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Regulations Division
Office of the General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

Re: Docket FR-5717-P-01
Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard

Dear Sir or Madam:

Thank you for the opportunity to submit comments on behalf of The Pew Charitable Trusts regarding the Department of Housing and Urban Development's (HUD) notice of proposed rulemaking to amend regulations and implement Executive Order 13690, which established the Federal Flood Risk Management Standard (FFRMS). The Pew Charitable Trusts strongly supports the FFRMS as a proactive strategy for investing taxpayer dollars that will pay long-term benefits.[1]

Overall, we support HUD's important updates to its floodplain management regulations and minimum property standards to better manage significant flood risks, protect people and property, and steward taxpayer investments. We also recommend several areas in which the proposed rules can be improved.

Our strong preference would be for a rule which relies on up-to-date maps that consider future flood risk as the basis for siting and design decisions in all instances of new construction or substantial improvement or repair. Such an approach would account for the changing nature of flood risk over time, not only as weather patterns change, but also as land uses and cover within a watershed are altered.[2] This option would allow HUD to better protect its investments in housing and other community infrastructure,

[1] See comments submitted by The Pew Charitable Trusts, May 6, 2015, https://www.regulations.gov/document?D=FEMA-2015-0006-0112, and October 21, 2016, https://www.regulations.gov/document?D=FEMA-2015-0006-0442.
[2] See, for example, Technical Mapping Advisory Council, "Future Conditions Risk Assessment and Modeling," December 2015, https://www.fema.gov/media-library-data/1454954261186-c348aa9b1768298c9eb66f84366f836e/TMAC_2015_Future_Conditions_Risk_Assessment_and_Modeling_Report.pdf

minimize flood losses, shorten disaster recovery times, better communicate risk, and limit the need for federal assistance to individuals.

We understand, however, that such maps are not immediately available in many communities and that HUD, which has been called upon by Congress to play an ever-increasing role in disaster recovery, wishes to expedite the post-disaster rebuilding phase. Further, we appreciate that the margin of safety afforded by the required 2- and 3-foot freeboard elevation improves upon the current practice of requiring elevation of the lowest floor to or above the base flood elevation of the 1-percent annual chance flood—a practice which has shown to be insufficient in many instances by the Federal Emergency Management Agency's (FEMA) Mitigation Assessment Teams,[3] for example. Therefore, we support the use of the 2-foot freeboard requirement for non-critical actions and the higher elevation between the 0.2-percent annual chance storm and a 3-foot freeboard for critical actions as a minimum. The safety margin afforded by the additional freeboard will not be tested or relied upon in every instance, but it can prove crucial in many cases.

At the same time, however, we urge the Department to take steps to address those situations where freeboard will not offer a sufficient or lasting protection, by more fully incorporating the best available scientific information on future risks wherever feasible.

As the notice states, Executive Order 11988 requires that federal agencies utilize the best available information to determine flood risk, and the proposed rule calls on applicants to use advisory base flood elevations or other preliminary maps and studies as a basis for enhanced protections and additional levels of elevation. The rule also assures that more protective standards adopted by states or local governments, including higher freeboard standards, will be followed. These are important protections that we support.

However, the regulation could be improved with clearer direction for applicants to use FEMA data on 0.2-percent annual chance flood zones wherever available and by supplementing existing Flood Insurance Rate Maps (FIRM) with credible future risk data developed by other federal agencies. The types of regional and watershed-scale maps that should be considered include, for example, the Department of Transportation's Gulf Coast study and the Army Corps' analysis of the Sandy-impacted region. We urge HUD to place additional emphasis on the need to use such information, as well as local information from previous high water marks. As HUD issues announcements of Community Development Block Grant-Disaster Recovery (CDBG-DR) allotments, we recommend that the Department assemble and share the specific information most appropriate to each such affected area.

We are particularly concerned with HUD's decision not to consider the horizontal extent of the FFRMS floodplain for 1-to-4 family residential structures. We urge the Department to carefully reconsider that approach, again looking at the experience of past floods that have damaged homes and businesses beyond the lateral extent of the 1-percent annual chance floodplain and recognizing that a significant percentage

[3] See, for example, mitigation assessment team reports for Hurricanes Opal (1995), Georges (1998), Ivan (2004), Katrina (2005), Rita (2005), and Ike (2008), https://www.fema.gov/fema-mitigation-assessment-team-mat-reports. Note that even after Hurricane Isaac (2012), an event that generally did not exceed base flood elevations, the team found that buildings elevated to the best available elevation data, including preliminary FIRMs, had been far less likely to suffer damage. The Isaac team likewise concluded that the adoption of freeboard requirements was beneficial.

of the National Flood Insurance Program's (NFIP) claims are filed from properties outside of this area.[4] Indeed, as HUD points out, the recent FEMA study conducted by AECOM makes it clear that the size of floodplains in many areas will continue to increase over time, and failure to elevate newly constructed or reconstructed buildings outside of but near the 1-percent annual chance floodplain may allow those buildings to be subject to significant flood risks in the future.[5]

At an absolute minimum, we would recommend that the Department extend its freeboard requirements to such structures outside of the 1-percent annual chance floodplain whenever data available from FEMA, the Small Business Administration, or other government agencies indicates that those structures or adjacent structures have been previously flooded or lie within an area that has been identified as a problem by a repetitive loss area analysis conducted by an NFIP-participating community.

Another area of concern is the proposal to eliminate the categorical exclusion restriction on increases to the building footprint of a 1-to-4 unit structure within a floodplain or wetland area. While such increases may generally have modest impacts, this change may ultimately prove problematic, particularly for housing and other community infrastructure in low-lying or eroding coastal areas, on wetlands fill already subject to chronic, low-level flooding, or in neighborhoods with poorly functioning storm drainage systems. At the very least, HUD and other responsible entities should consider the cumulative impact of these footprint enlargements. We also recommend that the Department restrict the use of the categorical exclusion in cases where flooding has already been identified as a concern.

Pew supports HUD's update of the definition of Coastal High Hazard Area, and we believe that the rule should underscore the need to avoid construction or reconstruction within these dangerous areas. We further support alternatives to actions in the FFRMS floodplain or wetlands and urge careful consideration of the use of natural systems, ecosystem processes, and nature-based solutions, where possible, as required in the 8-step review process.

In addition, we strongly support the decision to update the minimum property standards to assure that flood risk is incorporated into considerations of basic livability and safety standards across HUD programs, and we encourage the Department to act quickly on updating the regulations governing manufactured housing.

Pew also recommends that HUD follow FEMA's lead and eliminate within this rule the use of the terms 100-year and 500-year floodplain and substitute the terms 1-percent annual chance flood and 0.2-percent annual chance flood. Many experts now agree that the misleading 100-year and 500-year terms can inaccurately communicate risk to the general public.

Finally, we stress the importance of these new rules and the anticipated rules for manufactured housing, not only for those who are directly impacted by HUD programs but also federal taxpayers.

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[4] See, for example, National Research Council, "Mapping the Zone: Improving Flood Map Accuracy," 2009, https://www.nap.edu/catalog/12573/mapping-the-zone-improving-flood-map-accuracy , which states that "one-third of flood insurance claims are for areas outside of the SFHA."

[5] AECOM, "The Impact of Climate Change and Population Growth on the National Flood Insurance Program through 2010," June 2013, http://www.aecom.com/content/wp-content/uploads/2016/06/Climate_Change_Report_AECOM_2013-06-11.pdf.

As a recent Government Accountability Office (GAO) report affirms, Congress increasingly relies on HUD to help with community recovery from floods and other natural disasters. In reviewing disaster-specific spending by 17 federal agencies from fiscal years 2005 through 2014, GAO found that HUD's obligations of $30.7 billion accounted for nearly a quarter of the overall disaster-specific spending, second only to the Department of Homeland Security.[6]

We believe that the proposed rule can help control these expenditures by assuring that HUD dollars go toward lasting and flood-ready solutions that help communities build stronger and smarter. By considering future flood risk and incorporating reasonable margins of safety into new construction and major repairs, HUD will better realize its broad mission of helping to build vibrant communities and affordable homes for some of the nation's most vulnerable populations.

With flood-smart investments and enhanced requirements for appropriate elevation, mitigation, or relocation of at-risk structures, savings may be realized in a lowered demand for CDBG funding for disaster recovery, as well as for FEMA Public Assistance and Individual Assistance. Savings may also accrue to local public housing authorities, local school districts, senior centers, and other entities as they escape a costly cycle of repetitive flooding and rebuilding.

The Pew Charitable Trusts commends HUD for this initiative and believes that implementation of the updated FFRMS offers a more strategic approach to spending taxpayer dollars, especially as the population grows and concentrates near riverine and coastal flood hazard areas. We appreciate the opportunity to comment and look forward to HUD's speedy adoption of a final rule.

Sincerely,

Velma M. Smith
Officer, Government Relations

[6] See GAO Report, "Federal Disaster Assistance: Federal Departments and Agencies Obligated at Least $277.6 Billion during Fiscal Years 2005 through 2014," September 2016, http://www.gao.gov/assets/690/680038.pdf.