



July 18, 2016

Submitted electronically via www.regulations.gov

Office of the General Counsel
Regulations Divisions
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0001

RE: NRDC Comments on the Proposed Rule for *Modernizing HUD's Consolidated Planning Process To Narrow the Digital Divide and Increase Resilience to Natural Hazards*
Docket No. FR 5891-P-01

Dear Office of the General Counsel:

The Natural Resources Defense Council (NRDC) appreciates the opportunity to provide comment to the U.S. Department of Housing and Urban Development (HUD) on the Proposed Rule for *Modernizing HUD's Consolidated Planning Process To Narrow the Digital Divide and Increase Resilience to Natural Hazards* ("Proposed Rule"). NRDC is an international nonprofit environmental organization with more than 2 million members and online activists. Our organization works to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. Our organizational goals include curbing global warming, safeguarding human health, and ensuring safe and sufficient water for people and the environment. NRDC supports HUD's efforts to enhance the resilience of low- and moderate-income communities to natural hazard risks, especially in light of the anticipated effects of climate change on the frequency and severity of these risks.

We recommend that HUD take the following actions when finalizing the Proposed Rule:

- I. Develop guidance for jurisdictions on how to assess natural hazard risks to low- and moderate-income residents and incorporate hazard mitigation and resilience into HUD planning processes;
- II. Align the consolidated planning process with the state and local hazard mitigation plans developed for the Federal Emergency Management Agency (FEMA);
- III. Ensure that Consolidated Plans and use of formula block grant funding programs comply with the Federal Flood Risk Management Standard (FFRMS); and
- IV. Compile and make publicly available data on the number of low- and moderate-income housing units and residents at risk from flooding.

NATURAL RESOURCES DEFENSE COUNCIL

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As HUD is well aware, numerous credible scientific sources have found unequivocally that the global climate is changing and that these changes have already and will continue to have significant impacts on the frequency and severity of natural hazards.¹ In order to reduce loss of life, property damage, and economic impacts, communities must proactively assess changing natural hazard risks, incorporate these risks into relevant planning processes, and undertake actions to build resilience.

NRDC has long advocated for federal agencies to fully consider climate change risks in their policies and programs and take necessary steps to better protect people, property, and valuable taxpayer dollars from these risks. Our recommendations, which are explained in greater detail below, will help HUD to make communities, especially those with vulnerable populations, more resilient to the growing risks from a changing climate.

I. *Develop Guidance for Jurisdictions on How to Assess Natural Hazard Risks to Low- and Moderate-Income Residents and Incorporate Hazard Mitigation and Resilience Into HUD Planning Processes*

NRDC fully supports the Proposed Rule's requirement for jurisdictions to assess natural hazard risks to low- and moderate-income residents, including how risks might increase due to climate change, when developing a Consolidated Plan.² This requirement represents a positive step forward in helping communities prepare for a changing future and increasing natural hazard risks.

We also appreciate HUD's recognition that there are a variety of data and other resources available from federal agencies and other credible sources for jurisdictions to consider when conducting this analysis. However, given the vast and nearly unlimited volume of available data, findings, and methods on climate change and natural hazard risks, we strongly encourage HUD to establish more specific guidance for jurisdictions on how to complete the required analysis. Such guidance should not only include a step-by-step process for assessing community vulnerability to climate change and natural hazard risks but also should facilitate the identification and incorporation of actions that build resilience to these risks in the consolidated planning process. One such resource referenced in the Proposed Rule is the *Community Resilience Planning Guide for Buildings and Infrastructure Systems* by the National Institute of Standards and Technology (NIST), which would allow jurisdictions to assess potential damages and other consequences resulting from natural hazard risks and identify corresponding risk mitigation solutions.

Developing more detailed guidance also would reduce the burden placed on jurisdictions by providing greater clarity on how to conduct a robust resiliency analysis. Further, this guidance would enhance consistency among and improve confidence in resiliency analyses as well as facilitate the review and approval of Consolidated Plans by HUD.

¹ See e.g., U.S. Global Change Research Program, *Climate Change Impacts in the United States: The Third National Climate Assessment at Ch. 2: Our Changing Climate* (2014), available at <http://nca2014.globalchange.gov/report/our-changing-climate/introduction>.

² Department of Housing and Urban Development; Modernizing HUD's Consolidated Planning Process To Narrow the Digital Divide and Increase Resilience to Natural Hazards, 81 Fed. Reg. 31,192 (May 18, 2016) (to be codified at 24 C.F.R. Pt. 91).

Additionally, NRDC supports the inclusion of a post-disaster review requirement in the final rule for jurisdictions impacted by a major disaster. As we have witnessed in recent decades, natural disaster events around the world have become both more frequent and more costly.³ Such events provide a valuable learning opportunity for jurisdictions to evaluate observed impacts on affected communities, reassess their vulnerability to natural hazard risks in light of this new information, and update the resiliency actions in their Consolidated Plan. A post-disaster review is even more necessary given the anticipated impacts of climate change on natural hazard risks.

II. *Align the Consolidated Planning Process with the State and Local Hazard Mitigation Plans developed for FEMA*

NRDC applauds HUD's recognition of the strong nexus between the Proposed Rule's resiliency analysis requirement and FEMA's hazard mitigation planning process. Over the past few years, we have successfully advocated for climate change and its projected effects on the frequency and severity of future natural hazards to be integrated into State Hazard Mitigation Plans (SHMPs). We agree with HUD that where possible jurisdictions should utilize the risk assessments and mitigation strategies contained within FEMA-approved local and state hazard mitigation plans (if those plans have been updated to include considerations of climate change's projected impact on hazard risk) as a resource when conducting the required resiliency analysis. Ensuring consistency between a jurisdiction's Consolidated Plan and any applicable hazard mitigation plan that considers climate change will only strengthen the ability of communities to comprehensively evaluate their vulnerability to natural hazard risks and meaningfully implement mitigation actions that address those risks. Aligning these plans also will allow for jurisdictions to coordinate and maximize the use of HUD and FEMA funding programs to implement strategies that increase natural hazard and climate change resilience.

To facilitate alignment of these critical planning documents, NRDC supports the Proposed Rule's revision to the Consolidated Plan regulations regarding consultation and citizen participation requirements. While jurisdictions have likely exceeded these minimum regulatory requirements, explicitly requiring consultation with agencies responsible for managing floodprone areas, public land or water resources, and emergency management when developing a Consolidated Plan will help ensure consistency and coordination among public agencies.

III. *Ensure that Consolidated Plans and Use of Formula Block Grant Programs Comply with the FFRMS*

Executive Order 13690 (EO 13690) established the FFRMS, which is a necessary and prudent update to the pre-existing federal floodplain management standard established by Executive Order 11988 (EO 11988). The FFRMS not only reinforces the original intent of EO 11988 – “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,”⁴ but expands upon it by requiring the

³ Munich RE, *NatCatSERVICE Loss events worldwide 1980-2014* (January 2015), available at http://www.preventionweb.net/files/44281_19802014paketworldusde4zu3.pdf.

⁴ Exec. Order No. 11988, 42 Fed. Reg. 26,951 (May 24, 1977), 3 C.F.R.117 (1977 Comp.).

federal government to “take action, informed by the best-available and actionable [climate] science,” to improve the nation’s resilience to flooding.⁵

The importance of transitioning from an emphasis on flood protection to a broader focus on flood risk management cannot be overstated. Floodwaters can never be completely controlled nor the risks associated with flooding completely eliminated. This is especially true when the impacts of climate change are considered. The risk of flooding is no longer static, but is now a dynamic and moving target due to sea level rise, shifting precipitation patterns, and other climate change impacts. Instead, integrated risk management techniques, such as building in alternative and less hazardous sites, preserving open space, restoring and enhancing natural hydrological functions, and assessing how a suite of strategies can provide complementary flood risk reduction benefits, are better suited for minimizing the risk of damages from flooding.

Federal floodplain management policy, though not always practice, has long aimed to achieve a reduction in the loss of life and damage caused by floods and the preservation and restoration of the natural resources and functions of floodplains. It is a wise use of the floodplain to achieve both of these goals. Effective implementation of EO 13690 and the FFRMS will help harmonize current disparities between policy and practice.

As NRDC has previously recommended to HUD,⁶ the forthcoming proposed rule for incorporating the FFRMS into HUD’s regulations and operating procedures must achieve the following:

- Utilize the climate-informed science approach in coastal zones to determine flood risk;
- Establish the substantial improvement/damage threshold at a maximum of 50 percent;
- Comply with state, tribal, territorial, and local government flood risk standards when such standards are more protective than the FFRMS;
- Narrowly define what constitutes an emergency action;
- Evaluate flood risks even if building behind structural flood risk management systems, including the risk of flooding should the structure fail or be breached; and
- Incorporate the FFRMS into agency regulations and operating procedures within 18 months.

Further, HUD must ensure that Consolidated Plans and use of the various formula block grant programs comply with the Department’s FFRMS rule. By doing so, HUD can better protect people and property and consistent with EO 13690, more effectively prevent the use of federal resources for risky investments in the nation’s floodplains.

IV. *Compile and Make Publicly Available Data on the Number of Low- and Moderate-Income Housing Units and Residents at Risk from Flooding*

As the Proposed Rule requires jurisdictions to assess natural hazard risks to low- and moderate-income residents during completion of a Consolidated Plan’s required housing market analysis, HUD should compile and make publicly available data on the number of low- and moderate-income housing units and residents at risk from flooding. This information will be useful for a

⁵ Exec. Order No. 13690, 80 Fed. Reg. 6,425 (Feb. 4, 2015).

⁶ Robert Moore, NRDC, Letter to HUD Secretary Julián Castro, Jan. 12, 2016.

variety of community planning purposes, will help educate residents about their level of flood risk, and could encourage residents to purchase flood insurance policies to better manage their risks. Transparency and ready access to data are critical for making well-informed and sound decisions about where to live and how to guard against risks.

* * *

NRDC respectfully requests consideration of our recommendations and would like to reiterate our appreciation for this opportunity to provide comments on the Proposed Rule. If you would like to discuss these comments in more detail, please do not hesitate to contact us at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Chou", with a long horizontal flourish extending to the right.

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