elevation plus two feet, whichever is lower (Supplementary information included in the Federal Register III.Q.2): Yes, please consider selecting this alternative over the currently proposed step that does not allow the option of BFE +2 feet in order to avoid incentivizing excessive fill in 500-year floodplains.
- In response to HUD seeking comments about whether FFRMS floodplain boundaries that have already been defined by other federal agencies (Supplementary information included in the Federal Register III.Q.3): Yes, please reduce redundancy in federal oversight and allow FFRMS boundaries established by other agencies to be used by HUD. Please consider a process, however, where a stakeholder may contest the boundary as an impetus for HUD’s reconsideration of the boundary. Are there any other federal agencies that have established a process for defining the FFRMS floodplain?
- In response to HUD seeking comments about what factors or stakeholder needs HUD should consider when establishing an effective date for this rule and whether HUD should establish an extended effective date (Supplementary information included in the Federal Register III.Q.4): Stakeholders need access to CISA mapping for a minimum of at least one year before the rule should become effective. The reason for this is because planning for development projects usually begins years in advance of a land acquisition or the initiation of the planning process. Implementing the rules immediately after the rulemaking process is completed could result in major expenses to developers as related to changes in land value they acquired for the purpose

of development or the need to design new costly civil and architectural plans; this could result in a delay of developments reaching the market and result in unequitable financial losses of developers that are already in the project planning process. Individuals should have the right to access the CISA mapping in order to make informed decisions about their land purchases.

- In response to HUD seeking comments about using the FVA approach to define the FFRMS in instances where the FVA approach has a higher elevation requirement than the 0.2% annual-chance elevation due to wave action (Supplementary information included in the Federal Register III.Q.5): No, please stick with using a consistent approach that is easier for stakeholders to understand and manage. Generally, compliance with federal standards can be expected to be better in cases where rules are consistently applied and easy to understand, which is why it is recommended to use the FVA.
- In response to HUD seeking comments about alternative measures that may help promote the production and availability of affordable housing in the near-term while still promoting flood resilience (Supplementary information included in the Federal Register III.Q.6): Please consider allowing a 1-3 year grace period after the implementation of the rule whereas land that has already been acquired for the purposes of development or development plans that are already in process for existing concepts would not be impeded by the rule change. The grace period would also allow for another Administration to keep the rule in place or overturn the rule without creating a hiccup in the delivery of developments to the market. A grace period is critical of any decision to implement a FFRMS.