September 15, 2014

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

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

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO) and its members, we would like to thank you for the opportunity to comment on the Department’s Proposed Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program and Other Programs Fiscal Year 2015. NAHRO is the nation’s largest and oldest housing and community development organization supporting the provision of adequate and affordable housing and strong, viable communities for all Americans — particularly those with low and moderate incomes. NAHRO members administer, own and manage a substantial portion of dwelling units/vouchers in the Section 8 tenant-based, Public Housing, Section 8 project-based programs as well as HOME, Shelter-Plus Care and Low-Income Housing Tax Credit programs.

NAHRO has filed similar comments since FY 2006 with recommended improvements to HUD’s FMR methodology to no avail. As a result, NAHRO is resubmitting several of our prior recommendations and respectfully requests that the Department adopt them before publishing the Final FY 2015 Fair Market Rents for Existing Housing.

**NAHRO’s Analysis of HUD’s FMRs on County Basis**

As in prior years, HUD’s proposed FY 2015 FMRs reveal great variability from year to year, and national FMRs have fluctuated dramatically from FY 2010 to FY 2015. Figure 1 shows that national FMRs, on average, increased by nearly eight percent from FY 2012 to FY 2013, were nearly flat from FY 2013 to FY 2014, and are proposed to increase by nearly three percent in FY 2015.
FMR changes from FY 2010 to FY 2015 on the local level have varied greatly as well. For instance, HUD’s two-bedroom FMRs in Autauga County in the Montgomery, AL MSA remained the same from FY 2010 – FY 2011; decreased by two percent from FY 2011 – FY 2012, increased by nine percent from FY 2012 - FY 2013, decreased by ten percent from FY 2013 – FY 2014 and then are proposed to increase by eleven percent from FY 2014 – FY 2015. It is, however, unclear which elements of the discretionary methodologies HUD uses to formulate FMR values are responsible for these swings, which are not mirrored by data from the actual rental housing markets around the country. Unlike the FMRs, actual rental markets have not reversed course so dramatically in the last five years.

NAHRO’s analysis of HUD’s proposed FY 2015 Fair Market Rents on a county-by-county basis, by bedroom size and a year to year review is available at http://www.nahro.org/sites/default/files/searchable/NAHRO's County Analysis of HUD's Proposed FY 2015 Fair Market Rents.pdf.
Programmatic Impacts of HUD’s Proposed FY 2015 FMRs

The extreme variability in HUD’s FMRs from year to year has adverse impacts on HUD’s existing housing programs, which assist approximately five million low-income households. For example:

- In communities where HUD’s proposed FY 2015 FMRs are too low, housing cost burdens for voucher-assisted households will increase, forcing low-income families to seek housing in areas with greater concentrations of poverty and lower quality housing stock.

- In communities where HUD’s proposed FY 2015 FMRs are too high, PHAs’ per voucher HAP costs will increase, resulting in fewer leased households and reduced voucher utilization rates.

- From FY 2014 to FY 2015, two-bedroom FMRs declined by more than ten percent in 33 metro areas and 60 non-metropolitan areas. With dramatically reduced FMR values, participating property owners will be less likely to renew their contracts for existing assisted dwelling units with low-income households and more likely to rent to higher-income households. Prospective property owners will be less likely to participate in the Section 8 HCV program. Ultimately, extremely low-income and very low-income voucher-assisted households will experience great difficulty in securing affordable, decent, safe and sanitary housing.

- Federal regulations require that PHAs conduct a rent reasonableness study when the published FMR decreases by at least five percent. In circumstances where FMRs are inaccurate, it is imprudent for HUD to impose expensive cost studies on PHAs that are already experiencing financial difficulty, particularly in light of years of insufficient administrative fee funding.

- PHAs that believe their FMRs are inaccurate may apply for waivers to HUD for exception payment standards. However, there is no guarantee that the Department will approve them. Further, given the recent Congressional actions (H.Amdt.827 and H.R.5374) that seek to limit the Department’s authority to grant exception payment standards in excess 120 percent of the FMR, NAHRO is concerned about
PHAs’ future ability to avail themselves of higher payment standards to support voucher operations.

NAHRO’s Recommendations

NAHRO recommends the following improvements to HUD’s proposed FY 2015 Fair Market Rents and estimating methodologies for existing housing programs:

- Validate prior year FMRs with 1-Year ACS data for each prior year
- Rescind adoption of the new OMB areas and readopt FY 2005 FMR area definitions
- Implement a five percent cap and floor on year-to-year changes to FMRs
- Restore AAF values based on the previous OMB areas (FY 2005 and prior years)
- Allow separate public comment on the utility component of FMRs
- Publish Census 2000 rent data by bedroom size and rental market
- Continue use of state non-metropolitan minimum FMRs for HCV program
- Articulate applicability of FMRs to the Public Housing Program

Validate prior year FMRs with 1-Year ACS data for each prior year

Because of lags in processing ACS survey data, most ACS-based FMR estimates are put into effect two or three years after the data are collected. NAHRO has recommended since FY 2007 that HUD undertake a validation process to observe and improve any flaws in its discretionary estimating methodologies to reduce variability in FMRs from year to year. Starting with FY 2006 data and then repeating for each subsequent year, the Department should use updated 1-year ACS data to determine what values would have been and compare it with the final FMR values published for each area using the Department’s FMR estimating methodologies. Undertaking this exercise retroactively would provide a validation mechanism to assess which aspects of the discretionary estimating methodologies are less accurate in estimating actual FMR values. This validation process would likely yield important information that HUD PD&R could use to improve its methodologies for FY 2015 and beyond while still adhering to the statutory provision governing HUD’s formulation of FMRs.

Rescind adoption of the new OMB areas
Readopt FY 2005 FMR area definitions

We again note the controversy created by the Department’s adoption of new OMB area definitions in FY 2006, which do not reflect the geography of housing markets around the country. With the adoption of the new OMB areas in FY 2006, many formerly non-metropolitan areas were combined with metropolitan areas. Specifically, by combining some non-metropolitan counties with metropolitan counties, FMRs were significantly diluted in metropolitan areas. Once 51 formerly non-metropolitan counties were converted to metro areas to be consistent with OMB’s area definitions, FMR metro values
for the other counties in those metro areas decreased. NAHRO believes that, in addition to flaws in HUD’s estimating methodologies, HUD’s proposed FY 2015 FMRs are further distorted by the Department’s use of these OMB areas. To that end, NAHRO reiterates our call for the Department to return to the FMR area definitions in place for FY 2005 and prior years.

For PHAs participating in HUD’s mall area FMR demonstration, FMRs based on zip codes resolved the problem described above. However, there may still be some zip codes that straddle both non-metropolitan and metropolitan counties where the demonstration does not solve this problem. While we are encouraged that FMRs are more accurate for many zip code areas under the demonstration, we firmly believe that corrections are still needed for the larger problem stemming from HUD’s 2006 decision to adopt the OMB areas to determine FMRs.

Implement a five percent cap and floor on changes to FMRs

NAHRO has also recommended since FY 2006 that the Department implement a five percent cap and floor for those changes to FMRs in areas that would otherwise exceed a five percent change from the previous year as a result of HUD’s adoption of OMB’s area definitions, with the exception of areas that experience a natural disaster, major economic change or a significant change in the supply and demand of rental housing. On average in FY 2015, across all metropolitan and non-metropolitan areas, two-bedroom FMRs increased by less than three percent from FY 2014 to FY 2015. However, individually, there were some large swings in both directions. For instance, from FY 2014 to FY 2015, two-bedroom FMRs declined by more than ten percent in 33 metro areas and 60 non-metropolitan areas. Some, but not all, of the larger declines occurred in small metro areas. In the last five years, FMRs have most frequently fluctuated between a zero to five percent increase. By implementing a five percent cap and floor on changes to FMRs, the Department could enable PHAs to better predict changes in annual FMRs and plan their budgets accordingly.

HUD previously stated that it would have to make a regulatory or legislative change in order to limit the FMR change to no more than five percent from the previous year. NAHRO contends that this recommendation can be implemented in FY 2015 within HUD’s existing statutory and regulatory
purview, and welcomes the opportunity to discuss this further with the Department. Having viewed HUD PD&R's individual documentation for specific FMR areas, we did not see any information, explanation or calculation about the annual and cumulative impacts on proposed FMR values which result from HUD’s adoption of OMB areas from FY 2006 to the present. In the name of transparency and accountability, we believe that this is an important feature that HUD PD&R should build into its processes. Absent providing this information, program stakeholders are left with having to take HUD’s word for the accuracy of its FMR calculations.

**Restore AAF values based on the previous OMB areas**
**(FY 2005 and prior years)**

The adverse impact each year of HUD’s consolidation of AAFs on all FMR values nationwide has been significant. From the time of the adoption of the new OMB areas in FY 2006 to the present, the number of AAF values for regional metropolitan counties and non-metropolitan counties were reduced by 50 percent and the corresponding inflation factors were rendered less accurate. Given that the AAFs apply to all PHAs’ voucher renewal funding, the diluted value of many PHAs’ AAFs has contributed to the underfunding of their voucher programs in recent years. We hope that HUD PD&R does everything in its power to correct for prior inactions and restores AAF values based on the OMB areas used in FY 2005 and prior years.

The final report issued on October 14, 1999 by the Negotiated Rulemaking Advisory Committee and prepared by The Consensus Building Institute stated that from 2000 – 2002, HUD and other Section 8 stakeholders would continue to seek ways to improve the annual adjustment process. The report, reached through consensus, stated that “HUD will create a stakeholder advisory group to assist in developing an adjustment factor research and pilot testing strategy….The researchers implementing the strategy will gather data on PHAs' actual costs, including data on changes in rents, tenant incomes, bedroom size distribution and other cost factors. They will seek to develop adjustment factors and procedures that are more accurate and timely than the current AAFs. They will pilot test the use of these factors and procedures with a representative sample of PHAs…If HUD and other stakeholders are able to develop adjustment factors and procedures that are more accurate and timely than the current AAFs, then HUD will revise the allocation system to use the more accurate factors and procedures.” To the best of our knowledge, these actions have either not been acted upon or not been made known to the public.

**Allow separate public comment on the utility component of FMRs**

NAHRO recommends that HUD provide an opportunity for interested parties to comment on the utility component of FMRs (24 CFR § 982.517) through a separate process than that used to comment on the proposed FMRs themselves. To inform these comments, NAHRO recommends that HUD provide PHAs with the utility data it gathers from the annual FMR calculations so that each PHA can evaluate the percentage by which utilities changed each year. At present, while there is a polling methodology with regard to rents, there is no mechanism available which relates to determination and presentation of utility bill data.
The Legal Services Client Coalition published a paper entitled, "The Role of Utility Costs in Setting Fair Market Rents for Section 8 Housing."¹ This paper provided data revealing the inadequacy of HUD’s proposed FMRs with respect to utility costs—when compared against actual utility company data. The study reviewed 100 different communities, showing that when actual utility costs are disaggregated and considered apart from the FMR as a whole, the FMRs proposed by HUD are inadequate in 38 different cities.

PHAs are required to revise their utility allowances if, after performing extensive research on consumption and rates, they find that utility costs have increased by ten percent or more since the last change. Among other things, we believe that greater transparency in HUD’s utility cost calculation process will help inform Congress and HUD on the needs for additional HAP funding.

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**Publish Census rent data by bedroom size and rental market**

To ensure successful program operation, the Section 8 program rules allow for FMR exceptions to compensate for variations in rent levels and rental housing characteristics that exist within individual housing markets. Upon approval by HUD, a PHA may exceed the published FMRs by up to 20 percent for specified geographic submarkets of a larger FMR area. The most common way for PHAs to avail themselves of the opportunity for Exception Payment Standards is to follow HUD’s "Median Rent Method."

The data provided to the public regarding the methodology used to calculate FMRs through various web-based tools has been helpful to PHAs. Given the costly process to PHAs and HUD in conducting RDDs, NAHRO recommends that the Department make available to PHAs Census rent data by bedroom size and rental market in a way that makes it easier for them to determine whether they may qualify for exception payment standards (or special exception payment standards) through the "median rent" method. PHAs’ ability to access this information for purposes of applying for “success rate” payment standards is important.

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**Continue use of state non-metropolitan minimum FMRs for HCV program**

NAHRO continues to support the use of state non-metropolitan minimum FMRs for the HCV program. These minimums are essential to ensuring that voucher holders in rural communities have sufficient “purchasing power” to identify and successfully lease units.

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¹ "The Role of Utility Costs in Setting Fair Market Rents for Section 8 Housing” by the Legal Services Client Coalition (http://www.fsconline.com/downloads/UTIL-FMR.pdf)
Articulate applicability of FMRs to the Public Housing Program

In the discussion accompany the proposed FMRs, no mention is made of the applicability of FMRs to the Public Housing program. However, as a result of the FY 2014 Consolidated Appropriations Act, PHAs are required to set their flat rents no lower than 80 percent of the FMR. NAHRO has previously commented on the negative consequences of this one-size-fits-all policy, and is continuing to pursue a legislative solution. In addition to NAHRO’s concerns about the use of a regional aggregate as a benchmark instead of local market and project-specific data, we are also concerned about the use of the statewide minimum FMRs for purposes of the flat rent. In the HCV program, statewide non-metropolitan FMRs were intended to increase the number of housing units in rural communities available to low-income households. However, statewide minimum FMRs have the inverse effect on the Public Housing program. They are, by definition, higher than the market rents for the community, thereby undermining the utility of flat rents for that community. While NAHRO continues to support the use of state non-metropolitan FMRs for the HCV program, NAHRO recommends that HUD use the calculated FMRs for purposes of monitoring flat rent compliance.

Conclusion

On behalf of NAHRO, I would like to thank you for the opportunity to comment on the proposed FY 2015 FMRs. If you have any questions concerning these comments, please feel to contact me at (202) 580-7213.

Sincerely,

Janelle A. Beverly
Policy Analyst – Section 8 Housing Programs
NAHRO’s county-by-county analysis of the FY 2015 proposed FMRs is available at: