NATIONAL ASSOCIATION OF REALTORS®

June 6, 2023

The Honorable Marcia Fudge
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Re: Proposed Rule; Floodplain Management & Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure (88 Fed. Reg. 17755)

Dear Secretary Fudge:

Thank you for the opportunity to comment on the above-captioned proposed rulemaking.

The proposed rule would generally update HUD floodplain management regulations for federal assistance, financing, and insurance. Among the changes, the rule would provide for a climate-informed-science approach to expand the floodplain where elevation and floodproofing would be required for HUD financed projects in 24 CFR Part 55. It would also raise minimum property elevation standards for one- to four-unit housing under HUD single-family mortgage insurance programs (Part 200). Part 200 would now require that the first floor of new construction and substantial improvement projects be built at least two feet above the 100-year or base flood elevation in special flood hazard areas on FEMA maps.

REALTORS® support strengthening new floodplain construction standards to receive federal assistance, including financing and mortgage insurance. When new homes are not properly built or elevated in high-risk areas, property owners and buyers often turn to their real estate professional to help sell properties with high insurance costs or repeated flood damage. Incorporating freeboard into the minimum property standards provides a reasonable margin of safety against loss of property and life, while reducing the number of FHA borrowers who could later find themselves with unsellable property. HUD has also provided compelling data that the benefits of the proposed two-foot-above standard far exceed the costs, and without a standard, property owners would tend to under-insure and under-mitigate relative to the flood risk.

REALTORS® have significant concerns about applying new floodplain construction standards to substantial improvements of existing homes, which would include any repair, reconstruction, modernization, or improvement costing more than 50 percent of a structure's market value.[1] Under HUD single-family mortgage insurance programs, owners apply for this insurance only *after* the structure is built, so many FHA-insured structures may not be built to an elevation standard. The National Institute of Building Sciences has estimated that the average cost of elevating existing structures to a one-foot-above standard ranges from $65-101 per square foot, or $97,500-$151,500 for a 1,500sf home.[2] While this proposed rule would only add one-to-two more feet on top of the state/local

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[1] See the proposed rule at https://www.federalregister.gov/d/2023-05699/p-374
[2] National Institute of Building Sciences. 2019. [Natural Hazard Mitigation Saves 2019 Report (nibs.org)](), pp. 89, 203.

floodplain ordinance, HUD's cost estimate of $80-$4,000 per substantial improvement project appears far too low. Contrary to HUD's expectation that the retrofit cost cannot be much more than this,[3] the Agency does not explain how one-story homeowners would be able to reserve their one and only floor for a non-residential use to reduce their compliance cost. Existing single-family homeowners do not have the same flexibility as builders to locate new projects outside floodplains or reserve the first floor of multi-family projects for a non-residential use. For FHA-insured substantial improvement projects, the owner's choice is either to comply by elevating their home or lose their mortgage insurance.

REALTORS® encourage HUD to expand the Regulatory Impact Analysis to consider a one-foot-above standard for substantial improvements and request public comment before issuing a final rule. Executive Order 12866 as amended directs federal agencies to assess all costs and benefits of available regulatory alternatives and select the approach that maximizes net benefits unless the statute requires otherwise. However, HUD

- Does not analyze the most readily available alternative, which is to raise the standard by one foot instead of two;
- Uses a 2013 new construction study to calculate the costs of retrofitting existing homes, despite recognizing that the cost for substantial improvement projects is significantly higher than for new construction;[4] and
- Measures the proposal's benefits using the decreased insurance premiums from an outdated and inaccurate methodology that has been replaced by Risk Rating 2.0.[5,6]

Reliance on incomplete or outdated information raises questions about the cost-benefit analysis for the substantial improvement proposal. As HUD continues to rely on this analysis to help justify a regulatory decision, the Agency should at least consider a one-foot alternative and conduct a sensitivity analysis so that stakeholders may more fully evaluate and offer informed comments on the proposal.

Thank you again for the opportunity to comment. REALTORS® stand ready to assist in reasonable and well supported efforts to protect against loss of life and property due to flooding, the most common and costly natural disaster in the United States.

Sincerely,

Kenny Parcell
2023 President, National Association of REALTORS®

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[3] Please see footnote 77 of the Regulatory Impact Analysis.
[4] Ibid, p. 23.
[5] Ibid, p. 26 and preamble at https://www.federalregister.gov/d/2023-05699/p-150
[6] For more about how Risk Rating 2.0 improves the reliability and accuracy of property ratings when elevating, please see the Discount Explanation Guide (fema.gov) and Rate Explanation Guide (fema.gov).