



MORTGAGE BANKERS ASSOCIATION

October 4, 2024

The Honorable Julia Gordon
Assistant Secretary for Housing/Federal Housing Commissioner
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

RE: Need for Guidance on the FFRMS

Dear Assistant Secretary Gordon:

The Mortgage Bankers Association (MBA)¹ is writing to reiterate our concern that the Department of Housing and Urban Development's (HUD) Federal Flood Risk Management Standard (FFRMS) rule remains unready for implementation. The recent events in the Southeast demonstrate the importance of building resiliency, and the safety of residents has never been more evident. However, HUD has yet to publish clear guidance on the rule, and lenders, developers, and HUD staff alike do not yet have the appropriate direction or the required tools necessary to make determinations about the floodplain status of a given property. We strongly urge you to postpone the January 1, 2025 implementation date of this rule until comprehensive guidance is available, along with sufficient tools and data to make the necessary determinations.

While some of our members have engaged in discussions with HUD staff and received answers to certain questions, there are still many points where guidance is unclear. Regional HUD staff do not feel they have been adequately trained or have the resources to make the required determinations. Furthermore, despite receiving oral responses to some policy inquiries, little direction is available in writing for lenders or HUD staff. Additionally, not all questions submitted to HUD have been answered. These issues will lead to widespread variability and uncertainty across the country and confuse lenders who work across multiple HUD regions. HUD must release clear and specific guidance to ensure appropriate compliance with the rule and the flood safety measures necessary to protect lives.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 275,000 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 2,000 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.

Attached to this document is a list of questions that we recommend be covered by the guidance. We are happy to work with you to distribute any materials you produce. Our members take their role in supporting a safe housing supply seriously. We all want to do what is best for people across the nation. However, we need proper tools, clear instructions, and guidance on how to meet the goals of this rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "R. D. Broeksmit". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert D. Broeksmit, CMB
President and Chief Executive Officer
Mortgage Bankers Association

FFRMS Questions

8-Step Analysis

- Costs for newspaper announcements have skyrocketed. The Rule provides for publication on a government website. Please provide clarity on an appropriate government website for public notice of the 8-Step. Does a municipal city website or something similar suffice? We understand there are no currently approved government websites for public posting.
- When will the 8-Step Decision-Making Process Case Study be updated on the HUD Exchange? Is there a timeline for HUD publishing the new 8-step templates?
- The 8-step process for new construction requires Elevation Certificates to be completed or a floodproofing certificate. For purposes of an Elevation Certificate, is a surveyor simply identifying the proposed elevations on the Certificate? Or is HUD indicating that an Elevation Certificate is required after construction to document as-built elevations? We have been told HUD would prefer topographic lines, but this adds roughly \$6,000 to the cost of an ALTA survey. What are alternatives?
- When FFRMS analysis of a project indicates that existing buildings are outside the 100-year flood zone per the FIRM, but are within the FFRMS floodplain, will Elevation Certificates be required?
- Surveyors are reluctant to provide Elevation Certificates relative to even a Preliminary BFE; we anticipate problems obtaining Certificates related to a “calculated/estimated” BFE from an FFRMS analysis.
- Will HUD be providing examples as to how the Economic Costs should be evaluated as part of the 8-step Decision Making Process and when the new 8-step process will be provided to Lenders?
- Under what circumstances is HUD going to decide if a site is suitable or not based on the requirement (in step 3) for identifying practicable alternative sites? In many cases where sites are in unshaded zone X but still fall in the FFRMS, or sites are in the 500-year 0.2% floodplain (shaded zone X), there are no alternatives in the populated areas to build new housing or rehabilitate housing. Please describe or specify what criteria HUD is going to use to make a determination as to whether or not there is a practicable alternative in these cases?

Section 55.8

- When will HUD be releasing additional guidance/clarification on what, exactly, constitutes a “de minimis” improvement within a regulatory floodway? Do accessibility improvements count towards the improvement for purposes of the floodway?
- When will the WISER model be available?

- When will HUD be releasing additional guidance/clarification on what is defined as a “functionally dependent use” within a regulatory floodway?

Calculating Substantial Improvement

- How is the rehabilitation threshold calculated?
- How is the value of the current structure determined?
- How is the total renovation cost measured? For instance, which cost categories are included in this number, and which are excluded? What costs can and cannot be included in rehab costs (e.g., architect fees, GC fees, overhead, profits, general requirements)?

Project Specific / Program Type Questions

- If we are doing a HEROS submission for a Chapter 15 Section 8 HAP Contract Renewal and the borrower is doing a Tax Credit Rehab/Refinance with Fannie or Freddie (non-HUD loan), will the existing building have to comply with FFRMS requirements and be floodproofed as part of the rehab?
- If we are doing a Rehab of an existing 202 after they obtain their Budget Based Rent Increase (BBRI), will they have to comply with the new FFRMS requirements and be floodproofed as part of the rehab even though they are already in HUD’s portfolio?
- Part of CFR-55-21 has a narrow exclusion for deeply affordable communities. What is the exclusion?
- If we have a property that is doing a new HUD MAP 223f loan with moderate rehab (Heavy 223f) and they have ancillary structures and improvements in the 500-year floodplain, but none of the residential structures are located in a flood hazard area, will the property have to comply with FFRMS and obtain flood insurance?
- If doing just a 223f refi with no major repairs that is in the 100-year flood plain, is that property excluded from being refinanced?
- If we are doing an acquisition or refinance of a property in the FFRMS that has floodproofing on the first floor of residential, will that property be allowed to do a 223f?
- What is HUD’s plan for Sub-Rehab properties in the FFRMS? Raising the building is not feasible, rejecting the project seems unreasonable, and changing the entire ground level to non-residential seems impractical and financially prohibitive. Do they have a plan for what flood-proofing would be required or if emergency evacuation/relocation/management is sufficient?

Mapping Related Questions

- Will HUD be working on or releasing a simpler tool to find the FVA elevations instead of having to read through code?
- When will a tool be available with the CISA maps?
- When will HUD approve the existing CISA maps?
- Please clarify 223(f) requirements to satisfy FFRMS—will all 3 approaches (CISA, 0.2% PFA, and FVA) be required to be discussed if Zone X Shaded or an SFHA is noted within the FEMA FIRM panel?
- If a site is adjacent or within Zone A or Zone D, and there are no flood insurance studies or information from the municipality, how do we determine the FFRMS? Is the only option to get a flood study?
- Are county GIS mapping tools accepted for elevation data?
- When a property is located wholly within Zone X (Unshaded), how far from the property should be searched in order to confirm it is outside the FFRMS floodplain?
- When working to define the elevation of the 500-year floodplain, if a Flood Insurance Study (FIS) is available that effectively depicts the elevation(s) of the 500-year floodplain, should that always be used/referenced in lieu of using the elevation of the 100-year floodplain, plus 2 feet for non-critical actions and 3 feet for critical actions?
- Can HUD provide an example of determining FFRMS floodplain for a property that is impacted by multiple flooding sources?
- In areas protected from the 1% chance of flood by a levee system, how should the FFRMS elevation be calculated? Efforts to obtain local data have been unsuccessful, as they simply do not have Base Flood Elevation data for a single property within a city that is protected by a large levee system.

Miscellaneous

- What is the process for utilizing LOMR-Fs? Will they not be accepted under any circumstances anymore? Or is it a case-by-case basis?
- Does HUD no longer care about LOMRs and does it only apply to local permitting requirements?
- If the Climate Risk Review isn't showing a future issue for flooding, but the FFRMS floodplain is now an issue, do we have to report that in the climate report?
- Will HUD be providing an example of the tenant notification that should be used?

- For a 221(d)(4) sub-rehab project that exceeds the 50% SRL threshold, when are engineering plans to elevate the structure required?