

May 6, 2015

Mr. Roy Wright
Regulatory Affairs Division
Federal Emergency Management Agency (FEMA)
8NE
500 C Street, S.W.
Washington, D.C. 20472-3100

RE: Guidelines for Implementing Executive Order 11988, Floodplain Management as Revised by Executive Order 13690 (Docket ID FEMA-2015-0006)

Dear Mr. Wright:

On behalf of the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA), we respectfully submit comments in response to the President's Executive Order 13690 and Revised Guidelines, Establishing a Federal Flood Risk Management Standard (FFRMS). While this action amends an earlier 1977 order requiring federal agencies to reduce federal investment risk by avoiding to the extent possible direct or indirect support of floodplain development, it is complex and raises many issues about the impact of these changes on private real estate development, including apartment properties.

For more than 20 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered in a joint legislative program to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of more than 170 state and local affiliates, NAA is comprised of over 67,000 members representing more than 7.6 million apartment homes throughout the United States and Canada. The combined spending by the apartment industry and its 36 million residents contributed \$1.3 trillion to the U.S. economy and supported 12.3 million jobs in 2013.

Given the complexity of this order relative to the unknown relationship to other program and agency interpretations, NMHC/NAA is still evaluating the impact of this action on the multifamily industry. Therefore, our comments are focused on a few key areas, (1) the definition of "federally funded projects", (2) the revised definition of floodplain, (3) the order's impact on other federal regulations, i.e. NFIP, CWA, ESA etc. and (4) the lack of adequate industry and public comment to fully assess the impacts of this change.

(1) "Federally funded, financed or assisted"

EO 13690 states that the FFRMS applies to all federal activity including: "(1) acquiring, managing, and disposing of Federal lands and facilities; (2) **providing Federally undertaken, financed or assisted construction and improvements**; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land use resource planning, regulating, and licensing activities."

Absent any further definition of (2) above, it is not clear where the distinction is made between federal and private investments. We request that you specifically state how this Executive Order will impact multifamily mortgages (i.e., those financed and/or insured by FHA, Fannie Mae, Fannie Mac, VA, etc.) as well as those properties financed by federally insured banks. We are also unclear to what degree federally subsidized housing programs such as the Housing Choice Voucher Program (HCVP), Project Based Rental Housing Program, and Section 202 Supportive Housing for Elderly and HOME program trigger compliance with EO 13690. It is important that specific programs and financing options be detailed if included within the scope of this order.

(2) Revised definition of floodplain

EO 13690 expands the definition of “floodplain” from the well-established 100 year flood elevation to one that relies on three approaches that will significantly increase the boundaries of the floodplain. They include the following:

- Utilizing best-available, actionable data and methods that integrate current and future changes in flooding based on science,
- Two or three feet of elevation, depending on the criticality of the building, above the 100-year, or 1%-annual-chance, flood elevation, or
- 500-year, or 0.2%-annual-chance, flood elevation.

Currently, the 100-year flood is a regulatory standard used by Federal agencies and most states, to administer floodplain management programs and is used by the National Flood Insurance Program (NFIP) as the basis for insurance requirements nationwide. This new standard raises serious concerns for our members who build, own and manage apartment properties. Reducing flood risk and making communities more resilient are a key component of the NFIP and the program has recently undergone significant reforms by Congress to strengthen the program and communities. We are concerned that this proposed action will have far reaching consequences beyond future “federal investments” and extend to the existing private built environment including apartment communities. What will happen to the pricing of NFIP policies when property owners are newly mapped into the broader floodplain established under this order? Will the Special Flood Hazard Area (SFHA) be redefined to include the 500-year floodplain?

Multiple agencies will be directed to adopt the option of their choice for determining floodplain boundaries. This is certain to cause confusion and other unintended consequences for stakeholders. Further if applied to private investment, this Executive Order has the potential to significantly increase construction, insurance and lending costs for property owners, not to mention discourage development and investment altogether. These results are not acceptable especially at a time when affordable housing is in such short supply.

(3) Impact on other regulations

- As indicated above, we are deeply concerned that this order will have a significant negative impact on the NFIP relative to policyholder premiums, property values and lender requirements. The NFIP reforms put in place by Congress last year will increase the cost of coverage for most policyholders. Any action that will further increase costs or reduce property values needs to be reconsidered. The current language of the order is ambiguous with regard to

the impact on other federal programs and we strongly urge clarification on these matters. It needs to expressly state that this Executive Order does not impact the NFIP.

- Expanding the definition of the floodplain may also trigger permitting regulations under the Clean Water Act (CWA). The Environmental Protection Agency (EPA) and Army Corps of Engineers are currently finalizing regulations that would greatly expand the definition of “waters of the United States” under the CWA. The rule identifies waters “adjacent” to navigable waters as “jurisdictional” under the CWA and further defines “adjacent” in terms of waters within a floodplain. Therefore, this order will grant EPA and the Corps greater reach than they originally propose under their regulations. This represents an example of how this action will trigger other regulatory requirements probably not anticipated. Further review of such impacts is warranted.
- Additionally, if the floodplain expansion includes critical habitat, the regulatory requirements of the Endangered Species Act (ESA) may be triggered, expanding the reach of another federal agency that can result in increased cost of development and ultimately decrease investment opportunities.

We thank you for the opportunity to present our views on the Executive Order 13690 and the Revised Guidelines. Given the significant impact of this action, in addition to the issues raised above, we strongly encourage FEMA take a more thoughtful and deliberative approach to achieve the highest level of stakeholder input before finalizing this order. It is not clear that the Administration has solicited and considered input from Governors, mayors and other stakeholders as directed by the FY2015 Consolidated and Further Continuing Appropriations Act (P.L. 113-235). The impact of this new flood standard to the economy and specifically the real estate markets should not be underestimated. We look forward to working with you on this effort.

Sincerely,



Cindy V. Chetti
Senior Vice President of Government Affairs
National Multifamily Housing Council



Gregory Brown
Senior Vice President of Government Affairs
National Apartment Association