National Association of Housing and Redevelopment Officials
630 Eye Street NW, Washington DC 20001-3736
(202) 289-3500 Toll Free: (877) 866-2476 Fax: (202) 289-8181

January 11, 2018

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 20176
Washington, DC 20410-0500

Re: [Docket No. FR-6070-N-01] Notice for Small Area Fair Market Rent (Small Area FMR) Designations[1]

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments to the United States Department of Housing and Urban Development (HUD or the Department) in response to the notice titled "Notice for Suspension of Small Area Fair Market Rent (Small Area FMR) Designations; Solicitations of Comment" published in the *Federal Register* on December 12, 2017.

Formed in 1933, NAHRO represents over 20,000 housing and community development individuals and agencies. Collectively, our members manage over 970,000 public housing units, 1.7 million Housing Choice Vouchers, and receive over $1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to use in their communities. NAHRO is unique in that we represent public housing agencies, local redevelopment agencies, and other HUD grantees of all sizes and geography.

While NAHRO agrees that families participating in the Housing Choice Voucher (HCV) program should be afforded the greatest degree of choice possible, especially where those choices help family members enhance their education, health, and safety, we are concerned that agencies are in the exasperating situation of having to quickly implement rules without the resources needed to achieve an optimal level of success.

After finalizing the Small Area FMR rule, HUD suspended the mandatory implementation of Small Area FMRs in 23 of the 24 previously designated areas. A federal court then enjoined HUD's suspension of the mandatory aspects of the Small Area FMR rule. PHAs must now make large and complex changes to how they administer their voucher program immediately, absent additional funding or guidance from HUD.

[1] All citations are informal.

e-mail: nahro@nahro.org website: www.nahro.org

Given this, NAHRO makes the following recommendations:

- HUD should immediately publish guidance on the implementation of Small Area FMRs, including information on the waiver process;
- HUD should immediately provide technical assistance on implementing Small Area FMRs;
- In its next budget request, HUD should ask Congress for additional funding to provide to PHAs that are required to implement Small Area FMRs or wish to implement Small Area FMRs[2]; and
- Both the FMR and Small Area FMR calculation methodology should be revised so that they no longer undervalue rental prices in certain metropolitan areas.

This letter is divided into two short sections which explain why additional funding is required to properly implement Small Area FMRs and why FMRs and Small Area FMRs undervalue certain metropolitan areas.

Additional Resources Are Required to Properly Implement Small Area FMRs - PHAs May Be Forced to Serve Fewer Families or Impose Higher Family Contributions

The true cost of implementing Small Area FMRs is unknown. While the *Small Area Fair Market Rent Demonstration Evaluation* found that implementing Small Area FMRs was less expensive than using regular FMRs, the Demonstration did not evaluate the same set of regulatory provisions as those included in the Small Area FMR rule.[3] Notably, there are two provisions in the Small Area FMR final rule which were not evaluated and have the potential to greatly increase the cost of serving families.[4] These provisions are the hold harmless provision and the provision that allows PHAs to set a new payment standard between the range of the old FMR and the range of the new FMR (i.e., PHAs may lower payment standards, but not as much as required by the new FMR). While these two provisions are necessary to ensure that families currently in the HCV program do not see their subsidies cut (and have their cost burdens increased), they also have the potential to greatly increase the costs of the HCV program.

Increased costs in the HCV program, while funding remains flat, means that PHAs will be forced to make one of two choices: either PHAs will have to serve fewer families or they will have to lower the subsidy amounts to certain families. Either way, vulnerable families will be harmed.

While it seems intuitively correct that if families in less expensive neighborhoods have their subsidies held harmless (or only partially lowered), while there are increased subsidies in more expensive neighborhoods, overall program costs will increase, this is a point that has not been empirically tested. This is a key reason why, it was premature for Small Area FMRs to be mandatorily imposed. Absent additional funding, Small Area FMRs present PHAs with a choice between serving fewer families or cutting the subsidies of some families. While there are benefits to using Small Area FMRs, they have to

[2] This amount should cover all the costs of implementing Small Area FMRs likely to be faced by PHAs and additional money in a PHA's Housing Assistance Payments account to ensure that fewer families are not served or that some families will not be additionally cost-burdened.

[3] The selection criteria for the Demonstration were also different than the criteria used for selecting areas where Small Area FMRs would be mandatorily imposed.

[4] "No additional tenant protections were instituted for tenants serviced by PHAs accepting HUD's invitation to participate in the Small Area FMR demonstration nor were additional tenant protections implemented for tenants living in the Dallas, TX HUD Metropolitan Area when Small Area FMRs were implemented there." See 81 Fed. Reg. 80,572.

be balanced against the potential harm to families. Balancing this tradeoff is an individualized assessment that should be done by PHAs and not imposed by HUD.[5] Alternatively, HUD can remedy this likely harm to vulnerable families by asking Congress for additional funding to implement Small Area FMRs in its next budget request.

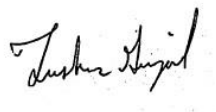
Both FMRs and Small Area FMRs Undervalue Rental Prices in Certain Metropolitan Areas

We have frequently heard from our members that FMRs undervalue on-the-ground rental prices in certain metropolitan areas. Typically these are neighborhoods that have experienced rapid rental increases within the last several years. There is great concern among our members that in these neighborhoods, where FMRs are already lagging behind rental prices--lowering success rates among families searching for units--Small Area FMRs will further lower prices in neighborhoods where the FMR is already too low, making finding a unit almost impossible for those families.

Research comparing Craigslist data with HUD data, found that in many metropolitan areas, where the FMR lagged behind the actual rental prices, there were fewer units at or below the FMR level than expected.[6] As FMRs are set at the 40th percentile rent, approximately forty percent of a market's available units should be at or below the FMR. In some Metropolitan areas, the 2 bedroom FMR has much lower percentages of units that are at or below the FMR. Since it is likely that the reason for these lower estimations is lagging FMRs, a lagging Small Area FMR, instead of creating a more accurate unit price, will further increase the gap between the payment standard being set by the PHA and the actual on-the-ground rental price (i.e., the lagging Small Area FMR will be even more off current on-the ground rental prices than the lagging FMR). This will lower success rates for many families in these metropolitan areas.

NAHRO thanks the Department for its willingness to engage with all of its stakeholders and looks forward to working collaboratively with HUD on this and other issues. If you wish to discuss these recommendations in further detail, please do not hesitate to contact me at tgurjal@nahro.org.

Sincerely,



Tushar Gurjal
Policy Analyst, Section 8 programs

[5] Additional funding is also required to implement the administrative changes required by the rule.
[6] See Geoff Boeing and Paul Waddell, "New Insights into Rental Housing Markets Across the United States: Web Scraping and Analyzing Craigslist Rental Listings," *Journal of Planning Education and Research*, 2016.