NATIONAL MULTIFAMILY HOUSING COUNCIL

NATIONAL APARTMENT ASSOCIATION

June 6, 2023

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 10276
Washington, D.C. 20410-0500

Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard
Docket No. FR-6272-P-01

Dear Sir or Madam,

On behalf of the nearly 100,000 combined members of the National Multifamily Housing Council (NMHC)[1] and the National Apartment Association (NAA)[2], we write to applaud the U.S. Department of Housing and Urban Development (HUD) and the Biden Administration for taking steps to make our communities more resilient and lessen the financial burden that taxpayers face in the wake of disaster. Investing in pre-disaster mitigation efforts and making our communities more resilient is a shared, common goal for HUD and our industry.

Additionally, we wish to express our continued concern regarding HUD's proposed rule entitled "Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard" ("the Proposal").

Housing Supply and Affordability are Key Issues That Must Be Addressed

Pre-pandemic, it was often estimated that only 1 in 4 families who needed decent, safe, and sanitary affordable housing had access to it. Since then, this number has grown. There is a direct correlation between federal policies that support increases to housing supply and affordability and the willingness of developers and others to create that affordable supply. Many housing providers operate on narrow margins, with the majority of rental payments going to pay actual expenses related to maintenance and other property upkeep, property taxes, debt, and similar operating expenses.[3]

[1] Based in Washington, D.C., NMHC is a national nonprofit association that represents the leadership of the apartment industry. Our members engage in all aspects of the apartment industry, including ownership, development, management and finance, who help create thriving communities by providing apartment homes for 40 million Americans, contributing $3.4 trillion annually to the economy. NMHC advocates on behalf of rental housing, conducts apartment-related research, encourages the exchange of strategic business information and promotes the desirability of apartment living.

[2] The NAA serves as the leading voice and preeminent resource through advocacy, education, and collaboration on behalf of the rental housing industry. As a federation of 141 state and local affiliates, NAA encompasses over 93,000 members representing more than 11 million apartment homes globally. NAA believes that rental housing is a valuable partner in every community that emphasizes integrity, accountability, collaboration, community responsibility, inclusivity and innovation.

[3] See e.g., NAA's Breaking Down One Dollar of Rent, available at https://www.naahq.org/sites/default/files/naa-documents/dollar_of_rent_2022.pdf.

The nation faces a housing affordability crisis, and it is essential that we build housing at all price points to address critical housing needs. According to recent research commissioned by NMHC and NAA, the U.S. needs to build 4.3 million new apartment homes by 2035 to meet the demand for rental housing.[4] This includes an existing shortage of 600,000 apartments stemming from underbuilding due in large part to the 2008 financial crisis. Further, underproduction of housing has translated to higher housing costs – resulting in a consequential loss of affordable housing units (those with rents less than $1,000 per month), with a decline of 4.7 million affordable apartments from 2015-2020.

In fact, the total share of cost-burdened apartment households (those paying more than 30% of their income on housing) has increased steadily over several decades and reached 57.6% in 2021.[5] During this same period, the total share of severely cost-burdened apartment households (those paying more than half their income on housing) increased from 20.9 to 31.0%.[6]

Moreover, it is becoming increasingly difficult to build housing that is affordable to a wide range of income levels. Ongoing labor and materials challenges and strained construction conditions pressures housing development and results in costs and delays that impact overall affordability and availability. In addition, ill-timed, unnecessary or unduly burdensome laws, policies and regulations at all levels of government prevent us from delivering the housing our country so desperately needs. Elevated regulatory costs, in particular, create a barrier to affordable housing supply. Recent research published by NMHC and the National Association of Home Builders found that regulation imposed by all levels of government accounts for 40.6 percent of multifamily development costs.[7]

We are therefore concerned that, amidst an industry already closely regulated at all levels of government, additional undue federal building and construction requirements may have a chilling effect on interest in and ability to develop or operate new housing. New federal requirements will impact investment into and development of housing stock if there is a discernible change to the already-limited return on investment and the long-term viability of a property. Investment and development may significantly be diminished when increased costs of property construction and rehabilitation are weighed against narrow operating margins.

Additionally, following extreme, pandemic-fueled volatility in product costs, supply chain stability, and staffing constraints, the apartment construction and renovation pipeline has seen some moderation, yet continues to face difficult conditions. Seventy-nine percent of respondents reported construction delays in NMHC's March 2023 Quarterly Survey of Apartment Construction and Development Activity, and 47 percent reported experiencing repricing

---

[4] Hoyt Advisory Services, "Estimating the Total U.S. Demand for Rental Housing by 2035." (2022), https://www.weareapartments.org/.
[5] American Housing Survey, U.S. Census Bureau, "NMHC tabulations of 1985 American Housing Survey microdata." (2021).
[6] *Id.*
[7] National Multifamily Housing Councill and National Association of Home Builders, "Regulation: 40.6 Percent of the Cost of Multifamily Development." (2022) https://www.nmhc.org/globalassets/research--insight/research-reports/cost-of-regulations/2022-nahb-nmhc-cost-of-regulations-report.pdf.

increases in projects over the last three months.[8] Respondents experiencing delayed starts were most likely to cite project infeasibility as a cause (49% of respondents, up from 32% last quarter).

Simply put, we are very concerned that, while well intentioned, additional regulation by HUD and the federal government in this space will hurt, not help, the affordable housing crisis in this country.

The Impact of HUD's "Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard" Proposal

Multifamily owners and developers must balance a wide array of concerns with regard to project viability, of which floodplain management and resiliency are two. Developing multifamily properties in areas that are at risk of flooding typically requires greater financial investment, longer permitting time, and enhanced construction standards. This affects a project's viability, but also lends to why the multifamily industry takes project development, regardless of funding source, and its relation to floodplain management and sustainability seriously.

NMHC and NAA are especially concerned that HUD's Proposal threatens access to FHA mortgage insurance programs for multifamily builders in an already tight credit market. If implemented, the Proposal will severely disrupt the multifamily housing market and harm affordability for countless families living in areas designated under the expanded floodplain definition. This comes at a time when the entire multifamily industry as well as policy makers at all levels of government are striving tirelessly to make housing more affordable—from development, construction, and ultimately what level of rents residents pay.

While the proposal includes several significant improvements from a similar rulemaking put forward during the Obama Administration, multifamily developers would still face a confusing, cumbersome and costly process to comply. When funding is derived from a HUD grant program, such as HOME or CDBG, or when using FHA mortgage insurance for new construction or substantial rehabilitation projects, developers would be required to account for an expanded floodplain both vertically (based on projections of increased flood height) and horizontally (to reflect the vertical increase depending on the topography of a site). The proposed rule establishes that, when possible, a Climate Informed Science Approach (CISA) should be used to determine the FFRMS floodplain, utilizing the best-available, actionable hydrologic and hydraulic data. Where this data is unavailable, the rule provides for alternate approaches to determine the FFRMS floodplain based on the best available data/information. Yet, even with the possible alternate approaches in mind, NMHC and NAA remain concerned that the Proposal will lead to significant disruption and confusion in the multifamily development space as CISA is not widely understood or actionable without significant cost and project delays, which only exacerbate housing affordability concerns.

[8] National Multifamily Housing Council, "Quarterly Survey of Apartment Construction & Development Activity." (March 2023) https://www.nmhc.org/research-insight/nmhc-construction-survey/2023/quarterly-survey-of-apartment-construction-development-activity-march-2023/.

We also believe that any new, expanded floodplain requirements should be limited only to "federally funded projects." HUD does not originate loans or fund projects through the FHA Multifamily Program. Rather, it insures those loans through the FHA. As such, projects insured by these programs should not be required to meet the mandates of the FFRMS.

Uncertainty created by promulgation of these standards without modification or amendment would negatively impact development by reducing available ROIs to potential and existing investors barring reasonable accommodation or compliance safe harbors established to alleviate compliance burdens and allow for diffusion of risk appropriately. The very existence of CISA-based compliance standards acknowledges that uncertainty prevails and does so with deleterious effect on the multifamily rental housing sector at every level of a property's lifespan- development, construction, and occupancy. Absent calibration to include all parties with an economic nexus to the rental housing industry in appropriate risk management and mitigation as well as the costs attendant only works to further diminish the value of HUD's FFRMS update process.

If left as proposed, and while well-intentioned, we believe that the additional elevation and flood-proofing requirements for multifamily properties using FHA mortgage insurance and /or HUD grant programs could make many projects infeasible, due to increased construction, financing and insurance costs and the inability to offset these costs through higher rents. In either case, the Proposal would prevent delivery of much-needed units as we all try to address our nation's affordable housing challenges.

Again, NMHC and NAA believe that HUD should rethink this proposed rule and take into account the negative impact this Proposal could have on meeting our shared goal of ensuring affordable, quality housing for all Americans. We appreciate the opportunity to share the views of the multifamily housing industry with you on this important matter. We look forward to working with HUD as we continue to strive to meet our shared goal of making our communities more resilient.

Sincerely,

Sharon Wilson Géno
President
National Multifamily Housing Council

Robert Pinnegar
President & CEO
National Apartment Association