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December 7, 2016

The Honorable Julián Castro  
Secretary  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW  
Washington, DC 20410

**Re: Proposed Rule; Floodplain Management & Protection of Wetlands (81 Fed. Reg. 74967)**

Dear Secretary Castro:

On October 28, 2016, the Department of Housing and Urban Development (HUD) proposed to raise the elevation requirement for FHA-insured new construction or substantial improvement in Special Flood Hazard Areas (SFHA). Currently, those homes must be built to the Base Flood Elevation (BFE) – the height of the water during a 100-year or base flood – but under this proposal, FHA's standard would be two feet higher. HUD would also expand the area where FHA-financed multi-family buildings are subject to an 8-step review process, including flood proofing or elevation and the consideration of practicable siting alternatives.

The National Association of REALTORS® (NAR) supports striking a balance between the safety and affordability of homes located in high risk flood zones. On one hand, HUD presents research that home prices have fallen after floods because the developers, owners and buyers didn't understand the risk, or assumed there would be sufficient federal aid to rebuild.<sup>1</sup> If pre-flood prices aren't reflecting the full risk, there would be little incentive to build above BFE, a level which hasn't been high enough to withstand recent floods. On the other hand, FEMA has not provided accurate flood maps or insurance rates which could explain some decisions to buy or build in these locations. Also the in/out nature of SFHAs, coupled with uncertainties inherent in flood mapping (e.g., BFE can change with new development or erosion), may be lulling others into building to unsafe elevations. Markets cannot account for risks for which there is not reliable information, but as flooding occurs and the true cost become known, buyers and sellers have negotiated accordingly and owners have turned to the federal government for assistance with – in hindsight – avoidable flood losses.

NAR believes that HUD's approach – raising FHA's standard to include a margin of safety but only for those voluntarily locating in the floodplain and already building to BFE – would begin to address the informational market failure. HUD has demonstrated that the flood insurance premium savings alone would pay for the increased cost of construction. Building more conservatively would also avoid issues down the road should owners decide to sell but the properties have been flood damaged, were built to a BFE that is now too low or are facing dramatic flood insurance rate increases. The



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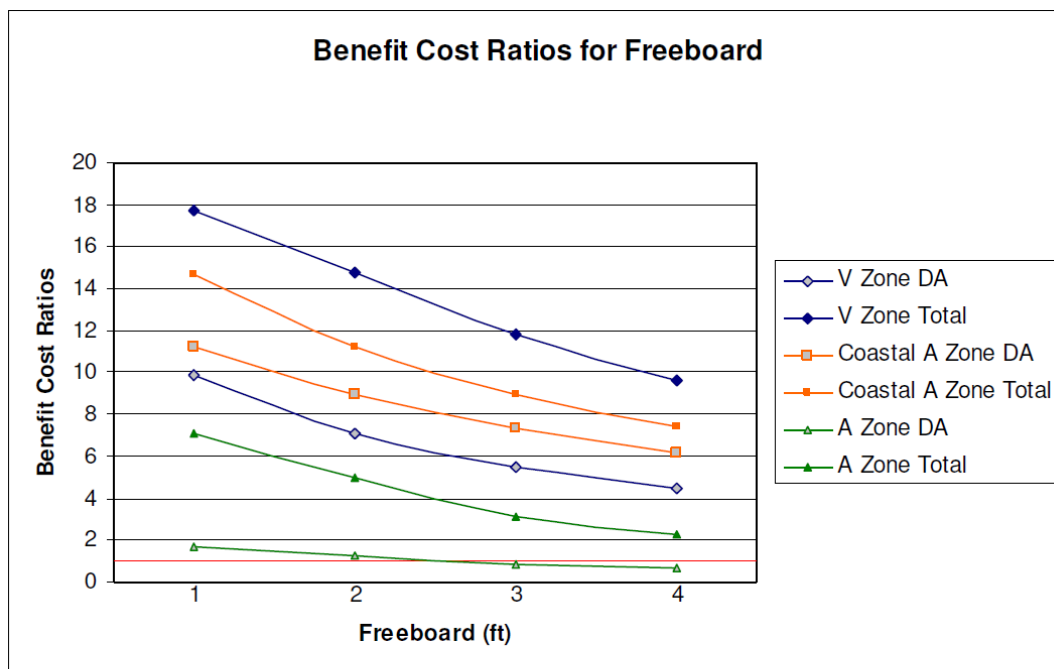
<sup>1</sup> Contrary to popular belief, most post-disaster assistance comes in the form of a low interest loan that must be paid back along with any existing mortgage. In fact, between 2005 and 2014, the average individual/household assistance grant for flood related losses was only \$5,508 (2015 USD). Kousky, Carolyn. Forthcoming. "Financing Flood Losses: Considering Reforms to the National Flood Insurance Program."

rule does not appear to change FHA’s standard for existing or historic structures, nor would it apply to all property improvements – just those for which an owner applies for an FHA loan and the loan amount exceeds 50 percent of the pre-flood market value. Multi-family building owners would have the option to flood proof rather than elevate. Of the 1 million mortgages backed by FHA, the rule is estimated to affect less than 1,200 loans each year, yet it would provide a buffer against future flood losses and map updates that could trigger insurance rate increases or retrofits.

While the overall approach seems reasonable, NAR would raise two points:

1. **HUD should broaden its cost-benefit analysis to include a one-foot increase as well as two.** Executive Order 13563 specifically directs Federal agencies to “tailor its regulations to impose the least burden on society” and “select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits.” HUD has developed a cost-benefit analysis for a two-foot increase to FHA’s standard but does not analyze a one-foot increase which could produce higher net benefits and lower societal burden.<sup>2</sup> If the two-foot standard is within the Agency’s authority, so is one foot.

Net benefits. To develop its analysis, HUD draws some of the inputs from a FEMA study but that study also calculated the benefit-cost ratios of adding one, two, three, and four feet of freeboard to model homes.<sup>3</sup> As the following chart taken directly from the FEMA study shows, the benefit/cost at one foot is always higher, in every case considered. Since HUD is simply applying some of these model inputs to FHA loan data in selected states across the nation, this implies that the nationwide net benefits should be higher under the one-foot alternative than two, but HUD would have to reproduce its cost-benefit tables at one foot for comparison and explain its option selection.



**Graph 5 |** A Comparison of the Benefit Cost Ratios for Damages-Avoided Only (DA) Versus the Benefit Cost Ratio Total (i.e., the combined damages-avoided benefits plus the flood insurance premium savings). The red line illustrates a Benefit Cost Ratio of 1.0.

**Source: FEMA**

<sup>2</sup> On page 6 of the regulatory analysis, HUD states that, as part of an interagency work group (MitFLG), it considered raising the standard by one, two, and three feet. However, that work group was developing a mitigation framework for federal investments, not a HUD regulation. If there is a work group product that supports HUD’s selection of two foot over other levels of the standard, it is not evident in the analysis for this proposed rule, nor is it posted to the docket at Regulations.gov.

<sup>3</sup> FEMA. 2013. “2008 Supplement to the 2006 Evaluation of National Flood Insurance Program’s Building Standards.”

Societal Burden. Raising FHA's standard by two feet would conflict with 46 state freeboard decisions, discourage some code improvements<sup>4</sup> or mitigation investments, and create a particular hardship for homeowners who recently retrofitted to a lower standard (e.g., Hurricane Sandy impacted areas of New Jersey). Alternatively, a one-foot standard would reduce the state conflicts and burden while providing a margin of safety in 30 states that default to a federal standard. HUD can and should broaden its analysis to include other levels of the elevation standard and explain the decision to select one level over another.

2. **HUD should also clarify how FHA's loan approval process would work under the proposed rule.** To our knowledge, this is the first time FHA's new-construction standard would extend to substantial improvements in SFHAs. Typically, there is no HUD or FHA review or approval until after a home is built and an FHA loan is sought. There is the 203k rehabilitation loan program but the rule refers more broadly to "substantial improvement." If the intent is to limit the rule to those applying for a 203k loan, why doesn't the rule simply reference 203k? Are all 203k loans affected or just the substantial rehabs and at what point in the process would the standard be triggered? Suppose the initial appraisal reveals substantial improvements are required in order to meet minimum FHA standards, would the elevation standard kick in then or later? Please describe the process under this rule.

Without clarification on the proposed substantial-improvement component and a more complete cost-benefit analysis, it is difficult to evaluate the two-foot proposal or how it would impact FHA loan products. NAR respectfully requests that HUD issue a supplemental notice with the additional information and extend the comment period by 60 days in order to ensure a full and meaningful opportunity for public comment under the Administrative Procedure Act, 5 USC 551 *et seq.*

Thank you for the opportunity to share some initial feedback on the proposed elevation rule. NAR looks forward to continuing to work with HUD to ensure safe and affordable housing especially in the SFHA.

Sincerely,



William E. Brown  
2017 President, National Association of REALTORS®

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<sup>4</sup> "Substantial improvement does not include improvement of a structure to comply with existing state or local code specifications that is solely necessary to assure safe living conditions" (NPRM at 74972).