

September 12, 2014

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 Seventh Street, SW.
Room 10276
Washington, DC 20410-0001

Re: Proposed Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program and Other Programs Fiscal Year 2015
Docket No. FR-5807-N-01

Dear Sir or Madam:

On behalf of the undersigned organizations, please find our comments on the above-referenced Notice for Proposed Fair Market Rents (FMRs) for the Housing Choice Voucher Program for Fiscal Year 2015 (FY2015). Our organizations represent thousands of firms involved in the multifamily rental housing industry, including the building, operation, and management of affordable rental properties. Several of our organizations are also affiliated with local associations that work with HUD field offices and public housing authorities (PHAs).

Our comments address two specific aspects of the current FMR methodology: (1) procedures HUD could implement to reduce the number of large year-to-year fluctuations in FMRs, which have been responsible for the bulk of the negative comment letters HUD has received on proposed FMRs in recent years and (2) Small Area Fair Market Rents (SAFMRs). In addition, we would like to commend HUD for the analysis and detail it has provided in recent FMR notices, which have greatly facilitated our ability to provide meaningful comments and for its decision to solicit comments from stakeholders before implementing another round of substantive methodological changes.

Reducing the Number of Large Fluctuations in FMRs

FMRs inevitably change drastically for at least a few areas in a given year. For example, the list of FMRs proposed for FY2015 shows declines of more than five percent in 47 metropolitan FMR areas. In eight of these, the decline was more than 10 percent.

Declines of this magnitude cause complications for property owners, tenants and PHAs. For example, a reduction of more than five percent in published FMR triggers a rent reasonableness analysis on the part of the PHA with jurisdiction over the area (Housing Choice Voucher Guidebook, directive 7420.10G). If the PHA's analysis finds that the rent being charged by a property owner is no longer reasonable, the owner will be required to reduce the rent. If the owner determines that this reduction will adversely affect the financial stability of the property, the owner will likely choose to leave the program, and the tenant will then have to move. Another consequence of a large reduction in FMRs is that owners may have to defer maintenance items because cash flows are no longer adequate to cover operating expenses.

As a result, it is not surprising that large year-to-year fluctuations in general—and declines of this magnitude in particular—have traditionally been responsible for the bulk of negative comments HUD has received in response to the published list of proposed FMRs.

Changes in FMRs, of course, reflect statistical error as well as underlying economic trends. HUD noted this explicitly in its October 3, 2013, notice on final FMRs for FY2014, stating “It is not clear how much of the variation is due to actual market movement and how much is variability in the American Community Survey (ACS) sample.” The current FMR methodology has now been in place long enough to analyze changes in successive years, allowing stakeholders to see that there is, in fact, a tendency for changes in one year to be reversed the next. In the FMR county-level files, for example, the simple correlation between the changes in proposed FMRs for FY2014 and FY2015 is -0.4, indicating some (but not a perfect) tendency for a change in the FMR to reverse itself the following year. This mean-reverting tendency is more likely to be the product of statistical error than an underlying economic trend that reverses itself rapidly and provides additional justification for seeking methods that would limit fluctuations in a given year and generally smooth the series.

In the past, HUD has rejected methods such as imposing floors or caps and conducting its own rent surveys. HUD contends that caps and floors violate the statute as currently written, and that in recent years it has lacked sufficient funding to conduct its own surveys.

However, in the October 3, 2013, final FMR notice, HUD also stated “Most of the large changes in FMRs for smaller metropolitan and nonmetropolitan counties come from changes in the one-year ACS data. HUD will examine possibly limiting the application of one-year ACS data based on the size of the margin of error of the estimate of recent mover rent. Members of the public should be aware, however, that changes in methodology designed to limit FMR volatility in future years may result in substantial volatility of FMRs in the year of implementation.”

We believe an approach that would place additional restrictions on the use of the one-year ACS data has merit. The current criterion for judging the statistical reliability of a recent mover factor based on the one-year ACS data is a two-bedroom recent mover gross rent estimate with a margin of error no bigger than the estimate itself. This is a very mild criterion for statistical reliability, less stringent than the one used in any other application with which we are familiar. HUD’s warning that a change in methodology to limit volatility may itself cause volatility in the year implemented is well taken. However, this could be mitigated by employing volatility along with a more stringent margin of error as a joint alternate criterion for rejecting a recent mover gross rent estimate.

For example, HUD would continue to reject a recent mover estimate if it has a margin of error larger than the estimate itself.

Then, for an estimate that passes this mild test, HUD could apply a multiple-criteria second test, such as the following:

- *if* the margin of error on a recent mover estimate is greater than, say, 10 percent (rather than 100 percent) of the estimate, **and**
- *if* using the recent mover factor based on that estimate would cause the two-bedroom FMR computed for the area to decline by more than five percent, **and**
- *if* the two-bedroom FMR for the area would be higher if based on an alternative recent mover factor for a larger geographic area,
- **then** consider a recent mover factor based on next geographic area in the hierarchy and apply the same tests.

We strongly recommend that HUD investigate a method such as this as a way to limit the large and often temporary downward movements in FMRs. Such a method could forestall many of the negative comment letters typically triggered by these large changes.

Small Area Fair Market Rents

The Notice states that, so far, use of SAFMRs is limited to public housing authorities in the Dallas, TX HMFA, the Housing Authority of the County of Cook (IL), the City of Long Beach (CA) Housing Authority, the Chattanooga, TN Housing Authority, the Town of Mamaroneck (NY) Housing Authority, and the Laredo, TX Housing Authority.

We continue to have serious concerns about the use of SAFMRs to manage the voucher program or other housing programs. We understand that there are concerns about geographic concentration and limited housing choices for voucher holders in certain parts of the country. However, the most important factor in limiting choices of voucher holders is the policy shift that occurred in the 1990s which lowered all FMRs from the median or 50th percentile of the rent distribution, first to the 45th and then to the 40th percentile. A measure like SAFMRs that establishes significant differences in rent and subsidy limits within the same housing market fails to address the fundamental issue of FMRs that are too low to allow the voucher program to work as intended within a market area and is likely to have adverse consequences.

An important example of an adverse consequence is the potential to significantly reduce the resources going to lower-income/lower-rent neighborhoods and increase the resources going to higher-income/higher-rent neighborhoods. The change not only reduces rents but, to the extent that SAFMRs cause Section 8 tenants to move out of ZIP code areas that have low rents relative to other locations within an FMR area, it also reduces the available pool of tenants for rental properties developed and operated under federal and state housing programs, such as HOME, CDBG, government-insured loans, or various types of tax incentives such as the Low Income Housing Tax Credit (LIHTC) program. Many of these programs target affordable housing developments to distressed areas as part of a plan to foster redevelopment and stabilize neighborhoods. Because rents are restricted in affordable properties to ensure they are affordable to very-low and low-income households, there is little additional cash flow available after paying debt service and operating costs, leaving no cushion to absorb negative shocks.

We believe that, before HUD offers additional uses of SAFMRs, it should conduct and complete an evaluation of the demonstration program. We understand that HUD is not requiring metropolitan housing authorities to use SAFMRs at this time and would not do so until the demonstration has been evaluated and only then if the evaluation shows that SAFMRs achieve the intended policy objectives. However, HUD seems to be very focused on using SAFMRs in multiple ways without having first completed its evaluation.

Further, our organizations have expressed concern previously to HUD that its proposed research questions are not adequate to make substantive conclusions about the effectiveness of SAFMRs in meeting any particular policy objective. We offered nine additional questions for HUD's consideration in the evaluation of the demonstration. We again ask when HUD intends to publish its evaluation and solicit further comments from stakeholders on this important issue.

Commendable Level of Detail Added to Recent FMR Releases

Finally, we would like to commend HUD on adding a number of helpful details, beyond those strictly required by statute or regulation, to the FMR releases in recent years. Important examples include the following:

- Adding percent and dollar changes from the previous year on the proposed FMR county-level data file;
- Describing the impact of 1-year ACS data on FMR changes in response to public comments in the final FY2014 FMR notice;
- Providing advance notice of HUD's intent to solicit comments on topics such as the new metropolitan area definitions.

Being able to obtain percent and dollar changes directly from a publicly available data file greatly facilitates our ability to analyze proposed FMRs. HUD's description of the impact of 1-year ACS was educational and instrumental in enabling us to fashion our above recommendation for limiting large FMR fluctuations. Developments such as the incorporation of OMB's latest metropolitan area definitions into the ACS can have large and important impacts on FMRs. Soliciting public comments on these topics and providing advance notice to the public demonstrates an admirable effort on HUD's part to work cooperatively with industry stakeholders.

Thank you for this opportunity to comment on the proposed FY2015 FMRs. If you have any questions, please contact Paul Emrath, Vice President, Survey and Housing Policy Research, National Association of Home Builders, at pemrath@nahb.org.

Sincerely,

Council for Affordable and Rural Housing (CARH)
Institute of Real Estate Management (IREM)
LeadingAge
Mortgage Bankers Association (MBA)
National Affordable Housing Management Association (NAHMA)
National Apartment Association (NAA)
National Association of Home Builders (NAHB)
National Association of Housing Cooperatives (NAHC)
National Housing & Rehabilitation Association (NH&RA)
National Leased Housing Association (NLHA)
National Multifamily Housing Council (NMHC)