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Affordable Housing Alert

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HUD's Federal Flood Risk Management Standard applicable soon

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HUD's new standard is beginning to apply to HUD-assisted projects in the pipeline, including for certain FHA applications starting October 1, 2024, and may impact the viability of projects anticipating a 2025 closing.



What's the impact?

- 24 CFR part 55 is revised to expand the floodplain of concern for all HUD programs.
- The rule does not change current requirements or guidance specifying which actions require elevation or floodproofing. The area subject to such requirements has expanded.
- Compliance began for most HUD programs on June 24, 2024. However, many HUD Housing programs become subject to these rules upon the extended compliance date of January 1, 2025.
- HUD recently issued an application threshold to October 1, 2024.

Climate risk is at the center of the US Department of Housing and Urban Development's (HUD) April 23, 2024, [final rule](#) defining the Federal Flood Risk Management Standard (FFRMS) floodplain for HUD-assisted or financed projects. The greatest [impact of the revised rule](#) will be the increased number of properties subject to Part 55 floodplain management standards, including existing properties located outside of the 100-year floodplain but within the 500-year floodplain.

How does FFRMS affect real estate transactions?

Clients considering their upcoming transaction pipelines should be aware that, for any transaction where environmental review is not completed by year end, the transaction may become subject to this rule. More specifically, the general compliance requirements for most HUD programs under the rule was June 24, 2024. However, there is an extended date of January 1, 2025, for many HUD Housing programs including Section 8 renewals under Chapter 15, transfers under 8(bb) and Section 209, RAD conversions to PBRA, GRRP, and certain FHA loans. These programs become subject to the new rule if the floodplain analysis is not completed by end of the year 2024—this does not depend on the application date or date of submission of the environmental review request to HUD. Application of the new rules may either preclude your project from consideration or may implicate additional environmental review process or mitigation costs, which may be prohibitive.

For existing buildings subject to the Federal Flood Risk Management Standard (FFRMS), new § 55.8(a)(1)(ii), clarifies the scope of activities allowed in the FFRMS floodplain where there is a *floodway* onsite. Previously, buildings in a floodplain with a floodway on site could not receive HUD funds. The new rule permits *de minimis* improvements that do not expand the footprint of existing buildings, or the number of units permitted on the site.

FFRMS's three-tiered approach

Under the final rule, the FFRMS is based on climate science and future flood risk, which is evaluated under a three-tiered approach to identifying the floodplain of concern:

CISA

Where available, the FFRMS floodplain is based on maps developed using a Climate-Informed Science Approach (CISA) applied throughout the anticipated life cycle of a project, an Environmental Impact Statement (EIS) analyzing sea level rise and other climate impacts, and approval by HUD. Although a [Federal Flood Standard Support Tool](#) is online, mapping based on CISA does not appear to be available.

TWO-PERCENT ANNUAL CHANCE

Where CISA mapping or other CISA analysis is not available, HUD allows using the FEMA-designated 0.2-percent-annual-chance (500-year) floodplain for noncritical actions.

FVA

Where CISA mapping and FEMA 2% risk data are not available, HUD allows using the Freeboard value approach (FVA) for noncritical actions, established by adding 2 feet to the base flood elevation established on the effective FIRM rate map or Flood Insurance Study (FIS). For critical actions where CISA data is not available, the FFRMS floodplain is established by the higher of the FEMA 2% annual floodplain or adding 3 feet to the base flood elevation.

Important FFRMS application and analysis dates

According to an August 29, 2024, memorandum issued by the Office of Multifamily Production, HUD has established a October 1, 2024, threshold application date for new pre-applications and new straight to firm applications to continue to follow the previous floodplain regulation. While HUD is confident that it can complete a review of all complete applications and pre-applications filed by October 1, 2024, by the end of 2024, the floodplain analysis must be completed by January 1, 2025.

Cost considerations for floodproofing projects

Clients should consider the cost of required floodproofing and mitigation measures. The Substantial Improvement threshold, which is one trigger for mitigation measures in the FFRMS floodplain, is met if the cost of the planned work equals or exceed 50% of the market value of the structure before the repair is started. In our experience, completing mitigation measures for buildings subject to this rule and within the relevant floodplain are often prohibitively expensive.

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