Office of General Counsel
Department of Housing and Urban Development
451 7th St. SW, Room 10276
Washington, DC 20410–0500

RE: Docket No. FR-5423-P-01, Floodplain Management and Protection of Wetlands

Dear Docket Manager:

In response to the above referenced docket, the Association of State Floodplain Managers (ASFPM) is submitting comments regarding proposed changes as they relate to the Department of Housing and Urban Development’s (HUD) use of Executive Order (EO) 11988 and EO 11990.

ASFPM and its 32 Chapters represent over 14,000 state and local officials and other professionals who are engaged in all aspects of floodplain management and hazard mitigation, including management, mapping, engineering, planning, community development, hydrology, forecasting, emergency response, water resources, and insurance for flood risk. All ASFPM members are concerned with working to reduce our Nation’s flood-related losses. Many of our state members are designated by their governors to coordinate and implement the National Flood Insurance Program, and many others are involved in the administration and implementation of FEMA’s mitigation programs. For more information on the Association, our website is:  http://www.floods.org.

ASFPM’s comments are organized similar to that outlined in the Federal Register notice regarding the proposed changes.

Item #1. Codification of procedures authorized in EO 11990.

ASFPM Comment: ASFPM has no comments on this item.

Item #2. Allowance of HUD and HUD’s recipients of assistance to use Section 404 Clean Water Act permits in lieu of performing the first five steps of the 8 Step Process.

Dedicated to reducing flood risk and losses in the nation.
ASFPM Comment: ASFPM supports this rule change. There is a lot of redundancy between Section 404 requirements and the 8 Step Process for EO 11990 purposes. Reducing unnecessary redundancy is beneficial for all parties involved.

Item #3. Broaden the use of the 5 Step Process for repairs, rehabilitations, and improvements.

ASFPM Comment: ASFPM does not support this proposed rule change. As described in the notice, the 5-Step process eliminates steps 2, 3 and 7 of the 8-Step Process. These steps are:

- Step 2: Provide for public review
- Step 3: Identify and evaluate practicable alternatives to locating in the base floodplain
- Step 7: Issue findings and a public explanation

These steps are important in informing the public of proposed actions in floodplains and to explore alternatives to the proposed action. As described in the notice, the 5-Step Process currently applies to rehabilitations that include repair, reconstruction, modernization, or improvement of a structure that does not result in more than a 20% increase in the number of dwelling units.

ASFPM has serious concerns about some applications of the current 5-Step Process and is opposed to expanding the application of the 5-Step Process as proposed. For example, under 24 CFR 55.12(a)(2), the purchase or refinance of what would be deemed critical facilities (hospitals, nursing homes, assisted living facilities, etc.) in communities having good standing under the NFIP is allowed to proceed under the 5-Step Process (and not subject to an alternatives analysis). There could be significant federal investment in such facilities and not analyzing alternatives perpetuates continued federal investments of these types of critical facilities in floodplains, regardless of their protection level. This exposes taxpayers to future costs. Further, critical facilities must be operable and accessible during flood events; an effective alternatives analysis would look at these factors and require mitigation of impacts.

ASFPM believes that an alternatives analysis as required under EO 11988 should be done for any significant federal investment in a floodplain. Furthermore, proposed changes to this rule to allow more actions to fall under the 5-Step Process, such as those proposed in 24 CFR 55.12(a)(3) and (4) - even with the thresholds proposed, could cause significant impacts as it relates to floodplain resources. ASFPM also recommends that the proposed revisions of this section stipulate that critical actions or proposed actions in floodways / coastal high hazard areas be subject to the 8-Step Process.

It is especially important that the public be aware of any proposed significant federal investment in the floodplain. By eliminating both steps 2 and 7 there is effectively no notification of the public nor allowance for public comment. While ASFPM generally supports streamlining project approvals where possible, the proposed rule eliminates significant steps of EO 11988.

Item #4. Require the use of preliminary flood maps and advisory base flood elevations in post-disaster situations where they may be deemed best available data.

ASFPM Comment: ASFPM supports this proposed rule change. Past experience has shown that flood events frequently point out the inadequacy of older flood maps and studies. ASFPM strongly supports this requirement to use updated and preliminary data where existing data is not the best available information.

Item #5. Exempt certain activities from the 8-Step Process for floodplain management compliance.
ASFPM Comment: ASFPM does not support this proposed rule change. Wholesale exemption of activities from EO 11988 is extremely problematic. The notice proposes leasing structures (except those that are in floodways or coastal high hazard areas, and critical actions in either the 100-year or 500-year floodplains), special projects to increase access for those with special needs, activities involving ships or water-borne vessels, and activities that preserve natural and beneficial functions of floodplains, to be exempt from the entire 8-Step Process. ASFPM could accept a limited exemption of activities that preserve or enhance natural and beneficial functions of floodplains because by definition these activities are not going to result in flood losses and are compatible uses of the nation’s floodplains.

ASFPM does not, however, support further exemptions. For each proposed category of exemption, there could be significant federal investments in the floodplain. As mentioned in item #3, federal investments, especially significant ones, must be subject to the scrutiny from alternatives analysis, to public notices, to modification of the action to minimize threats to life and property. Leasing properties can lead to poor decisions and even speculative construction on what some deem as “cheap” land because they know there is a potential lease opportunity. In the past, this has occurred with leased Post Office facilities. Even with ships or water borne vessels, there could be less risky locations for ancillary facilities that service ships or vessels. In cases where there are not, the 8-Step Process requires the identification of impacts and risk minimization measures to be undertaken.

Item #6. Prohibition of HUD funding or FHA mortgage insurance for construction of new structures in Coastal High Hazard Areas.

ASFPM Comment: ASFPM supports this proposed rule change. Currently HUD may fund construction activities in the Coastal High Hazard Area as long as the structures meet 44 CFR 60.3(e). These minimum NFIP construction standards still result in significant residual risk, and the flood risk in these areas will likely increase, especially in light of current Sea Level Rise (SLR) projections. For this reason, we support this proposal to completely eliminate HUD funding for construction in these areas.

Item #7. Allows HUD or a responsible entity to adopt previous review processes that were performed by another responsible entity or HUD.

ASFPM Comment: ASFPM supports this proposed rule change. ASFPM understands that for complicated projects that blend funding from various sources, there may be duplication in EO11988 review. To the extent that duplication and redundancy can be eliminated while preserving a rigorous EO11988 process once for a project is sensible.

Item #8. Modifies the Categorical Exclusion (CatEx) from environmental review under NEPA for minor rehabilitation of 1-4 unit residential properties removing the qualification that the footprint of the structure may not be increased in a floodplain or wetland.

ASFPM Comment: ASFPM does not support this proposed rule change. Expanding the footprint of a building in the floodplain can increase risk to the subject property, adjacent properties, and may increase the base floodplain level. We recognize that reviewing what are perceived as minor improvements to existing structures can seem like a trivial matter. However, it has been ASFPM’s experience that the cumulative effect of continual encroachments into the floodplain can result in significant impacts on others, once again increasing the taxpayers exposure in future flood events.

Item #9. Requirement that all new construction of critical actions in the 100-year or 500-year floodplain be elevated to the 500-year base flood elevation.
Association of State Floodplain Managers, Inc.

March 23, 2012

ASFPM Comment: ASFPM supports this proposed rule change. It is essential that as a nation we recognize the unique functions, impacts, and investments of critical actions. Many times such actions (such as funding a community wastewater treatment facility or hospital) are among the most significant investments a community will make and such facilities must be operable during and after a flood event. As mentioned in the notice, consistency with the WRC guidance is a positive step as the WRC guidance is quite good as it relates to critical actions.

When issued in 1977, EO 11988 directed the heads of agencies to provide leadership in encouraging a unified effort to prevent unnecessary use of the Nation’s floodplains and to lessen the risk of flood losses. ASFPM applauds HUD for its effort with some of the proposed changes; however, we do have concern with others. Please do not hesitate to contact us if you have any questions.

Sincerely,

Sally McConkey, Chair

Larry Larson, Executive Director

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