

MBA SUMMARY for FHA Multifamily Properties
Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard, [Docket No. FR-6272-F-02] –
FINAL RULE

[\[LINK\]](#)

April 22, 2024

Compliance Date – The compliance date for most multifamily properties is January 1, 2025 - compliance with this final rule’s amendments to 24 CFR part 200 is required for new construction where building permit applications are submitted on or after January 1, 2025; and compliance with this final rule’s amendments to 24 CFR part 55 is required no later than January 1, 2025 for the following programs: (1) Programs subject to chapter 9 of the Federal Housing Administration’s (FHA) Multifamily Accelerated Processing (MAP) Guide (4430.G): Multifamily FHA, Section 202 and 811 capital advance grants, transfers under Section 8(bb) of the United States Housing Act and Section 209 of HUD’s annual appropriations (or subsequent provisions), Section 8 Renewals with Capital Repairs, Rental Assistance Demonstration (RAD) conversions to Project-Based Rental Assistance (PBRA), and the Green and Resilient Retrofit Program; and (2) The other mortgage insurance programs subject to part 55: FHA Healthcare and FHA Risk Share.

Summary of Rule - This final rule expands the floodplain of concern from the 1-percent-annual-chance floodplain to the Federal Flood Risk Management Standard (FFRMS) floodplain, designated based on projected future flood risk, to ensure that HUD projects are designed with a more complete picture of a proposed project site’s flood risk over time.

For most properties located in a floodplain, this will require adding an **additional 2 feet to the base flood elevation (the 100-year, or 1-percent-annual-chance flood elevation) for non-critical actions and by adding an additional 3 feet to the base flood elevation for critical actions** (those that, if flooded, might result in loss of life, injury to persons, or damage to property).

The rule establishes a three-tiered approach, first requiring the use of the Climate Informed Science Approach (CISA), where data is available and actionable, to establish the required level of flood resilience for floodplain management decision making, elevation of structures, and floodproofing. Second, in areas where CISA data is not currently available and actionable to define the FFRMS floodplain, as described in this final rule, HUD will typically require that the FFRMS floodplain be based on the FEMA-mapped 0.2-percent-annual-chance floodplain or a freeboard height above the FEMA-mapped 1- percent-annual-chance floodplain. And lastly, using the Freeboard Value Approach.

Details of the three-tiered approach are as follows:

1. **Climate Informed Science Approach (CISA):** The FFRMS floodplain is defined as areas designated as having an elevated flood risk during the anticipated life of the project based on CISA.
2. **0.2- Percent-Annual-Chance Flood Approach (0.2 PFA):** For non-critical actions, where CISA data or other types of CISA analysis is not available or actionable, but FEMA has defined the 0.2-percent-annual-chance floodplain, the FFRMS floodplain is defined as those areas that FEMA has designated as within the 0.2-percent-annual-chance floodplain. For critical actions

where CISA data is not available nor actionable, the FFRMS floodplain is defined as either the area within the 0.2-percent-annual-chance floodplain or the area that results from adding three feet to the base flood elevation, whichever results in the larger floodplain and higher elevation. For any action, newly constructed or substantially improved structures within this definition of the FFRMS floodplains are required to be elevated to or above the FFRMS floodplain.

3. **Freeboard Value Approach (FVA):** For non-critical actions, if CISA data is not available or actionable and the FEMA 0.2-percent-annual-chance floodplain is not defined, the FFRMS floodplain is defined as those areas, including the horizontal extent, that result from adding two feet to the base flood elevation as established by the effective FEMA FIRM or Flood Insurance Study (FIS).

Changes to the 8-step process - The final rule significantly expands Step 5 in § 55.20(e) to implement FFRMS. 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 decision-making 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 will require that those higher standards apply. The revised § 55.20(e) also provides more specific instruction on minimization and floodplain restoration measures, which are a key component of increasing flood resilience and must be considered in the 8-step decision-making process.

All substantially rehabilitated or newly constructed structures within the FFRMS floodplain that are not elevated must be floodproofed consistent with the latest FEMA standards at or above the level of the FFRMS floodplain. This provision permits owners of non-residential and certain residential buildings (with no residential dwelling units below the FFRMS floodplain) to construct structures in a way that is less expensive than elevating but allows the buildings to withstand flooding.

The rule also establishes mandatory actions to plan ahead for residents' safety in multifamily residential properties, healthcare facilities, and critical actions.

Improvements to Existing Properties in the Floodplain - The rule creates a special approval process for improvements to existing HUD-assisted or HUD-insured properties with onsite floodways under the following circumstances, summarized as follows:

1. HUD completes an 8-step decision-making process and environmental review pursuant to part 50 and mandates measures to reduce flood risk and ensure that there are no other environmental risks or hazards at the site;
2. Specific measures will be taken to minimize flood risk and improve overall resilience at the site, including removing all residential units and critical action structures from the floodway; and
3. HUD determines that the HUD assistance cannot be practicably transferred to a safer site.

Projects with Onsite Floodways - The final rule removes the incidental floodway exception and requires projects with onsite floodways to complete the 8-step decision-making process and determine that there are no practicable alternatives before approving any proposed activity. It also allows for a broader range of activities in the floodway and in the adjacent FFRMS floodplain than is permitted under the current incidental floodplain exception. Approval of a site with an onsite floodway is allowed where:

1. All structures and most improvements are removed from the floodway (excludes functionally dependent uses, utility lines, and de minimis improvements including minimal ground disturbance or placement of impervious surface area) and
2. A permanent covenant or comparable restriction would prevent future development or expansion of existing uses in the floodplain and/or wetland.

Wetlands - The final rule broadens the wetlands definition beyond National Wetlands Inventory (NWI) screening alone and addresses 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. Where these sources do not provide a conclusive answer as to whether a wetland is present, 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 (USFWS); (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 of determining the presence or absence of a wetland increases flexibility and avoids unnecessary consultation with the USFWS without increasing the risk that wetlands will not be accurately identified.

The final rule removes (which, in concept, provides relief from) five of the eight steps in the wetlands decision-making process when a permit has been secured from the United States Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act for a proposed HUD-assisted construction activity in a jurisdictional wetland outside of the floodplain. The final rule removes this section because practitioners have not historically found it useful, and part 55 already contains another section that offers similar relief from the 8-step decision-making process where USACE (or any other Federal agency) has already completed the 8-step decision-making process for the same action.

Letter of Map Amendment (LOMA) Exception Removed - HUD is removing the exception for LOMA/Letter of Map Revision (LOMR) and Conditional Letter of Map Amendment (CLOMA)/Conditional Letter of Map Revision (CLOMR) because a FEMA determination (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 is removing the exception on conditional LOMAs and conditional LOMRs for the same reason, as well as 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 is changing this policy to disincentivize the use of sitewide fill and require completion of the 8-step decision-making process before adding fill to modify a floodplain.

Notification of Tenants – For HUD-assisted, HUD-acquired, and HUD-insured rental properties, new and renewal leases are 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 must 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.