Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW
Room 10276
Washington, DC 20410-0001

Re: [Docket No. FR-5962-N-01] Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program and Other Programs Fiscal Year 2017

To Whom It May Concern:

On behalf of our agency members--who manage 1.7 million Housing Choice Vouchers--and the more than 20,000 individual members that make up the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments in response to the notice published in the Federal Register on June 16, 2016, titled “Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program and Other Programs Fiscal Year 2017.” NAHRO would like to thank the United States Department of Housing and Urban Development (HUD or the Department) for the opportunity to comment on these proposed Fair Market Rents (FMRs).

Many of NAHRO’s concerns from past years have been fully or partially addressed with some of the provisions included in the passage of the Housing Opportunity Through Modernization Act of 2016 (HOTMA). At the same time, the passage of this legislation has raised some new concerns that this comment letter addresses. Finally, some of the concerns that have plagued FMRs in past years remain. This comment letter is divided into three main sections. The first section reviews some of NAHRO’s most important concerns with FMRs, the second section reviews some of NAHRO’s previous recommendations and makes additional recommendations, while the third section responds to HUD’s specific solicitations for comment.

NAHRO’s Concerns

In previous years, NAHRO’s two major concerns regarding the FMRs were that they were inaccurate and excessively volatile. The concern about inaccuracy still remains, as does the concern about excessive volatility, although this has been partially alleviated by the passage of the HOTMA.
The proposed FY 2017 FMRs Do Not Represent On-the-Ground Rental Market Conditions

As in previous years and after consulting with our membership, NAHRO does not believe that the FMRs represent accurate on-the-ground rental market prices. The accuracy of FMRs is a function of the underlying data set and the methodology used to convert the data set to the FMRs. The source of the data remains the same as last year. The methodology for calculating the FMRs also remains the same from the final FMRs published in FY 2016, though NAHRO would like to complement HUD on listening to NAHRO and adopting a “forward trending” methodology between the proposed FY 2016 FMRs and the final FY 2016 FMRs, which NAHRO hopes made the final FY 2016 FMRs more accurate. While a step in the right direction, NAHRO does not believe that this change was drastic enough to create fully accurate FMRs--especially in those instances where a place may have a tight rental market.

Changes Stemming from HOTMA Make Volatility a Lesser Concern than in Previous Years, but Still Require Action to Stabilize

The provision in HOTMA that allows PHAs to hold harmless payment standards when there has been a reduction in an area’s FMR partially alleviates some of NAHRO’s previous concern about volatility. NAHRO encourages HUD to promulgate rules or guidance to allow the implementation of this provision as soon as possible. This provision will allow PHAs to maintain payment standards for program participant households despite downward shifts in FMRs.

While this is a welcome change, NAHRO notes that it does not completely solve the problems associated with volatility. New program participants that enter in a year with a large downward shift in area FMRs will still have to begin with a lower payment standard than is necessary. Reforming the FMR methodology to ensure smaller year-to-year shifts in FMRs is still required. HUD has previously indicated that it takes FMR volatility seriously, and it should continue to think seriously about ways that it can reduce volatility.

Inaccurate FMRs Have Negative Programmatic Impacts

As NAHRO has stated in previous comments, inaccurate FMRs have strong negative impacts on PHAs’ ability to serve Housing Choice Voucher (HCV) participants. Low-income families that rely on the HCV program will feel the greatest impact in areas where the published FMRs are too low relative to actual costs. These low FMRs cause cost burdens for voucher-assisted households to increase, sometimes to the point of forcing low-income families to seek housing in areas with greater concentrations of poverty and lower-quality housing stock. In areas where the published FMRs are too high relative to actual market costs, PHAs’ per voucher HAP costs will increase, resulting in fewer households being served.

Inaccurate FMRs can lead to additional programmatic costs. In instances where a PHA believes that its FMRs are inaccurate, it is faced with the additional burden of having to apply for waivers from HUD for exception payment standards, though there is no guarantee that HUD will approve them. While HUD has made it easier to utilize higher payment standards in some instances (e.g., when the household is serving a person with a disability), the best solution is not exception payment standards, but rather accurate FMRs.
NAHRO’s Recommendations

HUD Should Use More Timely Data When Calculating FMRs

HUD should use more timely data when calculating FMRs. While NAHRO appreciates the ease with which HUD can use the ACS standard tabulations, this data is not timely enough to support accurate FMR calculations. HUD should work to develop a method to incorporate more recent data into its published FMRs rather than continue to rely on PHA-funded studies to correct inaccuracies in FMRs. While PHAs may appeal proposed FMRs by conducting FMR surveys and submitting the results to HUD, this is not an appropriate long-term solution for two reasons. First, the expense of conducting these surveys makes them prohibitively expensive for most PHAs. As a result, PHAs facing tight budgetary constraints have no recourse and are forced to accept FMRs that do not provide an accurate representation of their current rental market. Second, PHAs’ comparative advantage lies in activities involving and related to providing affordable housing and administering voucher programs. They are not well suited to conducting surveys and compiling sophisticated statistical analyses. This is a function that would be better suited for HUD’s Office of Policy Development and Research (PD&R). According to PD&R’s website, PD&R is “responsible for maintaining current information on housing needs, market conditions, and existing programs, as well as conducting research on priority housing . . . issues.”

HUD Should Continue to Refine its Methodology for Calculating FMRs

NAHRO was pleased that HUD “replaced the historical-based annualized change in gross rent trend factor with a forward-looking forecast” for the final FY 2016 FMRs. Using “national forecasts of the rent and utility components of [the Consumer Price Index]” makes more sense in calculating FMRs rather than looking to the past and trending forward. This resulted in a higher trend factor for the final FY 2016 FMRs over the proposed FY 2016 FMRs. HUD should continue to think innovatively about ways that it can change the methodology to accurately capture FMRs. Each methodological change that brings HUD’s FMRs closer to actual rental prices results in much better on-the-ground results for HCV program participants.

HUD Should Allow Separate Public Comment on the Utility Component of FMRs

As mentioned in previous comments, NAHRO believes that HUD should allow interested stakeholders to comment on the utility component of FMRs. We recommend that HUD provide PHAs with the utility data it gathers from the annual FMR calculations so that PHAs may evaluate the percentage change in the utility component from year to year. NAHRO also encourages greater transparency in the methodology of how utility costs within gross rents are determined. Given the magnitude of utility costs nationwide and their significant impact on affordability, HUD’s stakeholders should have the opportunity to comment on this process separately from FMRs.

HUD’s Specific Solicitations for Comment

What should be considered “material changes” in FMR estimation methods for purposes of triggering public notice and comment under HOTMA?

HUD should take an expansive view of what constitutes a “material change” in FMR estimation methods. Any methodological change that alters the determination of at least one FMR from what it would be under the methodology previously used by HUD should be considered a “material change.” Under this
rule, updated data from the same source would not constitute a material change. NAHRO’s rationale behind this recommendation stems from NAHRO’s belief in open, transparent government that clearly explains its reasoning behind changes and allows feedback, which NAHRO believes is in the best interest of program participants and all other interested stakeholders. NAHRO believes that this will put in place safeguards to prevent future administrations from manipulating FMR formulas without informing the public.

Although this is an expansive definition, this would not encompass all changes. Non-substantive changes (e.g., renaming a metropolitan statistical area) would not fall within the ambit of this rule. Only changes that impact how a PHA can spend money (since PHA payment standards are based on FMRs) would be required to be considered material.

**What other effects of changes in FMR estimation methods should HUD consider in determining whether such changes are “material”?**

As noted above, only those changes that would have the effect of changing how a PHA may spend its money (in this case, set its payment standards) would need to fall under “material change.”

If HUD should choose not to adopt this simple, but fair rule, then it should consider the time horizon over which a change may occur. For example, even if a change did not meet whatever threshold HUD sets in the year immediately following the methodological change, HUD should consider the effect of the methodological change over a five or ten year time horizon. This will prevent situations where HUD makes a methodological change that is not considered “material” over a short time period (without the input of interested stakeholders), but which may have drastic changes over five years or ten years. This will prevent methodological changes that may have minimal short term effects, but large long term effects from being implemented without the appropriate feedback from interested stakeholders to prevent unintended consequences.

**Should HUD consider any and all changes made to the FMR estimation methods to rise to the level of a material change?**

No, HUD should not consider any and all changes made to FMR estimation methods to rise to the level of a material change. First, this would contradict the plain meaning of the HOTMA legislation. The Department lacks the authority to promulgate regulations that contradict the plain meaning of a statute. Second, non-substantive changes do not require stakeholder input. Renaming a metropolitan statistical area or using an updated version of a data source that was previously used do not require use of the notice and comment process. Changes that will impact FMRs, which will impact how PHAs can spend money related to the HCV program, should be considered material.

Asking to allow for public input to changes to methodology that impact how a PHA can spend its money is not unreasonable. In many scenarios, changes involving money are deemed to be important. For example, in a scenario involving a contract between two parties where one party is selling something to another party, price is considered a material term. One party cannot unilaterally change it without breaching the contract. This is similar. FMRs are so important that any change in methodology, which will impact how any PHAs can spend their money, should be subject to the scrutiny that the informal rulemaking process (i.e., the notice and comment process) entails.
Requests for FMR Reevaluations

HUD should ensure that all groups remain able to comment on the methodological process during the request for FMR reevaluations, even if there have been no methodological changes. This allows interested stakeholders to have a method to signal their dissatisfaction with the current FMR methodology and data sources and allows them to pressure HUD to continually innovate in determining mechanisms to create accurate FMRs. This pressure incentivizes HUD to continually work on creating better FMRs.

NAHRO greatly appreciates the opportunity to comment on these proposed FY 2017 FMRs. We look forward to working with HUD in the future to further refine the Department’s methodology to ensure the greatest accuracy in calculating FMRs.

Sincerely,

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