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**24 CFR Parts 50, 55, 58, and 200**

**[Docket No. FR-6527-P-01]**

**RIN 2506-AC60**

**Rescission of Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard**

**AGENCY:** Office of the Secretary, U.S. Department of Housing and Urban Development (HUD).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise HUD’s regulations governing floodplain management and the protection of wetlands in accordance with Executive Order 14148, entitled “Initial Rescissions of Harmful Executive Orders and Actions.” Executive Order 14148 revoked an earlier executive order that formed a basis for the final rule that HUD published on April 23, 2024, entitled “Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard.” This proposed rule generally would restore HUD’s regulations to their state prior to the publication of the April 23, 2024, final rule, although it would maintain flexibilities from that rule related to floodways, categorical exclusions, exemptions from Part 55 applicability, and the decisionmaking process; it also proposes minor revisions for clarity.

**DATES:** *Comment Due Date:* **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule. All submissions must refer to the docket number and title. There are two methods for submitting public comments.

1. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>.<sup>1</sup>

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

**FOR FURTHER INFORMATION CONTACT:** Brian Schlosnagle, Acting Director of the Environmental Planning Division, U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone number 202-402-7553 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### *History of Floodplain Management Rulemaking*

On April 23, 2024, HUD published the “Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard” final rule (the final rule).<sup>2</sup> This followed a proposed rule issued on March 24, 2023 (the proposed rule) and public comment period.<sup>3</sup> In the final rule, HUD made several revisions to its regulations concerning floodplains. First, it introduced a process for determining the extent of the Federal Flood Risk Management Standard (FFRMS) floodplain with a preference for a “climate-informed science approach,” in accordance with Executive Order (E.O.) 13690, Establishing a Federal Flood Risk Management Standard and a

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<sup>1</sup> As required by the Administrative Procedure Act at 5 U.S.C. 553(b)(4), a plain language summary of the proposed rule is also available through the Federal eRulemaking Portal at <http://www.regulations.gov>.

<sup>2</sup> 89 FR 30850.

<sup>3</sup> 88 FR 17755. On May 11, 2023, HUD extended the original 60-day comment period provided in the proposed rule by an additional 14 days. See 88 FR 30267.

Process for Further Soliciting and Considering Stakeholder Input, which was issued by President Obama on January 30, 2015.<sup>4</sup> The final rule also revised HUD’s Minimum Property Standards for one- to-four-unit housing under HUD’s mortgage insurance and low-rent public housing programs to require the lowest floor in new construction to be built at a higher level than previously required. Additionally, the final rule made changes meant to streamline, improve, clarify, and modernize standards, and it revised a categorical exclusion that applies when HUD performs environmental reviews.

While E.O. 13690 was revoked by E.O. 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects on August 15, 2017, it was reinstated on May 20, 2021, by E.O. 14030, Climate-Related Financial Risk. However, on January 20, 2025, E.O. 14030 was revoked by Executive Order 14148, Initial Rescissions of Harmful Executive Orders and Actions. On February 20, 2025, following the issuance of E.O. 14148, HUD issued a one-year, partial regulatory waiver of elevation standards at 24 CFR § 200.926d(c)(4) for one- to-four-unit housing under HUD’s mortgage insurance and low-rent public housing programs. This partial waiver removed the two-foot elevation requirement for insured single family housing and reverted to the previous requirement that the lowest floor be constructed above the base flood elevation. HUD extended this partial waiver for another year on February 20, 2026. The part 200 provisions in this proposed rule incorporate the waiver determinations into regulation.

## **II. This Proposed Rule**

### *a. Revisions to accomplish rescission of most of the April 23, 2024, final rule*

This proposed rule would rescind and replace most of the final rule published in April 2024, including the agency’s preference for a “climate-informed science approach” in making

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<sup>4</sup> E.O. 13690 amended E.O. 11988, Floodplain Management, which was originally issued in furtherance of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.); the Flood Disaster Protection Act of 1973, as amended (Pub. L. 93-234, 87 Stat. 975); and the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.).

applicable floodplain determinations. Prior to the final rule's publication, input from the public conveyed serious concerns with this determination method. In recognizing these concerns, this proposed rule would revise the relevant HUD program regulations at 24 CFR parts 55 and 200 and include limited associated changes at 24 CFR parts 50 and 58, thus restoring the prior process for determining an applicable floodplain.

Rescission of the 2024 rule would result in millions of dollars in saved construction costs and help spur needed housing development, with expected annual construction cost savings of \$4.5 million to \$85 million. These cost savings reflect the added annual construction costs associated with the 2024 rule as estimated by that rule's final Regulatory Impact Analysis (RIA). Using a discount rate of 7 percent, the net present value of these cost savings would be \$32 million to \$597 million over ten years of construction, assuming the same levels of construction and substantial rehabilitation estimated by that RIA.

If not rescinded, the construction costs resulting from the 2024 final rule would likely result in several negative outcomes, such as these costs being passed on to individual potential homebuyers. Among other outcomes, this would particularly harm low-to-moderate income potential homebuyers using FHA-backed mortgages, including by potentially pricing them out of the market. An additional potential outcome is that the increased cost of compliance with the agency's final rule would further disincentivize builders from doing business in impacted areas, thus slowing down housing development in relevant communities. Both of these issues were discussed by stakeholders prior to the final rule's publication. The agency's desire to further avoid each of these outcomes additionally informs its proposal to rescind the final rule.

Proponents of the final rule have also opined that the cost of compliance with the final rule is ultimately outweighed by reductions in insurance premiums and other costs to the individual, as well as to the federal government. Input from the public prior to the final rule's publication casts doubts on this prediction, with commenters asserting that the agency appears to

have underappreciated the total construction costs of implementing the final rule.<sup>5</sup> Commenters noted that they had concerns about the additional cost estimates provided by HUD, with one commenter asserting that actual increased construction costs could be up to two times the amount put forth by HUD. In response to these comments HUD reaffirmed its estimates. Absent additional analysis, it is not clear that potential reductions in insurance would offset current costs, but it is conceivable that current costs could impede the building or rehabilitation of affordable housing, especially, as noted by one commenter, lower-priced homes aimed at low-to-moderate income potential homebuyers. This input from the public informed the agency's proposal to rescind the final rule.

In addition, the final rule implements prohibitive elevation requirements for substantial improvement of existing HUD-assisted properties. In particular, HUD estimates that 9.31% of the existing Public Housing portfolio and 7.1% of the existing Multifamily-assisted and -insured portfolios are located in the FFRMS floodplain. The majority of these properties are garden-style units that are difficult to elevate, as required for substantial improvement projects. Restoring the prior process for determining the regulatory floodplain as well as eliminating the additional elevation requirements would allow HUD to continue to support existing projects in the floodplain while still considering safety and mitigation via the decision-making process at § 55.20. This regulatory revision, by simplifying the definition of the regulatory floodplain, would also reduce compliance complexity for applicants and grantees, as the FFRMS approach provided a hierarchy of three processes for defining the floodplain for non-critical actions and two processes for critical actions.

b. *Other revisions*

1. *Edits to § 55.20 Decisionmaking Process.* This proposed rule would make a minor revision to § 55.20(e) to clarify that actions should be designed to avoid potential adverse

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<sup>5</sup> HUD notes that while some commenters asserted that construction costs were underappreciated in the 2024 final rule, the agency has not conducted a revised cost analysis for the purposes of this proposed rule.

impacts to and from the regulatory floodplain or wetland rather than only minimize adverse impacts. Where impacts cannot be avoided, actions should be designed to minimize potential adverse impacts and to restore or preserve the natural and beneficial functions of the floodplain or wetland. This revision would more closely align with Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands; and Section 404 requirements of the Clean Water Act.

HUD also proposes a revision at § 55.20(e)(3) to clarify that non-critical actions (in the case of new construction and substantial improvement) in the 1 percent annual chance floodplain must be designed and built following applicable National Flood Insurance Program (NFIP) and local requirements. This language would align with existing regulatory NFIP requirements, established by FEMA under 44 CFR 60.3, which generally require newly constructed and substantially improved buildings in the 1 percent annual chance floodplain to elevate the lowest floor (in the case of residential buildings) or elevate or floodproof (in the case of non-residential buildings) to or above the 1 percent annual chance or “Base” Flood Elevation (BFE). This provision would not establish new requirements – it would clarify existing NFIP requirements that have caused confusion among practitioners because they were not specified in HUD regulation.

Similarly, this proposed rule would make a revision to § 55.20(e)(3) and (4) to clarify that all newly constructed critical actions within the 0.2 percent annual chance floodplain, including those within the 1 percent annual chance floodplain, must be designed and built at or above the 0.2 percent annual chance flood elevation and must include an emergency evacuation plan, an early warning system, and identification of evacuation routes. This would clarify that if a critical action is funded by multiple agencies with differing requirements, the more stringent critical action requirement will apply. HUD also proposes to retain a clarification from the 2024 FFRMS rule that allows floodproofing following FEMA’s regulations for non-critical action

residential dwellings with no units below the base flood elevation and for both critical and non-critical nonresidential buildings.

This proposed rule would also revise § 55.20(c)(2)(ii) to remove the reference to environmental justice in accordance with E.O. 14148, “Initial Rescissions of Harmful Executive Orders and Actions” and the rescission of E.O. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.”

*2. Specific provisions retained from the 2024 final rule regulations<sup>6</sup>*

a. *Categorical Exclusion* – This proposed rule would retain the 2024 revised categorical exclusion at § 50.20(a)(2)(i) for minor rehabilitation of one- to four-unit residential properties. This proposed rule also would retain the removal of the qualification that the footprint of the structure may not be increased in a floodplain or wetland when HUD performs the review. In 2013, HUD removed the footprint trigger from the corresponding categorical exclusion at § 58.35(a)(3)(i) for rehabilitations reviewed by responsible entities. This change would make the review standard the same regardless of whether HUD or a responsible entity is performing the review. Moreover, when HUD performs a review under 24 CFR part 50, the categorical exclusion in § 50.20(a)(3) applies to construction, but not rehabilitation, of up to four units in a floodplain or wetland as an individual action such that an environmental assessment or environmental impact statement is normally not required. Without retaining the revisions to this categorical exclusion, rehabilitated structures in a floodplain or wetland with an increased footprint would require an environmental assessment or environmental impact statement. It is logically inconsistent to require a more complex review for minor rehabilitations than for new construction. Similarly, it is logically inconsistent to apply a higher level of review for HUD as opposed to grantees because the proposed actions would be the same regardless of review authority under 24 CFR part 50 or part 58.

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<sup>6</sup> In instances where provisions of the 2024 final rule are proposed to be retained, HUD has deleted any reference to FFRMS in such provisions.

b. *Limitations on HUD Assistance in Floodways* – This proposed rule would retain 2024 final rule flexibilities on HUD assistance in floodways in current § 55.8(a) and add them to a revised § 55.1(c). The new § 55.1(c) would clarify that HUD assistance may be used in floodways where all structures and most improvements are removed from the floodway and a permanent covenant or comparable restriction would prevent future development or expansion of existing uses in the floodplain and/or wetland. Rehabilitation activities, including reconstruction in the case of Presidentially declared disasters, that do not expand existing uses in the 1 percent annual chance floodplain (or 0.2 percent annual chance floodplain for critical actions) outside of the floodway are permitted. This exception allows for limited improvements in the floodway, including functionally dependent uses, utility lines, *de minimis* improvements, and removal of existing structures or improvements. This option allows for a broader range of activities in the floodway and in the adjacent floodplain than was permitted under the pre-2024 regulation. This proposed rule would also make a minor revision to the language of the 2024 final rule by clarifying that a critical action that is insurance of a mortgage on a property containing a floodway may invoke all three exceptions listed at § 55.1(c)(1)(ii).

c. *Terminology* – This proposed rule would retain the 2024 regulatory definition of *impervious surface area* in a new § 55.2(b)(10) and Coastal A Zone (previously referred to as *limit of moderate wave action (LiMWA)*) in a new § 55.2(b)(3). These definitions are necessary to align with the terminology added to the revised § 55.1(c). This proposed rule would also retain minor 2024 revisions to the definition of *new construction* at § 55.10(a) in a revised § 55.2(b)(11) for clarity, and would retain the terminology in the 2024 final rule of “1 percent annual chance floodplain” in lieu of “100-year floodplain” and “0.2 percent annual chance floodplain” in lieu of “500-year floodplain.” This proposed rule would also update the definition of *coastal high hazard area* in a revised § 55.2(b)(4) and move the language on appropriate data sources to a new § 55.2(c) *Floodplain data sources* with no substantive change to the data requirements. Finally, this proposed rule would make a minor update to the definition of

*substantial improvement* at § 55.2(b)(12)(i)(B) to define an increase in the number of dwelling units “or beds in the case of hospitals and residential care facilities.” This revision aligns with HUD’s regulatory terminology at 24 CFR part 50 and captures HUD healthcare program activities that increase the number of units without expanding residential density.

d. *Applicability of Subpart C Decisionmaking Process* - § 55.11 of this proposed rule would retain 2024 revisions to Table 1 on the applicability, by location and type of action, of the decisionmaking process for implementing Executive Order 11988 and Executive Order 11990 under subpart C. These revisions are necessary to align with the flexibilities on HUD assistance in floodways in § 55.1(c), as proposed to be revised.

e. *Inapplicability of Part 55 to Certain Categories of Proposed Actions* – This proposed rule would retain a 2024 exception to the full 8-step decisionmaking process for small scale infrastructure. This provision at § 55.12(a)(5) provides an exception from the decisionmaking steps in § 55.20(b), (c), and (g) (steps 2, 3, and 7) for repairs, rehabilitation, or replacement of certain infrastructure with limited impact on impervious surface area, including streets, curbs, and gutters. This exception does not apply to critical actions, levee systems, chemical storage facilities (including tanks), wastewater facilities, or sewer lagoons, all of which would require the 8-step decisionmaking process. In addition, § 55.12(b)(5) would retain language from the 2024 final rule clarifying that the exclusion from the decisionmaking process in § 55.20 for financial assistance to lease certain existing structures also applies to financial assistance to lease units within an existing structure. Also, § 55.12(c)(7) would retain language from the 2024 final rule maintaining a narrower version of the incidental floodplain exception as applied to the 1 percent annual chance floodplain (not including floodways or coastal high hazard areas). This revision allows projects to proceed without completing the 8-step decisionmaking process where an incidental portion of the project site falls within the 1 percent annual chance floodplain (or 0.2 percent annual chance floodplain for critical actions). Retaining

the language from the 2024 final rule in § 55.12(c)(7) is necessary to support the flexibilities on HUD assistance in floodways in the revised § 55.1(c).

This proposed rule would leave undisturbed the removal of the exception described at § 55.12(c)(11) for projects related to ships and waterborne vessels. This exception was removed in the 2024 final rule because these are not activities that generally receive HUD funds and practitioners have expressed confusion over its presence in the regulation. Finally, this proposed rule would retain a provision in the 2024 final rule that provides flexibility for floodplain-compatible parks and recreation uses routinely combined with floodplain and wetland restoration and preservation work. Section 55.12(c)(3) in this proposed rule would also retain language from the 2024 final rule to allow certain structures and improvements designed to be compatible with the beneficial floodplain or wetland function of a property to be exempt from the requirements under this part.

f. *Decisionmaking Process* – This proposed rule would revise § 55.20(c)(3) to retain language from the 2024 final rule allowing HUD to exclude consideration of alternative sites from the decisionmaking process for multifamily and healthcare mortgage insurance projects, while requiring consideration of modifications to or rejection of the project request. This proposed rule would also retain the 2024 removal of the § 55.20(e)(3)(iv) requirement to identify marks of past or estimated flood levels for critical actions because it was operationally difficult to implement.

g. *Areawide Compliance* – This proposed rule would retain the 2024 removal of § 55.25 for areawide compliance. Areawide decisionmaking described in this section requires a complex notification process involving publications, and HUD has no record of the provision's use in a HUD-assisted activity since the inception of 24 CFR part 55. This provision is unnecessary, as HUD has well-established procedures for tiering of environmental review records that similarly facilitate compliance with part 55 across a geographic area without relying on § 55.25.

h. *Alternate Processing for Nonconforming Sites* – This proposed rule would retain the 2024 “Alternate processing for existing nonconforming sites” at a new § 55.29 to address concerns about existing sites that do not conform to the prohibitions at 24 CFR 55.1(c). This section retains a special approval process for improvements to existing HUD-assisted or HUD-insured properties that cannot otherwise meet § 55.1(c) under the following circumstances, summarized as:

1. HUD completes an 8-step decision making process and environmental review pursuant to part 50, mandates measures to reduce flood risk, and ensures there are no additional environmental hazards that impact compliance with parts 50, 51, 55, or 58;

2. Specific measures will be taken to minimize flood risk at the site, including removing all residential units and critical action structures from the floodway; and

3. HUD determines that the HUD assistance cannot be practicably transferred to a safer site.

The purpose of this section is to establish a means of continuing HUD assistance or financing in exceptional circumstances to existing HUD-assisted or HUD-financed projects (e.g., properties receiving assistance through Public Housing, Section 8 Project-based Rental Assistance, or subject to a HUD-insured mortgage) that would otherwise be unable to comply with part 55 due to the presence of an on-site floodway, coastal high hazard area, or Coastal A Zone. This section should be applied only in rare cases and is not intended to eliminate the general restrictions on providing HUD assistance for projects within floodways, coastal high hazard areas, or Coastal A Zones. However, HUD recognizes that there are circumstances in which terminating HUD assistance would not improve residents’ overall resilience or safety in the context of HUD’s mission. In such cases, HUD will closely review the site and determine whether the best option to improve flood resilience would be financing improvements at the existing site or rejecting HUD assistance at the site. This proposed rule would make a minor revision to the 2024 language to allow the Assistant Secretary for the relevant program area to

approve a project after HUD has met all of the conditions above, rather than limiting approval authority to the Assistant Secretary for Community Planning and Development.

This proposed rule would also make a minor revision to the language of the 2024 final rule regarding alternate processing to remove the requirement that elevated flood risk is the only environmental hazard that “requires mitigation to comply” with HUD’s environmental requirements at 24 CFR parts 50, 51, 55, and 58. This proposed rule would remove the prohibition on environmental hazards that require mitigation because environmental mitigation generally does not preclude compliance with parts 50, 51, 55, and 58.

i. *Other Provisions of the 2024 Final Rule Retained for Clarity* – This proposed rule would retain minor revisions from the 2024 final rule to clarify limits on expansion of the footprint of the structure and paved areas for categories of actions at § 55.12(a)(3) and (4) that are exempt from the decisionmaking steps in § 55.20(b), (c), and (g) (steps 2, 3, and 7). Specifically, to reduce ambiguity, this proposed rule would retain the requirement that the footprint of the structure and paved areas is not increased by more than 20 percent in order to meet the exemptions, rather than requiring that the footprint is not “significantly increased.”

This proposed rule would also retain minor revisions to § 55.20(b) related to comment periods for public notice to clarify that the first day of the comment period begins at 12:01 a.m. on the day following publication. Existing language would also be retained at § 55.20(c)(1)(ii) to provide examples of project design elements that may be incorporated to identify practicable alternatives to locating the project in a floodplain or wetland.

This proposed rule would also retain a revision made by the 2024 final rule to the 8-step decisionmaking process at § 55.20(b)(1) that allows public notices to be posted on an appropriate government website as an alternative to publication in local news media. The government website alternative proposed to be retained is also reflected in changes to §§ 50.23, 58.43, 58.45, and 58.59 of the 2024 final rule; as such, those provisions also are not changed in this proposed rule.

HUD invites public comment on this proposed rule for a period of 60 days. HUD will consider all comments received in its ongoing process of reviewing this proposed rule for consistency with recent Supreme Court decisions (see *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024); *West Virginia v. Environmental Protection Agency*, 597 U.S. 697 (2022); and *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023)) and HUD's statutory authority.

### **III. Findings and Certifications**

#### *Regulatory Review (Executive Orders 12866 and 13563)*

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order. This proposed rule has been determined to be a "significant regulatory action," as defined in section 3(f) of Executive Order 12866, but not economically significant under section 3(f)(1).

Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

#### *Regulatory Costs (Executive Order 14192)*

Executive Order 14192, entitled "Unleashing Prosperity Through Deregulation," was issued on January 31, 2025. Section 3(c) of Executive Order 14192 requires that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior

regulations. OMB has determined that this proposed rule is a repeal of a regulation that results in reduced regulatory costs, ranging from -\$6.3 million to \$750,000, for purposes of Executive Order 14192.

#### *Federalism (Executive Order 13132)*

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: imposes substantial direct compliance costs on State and local governments and is not required by statute; or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would rescind most of the provisions of the April 23, 2024, final rule and restore HUD's floodplain management regulations largely to their prior state. Because this proposed rule reduces regulatory requirements and does not impose new compliance obligations on small entities, HUD has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies, pursuant to 5 U.S.C. 605(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities.

#### *Environmental Impact*

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section

102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available through the Federal eRulemaking Portal at *regulations.gov*. The FONSI is also available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements for floodplains management have previously been approved by OMB under the Paperwork Reduction Act and assigned OMB Control Number 2506-0151.

#### **List of Subjects**

#### **24 CFR Part 50**

Environmental impact statements.

#### **24 CFR Part 55**

Environmental impact statements; Floodplains; Wetlands.

#### **24 CFR Part 58**

Community development block grants; Environmental impact statements; Grant programs – housing and community development; Reporting and recordkeeping requirements.

#### **24 CFR Part 200**

Administrative practice and procedure; Claims; Equal employment opportunity; Fair housing; Housing standards; Lead poisoning; Loan programs – housing and community development; Mortgage insurance; Organization and functions (Government agencies); Penalties; Reporting and recordkeeping requirements; Social Security; Unemployment compensation; Wages.

Accordingly, for the reasons stated in this preamble, HUD proposes to amend 24 CFR parts 50, 55, 58, and 200 as follows:

### **PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY**

1. The authority citation for part 50 is revised to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 4321-4336e; and Executive Order 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902.

#### **§ 50.4 [Amended]**

2. Amend § 50.4(b)(2) by removing “as amended by Executive Order 13690, February 4, 2015 (3 CFR, 2016 Comp., p. 268)” and adding, in its place, “(3 CFR, 1977 Comp., p. 117)”.

### **PART 55—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS**

3. The authority citation for part 55 is revised to read as follows:

**Authority:** 42 U.S.C. 3535(d), 4001-4128 and 5154a; 42 U.S.C. 4321 *et seq.*; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121.

4. Amend § 55.1 by:

- a. Revising the section heading and the paragraph heading for (a);
- b. In paragraph (a)(1), removing the words “as amended,”;
- c. Revising paragraph (a)(3); and
- d. Adding paragraphs (a)(4) and (5), (b), and (c).

The revisions and additions read as follows:

**§ 55.1 Purpose and basic responsibility.**

(a) *Purpose* \* \* \*

(3) This part implements the requirements of Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, and employs the principles of the Unified National Program for Floodplain Management. These regulations apply to all HUD (or responsible entity) actions that are subject to potential harm by location in floodplains or wetlands. Covered actions include the proposed acquisition, construction, demolition, improvement, disposition, financing, and use of properties located in floodplains or wetlands for which approval is required either from HUD, under any applicable HUD program, or from a responsible entity authorized by 24 CFR part 58.

(4) This part does not prohibit approval of such actions (except for certain actions in floodways, coastal high hazard areas, and Coastal A Zones) but provides a consistent means for implementing the Department’s interpretation of the Executive Orders in the project approval decisionmaking processes of HUD and of responsible entities subject to 24 CFR part 58. The implementation of Executive Orders 11988 and 11990 under this part shall be conducted by HUD for Department-administered programs subject to environmental review under 24 CFR part 50 and by authorized responsible entities that are responsible for environmental review under 24 CFR part 58.

(5) Nonstructural alternatives to floodplain development and the destruction of wetlands are both favored and encouraged to reduce the loss of life and property caused by floods, and to

restore the natural resources and functions of floodplains and wetlands. Nonstructural alternatives should be discussed in the decisionmaking process where practicable.

(b) *Flood insurance*

(1) Under section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), proposed HUD financial assistance (including mortgage insurance) for acquisition or construction purposes in any “area having special flood hazards” (a flood zone designated by the Federal Emergency Management Agency (FEMA)) shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. This prohibition only applies to proposed HUD financial assistance in a FEMA-designated area of special flood hazard one year after the community has been formally notified by FEMA of the designation of the affected area. This prohibition is not applicable to HUD financial assistance in the form of formula grants to states, including financial assistance under the State-administered CDBG Program (24 CFR part 570, subpart I), Emergency Solutions Grant amounts allocated to States (24 CFR part 576), and HOME funds provided to a state under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701-12839).

(2) Under section 582 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 5154a), HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration of damage to any personal, residential, or commercial property if:

(i) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(ii) The person failed to obtain and maintain the flood insurance.

(c) *Limitations on HUD assistance in floodplains.* No HUD financial assistance (including mortgage insurance) may be approved with respect to:

(1) Any action located in a floodway unless one of the following applies:

(i) An exception listed in § 55.12(c) applies; or

(ii) A permanent covenant or comparable restriction will preserve all onsite 1 percent annual chance floodplain and/or wetland areas from future development or expansion of existing uses in the floodplain and/or wetland areas. Any rehabilitation action, including reconstruction in the case of properties affected by Presidentially declared disasters, that does not expand the footprint of the buildings or the number of units on the site would be allowed within the 1 percent annual chance floodplain (or 0.2 percent annual chance floodplain for critical actions) outside of the floodway. No buildings or improvements may modify or occupy the floodway, with the exception of:

(A) Functionally dependent uses (as defined in § 55.2(b)(8)) and utility lines;

(B) De minimis improvements, including minimal ground disturbance or placement of impervious surface area to ensure accessibility where this is permitted by local ordinances and does not increase flood risk to the property; or

(C) Buildings and improvements that will be removed as part of the proposed action.

(2) Any critical action located in a floodway, other than a functionally dependent use where any existing or new structure has been or will be elevated or floodproofed to the 0.2 percent annual chance flood elevation; or any critical action in a coastal high hazard area or Coastal A Zone, other than a functionally dependent use where any existing or new structure has been or will be elevated and constructed in accordance with current FEMA V-zone construction standards at 44 CFR 60.3(e); provided that, for a critical action that is insurance of a mortgage on a property containing a floodway with no structures or improvements in the floodway (except as allowed at § 55.1(c)(1)(ii)), paragraph (c)(1) of this section applies; or

(3) Any noncritical action located in a coastal high hazard area or Coastal A Zone, unless the action is a functionally dependent use, is limited to existing structures or improvements, or is reconstruction following destruction caused by a Presidentially declared disaster. If the action is

not a functionally dependent use, the action must be designed for location in a coastal high hazard area. An action will be considered designed for a coastal high hazard area if:

(i) In the case of reconstruction following destruction caused by a disaster, or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

(ii) In the case of existing construction (including any minor improvements):

(A) The work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 1 percent annual chance floodplain) applicable at the time the original improvements were constructed; or

(B) If the original improvements were constructed before FEMA standards for the 1 percent annual chance floodplain became effective or before FEMA designated the location of the action as within the 1 percent annual chance floodplain, the work would meet at least the earliest FEMA standards for construction in the 1 percent annual chance floodplain.

5. Revise and republish § 55.2 to read as follows:

**§ 55.2 Terminology.**

(a) *Terms.* With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of Executive Order 11988, section 7 of Executive Order 11990, and the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978), issued by the Water Resources Council; the terms “special flood hazard area,” “criteria,” and “Regular Program” shall follow the definitions contained in FEMA regulations at 44 CFR 59.1; and the terms “Letter of Map Revision” and “Letter of Map Amendment” shall refer to letters issued by FEMA, as provided in 44 CFR part 65 and 44 CFR part 70, respectively.

(b) *Definitions.* For purposes of this part, the following definitions apply:

(1) *0.2 percent annual chance floodplain* means the minimum floodplain of concern for critical actions and is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year (also known as the 500-year flood). (See § 55.2(c) for appropriate data sources.)

(2) *1 percent annual chance floodplain* means the floodplain of concern for this part and is the area subject to inundation from a flood having a one percent or greater chance of being equaled or exceeded in any given year (also known as the 100-year floodplain or base floodplain). (See § 55.2(c) for appropriate data sources.)

(3) *Coastal A zone* means the portion of the coastal special flood hazard area where base flood wave heights are between 1.5 and 3 feet, and where wave characteristics are deemed sufficient to damage many NFIP-compliant structures on shallow or solid wall foundations. (See § 55.2(c) for appropriate data sources.)

(4) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis.

(5) *Compensatory mitigation* means the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, and/or, in certain circumstances, preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved. Examples include, but are not limited to:

(i) *Permittee-responsible mitigation*: On-site or off-site mitigation undertaken by the holder of a wetlands permit under section 404 of the Clean Water Act (or an authorized agent or contractor), for which the permittee retains full responsibility;

(ii) *Mitigation banking*: A permittee's purchase of credits from a wetlands mitigation bank, comprising wetlands that have been set aside to compensate for conversions of other wetlands; the mitigation obligation is transferred to the sponsor of the mitigation bank; and

(iii) *In-lieu fee mitigation*: A permittee's provision of funds to an in-lieu fee sponsor (public agency or nonprofit organization) that builds and maintains a mitigation site, often after the permitted adverse wetland impacts have occurred; the mitigation obligation is transferred to the in-lieu fee sponsor.

(6)(i) *Critical action* means any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that:

(A) Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(B) Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (*e.g.*, data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or

(C) Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, *e.g.*, persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not considered a critical action.

(ii) Critical actions shall not be approved in floodways, Coastal A Zones, or coastal high hazard areas unless they meet an exception in § 55.1(c).

(7) *Floodway* means that portion of the floodplain which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest. The term "floodway" as used here is consistent with "regulatory floodways" as identified by FEMA. (See § 55.2(c) for appropriate data sources.)

(8) *Functionally dependent use* means a land use that must necessarily be conducted in close proximity to water (e.g., a dam, marina, port facility, water-front park, and many types of bridges).

(9) *High hazard area* means a floodway or a coastal high hazard area.

(10) *Impervious surface area* means an improved surface that measurably reduces the rate of water infiltration below the rate that would otherwise be provided by the soil present in a location prior to improvement, based on the soil type identified either by the Natural Resource Conservation Service Soil Survey or geotechnical study. Impervious surfaces include, but are not limited to, unperforated concrete or asphalt ground cover, unvegetated roofing materials, and other similar treatments that impede infiltration.

(11) *New construction* includes grading, clearing, draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities, including the siting of manufactured housing units.

(12)(i) *Substantial improvement* means either:

(A) Any repair, reconstruction, modernization or improvement of a structure, including a manufactured housing unit, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(1) Before the improvement or repair is started; or

(2) If the structure has been damaged, and is being restored, before the damage occurred;

or

(B) Any repair, reconstruction, modernization or improvement of a structure, including a manufactured housing unit, that results in an increase of more than twenty percent in the number of dwelling units in a residential project, or beds in the case of hospitals and residential care facilities, or in the average peak number of customers and employees likely to be on-site at any one time for a commercial or industrial project.

(ii) *Substantial improvement* may not be defined to include either:

(A) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or

(B) Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places.

(iii) Structural repairs, reconstruction, or improvements not meeting this definition are considered “minor improvements”.

(13) *Wetlands* means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill roadbeds and activities such as mineral extraction and navigation improvements. This definition includes both wetlands subject to and those not subject to Section 404 of the Clean Water Act as well as constructed wetlands. The following process shall be followed in making the wetlands determination:

(i) HUD or, for programs subject to 24 CFR part 58, the responsible entity, shall make a determination whether the action is new construction that is located in a wetland. These actions are subject to processing under the § 55.20 decisionmaking process for the protection of wetlands.

(ii) As primary screening, HUD or the responsible entity shall verify whether the project area is located in proximity to wetlands identified on the National Wetlands Inventory (NWI). If so, HUD or the responsible entity should make a reasonable attempt to consult with the Department of the Interior, Fish and Wildlife Service (FWS), for information concerning the

location, boundaries, scale, and classification of wetlands within the area. If an NWI map indicates the presence of wetlands, FWS staff, if available, must find that no wetland is present in order for the action to proceed without further processing. Where FWS staff is unavailable to resolve any NWI map ambiguity or controversy, an appropriate wetlands professional must find that no wetland is present in order for the action to proceed without § 55.20 processing.

(iii) As secondary screening used in conjunction with NWI maps, HUD or the responsible entity is encouraged to use the Department of Agriculture, Natural Resources Conservation Service (NRCS) soil survey data and any state and local information concerning the location, boundaries, scale, and classification of wetlands within the action area.

(iv) Any challenges from the public or other interested parties to the wetlands determinations made under this part must be made in writing to HUD (or the responsible entity authorized under 24 CFR part 58) during the commenting period and must be substantiated with verifiable scientific information. Commenters may request a reasonable extension of the time for the commenting period for the purpose of substantiating any objections with verifiable scientific information. HUD or the responsible entity shall consult FWS staff, if available, on the validity of the challenger's scientific information prior to making a final wetlands determination.

(c) *Floodplain data sources.* HUD or the responsible entity must rely on Flood Insurance Rate Maps (FIRMs) and Flood Insurance Studies (FISs) developed by FEMA for the designation of "1 percent annual chance floodplains" (§ 55.2(b)(2)), "0.2 percent annual chance floodplains" (§ 55.2(b)(1)), "floodways" (§ 55.2(b)(7)), "coastal high hazard areas" (§ 55.2(b)(4)) and "coastal A zones" (§ 55.2(b)(3)). When FEMA provides interim flood hazard data, such as Advisory Base Flood Elevations (ABFE) or preliminary maps and studies, HUD or the responsible entity shall use the latest of these sources. If FEMA information is unavailable or insufficiently detailed, other Federal, state, or local data may be used as "best available information" in accordance with Executive Order 11988. However, a base flood elevation from

an interim or preliminary or non-FEMA source cannot be used if it is lower than the current FIRM and FIS.

6. Revise and republish § 55.3 to read as follows:

**§ 55.3 Assignment of responsibilities.**

(a) *Assistant Secretary for Community Planning and Development (CPD)* (1) The Assistant Secretary for CPD shall oversee:

(i) The Department's implementation of Executive Orders 11988 and 11990 and this part in all HUD programs; and

(ii) The implementation activities of HUD program managers and, for HUD financial assistance subject to 24 CFR part 58, of grant recipients and responsible entities.

(2) In performing these responsibilities, the Assistant Secretary for CPD shall make pertinent policy determinations in cooperation with appropriate program offices and provide necessary assistance, training, publications, and procedural guidance.

(b) *Other officials.* Other HUD Assistant Secretaries, the General Counsel, and the President of the Government National Mortgage Association (GNMA) shall:

(1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain or wetland;

(2) Ensure that actions approved by HUD or responsible entities are monitored and that any prescribed mitigation is implemented;

(3) Ensure that the offices under their jurisdiction have the technical resources to implement the requirements of this part; and

(4) Incorporate in departmental regulations, handbooks, and project and site standards those criteria, standards, and procedures necessary to comply with the requirements of this part.

(c) *Responsible Entity Certifying Officer.* Certifying Officers of responsible entities administering or reviewing activities subject to 24 CFR part 58 shall comply with this part in carrying out HUD-assisted programs. Certifying Officers of responsible entities subject to 24

CFR part 58 shall monitor approved actions and ensure that any prescribed mitigation is implemented.

(d) *Recipient*. Recipients subject to 24 CFR part 58 shall monitor approved actions and ensure that any prescribed mitigation is implemented. Recipients shall:

(1) Supply HUD (or the responsible entity authorized by 24 CFR part 58) with all available, relevant information necessary for HUD (or the responsible entity) to perform the compliance required by this part; and,

(2) Implement mitigating measures required by HUD (or the responsible entity authorized by 24 CFR part 58) under this part or select alternate eligible property.

**§§ 55.4 through 55.9 [Removed]**

7. Remove §§ 55.4 through 55.9.

8. Amend § 55.10 by:

a. Revising the section heading and paragraphs (a) and (b); and

b. Removing paragraph (c).

The revisions read as follows:

**§ 55.10 Environmental review procedures under 24 CFR parts 50 and 58.**

(a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA), including a finding of no significant impact (FONSI), or an environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17(a) through (h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.37. For types of proposed actions that are categorically excluded from NEPA requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial approval (or approval by a responsible entity authorized by 24 CFR part 58) of proposed actions in a floodplain or wetland.

(b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35(a)) does not exclude those actions from compliance with this part.

9. In subpart B, add a new § 55.11 to read as follows:

**§ 55.11 Applicability of Subpart C decisionmaking process.**

(a) Before reaching the decision points described in § 55.10(a), HUD (for Department-administered programs) or the responsible entity (for HUD financial assistance subject to 24 CFR part 58) shall determine whether Executive Order 11988, Executive Order 11990, and this part apply to the proposed action.

(b) If Executive Order 11988 or Executive Order 11990 and this part apply, the approval of a proposed action or initial commitment shall be made in accordance with this part. The primary purpose of Executive Order 11988 is “to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.” The primary purpose of Executive Order 11990 is “to avoid to the extent possible the long and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.”

(c) The following table indicates the applicability, by location and type of action, of the decisionmaking process for implementing Executive Order 11988 and Executive Order 11990 under subpart C of this part.

TABLE 1

Type of proposed action (new reviewable action or an amendment) <sup>1</sup>	Floodways	Coastal high hazard areas and Coastal A Zones	Wetlands or 1 percent annual chance floodplain outside coastal high hazard area,	Nonwetlands area outside of the 1 percent annual chance floodplain and within the 0.2 percent annual
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			<b>Coastal A Zones, and floodways</b>	<b>chance floodplain</b>
Critical Actions as defined in § 55.2(b)(6)	Critical actions not allowed unless they meet the requirements for critical actions in § 55.1(c) and are processed under § 55.20.	Critical actions not allowed unless they meet the requirements for critical actions in § 55.1(c) and are processed under § 55.20.	Allowed if the proposed critical action is processed under § 55.20. <sup>2</sup>	Allowed if the proposed critical action is processed under § 55.20. <sup>2</sup>
Noncritical actions not excluded under § 55.12(b) or (c)	Allowed only if the proposed non-critical action is not prohibited under § 55.1(c) and is processed under § 55.20. <sup>2</sup>	Allowed only if the proposed noncritical action is processed under § 55.20 <sup>2</sup> and is (1) a functionally dependent use, (2) existing construction (including improvements), or (3) reconstruction following destruction caused by a disaster. If the action is not a functionally dependent use, the action must be designed for location in a coastal high hazard area under § 55.1(c)(3)	Allowed if proposed noncritical action is processed under § 55.20. <sup>2</sup>	Any noncritical action is allowed without processing under this part.

<sup>1</sup> Under Executive Order 11990, the decisionmaking process in § 55.20 applies only to Federal assistance for new construction in wetlands locations.

<sup>2</sup> Or those paragraphs of § 55.20 that are applicable to an action listed in § 55.12(a).

10. Revise and republish § 55.12 to read as follows:

**§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.**

(a) The decisionmaking steps in § 55.20(b), (c), and (g) (steps 2, 3, and 7) do not apply to the following categories of proposed actions:

(1) HUD’s or the recipient’s actions involving the disposition of acquired multifamily housing projects or “bulk sales” of HUD-acquired (or under part 58 of recipients’) one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program and in good standing (i.e., not suspended from program eligibility or placed

on probation under 44 CFR 59.24). For programs subject to part 58, this paragraph applies only to recipients' disposition activities that are subject to review under part 58.

(2) HUD's actions under the National Housing Act (12 U.S.C. 1701) for the purchase or refinancing of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, and intermediate care facilities, in communities that are in good standing under the NFIP.

(3) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, intermediate care facilities, and one- to four-family properties, in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, the action does not meet the thresholds for "substantial improvement" under § 55.2(b)(12), and the footprint of the structure and paved areas is not increased by more than 20 percent.

(4) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing nonresidential buildings and structures, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the action does not meet the thresholds for "substantial improvement" under § 55.2(b)(12) and that the footprint of the structure and paved areas is not increased by more than 20 percent.

(5) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, or replacement of existing nonstructural improvements including streets, curbs, and gutters, where any increase of the total impervious surface area of the facility is de minimis. This provision does not include critical actions, levee systems, chemical storage facilities (including any tanks), wastewater facilities, or sewer lagoons.

(b) The decisionmaking process in § 55.20 shall not apply to the following categories of proposed actions:

(1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway, coastal high hazard area, or Coastal A Zone;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for "substantial improvement" under § 55.2(b)(12);

(3) HUD or a recipient's actions involving the disposition of individual HUD-acquired, one- to four-family properties;

(4) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; and

(5) The approval of financial assistance to lease an existing structure and/or units within an existing structure located within the floodplain, but only if:

(i) The structure is located outside the floodway, Coastal A Zone, or coastal high hazard area, and is in a community that is in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24);

(ii) The project is not a critical action; and

(iii) The entire structure is or will be fully insured or insured to the maximum under the NFIP for at least the term of the lease.

(c) This part shall not apply to the following categories of proposed HUD actions:

(1) HUD-assisted activities described in 24 CFR 58.34 and 58.35(b);

(2) HUD-assisted activities described in 24 CFR 50.19, except as otherwise indicated in § 50.19;

(3) The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition of such floodplain and wetland property, where a permanent covenant or comparable restriction is placed on the property's continued use for flood control, wetland protection, open space, or park land, but only if:

(i) The property is cleared of all existing buildings and walled structures;

(ii) The property is cleared of related improvements except those which:

(A) Are directly related to flood control, wetland protection, open space, or park land (including playgrounds and recreation areas);

(B) Do not modify existing wetland areas or involve fill, paving, or other ground disturbance beyond minimal trails or paths; and

(C) Are designed to be compatible with the beneficial floodplain or wetland function of the property.

(4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;

(5) Policy-level actions described at 24 CFR 50.16 that do not involve site-based decisions;

(6) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain or wetland;

(7) HUD's or the responsible entity's approval of a project site, an incidental portion of which is situated in an adjacent floodplain (not including the floodway, Coastal A Zone, or coastal high hazard area), but only if:

(i) The proposed project site does not include any existing or proposed buildings or improvements that modify or occupy the 1 percent annual chance (or 0.2 percent annual chance for critical actions) floodplain except de minimis improvements such as recreation areas and trails; and

(ii) The proposed project will not result in any new construction in or modifications of a wetland.

(8) HUD's or the responsible entity's approval of financial assistance for a project on any nonwetland site in a floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA), final Letter of Map Revision (LOMR), or final Letter of Map Revision Based on Fill (LOMR-F) that removed the property from a FEMA-designated floodplain location; or

(ii) A conditional LOMA, conditional LOMR, or conditional LOMR-F if HUD or the responsible entity's approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) Issuance or use of Housing Vouchers or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (*i.e.*, do not involve site-specific subsidies);

(10) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities.

**§§ 55.13 through 55.16 [Removed]**

11. Remove §§ 55.13 through 55.16.

12. Revise and republish § 55.20 to read as follows:

**§ 55.20 Decisionmaking process.**

Except for actions covered by § 55.12(a), the decisionmaking process for compliance with this part contains eight steps, including public notices and an examination of practicable

alternatives when addressing floodplains and wetlands. The steps to be followed in the decisionmaking process are as follows:

(a) *Step 1.* Determine whether the proposed action is located in the 1 percent annual chance floodplain (0.2 percent annual chance floodplain for critical actions) or results in new construction in a wetland. If the action does not occur in a floodplain or result in new construction in a wetland, then no further compliance with this part is required. The following process shall be followed by HUD (or the responsible entity) in making wetland determinations.

(1) Refer to § 55.28(a) where an applicant has submitted with its application to HUD (or to the recipient under programs subject to 24 CFR part 58) an individual Section 404 permit (including approval conditions and related environmental review).

(2) Refer to § 55.2(b)(13) for making wetland determinations under this part.

(3) For proposed actions occurring in both a wetland and a floodplain, completion of the decisionmaking process under § 55.20 is required regardless of the issuance of a Section 404 permit. In such a case, the wetland will be considered among the primary natural and beneficial functions and values of the floodplain.

(b) *Step 2.* Notify the public and agencies responsible for floodplain management or wetlands protection at the earliest possible time of a proposal to consider an action in a 1 percent annual chance floodplain (or a 0.2 percent annual chance floodplain for a critical action) or wetland and involve the affected and interested public and agencies in the decisionmaking process.

(1) The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual if the affected public is largely non-English speaking. In addition, all notices must be published in an appropriate local printed news medium or on an appropriate government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency, and must be sent to federal, state, and local public

agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.

(2) A minimum of 15 calendar days shall be allowed for comment on the public notice.

The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

(3) A notice under this paragraph shall state: The name, proposed location, and description of the activity; the total number of acres of floodplain or wetland involved; the related natural and beneficial functions and values of the floodplain or wetland that may be adversely affected by the proposed activity; the HUD approving official (or the Certifying Officer of the responsible entity authorized by 24 CFR part 58); and the phone number to call for information. The notice shall indicate the hours of HUD or the responsible entity's office, and any website at which a full description of the proposed action may be reviewed.

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a 1 percent annual chance floodplain (or a 0.2 percent annual chance floodplain for a critical action) or wetland.

(1) Except as provided in paragraph (c)(3) of this section, HUD's or the responsible entity's consideration of practicable alternatives to the proposed site selected for a project should include:

(i) Locations outside and not affecting the 1 percent annual chance floodplain (or the 0.2 percent annual chance floodplain for a critical action) or wetland;

(ii) Alternative methods to serve the identical project objective, including but not limited to design alternatives such as repositioning or reconfiguring proposed siting of structures and improvements or incorporating natural systems, ecosystem processes, and nature-based solutions to avoid floodplain and wetland impacts; and

(iii) A determination not to approve any action proposing the occupancy or modification of a floodplain or wetland.

(2) Practicability of alternative sites should be addressed in light of the following:

(i) Natural values such as topography, habitat, and hazards;

(ii) Social values such as aesthetics, historic and cultural values, and land use patterns,

and

(iii) Economic values such as the cost of space, construction, services, and relocation.

(3) For multifamily and healthcare projects involving HUD mortgage insurance that are initiated by third parties, HUD in its consideration of practicable alternatives is not required to consider alternative sites, but must include consideration of:

(i) A determination to approve the request without modification;

(ii) A determination to approve the request with modification; and

(iii) A determination not to approve the request.

(d) *Step 4.* Identify and evaluate the potential direct and indirect impacts associated with the occupancy or modification of the 1 percent annual chance floodplain (or the 0.2 percent annual chance floodplain for a critical action) or the wetland and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action.

(1) *Floodplain evaluation:* The focus of the floodplain evaluation should be on adverse impacts to lives and property, and on natural and beneficial floodplain values. Natural and beneficial values include:

(i) Water resources such as natural moderation of floods, water quality maintenance, and groundwater recharge;

(ii) Living resources such as flora and fauna;

(iii) Cultural resources such as archaeological, historic, and recreational aspects; and

(iv) Agricultural, aquacultural, and forestry resources.

(2) *Wetland evaluation:* In accordance with Section 5 of Executive Order 11990, the decisionmaker shall consider factors relevant to a proposal's effect on the survival and quality of the wetland. Among these factors that should be evaluated are:

(i) Public health, safety, and welfare, including water supply, quality, recharge, and discharge; pollution; flood and storm hazards and hazard protection; and sediment and erosion;

(ii) Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna; species and habitat diversity and stability; natural hydrologic function; wetland type; fish; wildlife; timber; and food and fiber resources;

(iii) Cost increases attributed to wetland-required new construction and mitigation measures to minimize harm to wetlands that may result from such use; and

(iv) Other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

(e) *Step 5.* Where practicable, design the proposed action to avoid the potential adverse impacts to and from the 1 percent annual chance floodplain (or the 0.2 percent annual chance floodplain for a critical action) or the wetland. Where impacts cannot be avoided, design or modify the proposed action to minimize the potential adverse impacts to and from the floodplain or wetland of concern and to restore and preserve its natural and beneficial functions and values.

(1) Minimization techniques for floodplain and wetland purposes include, but are not limited to: the use of permeable surfaces, natural landscape enhancements that maintain or restore natural hydrology through infiltration, native plant species, bioswales, evapotranspiration, stormwater capture and reuse, green or vegetative roofs with drainage provisions, and Natural Resource Conservation Service conservation easements. Floodproofing and elevating structures, including freeboard above the required base flood elevations, are also minimization techniques for floodplain purposes.

(2) Appropriate and practicable compensatory mitigation is recommended for unavoidable adverse impacts to more than one acre of wetland. Compensatory mitigation includes, but is not limited to: permittee-responsible mitigation, mitigation banking, in-lieu fee mitigation, the use of preservation easements or protective covenants, and any form of mitigation promoted by state or Federal agencies. The use of compensatory mitigation may not substitute

for the requirement to avoid and minimize impacts to the maximum extent practicable. Where projects require Clean Water Act Section 404 authorizations, the U.S. Army Corps of Engineers makes the determination of appropriate type and amount of compensatory mitigation for unavoidable impacts to wetlands regulated under the Clean Water Act.

(3) Actions covered by § 55.12(a) must be rejected if the proposed minimization is financially or physically unworkable. All critical and non-critical actions (in the case of new construction and substantial improvement) in the 1 percent annual chance floodplain shall be designed and built following applicable NFIP and local requirements. Additionally, all newly constructed critical actions in the 1 percent annual chance and 0.2 percent annual chance floodplain shall be designed and built at or above the 0.2 percent annual chance flood elevation with the exception that non-residential critical actions may floodproof in accordance with FEMA's regulations at 44 CFR 60.3(c)(3)(ii) and (c)(4)(i), or such other regulatory standard as FEMA may issue (refer to § 55.2(c) for appropriate data sources for the 0.2 percent annual chance flood elevation). Non-critical actions that have no dwelling units below the base flood elevation may also floodproof. If a critical action is funded by multiple agencies with differing requirements, the most stringent critical action requirement will apply.

(4) All critical actions must include:

(i) Preparation of and participation in an early warning system;

(ii) An emergency evacuation and relocation plan; and

(iii) Identification of evacuation route(s) out of the floodplain.

(f) *Step 6.* Reevaluate the proposed action to determine:

(1) Whether the action is still practicable in light of exposure to flood hazards in the floodplain or wetland, possible adverse impacts on the floodplain or wetland, the extent to which it will aggravate the current hazards to other floodplains or wetlands, and the potential to disrupt the natural and beneficial functions and values of floodplains or wetlands; and

(2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(i) The reevaluation of alternatives shall include the potential impacts avoided or caused inside and outside the floodplain or wetland area. The impacts should include the protection of human life, real property, and the natural and beneficial functions and values served by the floodplain or wetland.

(ii) A reevaluation of alternatives under this step should include a discussion of economic costs. For floodplains, the cost estimates should include savings or the costs of flood insurance, where applicable; flood proofing; replacement of services or functions of critical actions that might be lost; and elevation to at least the base flood elevation for sites located in floodplains, as appropriate based on the applicable source under § 55.2(c). For wetlands, the cost estimates should include the cost of filling the wetlands and mitigation.

(g) *Step 7.* (1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the 1 percent annual chance floodplain (or the 0.2 percent annual chance floodplain for a critical action) or the wetland, publish a final notice that includes:

(i) The reasons why the proposal must be located in the floodplain or wetland;

(ii) A list of the alternatives considered in accordance with paragraphs (c)(1) and (c)(2) of this section; and

(iii) All mitigation measures to be taken to avoid or minimize adverse impacts and to restore and preserve natural and beneficial functions and values.

(2) In addition, the public notice procedures of § 55.20(b)(1) shall be followed, and a minimum of 7 calendar days for public comment before approval of the proposed action shall be provided.

(h) *Step 8.* Upon completion of the decisionmaking process in Steps 1 through 7, implement the proposed action. There is a continuing responsibility on HUD (or on the

responsible entity authorized by 24 CFR part 58) and the recipient (if other than the responsible entity) to ensure that the mitigating measures identified in Step 7 are implemented.

13. Revise § 55.21 to read as follows:

**§ 55.21 Notification of floodplain hazard.**

For HUD programs under which a financial transaction for a property located in a floodplain (a 0.2 percent annual chance floodplain for a critical action) is guaranteed, approved, regulated or insured, any private party participating in the transaction and any current or prospective tenant shall be informed by HUD (or by HUD's designee, e.g., a mortgagor) or a responsible entity subject to 24 CFR part 58 of the hazards of the floodplain location before the execution of documents completing the transaction.

14. In subpart C, add a new § 55.22 to read as follows:

**§ 55.22 Conveyance restrictions for the disposition of multifamily real property.**

(a) In the disposition (including leasing) of multifamily properties acquired by HUD that are located in a 1 percent annual chance floodplain (a 0.2 percent annual chance floodplain for a critical action), the documents used for the conveyance must:

(1) Refer to those uses that are restricted under identified federal, state, or local floodplain regulations; and

(2) Include any land use restrictions limiting the use of the property by a grantee or purchaser and any successors under state or local laws.

(b)(1) For disposition of multifamily properties acquired by HUD that are located in a 0.2 percent annual chance floodplain and contain critical actions, HUD shall, as a condition of approval of the disposition, require by covenant or comparable restriction on the property's use that the property owner and successive owners provide written notification to each current and prospective tenant concerning:

(i) The hazards to life and to property for those persons who reside or work in a structure located within the 0.2 percent annual chance floodplain, and

(ii) The availability of flood insurance on the contents of their dwelling unit or business.

(2) The notice shall also be posted in the building so that it will be legible at all times and easily visible to all persons entering or using the building.

15. In subpart C, add a new § 55.24 to read as follows:

**§ 55.24 Aggregation.**

Where two or more actions have been proposed, require compliance with subpart C of this part, affect the same floodplain or wetland, and are currently under review by HUD (or by a responsible entity authorized by 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decisionmaking process in § 55.20.

16. Amend § 55.26 by revising the section heading, the introductory text, and paragraphs (b)(1) and (c) to read as follows:

**§ 55.26 Adoption of another agency’s review under the executive orders.**

If a proposed action covered under this part is already covered in a prior review performed under either or both of the Executive Orders by another agency, including HUD or a different responsible entity, that review may be adopted by HUD or by a responsible entity authorized under 24 CFR part 58 provided that:

\* \* \* \* \*

(b) \* \* \*

(1) The type of action currently proposed is comparable to the type of action previously reviewed by the other agency; and

\* \* \* \* \*

(c) As a condition of approval, mitigation measures similar to those prescribed in the previous review shall be required of the current proposed action.

17. In subpart C, add a new § 55.27 to read as follows:

**§ 55.27 Documentation.**

(a) For purposes of compliance with § 55.20, the responsible HUD official who would approve the proposed action (or Certifying Officer for a responsible entity authorized by 24 CFR part 58) shall require that the following actions be documented:

(1) When required by § 55.20(c), practicable alternative sites have been considered outside the floodplain or wetland, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government, whichever geographic area is most appropriate to the proposed action. Actual sites under review must be identified and the reasons for the nonselection of those sites as practicable alternatives must be described; and

(2) Under § 55.20(e)(2), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain or wetland as identified in § 55.20(d) have been applied to the design for the proposed action.

(b) For purposes of compliance with § 55.24 or § 55.26 (as appropriate), the responsible HUD official (or the Certifying Officer for a responsible entity subject to 24 CFR part 58) who would approve the proposed action shall require documentation of compliance with the required conditions.

(c) Documentation of compliance with this part (including copies of public notices) must be attached to the environmental assessment, the environmental impact statement or the compliance record and be maintained as a part of the project file. In addition, for environmental impact statements, documentation of compliance with this part must be included as a part of the record of decision (or environmental review record for responsible entities subject to 24 CFR part 58).

18. In subpart C, add a new § 55.28 to read as follows:

**§ 55.28 Use of individual permits under section 404 of the Clean Water Act for HUD Executive Order 11990 processing where all wetlands are covered by the permit.**

(a) HUD (or the responsible entity subject to 24 CFR part 58) shall not be required to perform the steps at § 55.20(a) through (e) upon adoption by HUD (or the responsible entity) of the terms and conditions of a Section 404 permit so long as:

(1) The project involves new construction on a property located outside of the 1 percent annual chance floodplain (or the 0.2 percent annual chance floodplain for critical actions);

(2) The applicant has submitted, with its application to HUD (or to the recipient under programs subject to 24 CFR part 58), an individual Section 404 permit (including approval conditions) issued by the U.S. Army Corps of Engineers (USACE) (or by a State or Tribal government under Section 404(h) of the Clean Water Act) for the proposed project; and

(3) All wetlands adversely affected by the action are covered by the permit.

(b) Unless a project is excluded under § 55.12, processing under all of § 55.20 is required for new construction in wetlands that are not subject to section 404 of the Clean Water Act and for new construction for which the USACE (or a State or Tribal government under section 404(h) of the Clean Water Act) issues a general permit under Section 404.

19. In subpart C, add a new § 55.29 to read as follows:

**§ 55.29 Alternate processing for existing nonconforming sites.**

Notwithstanding the limitations on HUD assistance defined in § 55.1(c), in exceptional circumstances, the Assistant Secretary for the relevant program area may approve HUD assistance or insurance to improve an existing property with ongoing HUD assistance or mortgage insurance if the following conditions are satisfied:

(a) HUD completes an environmental review pursuant to 24 CFR part 50, including the 8-step decision making process pursuant to § 55.20, that:

(1) Documents that it is not practicable to transfer the HUD assistance to a site with lower flood risk under existing program rules, financial limitations, and site availability; and

(2) Mandates measures to ensure that the elevated flood risk is the only environmental hazard or impact that does not comply with HUD’s environmental requirements at 24 CFR parts 50, 51, 55, and 58; and

(b) The proposed project incorporates all practicable measures to minimize flood risk, preserve the function of the floodplain and any impacted wetlands as described in § 55.20(e), and increase the overall resilience of the site, as approved and/or required by HUD. At minimum, these measures must include:

- (1) Removal of all residential units and critical action structures from the floodway;
- (2) Identification of evacuation routes out of the floodplain;
- (3) A No-Rise Certification for any new improvements in the floodway; and
- (4) Elevation or floodproofing of existing structures within the floodplain where practicable, and as required by FEMA.

**Subpart D [Removed]**

20. Remove Subpart D, consisting of § 55.30.

**PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL REVIEW RESPONSIBILITIES**

21. The authority citation for part 58 is revised to read as follows:

**Authority:** 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4336e, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902.

22. Amend § 58.5 by revising paragraph (b)(1) to read as follows:

**§ 58.5 Related Federal laws and authorities.**

\* \* \* \* \*

(b) \* \* \*

(1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly

section 2(a) of the order (For an explanation of the relationship between the decisionmaking process in 24 CFR part 55 and this part, see § 55.10 of this subtitle A.)

\* \* \* \* \*

## **PART 200—INTRODUCTION TO FHA PROGRAMS**

23. The authority citation for part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1702-1715z-21; 42 U.S.C. 3535(d).

24. Amend § 200.926d by:

a. Revising paragraphs (c)(4)(i) through (ii); and

b. Redesignating paragraphs (c)(4)(iii) through (v) as paragraphs (c)(4)(iv) through (vi), respectively, and adding new paragraph (c)(4)(iii); and

c. Revising redesignated paragraph (c)(4)(iv).

The revisions and addition read as follows:

### **§ 200.926d Construction requirements.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(i) *Residential structures with basements located in FEMA-designated areas of special flood hazard.* The elevation of the lowest floor in structures with basements shall be at or above the base flood elevation (1 percent annual chance flood elevation) required for new construction or substantial improvement of residential structures under regulations for the National Flood Insurance Program (NFIP) (see 44 CFR 60.3 through 60.6), except where variances from this standard are granted by communities under the procedures of the Federal Emergency Management Agency (FEMA) at 44 CFR 60.6(a) or exceptions from this NFIP standard for basements are approved by FEMA in accordance with procedures at 44 CFR 60.6(c).

(ii) *Residential structures without basements located in FEMA-designated areas of special flood hazard.* The elevation of the lowest floor in structures without basements shall be at or above the FEMA-designated base flood elevation (1 percent annual chance flood elevation).

(iii) *Residential structures located in FEMA-designated “coastal high hazard areas”.*

(A) Basements or any permanent enclosure of space below the lowest floor of a structure are prohibited.

(B) Where FEMA has determined the base flood elevation without establishing stillwater elevations, the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) and its horizontal supports shall be at or above the base flood elevation.

(iv) (A) In all cases in which a Direct Endorsement (DE) mortgagee or a Lender Insurance (LI) mortgagee seek to insure a mortgage on a newly constructed one- to four-family dwelling (including a newly erected manufactured home) that was processed by the DE or LI mortgagee, the DE or LI mortgagee must determine whether the property improvements (dwelling and related structures/equipment essential to the value of the property and subject to flood damage) are located in a 1 percent annual chance floodplain, as designated on maps of the Federal Emergency Management Agency. If so, the DE mortgagee, before submitting the application for insurance to HUD, or the LI mortgagee, before submitting all the required data regarding the mortgage to HUD, must obtain:

(1) A final Letter of Map Amendment (LOMA);

(2) A final Letter of Map Revision (LOMR); or

(3) A signed Elevation Certificate documenting that the lowest floor (including basement) of the property improvements is built at or above the 1 percent annual chance flood elevation in compliance with National Flood Insurance program criteria 44 CFR 60.3 through 60.6.

(B) Under the DE program, these mortgages are not eligible for insurance unless the DE mortgagee submits the LOMA, LOMR, or Elevation Certificate to HUD with the mortgagee's request for endorsement.

\* \* \* \* \*

**Scott Turner**  
Secretary

**[BILLING CODE 4210-67]**

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