May 17, 2017

U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Dear Acting Assistant Secretary Ammon:

On behalf of our agency members—who manage over 970,000 units of Public Housing and 1.7 million Housing Choice Vouchers—and the more than 20,000 individual members that compose the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer a few thoughts on the final rule titled “Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs” (Small Area FMR rule).¹

As it is “the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people,” NAHRO believes that one area with a high potential for streamlining is the Small Area FMR rule.² This rule has the potential to impose costs on PHAs that exceed the benefits. These costs, as well as other reasons that argue against mandatory implementation of Small Area FMRs, are discussed in our previously submitted comment letter on the rule.³ For these reasons, NAHRO believes that the use of Small Area FMRs should be completely voluntary.

To facilitate making the rule voluntary as quickly as possible, NAHRO recommends a two-step process:

1. HUD should publish a notice in the Federal Register that makes a determination to suspend mandatory implementation of Small Area FMRs in currently mandatory areas;⁴ and
2. HUD should re-open rulemaking for the Small Area FMR rule so that its text can be amended to make it voluntary.

¹ All citations are informal. 81 Fed. Reg. 80,567 (November 16, 2016).
³ See NAHRO’s comment letter on the Small Area FMR rule. https://www.regulations.gov/contentStreamer?documentId=HUD-2016-0063-0113&attachmentNumber=1&contentType=pdf.
⁴ See 24 C.F.R. 888.113(c)(4)(iii).
The first step is critical because it can be implemented immediately by publishing a notice. Making this change will suspend Small Area FMR designations of metropolitan areas and remove the requirement that those areas must comply with the current requirements—while the lengthier informal rulemaking process is taking place. Absent this step being taken, PHAs will need to begin upgrading their systems immediately to ensure upgrades are in place by the date by which PHAs need to be compliant.

If HUD decides to not suspend the mandatory implementation of Small Area FMRs by instituting the steps above, then HUD should provide waivers to Moving to Work agencies that will now be required to use Small Area FMRs.

1) Background

On November 16, 2016, HUD published a final rule titled “Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs.” The rule requires the use of Small Area FMRs—fair market rents set at the zip-code level—by all the PHAs in selected metropolitan areas. Metropolitan areas are selected by five criteria:

1. the number of vouchers under lease in the metropolitan FMR area;
2. the percentage of the standard quality rental stock, within the metropolitan FMR area is in small areas (ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR area;
3. the percentage of voucher families living in concentrated low income areas;
4. the percentage of voucher families living in concentrated low income areas relative to the percentage of all renters within these areas over the metropolitan area; and
5. the vacancy rate for the metropolitan area.

Additionally, the regulations state that “HUD will designate Small Area FMR areas at the beginning of a Federal fiscal year, such designations will be permanent, and will make new area designations every 5 years thereafter as new data becomes available.”

On November 16, 2016, HUD also published a notice in the Federal Register titled “Small Area Fair Market Rents in Housing Choice Voucher Program Values for Selection Criteria and Metropolitan Areas Subject to Small Area Fair Market Rents.” This notice sets the selection values for determining those areas that would be subject to mandatory implementation of Small Area FMRs. The notice also designates 24 areas which meet all the current selection requirements and are subject to mandatory implementation of Small Area FMRs.

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6 24 C.F.R. 888.113(c)(1).
7 24 C.F.R. 888.113(c)(4).
It remains NAHRO’s position that the use of Small Area FMRs should be voluntary. NAHRO encourages HUD to take steps to move towards making the imposition of Small Area FMRs voluntary. To achieve that goal, HUD should follow the steps outlined below.

2) **HUD should make a determination to suspend mandatory implementation of Small Area FMRs**

HUD should immediately issue a notice that will have the effect of making the mandatory implementation of Small Area FMRs voluntary. The Department has the ability to suspend all current Small Area FMR designations. The Small Area FMR rule states that HUD may suspend a Small Area FMR designation for a metropolitan area, when HUD makes a documented determination that the action is warranted. The Department should make a determination that forthcoming rulemaking making the rule voluntary should serve as a basis to suspend all current areas from mandatorily imposing Small Area FMRs. Suspending those areas from complying with the Small Area FMR rule now is important so that PHAs are not obligated to start making expensive upgrades to update their systems to handle Small Area FMRs, if the rule will eventually be voluntary. Publishing this notice will allow those PHAs that want to institute Small Area FMRs, the ability to still institute them, but would not make the implementation mandatory. Additionally, the regulatory certainty of knowing that Small Area FMR designations will not be mandated will make program planning easier, as opposed to the current status quo, where PHAs are uncertain if the rule can be changed in time to avoid costly upgrades.

3) **HUD should re-open rulemaking for the Small Area FMR rule so that its text can be amended to make it voluntary**

After the steps outlined above have been completed, HUD should re-open rulemaking for the Small Area FMR rule so that HUD can work towards the administration’s goals of regulatory streamlining. Re-opening rulemaking will allow HUD to amend the rule to bring it into alignment with the administration’s priorities. NAHRO looks forward to working collaboratively with HUD to streamline the rule.

4) **If HUD decides not to make the use of Small Area FMRs completely voluntary, then HUD should provide waivers to Moving to Work agencies**

In HUD’s original proposed rule for Small Area FMRs, titled “Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs,” HUD did not clearly articulate that it planned to have the rule apply to Moving to Work agencies. Instead, in the second footnote of the document, the proposed rule stated that Moving to Work agencies have the ability to waive

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9 24 C.F.R. 888.113(c)(4)(iii). The regulation states that “HUD may suspend a Small Area FMR designation from a metropolitan area, or may temporarily exempt a PHA in a Small Area FMR metropolitan area from use of the Small Area FMRs, when HUD by notice makes a documented determination that such action is warranted. Actions that may serve as the basis of a suspension of Small Area FMRs [include] . . . [o]ther events as determined by the Secretary.”

the payment standard regulatory provisions in effect at the time. The lack of clarity on this issue meant that Moving to Work agencies were uncertain whether the proposed rule would apply to them. It is unfair to now apply the final rule to them, when they did not know if it was going to be applicable to them in the proposed rulemaking stage and did not have a fair opportunity to provide comment.

We thank the Department for taking the time to read this letter. In the spirit of collaboration, we look forward to working with HUD to amend the Small Area FMR rule in accordance with the administration’s goals. If you wish to discuss this rule in further detail, please do not hesitate to contact me at tgurjal@nahro.org.

Sincerely,

Tushar Gurjal
Policy Analyst, Section 8 Programs