



National Association of Home Builders

1201 15th Street NW
Washington, DC 20005

T 800 368 5242
F 202 266 8400

www.nahb.org

June 16, 2016

Ms. Harriet Tregoning
Principal Deputy Assistant Secretary for the Office of Community Planning and
Development
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410

Dear Principal Deputy Assistant Secretary Tregoning,

On behalf of the National Association of Home Builders (NAHB), I would like to take this opportunity to share the results of the floodplain mapping analysis that was conducted for NAHB for the purpose of better understanding the potential impacts of Executive Order (E.O.) 13690 and the Federal Flood Risk Management Standard (FFRMS) on multifamily home builders and developers.

The FFRMS provides federal agencies with three options for defining the floodplain: the climate informed science floodplain; the freeboard value floodplain; or the 500-year floodplain. The U.S. Department of Housing and Urban Development (HUD) has indicated it will adopt the freeboard value floodplain, which is defined as the floodplain area corresponding with an additional two feet of elevation above the 100-year floodplain base flood elevation (BFE). Determining the extent of any floodplain standard depends on the existence of updated and current maps in order to assess the impacts and costs of such a decision. Because the federal government does not have maps depicting the full extent of the FFRMS-defined floodplains, neither the public, project developers nor HUD know if projects may be affected and the Department has no way of calculating the overall impact of adopting one definition over another.

Clearly, understanding the location of these floodplains on the ground is vital to determining the extent and impact of the E.O. on HUD's multifamily programs. Absent a readily available way to do so, NAHB hired a consultant to use the best available data to analyze the locations of the 847 HUD 221(d)(4) projects initially endorsed between 2010 and 2015. Using FEMA National Flood Hazard Layer (NFHL) geographic information system (GIS) data and FEMA Flood Insurance Studies (FISs), each project was analyzed to determine its likely status with respect to:

- The 100-year floodplain;
- The freeboard value floodplain; and
- The 500-year floodplain.

Interestingly, one of the most significant findings of the research is that the FEMA NFHL data necessary to accurately determine the extent of the floodplain are not

readily available in all parts of the country. Specifically, we found that 30% of the projects lacked sufficient NFHL data to determine their status relative to the freeboard value floodplain, and 44% lacked the data necessary to determine their status relative to the 500-year floodplain. For that reason, it is difficult to know for certain where many projects lie with respect to the FFRMS's floodplain definitions.

For those properties for which floodplain location and elevation data were available through the NFHL, the analysis indicates that 5% (36 individual projects) are located within the 100-year floodplain and would have been subject to the requirements of E.O. 11988, which directs them to undergo an eight step decision making process in an effort to avoid and minimize impacts to floodplains. Of course, these projects are currently subject to the eight-step process, so they do not represent a difference. However, this percentage is expected to more than double (to 11% and 12%, respectively) if HUD adopts either the freeboard value or the 500-year floodplain options set forth in the FFRMS. While the data may not suggest a marked increase in the number of affected properties, because the full complement of information is not readily available to make a definitive assessment for all properties, the actual impact across HUD's portfolio of 221(d)(4) properties cannot be determined and we believe it could be much higher.

Further, while the increase in the number of affected projects may seem modest, the impacts and impediments that E.O. 11988 and the FFRMS will place on these projects and project proponents are real. As raised in our April 18 letter, NAHB continues to be concerned that in addition to the uncertainties surrounding whether a property is within the boundaries of some expanded floodplain, the time and effort to complete the eight-step decision making process "Procedures for Making Determinations of Floodplain Management and Protection of Wetlands" that is required for complying with E.O. 11988 can be substantial. In addition, any required elevation, mitigation or project redesign could render a project economically infeasible. In a worst case, the overall uncertainty and increased costs could deter participation in the program completely, which would impair HUD's ability to meet its affordable housing goals.

NAHB initiated this study to better understand the geographic impact of changing the definition of the floodplain and to assess the extent of potentially impacted multifamily projects. The results reinforce three of NAHB's longstanding concerns: there is no easy or repeatable way to determine where many properties lie relative to the floodplain definitions set forth by the FFRMS; the availability of floodplain maps is vital to the 221(d)(4) program's success; and more work is needed to fully understand the breadth of the impacts of the FFRMS's implementation before it is implemented. Each of these issues is more fully addressed below.

Floodplain Identification Challenges Must Be Addressed

The first step in HUD's eight-step "Procedures for Making Determinations of Floodplain Management and Protection of Wetlands," which is currently triggered by federal actions occurring in the 100-year floodplain, is for HUD to "determine whether the proposed action is located in the 100-year floodplain . . ."¹ If the action occurs in

¹ 24 C.F.R. §55.20(a).

a floodplain, additional requirements are triggered, including public notice, evaluation of practicable alternatives to locating the action in the floodplain, identifying and evaluating potential direct and indirect impacts associated with occupancy or modification of the floodplain, and minimization of potential adverse impacts. Our members report that this process has become increasingly difficult due to Department staff taking an inordinate amount of time just to review the verbiage of the notice. In one particular case, it took over 90 days. If the action does not occur in a floodplain (as currently defined, or in the event HUD increases the BFE by 2'-3', as may be defined in the future), no further compliance activities are required.

Clearly, knowing whether a proposed action is in or out of the floodplain is a critical step in HUD's regulatory process. Yet our analysis confirms that HUD and property owners will have an increasingly difficult time completing this first step using any one of the new FFRMS floodplain definitions. Similarly, although HUD projects were used in this analysis, the findings are not limited to HUD actions. Rather, because the projects studied represent a large sample of federal actions taken in locations across the country, it is expected that all federal agencies tasked with identifying the FFRMS floodplain will face similar challenges.

Absent applicable NFHL data, reliable maps, or any indication about what information the agency will rely on to determine if a property is affected, both HUD and project proponents are left in the dark. For example, who within HUD will be responsible for making such determinations? What process will he or she follow? What assumptions will be made if the data are difficult to locate or uninformative? Will project proponents have an opportunity to provide data or information? Will there be an appeal process? Will the sponsor decide to avoid HUD programs due to this uncertainty?

These material unknowns and uncertainties will generate increased project delays, increased project costs and increased project cancellations – the costs of which will be passed on to renters, decreasing housing affordability. The uncertainties will also lead some project sponsors to forego participating in these much-needed programs, further straining the supply of affordable rental housing. Given these challenges and negative outcomes, NAHB urges HUD to exercise its regulatory flexibility, as outlined in our previous letter, and exempt Section 221(d)(4) and other FHA-insured projects from the FFRMS.

Floodplain Maps Must Be Provided

Without current maps that depict the FFRMS floodplain, there is no way for HUD or private landowners to easily know if a property lies within the newly defined floodplain or if the requirements of E.O. 11988 apply. NAHB's research underscores this point. While there are other sources of data, many are incomplete or not conducive to helping to determine the extent of the freeboard value floodplain. For example, in those areas where only paper maps are available, there is no way to estimate the areal extent of a floodplain boundary that is governed by an actual elevation. In other instances, data may be inconsistent or require on-site verification. The home building industry, like all industries, relies on regulatory schemes that are efficient and predictable. And yet for many properties, there is no way for a multifamily builder or developer who may be considering developing a project on a

property to know with certainty that the land he or she is considering for purchase is within the newly designated floodplain. Even after conducting engineering studies or surveys, there may be no clarity. This uncertainty not only contributes to business challenges, but also leads to project delays and increased project costs that are ultimately passed on to renters. As rents increase, fewer households can afford to live in the units. As fewer sponsors participate in HUD programs, fewer units will be built further exacerbating the current shortfall in housing production.

It is the responsibility of the Administration to make maps depicting the FFRMS floodplain publicly available prior to making any determination with regards to implementing E.O. 13690. Until such maps are available, all efforts to apply the E.O. and the FFRMS to any area other than the mapped 100-year floodplain should cease.

Full Extent and Impact of Revised Floodplain Definition Must Be Assessed

Broadening the definition of the floodplain through the FFRMS will have real impacts on projects across the country. As such, it is imperative that HUD fully understand and assess these impacts prior to adopting any changes, including, at a minimum, the number of projects likely to be affected; the administrative burdens on the agency and how they will be addressed; costs associated with compliance, such as elevation, mitigation and/or floodplain avoidance; the need for and impact on affordable housing and the people who need it in the affected community; the likelihood of disproportional impacts in certain areas of the country; etc.

Although there are no means to predict where future projects will occur, the portfolio of recent HUD 221(d)(4) projects seems to be a reasonable indicator of probable impacts stemming from the implementation of the FFRMS. Unfortunately, the data were not readily available to complete a full assessment of each of these projects, but those that were available indicate the percent of affected projects more than doubled. Because compliance with the E.O. includes administrative, as well as structural, design, and mitigation requirements, the impact on any one of these affected projects is likely to be significant.

Recognizing the difficulty in fully assessing how many projects might be affected and drawing on the results of the research, NAHB sought another view of the potential geographic scope of a revised floodplain definition. To do so, we asked a mapping consultant to look at the difference in land area covered by the 100-year vs. the 500-year floodplain in 15 cities where the data and maps for both the 100-year and 500-year floodplains were available.² Averaged across the cities, the 500-year floodplain covered 55% more land area than the 100-year floodplain. Because the freeboard value floodplain generally will fall between the 100-year and the 500-year floodplain, it is reasonable to suggest that its averaged increase over the 100-year floodplain would be something less than 55%, but absent a more in depth study, that exact value cannot be known.

² The cities studied include Austin; Dallas; Houston; Patterson and Woodland Park, NJ; Barrington, RI; Staten Island; Philadelphia; Fredericksburg, VA; Washington, DC; Richmond; Alexandria, VA; Redding, CA; San Diego; and Sacramento.

While these studies looked at land area and potential numbers of affected properties, they are not sufficient to show the expected disproportional impacts in some areas of the country. For example, 17% of the 221(d)(4) projects were located in Texas. NAHB remains concerned that adherence to the FFRMS could raise costs and/or stifle new projects in certain markets and, in doing so, could adversely impact the specific demographics and economic sectors these programs are intended to reach.

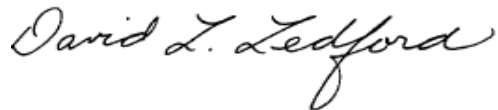
Conclusion

NAHB and the Department have a long history of working together to provide housing for America, including low-and moderate-income families. NAHB remains hopeful that we can continue our shared efforts and urges HUD to use its regulatory authority under E.O. 13690 to exempt Section 221(d)(4) and other FHA-insured projects from the FFRMS. Further, NAHB cautions that any rule designed to fulfill the requirements of E.O. 13690 should not be finalized until maps depicting the referenced floodplain and base flood elevations are produced and made available to the public.

If HUD does not exempt 221(d)(4) and other FHA-insured projects, NAHB's analysis suggests the Department, lacking maps and sufficient data, will have to determine the floodplain status on a case-by-case basis for at least 30% of the portfolio for which it is responsible. Without FFRMS floodplain maps, multifamily builders and developers will not know if their projects must comply with E.O. 11988 – an uncertainty that will lead to project delays, increased project costs and may deter participation in the program. Finally, HUD is strongly urged to identify and assess all of the impacts stemming from its implementation of the FFRMS prior to proposing or finalizing its rules.

Thank you for considering our data analysis and recommendations. Please do not hesitate to contact me or NAHB staff members Owen McDonough (omcdonough@nahb.org) or Michelle Kitchen (mkitchen@nahb.org) if you have any questions or would like additional information. We would also appreciate the opportunity to meet with you again to discuss our findings and recommendations.

Sincerely,



David L. Ledford
Executive Vice President
Housing Finance & Regulatory Affairs

cc:

Lourdes Castro-Ramirez
Principal Deputy Assistant Secretary for the Office of Public and Indian Housing

Stanley Gimont
Director, Office of Block Grant Assistance, Office of Community Planning and
Development

Edward Golding
Principal Deputy Assistant Secretary for the Office of Housing

Brian Handshy
Congressional and External Engagement, Office of Housing

Priya Jayachandran
Deputy Assistant Secretary for Multifamily Housing, Office of Housing

Marion McFadden
Deputy Assistant Secretary for Grant Programs, Office of Community Planning and
Development

Daniel Sullivan
Acting Director, Multifamily Development, Office of Housing

Francey Youngberg
Deputy Assistant Secretary for Public Engagement, Office of the Assistant Secretary
for Public Affairs