MORTGAGE BANKERS ASSOCIATION

December 21, 2016

VIA ELECTRONIC SUBMISSION

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

Re: Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard
Docket No. FR-5717-P-01

Ladies and Gentlemen:

The Mortgage Bankers Association[1] appreciates the opportunity to comment on the Department of Housing and Urban Development's (HUD) Proposed Rule regarding Minimum Property Standards for Flood Hazard Exposure and Building to the Federal Flood Risk Management Standard (FFRMS).[2]

MBA understands HUD's desire to implement a standard for flood risk management in 2017, as well as its goal to protect taxpayer money from flood risk exposure in properties within floodplains that have HUD funded or FHA insured mortgages. HUD's implementation of improved building standards could reduce the risk of flood loss and minimize the impact of floods on human safety, health, and welfare. This increased attention to building standards aims to ensure the increased safety and sustainability of housing stock located in areas subject to floods, as well as the responsible use and investment of federal funds in structures potentially subject to repeated flooding events.

MBA maintains that HUD's application of these standards, if adopted, must carefully consider the impact and timing of implementation of the FFRMS on FHA lenders and their current project pipelines in single family, multifamily, and healthcare finance production. Therefore, we strongly urge HUD to carefully consider when to apply this rule and make it effective particularly since key information is unavailable for consideration during the regulatory comment period.

I. Multifamily and Healthcare Finance Comments

HUD's proposed requirements would impact structures classifed as "non-critical actions" in multifamily and independent living healthcare facilities that are being newly constructed or substantially rehabilitated with HUD funding or FHA insurance. The proposed provision would require these structures to be elevated at least two feet above the base flood elevation. While requirements for "critical actions", defined in 24 CFR 55.2(b)(3)(iii) as projects where even a slight chance of flooding is too great for reasons such as loss of life, injury, or irreparable damage, including most FHA residential healthcare and hospital facilities where residents and patients are immobile, would require elevation above the greater of the 500-year floodplain or three feet above the base flood elevation.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the Nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit: www.mba.org.
[2] Docket No. FR-5717-P-01

MBA believes that special consideration must be given to the implementation and effective date of the proposed FFRMS rule, if adopted, with respect to the FHA multifamily, residential healthcare, and hospital project pipelines given the lengthy application and financing process. MBA strongly recommends that HUD establish an appropriate effective date to grandfather existing transactions. Grandfathering should be set as early in the production process as possible so as not to include any projects that have had concept meetings or similar interactions with HUD and the lender.

MBA notes that FEMA's Flood Insurance Rate Maps (FIRMs) have clearly depicted the 100-year floodplains across the nation which has been helpful and accessible to all parties. *New maps are critical in order to depict the horizontal extension of these floodplains* in accordance with the FFRMS. The updated maps have not been created and thus render it impossible for MBA and affected parties to fully assess the scope and impact of the proposed FFRMS rule. It appears that the proposed rule could have significant impact in the many parts of the United States with relatively flat topography. As HUD considers the implementation timeline and effective date for the proposed rule, MBA strongly urges HUD to delay implementation of the proposed rule until the horizontal floodplain maps have been released. It is necessary to consider the updated maps to gauge the scope of impact of the proposed rule.

MBA is also concerned with the FFRMS because it would be applied to HUD funding and FHA insurance for existing properties undergoing substantial rehabilitation. MBA recommends HUD consider the significant cost barrier already surrounding substantially rehabilitating multifamily and healthcare facilities, particularly properties serving as affordable housing resources. The cost of meeting the requirements of this proposed rule may negatively sway borrowers from seeking HUD financing or FHA insurance for needed improvements to properties. MBA also notes that aside from the impact on the supply of buildable land, there will be an additional underwriting cost due to the proposed rule, if adopted, because of the additional surveyors report requirements. HUD should provide language in the regulation to specify whether, as a result of this proposed rule, the application of the regulation could or will be expanded to projects that are not considered substantial improvements/new construction (i.e. 24 CFR 55.20(e)(4)). That rule is on minimization techniques for floodplain and wetlands purposes and there is no differentiation in the reference regarding minimization techniques that are not substantial improvements or new construction. The concern is that the subject proposed rule could have expansive impact. Therefore, HUD should stipulate what will not be impacted by the proposed rule with regard to existing FHA-insured projects as new Section 223(f) refinancings, Section 241 second mortgages, or 10 year Project Condition Needs Assessment-related required capital improvements occur. The budgetary impact and additional funding needs of making the existing FHA multifamily and healthcare portfolio more resiliant to flooding impacts should be considered.

In consideration of how to move forward with the proposed FFRMS rule, if adopted, MBA recommends that significant training of HUD staff on the requirements with reference material and access to experienced experts be mandatory prior to implementation. Informal feedback from MBA members indicates that environment-related HUD rules are inconsistently applied by different HUD offices. To move to a higher level of regulatory requirements for FHA programs on a complicated issue such as this demands a corresponding investment from HUD so that the FHA programs are not adversely impacted with increased processing times or errors in reviews. MBA continues to applaud FHA Multifamily's leadership in the transformative Multifamily for Tomorrow which reduced FHA production from 50 offices to a more manageable number for consistency. However, MBA believes that this rule could create significant problems if adopted without significant training, planning, and access to new maps.

In addition, many of the thoughts expressed in the Single Family Comment section below are also applicable to the Multifamily and Healthcare Finance Comments.

II. Single Family Comments

While MBA is supportive of increased risk mitigation in cases of repeated flooding events, MBA is concerned that HUD's adoption of the Freeboard Value Approach (FVA), requring more stringent building standards for new construction and substantial improvements in the FFRMS floodplain, will limit optionality and choice for FHA borrowers living in these affected areas. HUD's proposal represents not only a more expansive approach to flood mitigation requirements under FEMA, but also exceeds the intent of Executive Order 13690 by failing to limit expanded floodplain requirements to only "federally funded projects."[3]

MBA believes there is a distinction between HUD-funded properties and FHA-insured properties, and HUD's assistance in floodplains generally consist of only non-critical actions. Under the Final Implementing Guidelines, the FFRMS identifies higher standards for critical actions for federally-funded projects, defining "federally-funded projects" as actions where federal funds are used for new construction, substantial improvement, or to address substantial damage.[4] For all other federal actions that are not federally-funded projects, the Final Implementing Guidelines recommend that agencies "consider using the 500-year, or 0.2-percent-annual-chance floodplain as a minimum standard if an action is determined to be a critical action,"[5] thus offering flexibility for non-critical single family projects that are merely federally insured, such as the insurance of loans through FHA.

Subsequently, HUD's proposal to align its Minimum Property Standards (MPS) for one-to-four unit housing with the above-mentioned elevation requirement may limit the number of new construction homes available to many first-time and low-to-moderate income borrowers. Should new homes be built outside of HUD's MPS, those eligible for FHA financing will lose their option to purchase these newly constructed homes in the FFRMS floodplain, adversely impacting the borrowers FHA is intended to serve.

MBA recommends that HUD further consider the potential impact of this proposal on first-time and low-to-moderate income borrowers living in the FFRMS floodplain, and provide additional clarity on the effective date of this proposal and the implementation process for projects already underway.

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Thank you for your consideration of our comments. We look forward to engaging in further discussions on these important matters. If you have any questions, please contact Eileen Grey at egrey@mba.org or 202-557-2747 for multifamily issues and Katherine Tung at ktung@mba.org or 202-557-2870 for single family issues.

Sincerely,

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Cc: Pete Mills, MBA
Eileen Grey, MBA
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[3] Executive Order 13690, *Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input*, Jan. 30, 2015.

[4] Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, Oct. 8, 2015, available at: https://www.fema.gov/media-library-data/1444319451483-f7096df2da6db2adfb37a1595a9a5d36/FINAL-Implementing-Guidelines-for-EO11988-13690_08Oct15_508.pdf

[5] *Id.*