September 4, 2013

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

Re: [Docket No.FR-5725-N-01] Proposed Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2014

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 and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2014. 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 or 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 from FY 2006 to the present. Every year NAHRO made recommendations for future improvements to HUD’s FMR methodology, and raised topics including: 1) HUD’s adoption of “new” Office of Management and Budget (OMB) areas in FY 2006 to the present; 2) implementing a five percent cap and floor on FMR values for those that would otherwise exceed a five percent change from the previous year as a result of HUD’s adoption of OMB’s “new” areas for FMR purposes as well as due to HUD’s attendant estimating methodologies, 3) undertake a validation process starting with FY 2006 (and then in each subsequent year) by using 1-year ACS data for FY 2006 to determine what FY 2006 FMR values would have been and compare it with HUD’s final FY 2006 FMR values for each area which resulted from the Department’s FMR estimating methodologies with the ACS data available to it at that time, 4) Annual Adjustment Factors (AAFs), 5) insufficient public housing minimum percentile used for census-based FMR values, 6) relationship between quality of rental housing stock and FMRs, 7) requalification for 50th percentile FMRs, 8) improvements or alternatives to the random digit dialing method, and 9) exception payment standards, to no avail. With the exception of our additional comments and recommendations in this cover letter, NAHRO is
submitting virtually identical comments to HUD’s proposed FY 2014 FMRs that we previously submitted to HUD. We respectfully request that the Department adopt our prior and current recommendations.

Rental Housing Market Data

With the greatest depth and breadth of rental housing data HUD’s Office of Policy Development & Research (PD&R) has ever had available to it through special tabulations from the Census Bureau of the 5-year and 1–year American Community Surveys, it is really disappointing to see the inaccurate results of PD&R’s proposed FY 2014 Fair Market Rents (FMRs).

NAHRO’s Analysis of HUD’s FMRs on County-by-County and MSA Basis

HUD PD&R’s proposed FY 2014 FMRs are the ones subject to comment by September 4, 2013. Because so many of the discretionary methodologies the Department has employed for FY 2014 were also implemented in FY 2013 going back to FY 2006, NAHRO has enclosed our analysis of HUD’s proposed FY 2014 FMRs compared with the last four years’ FMR starting with the special tabulations from the 2010 Decennial Census. There are so many examples that illustrate HUD’s proposed FY 2014 FMR values compared with HUD’s prior years’ FMR values that are counterintuitive with historic norms of applicable rental housing values. To elaborate on our county-by-county analysis of HUD’s proposed FY 2014 FMRs compared with the last four years of FMRs, let us look at Autauga County in the Montgomery, AL MSA as an example.

NAHRO’s Analysis of HUD FMRs in Autauga County in the Montgomery, AL MSA

% Change in FMRs by BR Size: FY 2010, FY2011, FY2012, FY 2013 and FY 2014

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County Name and FMR Name - Autauga County in Montgomery, AL MSA  
Fips 2010 - 0100199999  
Metro Code - METRO33860M33860  
pop 2010 – 54571  
FMR Type – 40  
metro or non-metro - 1
HUD’s proposed FY 2014 FMRs in Autauga County in the Montgomery, AL MSA for 2 bedroom units (without more dramatic distortions in lower and higher bedroom FMR values) remained the same from FY 2010 – FY 2011; decreased by -2 percent from FY 2011 – FY 2012, increased by 9 percent from FY 2012 – FY 2013 and then are proposed to decrease by -10 percent from FY 2013 – FY 2014. Clearly, one or more elements of HUD’s discretionary methodologies in formulating FMR values is wrong, because rental housing markets around the country like the one in Autauga County in the Montgomery, AL MSA have not reversed course so dramatically several times over on an annual basis.

After NAHRO conducted separate FMR calculations for all metropolitan areas in the U.S. comparing HUD’s proposed FY 2014 FMRs with each county or FMR area’s final FY 2013 FMRs, and separate calculations for all non-metropolitan counties or FMR areas in the U.S., we found:

- **Metropolitan Areas** - The maximum FMR increase from FY 2014 vs. FY 2013 in all bedroom sizes for metropolitan areas is 37 percent, and the maximum decrease in FMRs from FY 2014 vs. FY 2013 in for metropolitan areas ranged from -27 to -33 percent depending on the FMR bedroom size; and

- **Non-Metropolitan Areas** - The maximum FMR increase from FY 2014 vs. FY 2013 in all bedroom sizes for non-metropolitan areas is 74 percent, and the maximum decrease in FMRs from FY 2014 vs. FY 2013 in all bedroom sizes for non-metropolitan areas is -47 percent.

Barring a natural disaster, major economic change positively or negatively, or major change in the supply and demand of rental housing in applicable 40th or 50th percentile FMR areas, historically applicable rental housing market values do not increase or decrease in one year at such extreme rates and oftentimes non-metropolitan areas do not experience substantially greater annual increases or decreases in rental values than metropolitan areas.

Even while operating with 94 percent pro-rations in Housing Assistance Payment in FY 2013, PHA’s rent reasonableness policies and procedures are designed to secure and retain dwelling units that pass Housing Quality Standards (HQS) within the applicable FMR percentile that are comparable to unassisted dwelling units in a way that neither undervalues nor inflates private unassisted rental market rents. Within the limits Section 8 voucher programs operating under a budget-based funding formula for the last ten years and at a 94 percent HAP pro-ration in FY 2013, the gross rents for “recent movers” (those who have moved into their current residence in the last 24 months) are significantly different than HUD’s proposed FY 2014 FMRs. HUD has at its disposal gross rents by bedroom size of voucher-assisted dwelling units for households who have leased-up successfully within the last 24 months. Although these dwelling units used to be unassisted prior to the rent reasonableness requirements being applied by PHAs and then leased in the Section 8 voucher program, this data if used by HUD with random stratified sampling procedures presents valuable information in addition to the 1-year ACS data, could assist HUD in learning about where its estimating methodologies resulted in FMR values that are dramatically different and potentially inaccurate.
Because HUD’s FMR values contain such dramatic increases and decreases each year, often in the opposite direction year after year over this four year period, we are at a loss to validate them as being accurate. NAHRO believes that HUD officials would be hard pressed to also go over its proposed FY 2014 FMR values in comparison with the FMRs from FY 2010 – FY 2013 with U.S. Senators, U.S. Representatives, real estate assessment economists, PHAs or other program stakeholders, and to stand by them as being accurate. Barring a natural disaster, major economic change positively or negatively, or major change in the supply and demand of rental housing in applicable 40th or 50th percentile FMR areas, historically applicable rental housing market values do not increase, decrease, increase and then decrease at significant percentage changes each year, like the FMR values HUD has published from FY 2010 – FY 2014. That stated, we call upon HUD to provide interested parties and the public with other comparable rental housing market studies by other qualified organizations that illustrate dramatic annual undulations in opposite directions each year over a number of years, in applicable rental housing market values.

While lawmakers and other program stakeholders may not be able to isolate the underlying flaws in HUD PD&R’s discretionary estimating methodologies because they are very complex, by virtue of having familiarity with their respective rental housing markets and trends each year from FY 2010 to the present along with their review of NAHRO’s county-by-county analyses of HUD’s FMRs, they would be able to convey to the Department that your FMR results are inaccurate. When lawmakers and other program stakeholders, also learn that HUD PD&R has not employed a validation mechanism to assess the accuracy of its discretionary FMR estimating methodologies despite our reasonable request to do so, the accuracy of HUD’s proposed FY 2014 and prior years’ FMR values and the credibility of the Department’s methodologies will be subject to legitimate questions.

**NAHRO’s Two Main Recommendations**

**Recommendation 1 - Validate Prior Year FMRs with 1-Year ACS Data for Each Prior Year:** Undertake a validation process starting with FY 2006 (and then in each subsequent year) by using 1-year ACS data for FY 2006 to determine what FY 2006 FMR values would have been and compare it with HUD’s final FY 2006 FMR values for each area which resulted from the Department’s FMR estimating methodologies with the ACS data available to it at that time. Among other benefits, the utility of HUD PD&R undertaking this exercise retroactively, is that it would provide a validation mechanism regarding which aspects of its discretionary estimating methodologies were less accurate in estimating actual FMR values in FY 2006 with those contained in the Census Bureau’s special tabulations of actual 1-year ACS data for FY 2006 (or the subsequent years in question), and which methodologies were more accurate. NAHRO’s recommendation each year, also applies to FY 2007, FY 2008, FY 2009, FY 2010, and FY 2011. Undertaking this exercise, would likely yield important information that HUD PD&R could use to improve its discretionary estimating methodologies for FY 2014 and beyond, while still adhering to the statutory provision governing HUD’s formulation of FMRs. Specifically, the statutory provision governing FMRs states, “..each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in this section….”
Other than our previous FMR analysis through FY 2012 demonstrating the distortions in FMR values attributable to HUD’s adoption of “new” OMB areas in FY 2006 and beyond, NAHRO is not able at this time to isolate the individual flaws in HUD PD&R’s discretionary estimating methodologies because they are very complex and time is limited. However, our review of our county-by-county analysis of HUD’s FMRs in conjunction historic costs and trends in applicable rental housing market values, suggests strongly that HUD’s proposed FY 2014 FMR values are inaccurate. With all of the data and staff at HUD PD&R’s disposal and absent our presenting any alternative rental housing market analysis, you may wonder how we can claim with any credibility that the results of PD&R’s proposed FY 2014 Fair Market Rent (FMR) values in so many areas around the country are incorrect. Absent the kinds financial and staff resources to conduct rental housing market studies or surveys like the ones HUD PD&R conducts with the help it receives from the Census Bureau through its special tabulations of ACS data, we cannot produce an alternate study or survey to demonstrate HUD’s inaccurate FMR values at this time. Remarkably, HUD PD&R cannot validate the accuracy of its prior year FMR values or proposed FY 2014 FMRs without at least implementing the retroactive validation measures NAHRO has and continues to make to the Department.

Please set-aside for the moment the other estimating methodological concerns and recommendations we have made to HUD PD&R each year concerning which the Department have not been adopted. Year after year, HUD PD&R has also been unwilling to adopt our recommendation to now use completed 1-year ACS data for FY 2006 and compare all of the bedroom FMR values for each area in FY 2006 resulting from HUD’s FMR estimating methodologies with the ACS data available to HUD at that time (proposed FY 2006 FMRs were published on June 2, 2005). Among other benefits, the utility of HUD PD&R undertaking this exercise retroactively, is that it would provide a validation mechanism, regarding which aspects of its discretionary estimating methodologies were less accurate in estimating actual FMR values in FY 2006 with those contained in the Census Bureau’s special tabulations of actual 1-year ACS data for FY 2006 (or the subsequent years in question), and which methodologies were more accurate. Our recommendation each year, also applies to FY 2007, FY 2008, FY 2009, FY 2010, and FY 2011. Undertaking this exercise, would likely yield important information that HUD PD&R could use to improve its discretionary estimating methodologies for FY 2014 and beyond, while still adhering to the statutory provision governing HUD’s formulation of FMRs.

Does the Department assert that its estimating methodologies for FY 2011 for example, are more accurate than if the Department went back now and calculated what FMRs for FY 2011 would have been had HUD used actual 1-Year ACS data for FY 2011 along with HUD’s other attendant methodologies? By contrast, does HUD assert that now using actual 1-Year ACS data for FY 2011 along with HUD’s other attendant methodologies to determine what FY 2011 FMRs would have been (had that data been available to HUD at that time) would be more accurate than its existing estimating methodologies with 2005 - 2009 ACS data and 1-Year ACS data used to determine FY 2011 FMRs, but that the existing statutory provision governing HUD’s formulation of FMRs prohibits the Department from doing this? If the Department answers either question in the affirmative, we welcome the opportunity to discuss this further with you to help the Department understand the rebenchmarking and validation system that we recommend.
As taxpayers fund all of the FMR-related work both HUD and the Census Bureau conduct, and the accuracy of FMRs is paramount to the program success of approximately 5 million low-income households and over 1 million participating property owners participating in Federally-assisted programs impacted by FMRs, we believe it is incumbent for HUD PD&R to conduct the kind of validation we have recommended to you.

**Recommendation 2 – Five Percent Cap and Floor on FMRs:** HUD has meaningful rental housing market data but the Department uses it within “new” OMB geographic areas that are not truly reflective of non-metropolitan counties and metropolitan counties’ geographic rental housing markets, which has resulted in inaccurate FMR values. HUD has not adopted NAHRO’s long-standing recommendation (from FY 2006 to FY 2014) to create a five percent cap and floor on FMR values for those that would otherwise exceed a five percent change from the previous year as a result of HUD’s adoption of OMB’s “new” areas for FMR purposes (since FY 2006) as well as due to HUD’s attendant estimating methodologies. If implemented, this recommendation would exempt areas where there was a natural disaster, major economic change positively or negatively, or major change in the supply and demand of rental housing, 40th percentile FMR areas qualifying for 50th percentile FMR areas or vice-versa, and have a manageable process in place for communities and HUD to document and consider valid rental housing market changes that exceed five percent.

In prior responses to NAHRO’s recommendation the Department stated that it is constrained by legal and regulatory language for its calculation of FMRs, and so it cannot ignore the requirement to use the most current data by only doing so in five percent increments. HUD also stated that it would have to make a regulatory or legislative change to limit the change to no more than five percent. NAHRO contends that this recommendation can be implemented in FY 2014 within HUD’s existing statutory and regulatory purview, and welcomes the opportunity to discuss this further with the Department. Is it HUD’s contention that Section 238 titled, “Fair Market Rents” contained in its FY 2014 budget request would enable the Department to overcome the obstacles it previously described so that among other things the Department would be able to implement the five percent cap or floor NAHRO has previously recommend, if it so chose?

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 discretionary adoption of “new” OMB areas from FY 2006 to the present. Absent providing this information, program stakeholders are left with having to take HUD’s word for the accuracy of its FMR calculations and adherence to its own established policies in this area. In the name of transparency and accountability, we believe that HUD PD&R should include this information in its processes and public notifications.

**Programmatic Impacts of HUD’s Proposed FY 2014 FMRs**

Beyond the task at hand for HUD PD&R to develop the most accurate FMRs possible with the data available and our task to comment on the Department’s data sources and methods for its FMR values; both Congress and other interest program stakeholders should also be made aware
of the adverse program impacts of HUD’s proposed FMRs that will affect approximately five
million low-income households in communities around the country including but not limited to:

- HUD’s proposed FY 2014 FMRs will increase the number of voucher-assisted
  households with housing cost burdens (income to rent and utility allowances or expenses)
  relative to their income, contribute to voucher-assisted households living in greater
  concentrations of poverty, and contribute to voucher-assisted households living in
  dwelling units with relatively lower quality housing stock.

- HUD’s proposed FY 2014 FMRs where the extent of the increase is inaccurate will result
  in PHAs’ per voucher HAP costs increasing and being able to lease fewer households
  under the budget-based renewal HAP funding system in place for the last ten years and
  for the foreseeable future.

- In both of the scenarios described in the two paragraphs above, PHAs can apply for
  waivers to HUD for exception voucher payment standards and special exception voucher
  payment standards in an attempt to compensate for HUD’s inaccurate proposed FMRs,
  but there is no guarantee that the Department will approve them. Further, given the depth
  and breadth of inaccurate proposed FY 2014 FMRs the volume of waivers that affected
  PHAs will submit with extensive documentation to justify their requests, coupled with
  the Department’s strained staffing capacity to review such waivers on a timely basis is a
  poor way to conduct business at a time of greatly reduced financial resources to PHAs.

- A five percent change in the FMR triggers a rent reasonableness study, which is costly
  for cash-strapped PHAs. We believe it is also imprudent for HUD PD&R to impose
  prohibitively expensive costs on PHAs and other program stakeholders to conduct local
  real-estate rental housing markets consistent with HUD’s data sampling and other
  requirements, in order for them to correct HUD PD&R’s inaccurate and discretionary
  FMR methodologies. This is less a critique of the mail-in rental housing market survey
  HUD has implemented. Instead, this is more of a critique of the inaccurate FMR values
  HUD PD&R generates which necessitate additional mail-in survey expenses. The
  expense of mail-in surveys would not be necessary if HUD’s FMR values were accurate.

- With dramatically reduced FMR values, participating property owners will be less likely
  to renew their existing assisted dwelling leases with low-income housing-assisted
  households, and more likely to rent to higher income households. Prospective property
  owners will be less likely to participate in many PHA’s Section 8 voucher programs in
  the future. This will result in a significant loss of available and affordable housing units
to extremely-low-income and very-low-income households and prevent assisted-
households from leasing decent, safe, sanitary and affordable housing units.

- HUD’s proposed FY 2014 FMRs will apply to Public Housing if HUD’s FY 2014 budget
  proposal regarding flat rents in Public Housing is enrolled into law in FY 2014. In the
  Public Housing program, HUD has included in its FY 2014 budget request a proposal
  which would require of all PHAs to set flat rents no lower than 80 percent of FMR with a
  possible three-year phase-in period for individual affected households if applicable.
The implications of HUD’s proposed FY 2014 FMRs also apply to other programs including: conversions to HUD’s Rental Assistance Demonstration (RAD) from Public Housing, Moderate Rehabilitation, Rent Supplement, and Section 236 Rental Assistance Payment programs to Section 8 Project-Based Rental Assistance and Project-Based Voucher programs as modified under RAD. HUD’s proposed FY 2014 FMRs if made final will also be used in the maximum allowable rent policies in RAD, which is a key element in the demonstration’s structure. The maximum rent for properties converting to the Section 8 Project-Based Voucher program as modified by RAD, is the lesser of: 1) total program funding in FY 2012; or 2) an amount not to exceed 110 percent of the applicable FMR by bedroom size; or 3) HUD’s rent reasonableness regulatory requirements (as defined under 24 CFR Section 983.303(b). The maximum rent for properties converting to the Section 8 Project-Based Rental Assistance program as modified by RAD, is the lesser of: 1) total program funding in FY 2012; or 2) an amount not to exceed 120 percent of the FMR.

Conclusion

Correcting HUD’s proposed FY 2014 FMRs will help PHAs maintain the purpose of the programs, to assist low-income households in sustaining decent, safe, sanitary and affordable housing.

On behalf of NAHRO, I would like to thank you for the opportunity to comment on the proposed FY 2014 FMRs. Please include our attached letters and FMR data analysis to reflect the concerns we have with HUD’s FMRs and our recommendations. If you have any questions concerning these comments or require additional information, please feel to call us at (202) 289-3500. Thank you for your time and consideration of our recommendations.

Sincerely,

Jonathan B. Zimmerman
Senior Policy Advisor – Housing Assistance Programs
Backdrop to HUD’s Proposed FMRs

In some ways, the Department’s unwillingness to improve the accuracy of FMRs nationwide as described in our previous comment letters has contributed to the need for the Department to test other configurations of rental housing data, such as the small area FMR demonstration as well as the Department’s change in inflating FMR values for three bedrooms and greater. If the Department is unable to make further improvements to FMR values nationwide while it undertakes a more limited small area FMR demonstration as well as HUD’s recent inflation of FMR values for larger-sized bedrooms, it would continue to represent additional lost opportunities for low-income households, participating property owners, affordable housing developers, and the affordable housing lending community. Improvements to FMRs overall and pursuit of the Department’s small area FMR demonstration are not mutually exclusive, but should be pursued simultaneously with equal vigor.

HUD Continued Adoption of OMB Area Definitions for FMRs Without Any Five Percent Cap

The Department’s response (September 27, 2006) to NAHRO’s previous comments to HUD’s proposed FY 2007 FMRs stated, “NAHRO erroneously suggests the 5 percent test is based on a comparison of the proposed FY2007 FMR with the final FY2006 FMR. Similarly, adjustments to the FMR areas based on median family income differentials are also based on 2000 Census data, not FY2006 data.” Since HUD first adopted both “new” OMB areas for its proposed and final FY 2006 FMRs and new methodology, it is fair to state that the Department’s methodology was, and still is, very complex and complicated. After reviewing HUD’s proposed FY 2006 FMR methodology using “new” OMB areas, NAHRO’s recommendation to allow the final FY 2006 FMR values resulting from adoption of “new” OMB areas and the Department’s attendant methodology to no more than a five percent change from the previous year’s final FMR values was not adopted. NAHRO’s identical recommendation each year through FY 2012 has also not been adopted by the Department. To help make sure that there is no misunderstanding of NAHRO’s critique and corresponding recommendation of HUD’s FMR determinations, NAHRO previously provided the Department with analysis of HUD’s final FMRs from FY 2006 through FY 2012 as proposed, on a county-by-county basis. Our analysis shows the variances in two bedroom FMR values during this time span, had NAHRO’s recommendation been adopted by HUD, versus the Department’s proposed and final FMRs. NAHRO’s analysis and comments on the impacts of HUD’s discretionary adoption of “new” OMB areas on FY 2012 and prior year FMR values and our county-by-county analysis of FMRs from FY 2006 - FY 2012 is available at:

http://www.nahro.org/sites/default/files/searchable/NAHROCommentsRegardingHUDProposedFY2012FMRs_0.pdf

and

http://www.nahro.org/sites/default/files/searchable/NAHROFMRAnalysisFY2006toFY2012_0.pdf

respectively. These materials are also included as file attachments to this submission.
Unfortunately, by not providing a five percent limitation on the annual FMR changes described in NAHRO’s comment letters each year, the Department’s FMR methodology has significantly hampered the success of Section 8 voucher programs in those housing markets that have experienced the greatest changes in FMR values (not actual rental housing costs) year to year, since the inception of HUD adopting “new” OMB areas.

HUD’s previous reply to our FMR comments stated, “HUD instituted widespread area definitional changes in FY 2006 to reflect the changes the Office of Management and Budget (OMB) made to area definitions that incorporated information from the 2000 Census. The OMB area definitions were based on commuting relationships. Outlying counties were included in metropolitan areas if over 25 percent of the residents were found to commute to that area. HUD modified the OMB definitions to reflect its pre-FY 2006 FMR area definitions where rents or incomes reflected differences of more than 5 percent from the new area definitions. HUD will not go back to the pre-FY 2006 area definitions that were based on 1990 Census data. The incoming ACS rent data are based on the current OMB definitions using the 2000 Census; consequently, HUD cannot return to the old area definitions without significant re-aggregation of the source information. HUD plans to revise its area definitions based on OMB metropolitan area definition revisions that incorporate the 2010 Census data and the 2006 – 2010 ACS data once they have been released in 2013. Area definition changes will be subject to comment and HUD may, at that time, consider limiting FMR changes resulting solely from changes to the area definition to five percent (cap and floor).”

HUD’s previous reply to our FMR comments also stated, “One commenter notes that a five percent change in the FMR triggers a rent reasonableness study, which is costly for cash-strapped PHAs. Another commenter noted that HUD should have instituted the same cap and floor of five percent that it instituted for Income Limits with the FY 2010 Income Limits. HUD is constrained by legal and regulatory language for its calculation of FMRs, and so it cannot ignore the requirement to use the most current data by only doing so in 5 percent increments. HUD would have to make a regulatory, or seek legislative, change to not fully use the most current rent data in setting FMRs. No such regulation or legislative requirement governs the calculation of income limits and prior to FY 2010, income limits were held harmless, that is, not allowed to ever decline. The change to incorporate caps and floors of up to 5 percent was a way to remove this hold harmless policy and create parity with increases and decreases. HUD is planning to propose to use floors and caps of 5 percent, subject to comment, when the new area definitions are incorporated; however, HUD cannot go back and make this change retroactive to the FY 2006 FMRs as analyzed by one commenter.”

Needless to say, NAHRO welcomes the opportunity to comment on HUD’s proposed use of five percent floors and ceilings in FMR values resulting from the proposed adoption of “new” OMB area definitions for FMR purposes in FY 2013. However, there was no mention of this issue in HUD’s proposed FY 2013 FMR notice. For NAHRO and our members, moving forward with these floors and ceilings could not come soon enough. To this end, NAHRO recommends that HUD publish further proposed changes to FY 2013 FMRs as soon as possible.

In lieu of HUD returning to the “old” area definitions based on OMB metropolitan area definitions in FY 2005 and prior years, which the Department claims it cannot do without
significant re-aggregation, NAHRO recommends that at the time HUD proposes using “new” OMB area definitions at some point later in FY 2013, that “on paper” the Department use the most recent AHS and later ACS applicable data available as if it had been available for HUD’s use in FY 2006 and subsequent years (but could not be used at that time due to the inherent delay in the availability and use of such data). For example, in formulating HUD’s final 2006 FMRs, it is unlikely that the 2006 ACS data that HUD is using for its proposed FY 2013 FMRs (i.e. FY 2006 –2010 5-year ACS data) was available to HUD to use for its final FY 2006 FMRs. By adopting NAHRO’s recommendation above, HUD would not violate the statutory requirement governing the Department’s use of the most recent data available in order to formulate FMR values. The second part of our recommendation, is to use the data described above as if either: 1) the FY 2005 and prior year FMR and OMB areas had been in place or 2) the FY 2006 and subsequent year FMR and OMB areas had been in place. While our preference is the former OMB/FMR area rather than the “new” area from FY 2006 to the present, for either option HUD adopts for this purpose, we recommend that “on paper” HUD apply the five percent ceiling and floor policy (as described above and in our recommendations) as if it had been in effect for FY 2006 and subsequent years but prior to the implementation of HUD’s pending FY 2013 FMR values. By doing so, HUD should then apply those FMR values “on paper” using the five percent ceiling and floor policy which resulted solely from the change in FMR area definitions to new FMR values in FY 2013. This would result in dramatically improved FMR values for FY 2013 and beyond, rather than embedding the existing distorted FMR values from FY 2006 to the present, as part of an otherwise improved five percent ceiling and floor policy from FY 2006 through FY 2013.

HUD’s previous explanation for not adopting our previous recommendations, is because doing so would require the Department to conduct significant re-aggregation. Regrettably, this statement misses our point about HUD’s FMR calculations and methodology. Developing and publishing the most accurate FMRs possible, including all of the accompanying work to accomplish that outcome, would mean not employing HUD’s existing and proposed methodology because it results in the Department’s own administrative ease. If employing a more time consuming process results from our recommendations, it is still worth pursuing in order to come up with the most accurate FMR figures possible for the benefit of low-income households, property owners, and affordable housing developers participating in a range of Federally funded programs. To this end, HUD PD&R should undertake the necessary steps with the consent of the most senior officials within the Department to secure the funding and legislation necessary to accomplish what we and perhaps HUD PD&R believes is necessary, rather than offering explanations about obstacles that exist which could be overcome by the Department.

Over several years, hundreds of millions of dollars have been transferred from a wide range of Housing and Community Development program dollars at time of annual pro-rations below 100 percent and other deep funding reductions, in order to pay for a wide range of activities under the Department’s “Transformation Initiative.” As you may know, a very significant percentage of the “Transformation Initiative” funds have not been obligated or spent to date with the added ability of HUD to make a reprogramming request with Appropriators if it so desired. In addition to other program uses, HUD has used funds from the “Transformation Initiative” for its “Small Area FMR Demonstration.” To date, HUD decided not to adopt NAHRO’s recommended
changes to the “Small Area FMR Demonstration” which is one of several reasons why HUD’s previous attempts to attract PHA applicants to participate in the demonstration has resulted in HUD receiving only four applications to participate in the demonstration (as of August 19, 2011) and resulted in only PHAs operating in the Dallas, TX HMFA being the only PHAs managing their voucher programs using Small Area Fair Market Rents (SAFMRs).

When NAHRO met with HUD staff prior to the Department proposing its “Small Area FMR” demonstration, HUD PIH staff said that it would not lead to higher per unit HAP costs or voucher program administrative costs. HUD PIH officials were wrong on both counts. Instead of HUD paying for those increased costs from the hundreds of millions redirected from housing and community development programs to its Transformation Initiative account for demonstrations, the Department provided increased administrative fee funding to PHA(s) participating in its small area FMR demonstration in FY 2011 and FY 2012. Under HUD’s FY 2013 budget request, the Department included increased HAP costs under HUD’s “Small Area FMR” demonstration as a new eligible category for the $75 million HAP set-aside adjustment fund. In addition to effectively siphoning off funds from all other PHAs’ ongoing administrative fee funds, HUD is now seeking authority to siphon off additional HAP set-aside funds from other PHAs for this purpose. Some of our PHA just received a letter from HUD PIH and HUD PD&R which states, “HUD’s prior attempts to launch the SAFMR demonstration have been unsuccessful because HUD has been unable to provide housing authorities wishing to participate with additional funding to offset the increased administrative fees that housing authorities will likely incur due to their participation in the demonstration. Fortunately, HUD has identified a limited pool of funds that the Department can use as supplemental fees to offset the expenses that your agency will need to incur in order to implement SAFMRs for your tenant based vouchers.”

Despite being proven wrong on several fronts by facts on the ground, HUD continues to press forward with its “Small Area FMR” without making any changes that we have previously recommended. It appears that HUD plans to “double down” by announcing additional PHAs authorized to operate using SAFMRs in the notice of Final FY2013 FMRs. With the cooperation and consent of senior HUD officials, PD&R should advocate within HUD to have the necessary financial resources at its disposal. If HUD PD&R availed itself of such available financial resources originally transferred from HCD program resources, HUD PD&R could conduct the kind of reaggregation with the most recent available rental housing data in a manner recommended by NAHRO as well as performer far more mail-based surveys than the four it conducted.

NAHRO’s member agencies and the analysis that we have performed to date, indicate to us that HUD’s FY 2012 FMR values are the least accurate final FMR values published at least over the last ten years. If implemented as proposed, HUD’s proposed FY 2013 FMR values will compound the inaccuracies embedded in the FY 2012 FMR values resulting in the FY 2013 FMR values eclipsing FY 2012 FMR values as the least accurate FMR values in eleven years. Elsewhere in our comment letter and attachments, we will provide a more specific explanation of our statements above. To help make sure that there is no misunderstanding of NAHRO’s critique and corresponding recommendations over the years regarding HUD’s FMR determinations, we have attached a table showing HUD’s final FMRs from FY 2006 through FY 2012, with our analysis of each county. Our analysis shows the variances in two bedroom FMR
values during this time span had NAHRO’s recommendation been adopted versus HUD’s FMRs. Had we been able with the time available to make the cross-walk between FY 2005 FMR values and HUD’s FY 2012 proposed FMRs using the same type of analysis, the variances between HUD’s FMR values using the “new” OMB areas without the provision capping year to year changes to five percent as recommended by NAHRO, would have been even more extreme.

Instead of addressing the underlying public policy merits of NAHRO’s critique and recommendation to the Department, its implementation of FMR values from FY 2006 to the present continues a counterproductive practice. It should come as no surprise that PHAs that filed comments regarding HUD’s proposed FY 2012 FMRs and/or requested HUD to conduct an RDD study in their respective areas consistent with NAHRO’s analysis of HUD’s FMR values and attendant recommendation using five percent caps on FMR changes in those same PHAs’ FMR areas. By comparison, we have not reviewed PHAs’ comments to HUD’s proposed FY 2013 FMRs nor have we had the chance to conduct the same kind of analysis we provided to HUD of the FY 2006-FY 20012 FMRs to include FY 2013. HUD PD&R could easily conduct this analysis to include FY 2013 which we think would be beneficial to your understanding the impact of your discretionary policy decisions to date. In any event, NAHRO will submit similar summary analysis of FMR values from FY 2006 – FY 2013 as proposed, with and without our recommended five percent ceiling and floor thresholds. Granted, we do not have the time or resources to determine the extent to which each FMR areas’ changes in FMR values would have occurred solely due to the change in OMB/FMR area. However, HUD PD&R has the capability to perform this analysis or to request the necessary resources with the Department in order to conduct that analysis.

Ironically, in responding to NAHRO’s comments to HUD’s proposed FY 2006 FMRs, HUD wrote, “…Furthermore, HUD has a hold-harmless policy for income limits because without such a policy, program rent revenues in subsidized rental projects with rents statutorily tied to income limits may fall, leading to the possibility of project default or departure from the program.” It appears that the Department does not understand or acknowledge the adverse impacts on Section 8 voucher programs, of its policy position to allow changes in area FMR values of greater than five percent year to year. When new FMR values change by more than five percent from the previous year’s FMRs, in cases where a PHA cannot set its new payment standards in relation to FY 2013 FMRs, that are sufficient to actual housing market costs and still be within a “basic range” payment standard (i.e. 90 – 110 percent of FMRs), there are a series of adverse impacts on their Section 8 voucher program participants. In areas where FMR values decrease by more than five percent for example, HUD’s policy results in a number of adverse impacts including but not limited to:

- lower Housing Assistance Payments (HAP) levels per voucher-assisted household;

  higher income to rent burdens for voucher-assisted households to the point where the inadequate FMRs may actually contribute to exacerbating PHAs’ compliance with HUD’s “affordability standard”[24 CFR §982.102(e)(3)(iii)] [Sec. 982.503 (g)(1) and (2)] and [Sec. 982.503 (d)];

- reduction in the quality of housing units that pass Housing Quality Standards (HQS);
• increased concentration of voucher-assisted households in developments and neighborhoods with higher concentrations of poverty;

• decreased success rates of voucher holders securing dwelling units under voucher programs after being on PHAs’ waiting lists or attempting to move after participating in voucher programs or some time; and

• existing property owners cancelling their participation in voucher programs.

PHAs that filed comments regarding HUD’s proposed FY 2012 FMRs cited these and additional adverse impacts in their communities. I anticipate HUD will receive similar comments to the Department’s FY 2013 FMRs, unless PHAs have decided that having not made any methodological changes to address this concern in FY 2012 they did not want to take the time to comment for FY 2013.

In areas where FMR values increase by more than five percent for example, HUD’s policy results in a number of adverse impacts including but not limited to:

• undue increases in per voucher HAP costs in the context of PHAs’ limited budget-based HAP renewal formula funding in place to varying degrees since FY 2003. This has led individual PHAs to serve fewer authorized families than they otherwise could, and depending on the adequacy of HAP appropriations enacted by Congress, also resulted in HAP pro-rations below 100 percent in following year than would otherwise have occurred.

PHAs that filed comments regarding HUD’s proposed FY 2012 FMRs cited these and additional adverse impacts in their communities. I anticipate HUD will receive similar comments to the Department’s FY 2013 FMRs, unless PHAs have decided that having not made any methodological changes to address this concern in FY 2012 they did not want to take the time to comment for FY 2013.

The Department also replied to NAHRO’s comments in regard to HUD’s proposed FY 2006 FMRs at that time. HUD wrote, “HUD does not have a similar hold-harmless policy for FMRs because voucher program rules are designed to mitigate the effects of decreases in FMRs on individual tenants. In cases where FMRs decline and the PHAs reduce payment standards accordingly, voucher rents for existing tenants remaining in their units may be maintained in accordance with the previous higher payment standard until the second annual recertification of the tenants’ income and rent subsidy after the payment standard declines. Thus, for existing voucher tenants who do not move, the rent level supported by their voucher will not decrease until up to 2 years after the payment standard decrease goes into effect.”

The net effect of HUD PIH’s existing regulations governing the time frames for PHAs lowering voucher payment standards, is that significant numbers of PHAs that might otherwise adopt a lower payment standard to reflect their local rental housing market values do not implement the change, because by the time voucher-assisted households’ second re-examinations come up for
implementation of this regulation, the values in their housing markets would likely have changed. When this occurs, it becomes administratively unwieldy and burdensome to have two sets of payment standards based on the date of implementation under HUD’s existing regulations, which would contribute to PHAs’ RHIIP and RIM errors/findings from HUD and the Office of Inspector General.

NAHRO believes that the intent of HUD requiring PHAs under existing regulation (not statute), to implement a lowered payment standard at a household’s second re-examination of household members and income, was to allow for a two year transition from the merger date of October 1, 1999 of the merger rule (RIN 2577–AB91) governing the consolidation of the Section 8 Certificate and current Section 8 Voucher programs (24 CFR § 248 et al.). However, since the transition to complete the merger of both programs ended by October 1, 2001, this practice of waiting until the second household reexamination remains in place at a significant expense to the HCV program and fewer eligible low-income families being served.

To help provide some measure of financial relief to these PHAs within existing appropriated funds, NAHRO has long recommended HUD PIH to exercise its existing regulatory authority (24 CFR § 982.502) by allowing PHAs to reduce the current time frames of them to implement reduced voucher payment standards (CFR 982.505) from households’ second reexamination to the greater of 90-days from the date the household is notified or a household’s’ lease anniversary date.

HUD exercised its authority with the issuance of PIH 2005-9 and through subsequent actions, but PHAs looking to implement shorter time frames for their lowered payment standards have been required by the Department to go through what many believe should be an unnecessary burdensome waiver process. Furthermore, in order for PHAs to have their waiver requests approved in 2005 and beyond, HUD has required agencies to not re-issue turnover vouchers to eligible applicants or lease them up under the program. HUD’s existing policy creates hardships for agencies that needed waiver approval for shortened time-frames for their payment standard reductions, in order to serve the same number of existing families or to restore their leasing to previous levels or their adjusted ACC baseline number of vouchers.

When there are housing markets which are cooling and so long as a PHA’s regulatory “affordability standard” is met [24 CFR §982.102(e)(3)(iii)], taking the above measure would provide opportunities to remedy their agencies’ funding shortfalls within the existing HAP amounts provided, but while not imposing hardships on low-income families and participating property owners. This measure could help some PHAs mitigate the effects of downward prorated administrative fees, if they are able to better utilize their available HAP and NRA resources to increase the number of families they lease, up to their adjusted baseline number of vouchers.

Using outmoded HUD regulations about the timeframes by which PHAs can implement lowered voucher payment standards or FMRs as another basis for not adopting NAHRO’s recommendations with respect to five percent changes in area FMR values, brings to mind the phrase “two wrongs do make a right.” HUD PD&Rs’ final implementation of proposed FMRs each year since FY 2005 coupled with HUD PIH’s unwillingness to modernize regulations for PHAs’ lowered voucher payment standards and FMRs (post merger of the former Section 8
Certificate and Voucher programs), have compounded problems for voucher programs, as described above.

When it comes to HUD’s implementation of income limits in the Section 8 program, the Department has adopted a sound policy that helps mitigate significant changes in income limits each year, but when it comes to the Department’s implementation of changes in FMR values, it has not.

We note the controversy created by the Department’s initial adoption of new OMB area definitions in FY 2005, which would have had adverse impacts in metropolitan areas for the majority of voucher-assisted households. After intense public scrutiny, this approach was not adopted. Regrettably, a year later the Department proposed and adopted the same new OMB areas for FMR calculations, with a series of modifications that have not adequately addressed the fundamental problem: that the new OMB areas do not reflect the geography of housing markets around the country.

Combining formerly non-metropolitan areas with metropolitan areas has had adverse impacts under the HCV program nationwide. Specifically, inclusion of formerly non-metropolitan counties resulted in significant dilution in FMR values for the metropolitan areas beyond what would have occurred absent this change in OMB area definitions. The diluted FMR areas assist a proportionally greater number of voucher holders nationally. An estimated 50 percent of the divisions the Department eliminated as geographic areas from FY 2005 have resulted in formerly non-metropolitan areas being within the proposed metropolitan areas from FY 2006 through FY 2010. This change has decreased the FMR values for many of those respective metropolitan areas beyond what they would have otherwise been had the Department not made the discretionary change to adopt new OMB areas for determining FMRs.

As noted below, the subareas within core based statistical areas (CBSAs), established by HUD in FY 2006 and maintained to the present day, are artificial modifications that have weak relationships to the social and economic integration of the subareas, as well as their housing market costs. In the General Explanatory Notes section of HUD’s proposed FY 2010 FMRs, HUD states, “In CBSAs where subareas are established, it is HUD’s view that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so in the future as the social and economic integration of the CBSA component areas increases…Metropolitan area CBSAs (referred to as MSAs) may be modified to allow for subarea FMRs within MSAs based on the boundaries of old FMR areas (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY 2005 FMRs. Collectively they include 1999-definition MSAs/Primary Metropolitan Statistical Areas (PMSAs), metro counties deleted from 1999-definition MSAs/PMSAs by HUD for FMR purposes, and counties and county parts outside of 1999-definition MSAs/PMSAs referred to as nonmetropolitan counties.).”

For further information on NAHRO’s previous analysis and comments on the impacts of HUD’s discretionary adoption of new OMB areas on FMR values, please see our comment letter (attached). NAHRO reiterates our call for the Department to rescind its adoption of the new OMB areas in favor of the FMR area definitions in place for FY 2005 and prior years.
In terms of HUD’s proposed small area FMR demonstration, FMRs based on zip codes solves the problem described above (i.e., non-metropolitan counties being combined with metropolitan counties) for those agencies participating in the demonstration. However, there may still be some zip codes that straddle both non-metropolitan and metropolitan counties where the proposed demonstration does not solve this problem. While we are encouraged by the fix to the problem for many zip code areas under the proposed demonstration, we firmly believe that correcting the larger problem stemming from HUD’s discretionary adoption of new OMB areas to determine FMRs for the HCV program nationwide is needed.

**HUD PD&R Takes on the Role of PHAs’ Discretionary Authority to Adjust Voucher Payment Standards and to Make Rent Reasonableness Determinations**

One of the most significant changes to HUD’s methodology in determining proposed FMR values for FY 2013, is the Department’s automatic adjustment increases to FMR values based on three- to six-bedroom unassisted dwelling units. Specifically, HUD’s proposed FY 2013 FMR notice states, “HUD further adjusts the rents for three-bedroom and larger units to reflect HUD’s policy to set higher rents for these units than would result from using unadjusted market rents. This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds bonuses of 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four bedroom FMR estimates. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four bedroom FMR. FMRs for single-room-occupancy units are 0.75 times the zero bedroom (efficiency) FMR.” It would be helpful if HUD would have presented the underlying figures to illustrate its assumptions about large-sized households. One reason we are asking HUD to provide this information, is because we are aware of a very significant percentage (i.e. 20 – 25 percent) of existing voucher-assisted households (authorized voucher sizes and bedroom sizes were not provided) that are currently leasing bedroom sizes that are greater than their authorized voucher size. Although this is entirely allowed under existing voucher program rules, when it occurs the contract rents are greater than dwelling units of voucher holders’ authorized voucher size, and the utility allowances are greater than the utility allowances of their authorized voucher size by approximately 10 percent. This would suggest that it is worth HUD examining and publishing statistics demonstrating the Department’s underlying factual basis for its policy change described above. Similarly, it would be beneficial for HUD provide a summary of voucher “success rates” by voucher-assisted household size to prove the underlying assumption in its policy change described above.

More important than the recommendations made above, is that HUD appears to overlook each PHA’s discretionary authority to set payment standards within their “basic range” of 90- 110 percent FMRs and to seek HUD’s approval of special exception payment standards either above or below their “basic range” for a number of reasons. HUD’s policy-related proposal regarding inflation factors for larger sized-bedrooms also appears to overlook PHA’s unit by unit, “rent reasonableness” evaluations. Under “rent reasonableness” regulations, PHA must determine
whether the rent to a property owner is a reasonable rent in comparison to rent for other comparable unassisted units, after having considered each dwelling units: location, quality, size, unit type, and age of the contract unit, and amenities, housing services, maintenance, and utilities that the property owner must provide under the lease. Outside of HUD’s criterion for PHAs’ use of 50th percent FMRs, “success rate” FMRs, “Small Area FMR” demonstration, median rent method FMRs, HUD’s proposed adjustment (described above) is the first time that we can remember HUD supplanting PHAs’ voucher payment standard authority with its own FMR inflation policy by bedroom size across-the-board. Much like the significant flaws in HUD’s “Small Area FMR” demonstration upon which we’ve previously commented, HUD’s FY 2013 policy proposal to inflate FMRs across-the-board instead of relying on PHAs’ to set voucher payment standards by bedroom size, neighborhood and even zip codes if they so desire, and to make rent reasonableness determinations under existing regulation, we believe that HUD’s proposed policy change will drive up Section 8 per voucher HAP costs in some cases unnecessarily and drive down per voucher HAP costs in others. If/when this occurs, it will also result in PHAs being able to serve fewer low-income families at reasonable income to rent burdens in decent and sanitary housing than they otherwise could with the HAP-related funds available to them had HUD not adopted its proposed FY 2013 bedroom inflation policy.

For HUD to better understand the relative accuracy of its FMR values in 2012 and prior years, NAHRO recommends HUD compare them with PHAs’ 2012 year-to-date voucher payment standard values by bedroom size and housing market, as well as their corresponding rent reasonable determinations by bedroom size and housing market in relation to both final FY 2012 FMRs as well as HUD’s proposed FY 2013 FMR values (trended so the rentals will be current for the year to which they apply; of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types, and before applying any the inflation factors into 2013). To conduct such analysis HUD PD&R should employ its “recent mover” methodology that was in place at the time or the “recent mover” methodology that HUD PD&R deems appropriate. Using a similar methodology, HUD could evaluate the relative accuracy of its proposed FY 2013 FMRs. Please understand that for a number of reasons, we are not recommending that this be the sole method by which HUD evaluates the relative accuracy of its FMR values and attendant methodology. One reason is because the rental housing data we describe of “recent movers” from the initial lease date onward are “assisted” rental housing units rather than “unassisted” rental housing units. Additional reasons include: the budget-based renewal HAP funding formula and prior year HAP-related expenses from the most recent calendar year, and financial inequities created under the existing portability process. As a result of the above reasons, many PHAs have been left in a strapped financial position to lease to their adjusted baseline number of authorized vouchers, to stay within the “affordability standard” of voucher-assisted households’ income to rent burdens, to secure decent, safe and sanitary housing and to deconcentrate poverty based on voucher-assisted households’ choice of where to lease wherever possible. Periodically, HUD PIH reports on or publishes information for the benefit of Congress and other program stakeholders showing the national weighted average of all PHAs’ voucher payment standards relative to the national weighted average FMR value. If HUD were to publish these same figures for 2012 (and following HUD’s proposed FY 2013 FMRs if the final FMRs are adopted as proposed), we believe it would likely show dramatic changes in FY 2012 and 2013, compared with the same figures in 2011 and prior years. With all of those caveats listed, we believe that HUD would gain valuable insights into the relative accuracy of its
FMRs based a number of existing and proposed FMR methodologies, to help inform the Department’s future discretionary actions in setting FMR values.

HUD’s Proposed Legislative Changes to the “Section Eight Voucher Reform Act of 2009”

Regarding HUD making a regulatory change or seeking a legislative change as it relates to FMRs, this should not be offered by HUD PD&R as an explanation for adhering to the status quo. As explained throughout our current and previous comment letters, there is much that HUD could do to improve the accuracy of FMRs within its existing regulatory authority as well as by proposing legislative language.

Listed below is a matrix comparing existing law relating to FMRs, “SEVRA of 2009” (HR 3045) and HUD’s proposed amendment to SEVRA. Words that are bolded and strikethrough text underscore differences in statutory language between the act, bill and proposed amendment. Our main point in providing this information is to illustrate that if/when HUD is interested in submitting legislative language regarding FMRs, the Department has demonstrated its ability to do so. When it comes to legislative language, obviously it would need to be enrolled into law first before being implemented by the Department. That stated, we would appreciate HUD PD&R refraining from providing explanations for why it cannot advance improvements to the formulation of FMRs when other parts of HUD have done so.

Just so that we do not leave the Department with a false impression of our positions on HUD’s proposed legislative FMR language, we summarize our concerns for the Department’s review and consideration. NAHRO is concerned about a number of changes in HUD’s proposed FMR statutory amendment, including but not limited to: striking the statutory language from SEVRA requiring HUD to define market areas in areas sufficiently distinct as is necessary to avoid concentration of voucher holders; taking into consideration factors such as the efficient administration of the program by PHAs and the administrative costs of HUD in establishing additional areas; the availability of data for a sufficient number of dwelling units to establish accurate fair market rentals; and the ability of PHAs to adjust the payment standard to more accurately reflect typical rental costs. We are also concerned about HUD’s proposed FMR statutory amendment to SEVRA, which would strike a requirement for HUD to establish procedures to permit a PHA to request the establishment of separate market areas for either all or contiguous parts of the areas under the jurisdiction of such agency.

<table>
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<tr>
<th>Section 8 (c) of the United States Housing Act of 1937</th>
<th>Section Eight Voucher Reform Act of 2009 (HR 3045)</th>
<th>HUD’s Proposed Amendment Language to SEVRA (HR 3045)</th>
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<td>(c)(1)...Proposed fair market rentals for an area shall be published in the Federal Register with reasonable time for public comment, and shall become effective upon the date of publication in final form in the Federal Register. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals</td>
<td>(a) IN GENERAL.—Paragraph (1) of section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(1)) is amended— (1) by inserting “(A)” after the paragraph designation; (2) by striking the seventh, eighth, and ninth sentences; and (3) by adding at the end the following: “(B)(i) The Secretary shall define market areas for purposes of this</td>
<td>“(B) Fair market rentals for an area shall be published not less than annually by the Secretary on the site of the Department on the World Wide Web and in any other manner specified by the Secretary, and shall become effective upon the date of publication. The Secretary shall establish a procedure for public housing agencies and other interested parties to request, within a time specified by the Secretary,</td>
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will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section. 

..... (2)(A) The assistance contract shall provide for adjustment annually or more frequently in the maximum monthly rents for units covered by the contract to reflect changes in the fair market rentals

paragraph in areas sufficiently distinct as is necessary—

“(I) to establish fair market rentals that accurately reflect typical rental costs of units suitable for occupancy by persons assisted under this section in communities in metropolitan and non-metropolitan areas (including low-poverty areas); and

“(II) to avoid concentration of voucher holders; while taking into consideration the factors specified in clause (ii).

“(ii) The factors specified in this clause are—

“(I) the efficient administration of the program by public housing agencies and the administrative costs of the Secretary of establishing additional areas;

“(II) the availability of data for a sufficient number of dwelling units to establish accurate fair market rentals; and

“(III) the ability of public housing agencies to adjust the payment standard to more accurately reflect typical rental costs.

“(iii) The Secretary shall establish procedures to permit a public housing agency to request the establishment of a separate market area for either all or contiguous parts of the areas under the jurisdiction of such agency. The Secretary shall consider and approve any such request using the criteria established in clause (i) and the considerations under clause (ii).

“(iv) The Secretary shall not reduce the fair market rental in a market area as a result of a change in the percentile of the distribution of market rents used to establish the fair market rental.

“(v) The Secretary shall phase in large increases or decreases in the reevaluation of the fair market rental in a jurisdiction. Each fair market rental in effect under this subsection shall be based on the most recent available data, trended so that the rentals will be current for the year to which they apply, of rents of dwelling units of various sizes and types in the market area suitable for occupancy by families assisted under this section. The Secretary shall cause to be published for comment in the Federal Register notices of proposed substantial changes in the methodology for estimating fair market rentals and notices specifying the final decisions regarding such proposed substantial methodological changes and responses to public comments.

“(C) The Secretary shall phase in large increases or decreases in the fair market rentals that result from changes in market area boundaries or other methodological changes that do not reflect actual year-to-year trends in rents, or result from changes in the percentile of the distribution of market rents used to establish the fair market rental, by limiting such decreases to not more than 10 percent each year, or such increases to a percentage determined by the Secretary.”
fair market rentals that result from changes in market area boundaries or other methodological changes that do not reflect actual year-to-year trends in rents by limiting such increases or decreases to not more than 5 percent each year.

(b) PAYMENT STANDARD.—Subparagraph (B) of section 8(o)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(1)(B)) is amended by inserting before the period at the end the following: ‘‘, except that no public housing agency shall be required as a result of a reduction in the fair market rental to reduce the payment standard applied to a family continuing to reside in a unit for which the family was receiving assistance under this section at the time the fair market rental was reduced’’.

House Report 111–277

Accurate Rentals. The bill requires HUD to define fair market rent (FMR) areas as sufficiently distinct as is necessary to reflect typical rental costs and to avoid concentration of voucher holders, while taking into consideration the efficient administration of the program by PHAs and HUD administrative costs, the availability of sufficient data to establish separate FMRs, and the ability of PHAs to adjust their payment standards to reflect accurate rent levels. HUD is required to establish procedures to permit a PHA to request a separate FMR area, to be evaluated using this criteria.

HUD is required to phase in changes in FMRs as a result of boundary changes to no more than 5 percent a year. No PHA can be required to reduce their payment standard for existing families as a result of an FMR change.
Annual Adjustment Factors

Included in our comment letter is a detailed critique of the Department’s consolidation of AAFs from ten metropolitan and ten non-metropolitan AAF values (including columns for highest cost utility included and highest cost utility excluded) in FY 2004 to just four region AAFs nationwide (including columns for highest cost utility included and highest cost utility excluded) in FY 2005 to the present. There is no valid statistical reason to dramatically consolidate AAFs in the fashion that the Department has under the previous Administration, and there is no valid reason that the former, more applicable ten metro and non-metro AAFs should not be restored. The adverse impact of HUD’s consolidated AAFs on all FMR values nationwide, the FMRs under the Department’s proposed small area FMR demonstration, and PHAs’ HAP renewal funding each year has been significant.

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, “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, the above actions have either not been acted upon or not been made known to the public. With 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 to restore AAF values based on the previous OMB areas (FY 2005 and prior years).

Utility Component of FMRs

NAHRO recommends that HUD allow interested parties to comment on the utility component of FMRs (24 CFR § 982.517) separately from the overall level of FMRs. In addition to this opportunity, the public should have available an accepted methodology in much the same fashion as the FMRs as a whole now have available for contract rents. NAHRO recommends that HUD provide PHAs with the utility data it gathers from the annual FMR calculations so that every PHA could at least evaluate the percentage utilities changed each year.
The Legal Services Client Coalition, published a paper entitled, "The Role of Utility Costs in Setting Fair Market Rents for Section 8 Housing." This paper provided data revealing how seriously inadequate HUD’s proposed FMRs are when utility bills—particularly seasonal utility bills—are explicitly considered using 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.

The FMR methodology makes no mention of how utility costs implicit within “gross rents” are developed or determined. In addition, they are not published separately. Interested parties should be able to comment on the utility component of FMRs separately from the overall level of FMRs. In addition to this opportunity, the public should have available an accepted methodology, in much the same fashion as the FMRs as a whole now have available for contract rents. 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.

PHAs are required to revise their utility allowances if after performing extensive research on consumption and rates, utility allowances increase by ten percent or more since the last time they were changed. Among other things, we believe that greater transparency in the utility cost calculations used by HUD will also serve an important purpose of providing an objective data-driven process to determine if additional HAP funding adjustments should be considered by Congress and HUD for this purpose, so that PHAs are not left with serving fewer families for this reason.

**Insufficient Public Housing Minimum Percentile Used for Census-Based FMR Values**

HUD’s current Census-based FMR rent determination methodology does not filter out all public, otherwise assisted, and substandard housing from its rental distributions. In an attempt to account for this problem before determining the applicable percentile FMR values, HUD excludes units falling below a minimum threshold (which varies from area to area) based on the 75th percentile distribution of public housing rents. NAHRO believes that HUD’s minimum threshold rent for public housing used to compute baseline FMR percentiles, does not adequately adjust public housing rents to be consistent with unassisted units with a reasonable likelihood of meeting HQS.

As you know, public housing rents are those based on household incomes rather than the total Allowable Expense Level (AEL) – the amount of money that is required to pay debt service and operating costs of the unit. Public housing units do not have debt service. Instead housing assistance is provided by HUD to PHAs to help cover public housing operating costs and capital maintenance needs. Therefore, the costs of maintaining public housing units are not adequately reflected in the rents used by HUD for determining the public housing cut-off levels.

As a result, public housing rents used by HUD for FMR purposes are significantly below rent levels found in the unassisted market with a reasonable likelihood of meeting their debt service.

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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)
associated with property owners’ ability to maintain Housing Quality Standards. To address this problem in the Census data before computing Census baseline FMR rents, NAHRO recommends HUD revise the FY 2006 FMRs, using a public housing rent cut-off at the 95th percentile or higher.

**Relationship Between Quality of Rental Housing Stock and FMRs**

GAO’s recent report titled, "HUD Can Improve Its Process for Estimating Fair Market Rents" found that 14 percent of metropolitan area FMRs and 34 percent of non-metropolitan area FMRs did not fall within a 10 percent range of unassisted gross rents. In combination with HUD’s study results described below, NAHRO believes that significant improvements to capturing more accurate housing quality conditions is needed with respect to the Department’s FMR methodology - even after full implementation of the American Community Survey. Without further improvements, agencies' ability to adequately access the bottom fortieth percentile of the housing market in most places around the country will likely continue to be compromised.

The HUD study referenced below, suggests that a significant portion of units at the bottom end of the rental housing stock – 8 percent to 14 percent - fail HUD's Housing Quality Standards (HQS) and do not have the rent revenue to support making the necessary repairs to come into compliance with HQS. Given that the majority of FMRs are at the bottom 40th percentile of the rental market, even the bottom 8th percentile represents 20 percent of the units under the FMR that are not of sufficient housing quality to qualify for the program. In these instances, PHAs have only the bottom 9th to 40th percentile of the rental housing market available and affordable for program participation. Under this scenario, just 80 percent of the program qualifying units the FMRs are designed to access actually meet the housing quality standards.

Under HUD's "Study on Section 8 Voucher Success Rates Volume I - Quantitative Study of Success Rates in Metropolitan Areas" (November 2001) found that over two-thirds (68 percent) of the successful voucher holders submitted one Request for Lease Approval (RFLA) and the unit passed on the initial inspection. The remaining 28 percent also leased the first unit, but it had to be inspected multiple times before passing inspection. Only 4 percent of voucher holders lease a unit under the Section 8 program, but only after a second or third unit is inspected. The above figures suggest that approximately 14 percent of units inspected under HQS never pass inspection.

As part of the HUD study mentioned above, PHAs were asked to estimate the proportion of units presented for inspection that passed their first housing quality standards (HQS) inspection (without needing to be re-inspected). This variable is used as a proxy for housing quality in the local jurisdiction, on the assumption that the higher the proportion of units that pass initial inspection, the better the local stock. About 31 percent of voucher holders were assisted by PHAs where no more than half of all units passed on the first inspection. Approximately 49 percent of voucher holders were assisted by PHAs where 51 – 75 percent of units passed on the first inspection. Lastly, approximately 20 percent of voucher holders were assisted by PHAs where over 75 percent of all units passed on the first inspection.
The above study’s estimates of "success rates" and the factors that affect them are based on a sample of more than 2,600 households that received vouchers from 48 PHAs across the country. The sample is representative of all voucher holders in metropolitan PHAs that administer programs with more than 800 units. (The study universe includes about 60 percent of all vouchers.)

HUD’s study titled, “Section 8 Rental Voucher and Rental Certificate Utilization Study” (October 1994), found that where the owner agreed to have the unit inspected and an inspection was performed, Section 8 enrollees moved into those units 89 percent of the time. The two principal factors for 11 percent of the units that were not leased under the program after an initial inspection were 1) failure of Housing Quality Standards or 2) the rent level could not be agreed upon by the property owner and PHA.

Over the lifetime of the Section 8 Housing Choice Voucher program, PHA program staff have used HUD’s Housing Quality Standards (HQS) to determine adequacy of their rental housing stock. Based on interviews with PHA staff, HUD’s study titled, "Costs and Utilization in the Housing Choice Voucher Program (July 2003) found that on average 8 percent of the rental housing stock was classified as "poor."

Based on the studies noted above, NAHRO believes the Department should examine methods to evaluate the percentage of units that fail to meet HQS to determine the downward bias of the existing FMR and adjustment methodologies (AHS, RDD, etc.) and recommend a method to offset any biases found. Given that the American Community Survey does not improve upon the quality of the data gathered about housing quality, this issue remains of continued importance to NAHRO members who are trying to access affordable housing opportunities for low-income households. In addition, this issue has a direct bearing on areas qualification for the 50th percentile FMRs.

**Requalification for 50th Percentile FMRs**

In numerous instances, HUD has disqualified PHAs from continuing their status with 50th percentile FMR area designations, if the concentration of voucher holders in the area did not lessen and the applicable PHAs did not meet minimum deconcentration objectives for the past three years. NAHRO is concerned about the conditions under which the Department rescinds 50th percentile FMRs.

At the end of the three-year period, HUD will continue to set the FMRs at the 50th percentile rent only so long as the concentration measure for the current year is less than the concentration measure at the time the FMR area first received an FMR set at the 50th percentile rent. As HUD PIH is aware, many PHAs voucher programs were dramatically under-funded in FY 2009. Their ability to help low-income families achieve deconcentration as well as qualify again for the 50th percentile FMR when compared with the base period has been affected adversely affected. Due to voucher funding shortfalls in FY 2009, rather than continuing to expand affordable housing opportunities to extremely low-income households in deconcentrated neighborhoods, PHAs’ ability to help extremely low-income households live in deconcentrated neighborhoods
was compromised substantially in FY 2009 as a direct result of HUD’s inaccurate funding calculations.

The total HAP funding PHAs have available to facilitate deconcentration is also subject to a variety of macro-economic factors beyond the FMR values, including decreases in household incomes resulting in increased per voucher HAP costs. Many PHAs have had to lower payment standards or not raise them to reflect their actual housing market costs, as a result of insufficient funding.

In many instances, these PHAs vigorously implemented outreach measures to both landlords and voucher-assisted households, to expand and provide housing opportunities outside of poverty-concentrated areas. PHAs’ efforts include:

1) Based on the survey results – increased voucher payment standards;
2) Surveyed/analyzed reasons new voucher holders experienced difficulties funding housing;
3) Provided voucher holders with information packets containing lists of owners interested in leasing to program participants, and maps to various areas, with housing opportunities outside poverty areas;
4) Financed creation of a county-wide search engine for affordable rentals, and encouraged landlords interested in participating in the Housing Choice Voucher Program to list their properties; and
5) Conducted landlord outreach on a bi-annual basis at various locations.

We believe a significant change to 50th percentile FMR requalification process is warranted. Reduction of FMRs to the 40th percentile FMRs in the instances described above, erode the progress and the efforts that these PHAs have made to assist low-income families move out of high poverty areas.

For the above reasons, NAHRO recommends an automatic extension of the existing 50th percentile FMRs, as well qualification of any new areas if applicable, under a set of criterion that is also fair and consistent with the funding and program structure changes that have been implemented in FY 2009.

**Exception Payment Standards**

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 via the
Internet, Census 2000 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.

**State Non-Metropolitan Minimum FMRs**

NAHRO has always supported and continues to support the use of state non-metropolitan minimum FMRs.

**PHA Determination of Rent Reasonableness**

HUD’s existing regulations governing PHA determinations of rent reasonableness (§982.507)(a)(2)(ii) state, “[t]he PHA must redetermine the reasonable rent: (i) Before any increase in the rent to owner; If there is a five percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect 1 year before the contract anniversary; or (iii) If directed by HUD. (3) The PHA may also redetermine the reasonable rent at any other time. (4) At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the PHA.” PHAs are compelled to reevaluate the rent reasonableness of existing leased units in the HCV program if there is a five percent decrease in the published FMR in conjunction with a property owner’s rent increase request. These set of conditions do not compel PHAs to lower contract rents for HCV-assisted dwelling units if there is a five percent decrease in the published FMR. As a result, it is not a foregone conclusion that decreased FMR values under the small area FMR demonstration will necessarily lead to lowered contract rents for dwelling units assisted through the HCV program.

Under the “Housing and Economic Recovery Act of 2008” (HERA) enacted into law on July 30, 2008, PHAs are permitted to use a HAP contract provision where the maximum rent on a unit shall not be less than the initial rent. Because this provision is permissive and not mandatory, HUD is considering parameters for when its use would be appropriate. HUD has stated in the past that it will finalize its policy on this provision through rulemaking. To date, the Department has not issued a proposed rule on this matter. NAHRO recommends that the Department initiate rulemaking on this issue.

**HUD PD&R, HUD PIH and HUD CPD**

On numerous occasions senior HUD officials have talked about getting away from the Department’s past practices of operating in Departmental silos. While most of NAHRO’s previous and current comments are completely within the scope of HUD PD&R’s purview regarding the formulation of proposed and final FMRs, we are also submitting these comments to HUD PIH and CPD officials, regarding FMR-related matters with their Departments’ purview. An example of one of NAHRO’s long-standing regulatory reform recommendations that we made to both HUD PD&R and HUD PIH offices for several years, relates to the effective date by which PHAs should be allowed by HUD to implement lowered voucher payment standards. As you may know, PHAs reevaluate their voucher payment standards at least each time HUD’s FMRs are published. We are glad to see that this topic made it into HUD PIH’s 2011 regulatory
reform agenda to be proposed through HUD’s rulemaking process at some point in the future. In all cases, for the betterment of voucher programs around the country, these and other FMR-related recommendations that we have made over the years to both HUD PD&R and HUD PIH, could not come soon enough for NAHRO and our member agencies.

Conclusion

On behalf of NAHRO, I would like to thank you for the opportunity to comment on the proposed FY 2013 FMRs. Please include our attached letters to reflect our comments on the system concerns we have with HUD’s FMRs and attendant recommendations. If you have any questions concerning these comments, please feel to call me at (202) 580-7213.

Sincerely,

Jonathan Zimmerman
Senior Policy Advisor - Housing Assistance Programs
August 1, 2006

Office of the General Counsel  
Rules Docket Clerk  
Department of Housing and Urban Development  
451 Seventh Street, SW, Room 10276  
Washington, DC 20410-0001

Re: [Docket No. FR–5068–N–01; HUD-2005-0010] Proposed FMRs for Fiscal Year 2007 for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy and Certain Other HUD Programs

Rules Docket Clerk:

The National Association of Housing and Redevelopment Officials (NAHRO) appreciates the opportunity to comment on the department’s proposed FY 2007 Fair Market Rents (FMRs). NAHRO is the largest and oldest housing and community development organization which advocates for the provision of adequate and affordable housing as well as strong, viable communities. NAHRO members include local housing agencies (HAs) and community development agencies that own and/or administer vouchers and properties involved in the HOME, Low-Income Housing Tax Credit, Section 8 tenant-based and Section 8 project-based housing programs.

By and large, the proposed FY 2007 FMRs continue to use the revised Office of Management and Budget (OMB) area definitions and the same calculation methodology used in establishing FY 2006 FMR areas. The FY 2006 FMR areas were a significant departure from the FMR areas used in prior years (FY 1993 – FY 2005). In FY 2006, NAHRO filed extensive comments and analyses in opposition to the department’s revised OMB areas for its FY 2006 FMR calculations. The association maintains its opposition to the FY 2007 FMRs for the same reasons stated in our 2006 comment letter as well as other reasons described below. In order to address many of the problems outlined in our comment letter, NAHRO recommends that HUD use the prior OMB area definitions (implemented from FY 1993 – FY 2005) and the prior methodologies used for the most recent U.S. Census Bureau data to re-benchmark FMRs and bedroom size intervals.

Having just undertaken an extensive review and analysis of the FY 2007 proposed FMRs, with this letter NAHRO wishes to raise the following concerns: dilution of FMRs resulting from the adoption and modification of OMB areas; adverse programmatic impacts of the final FY 2006 FMRs that are maintained in the proposed FY 2007 FMRs; modifications to the County-based Statistical Areas (CBSAs); treatment of counties removed and added to MSAs and CBSAs; application of HUD’s five percent area and sub-area designations as well as its “hold harmless” policy in FY 2007 and beyond; the intersection between HUD’s income limit and FMR area...
definitions; inadequate improvement of AAFs and alignment with OMB inflation factors; missing Consumer Price Index (CPI) update factors or 2005 ACS replacement data for Class B and C size cities; future annual FMR updates; FMR values related to hurricane impacted areas; the various reasons areas lost their 50th percentile FMR designations; improvements needed to the overall FMR methodology in the short-term and long-term; the lack of sufficient notification to HAs of exception payment standards; and use of the American Community Survey (ACS) for the calculation of FMRs and Annual Adjustment Factors (AAFs).

**FY 2007 FMRs Would Repeat the FY 2006 FMR Dilution in Rent Values for 95 Percent of Households Nationwide**

As noted above, the proposed FY 2007 FMRs continue to use the revised OMB area definitions and the same calculation methodology used in establishing FY 2006 FMR areas. In support of the proposed adoption and modification of OMB areas for purposes of calculating FMR values, HUD’s notice of proposed FY 2006 FMRs states, “Note that 96.9 percent of the population is in areas where the 2000 Census Base Rent changes by less than 5 percent.” In its analysis of FY 2006 FMRs however, NAHRO found significant dilution of metropolitan FMR areas in FY 2006 than they otherwise would have absent HUD’s inclusion of former non-metropolitan counties. In the same analysis, NAHRO found small percentages of households residing in metropolitan areas that experienced increases in FY 2006 FMR values as a direct result of including former non-metropolitan counties. This dilution in FMR values will remain or continue on into FY 2007 by virtue of HUD’s continued use of the new OMB areas for FY 2007 FMR values. Not only do the OMB areas not reflect unique housing markets or improve upon the previous FMR areas, but the dilution of FMR values (described herein) disadvantages voucher-assisted households’ (and other federally assisted households’) access to modestly priced, decent, safe and sanitary affordable housing dwellings in the marketplace.

NAHRO conducted a survey from January 15 – April 30, 2006 (attachments D and E) focusing on the impact of HUD's FY 2006 FMRs. The survey illustrates the adverse programmatic impact of the FY 2006 FMRs. The FMR areas and methodologies are repeated in large measure in the notice of proposed FY 2007 FMRs.

As a result of inadequate FMR values in FY 2006, applicants deemed eligible for the HCV program, after having spent long periods of time on waiting lists, are leasing with their vouchers at lower rates of success than in years past. Diluted FMR values in FY 2006 resulted in decreased rental assistance payments for voucher-assisted households in-place, and if continued under HUD’s proposed FY 2007 FMRs could potentially cause significant displacement if they are implemented for these existing assisted households. Beyond the human toll exacted upon voucher holders by the diluted FMRs in FY 2006, NAHRO believes the proposed FY 2007 FMRs will undermine the Administration’s goal to end “chronic” homelessness in 10 years, among other things.

**Adoption of OMB Areas**

The implications of HUD’s proposed FY 2007 40th percentile and 50th percentile FMRs, which combine former non-metropolitan areas with metropolitan areas, will impact Housing Assistance
Payments (HAP) levels per assisted household under the HCV program. Rather than outright decreases in FY 2007 FMRs resulting from this change, the department’s adoption and modification of OMB’s area definitions will result in lower values for FMRs in metropolitan counties than they would have been absent these changes. In order to address many of the problems outlined in our comment letter, NAHRO recommends that HUD use the prior OMB area definitions (implemented from FY 1993 – FY 2005) and the prior methodologies used for the most recent U.S. Census Bureau data to re-benchmark FMRs and bedroom size intervals.

As documented in detail below, NAHRO does not accept the department’s premise that adoption and modification of the new OMB areas for purposes of FMR (and income limit) calculations is justifiable. The department has yet to demonstrate or comment on in any degree of specificity the reasons that “the new definitions will facilitate the use of the extensive new ACS data that the Census will begin releasing next year that is collected and processed based on the new OMB definitions…” NAHRO respectfully requests a detailed explanation as to why the extensive new ACS data which is collected and processed based on the new OMB definitions could not also be used by the department for purposes of calculating and publishing FMR values under the former OMB definitions used from FY 1993 – FY 2005.

NAHRO has demonstrated and will continue to demonstrate that adoption and modification of the new OMB area definitions will disprove the department’s assertion that, “The other reason OMB definitions are important is that federal agencies are expected to use these definitions in administering their programs unless there is some strong program reason to do otherwise.” NAHRO requests an explanation of the annual criterion the department will apply to evaluate whether or not a strong program reason to do otherwise exists.

Despite the fact that over half of the comment letters in FY 2006 pertained to the adoption and modification of the OMB area definitions for FMRs, the final notice did not specifically or adequately address or include the substantive critiques or recommendations contained in these comment letters. In order for the public to make informed decisions about the larger impacts of the proposed FMRs on voucher-assisted households, we believe the department should provide the public with greater context about the impact of the proposed changes. To that end, NAHRO has performed additional analysis of the proposed FY 2006 40th percentile FMRs (see attachments B and C).

**Changing Other Counties from Non-Metropolitan to Metropolitan and Vice-Versa under OMB Definitions**

As proposed, adoption of OMB’s new area definitions will result in increases in the FMR values for many former non-metropolitan counties designated as metropolitan counties for FY 2007. However, decreases in FMR metro values for other counties in those areas will also occur.

HUD’s methodology did not state which counties are proposed to be removed from metropolitan areas. The counties to be removed will have their FMRs based on the 2000 Census-based rent method used in the FY 2007 FMR calculations. We believe this approach, will result in significant declines in proposed FMR values and an inequitable treatment of counties proposed for removal from metropolitan areas. In these instances, NAHRO recommends that the former
metropolitan counties (FY 1993 to FY 2005) which were removed from their MSAs or CBSAs, have their FMRs based on the 2000 Census-based rent method used in the FY 2005 FMR calculations.

In response, in the notice of final FY 2006 FMRs the department stated, “HUD disagrees that its treatment of nonmetropolitan county FMRs is inconsistent with its treatment of metropolitan areas. Metropolitan areas with more than a five percent increase or decrease as a result of the new definitions were assigned FMRs calculated based on their own data. Counties that were removed from FMR areas were also given FMRs based on their own data. The only difference is that use of FMR area data produced larger decreases for some of the counties removed from metropolitan areas.”

NAHRO disagrees with HUD’s comments above for the following reason. HUD excluded any county from the core CBSA if its FMR value under the new OMB area definitions would be significantly higher or lower than under the former FMR area definition (FY 1993 – FY 2005). As a result, many counties were removed from their previously defined FMR areas to form a HUD Metro FMR Area (HMFA). Under HUD’s proposed FY 2006 and FY 2007 FMR-modified OMB area definitions and methodology, the rental housing values from the nonmetropolitan counties are included in determining the FMR values of the core CBSA but are removed from the proposed FMR areas. Generally however, HUD assigned separate FMRs to component counties of CBSA Micropolitan Areas. There does not appear to be a good technical or policy reason for this double counting. The effect of this double counting, however, is to dampen FMRs in all affected FMR areas. NAHRO recommends that these counties should have their FMRs based on the 2000 Census-based rent method used in the FY 2005 FMR calculations. By contrast, the higher core county rental housing values are not included in the non-metro county FMR areas removed from the core CBSA. Not only is this inconsistent, it would tend to skew the proposed FMR values to decrease federal outlays. The result is a decline in FMRs, which is considerable in the separated county and less so in the core counties.

One aspect of HUD’s comment above is true, “Metropolitan areas with more than a 5 percent increase or decrease as a result of the new definitions were assigned FMRs calculated based on their own data. Counties that were removed from FMR areas were also given FMRs based on their own data.” However, the department’s following comment is not inclusive of other differences: “The only difference is that use of FMR area data produced larger decreases for some of the counties removed from metropolitan areas.” What the department neglected to mention or recognize is one principal difference in HUD’s treatment between the counties in question and the FMR values resulting from the department’s methodology: higher core county rental housing values were not included in the non-metro county FMR areas removed from the MSA or core CBSA while the rental housing values from former nonmetropolitan counties were included in determining the FMR values of the MSA or core CBSA. In one example there was no double counting of the counties in FMR values, and in the other case there was. This practice represents disparate treatment and should be rescinded in favor of NAHRO’s recommendations.

We believe that HUD understands the disparate treatment provided between counties which were removed from metropolitan areas and designated as nonmetropolitan counties versus those nonmetropolitan counties that were added to metropolitan areas or CBSAs in FY 2006. Even
HUD’s comments in the notice of final FY 2006 FMRs acknowledged, “Subparts of any of the new areas that had separate FMRs under the old OMB definitions were identified, and 2000 Census Base Rents for these subparts were calculated. Only the subparts within the new OMB metropolitan area were included in this calculation (e.g., counties that had been excluded from the new OMB metropolitan area were not included).” But like several other important aspects of our and other interested parties’ comments, they were not addressed. This is part of a pattern of omitted information important to program stakeholders, which runs counter to recommendations made by the GAO in the report titled, “Rental Housing: HUD Can Improve Its Process for Estimating Fair Market Rents,” which among other things focused on the need for greater transparency in the FMR determination process.

**Proposed Modifications to the County-based Statistical Areas (CBSAs)**

The subject Notice states, “In general, any parts of old metropolitan areas, or formerly nonmetropolitan counties, that would have more than a 5 percent increase or decrease in their FMRs as a result of implementing the new OMB definitions, are defined as separate FMR areas.” In the notice of proposed FY 2006 FMRs (June 2, 2005), the department referred to this change in areas and sub-areas as a “Modified Implementation of the New OMB Definitions.” Notwithstanding our larger opposition to the adoption of the OMB areas described herein, NAHRO previously commented in favor of this specific point in the department’s FY 2006 policy, as it was consistent with the department’s stated objectives.

However, if implemented as proposed in FY 2007, this modified implementation would run counter to the department’s stated FY 2006 objective from June 2, 2005: “HUD is using the county-based statistical areas as defined by OMB, with some modifications. The new definitions have been implemented with modifications intended to minimize changes in FMRs due solely to the use of the new definitions.” In FY 2007, HUD proposes applying this policy in relation to FY 2006 FMR and income limit values, which are already represented by the new and modified OMB definitions.

Instead, to initiate its policy as proposed and implemented in FY 2006, the department should provide proposed FY 2007 FMR values (as well as proposed FY 2007 income limits) and supporting documentation as if the former OMB areas (FY 1993 – 1995) and corresponding methodologies were in effect. After such calculations had been performed and compared with the proposed FY 2007 FMRs (and income limits) using the modified OMB area definitions (from FY 2006), then the 5 percent test could be applied. NAHRO recommends adherence to this recommended policy, as it is consistent with the changes resulting directly and solely from the adoption and modification of the new OMB area definitions (in FY 2006 and FY 2007) themselves. NAHRO’s recommendations concerning both area disaggregation and “hold harmless” policies, apply whether or not there is as a change of five percent or more in income limits.

For purposes of evaluating the 5 percent change as described above, the association believes that the FY 2007 proposed FMR values should not be compared with final FY 2006 FMR values

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because the FY 2006 FMRs already reflect values influenced by the adoption of and modifications to the OMB area definitions. Instead, any FMR differences of 5 percent or more (or income limit values) should be evaluated relative to the FMR values that would have existed absent adoption of the OMB areas or sub-areas (for FY 2006, FY 2007 and beyond). NAHRO supports a “Modified Implementation of the New OMB Definitions” policy which applies to the former OMB areas (FY 1993 – FY 2005).

HUD’s justifications for its policy in FY 2006 did not state that it was designed to minimize the number of large changes in FMR values relative to the previous year’s FMR values. Instead, the policy was designed to explicitly minimize the number of large changes in FMRs due to the use of the new OMB definitions themselves rather than the FMR values (or income limit values) in comparison to the previous fiscal year. Now, a year later, the subject Notice states, “The table below provides a list of the areas affected by this new approach. It compares the FY 2006 FMR to the Revised FY 2006 Rent that reflects the impact of the 2000 Census base median family income comparison for the new metropolitan area and its former FMR area components. The difference shown is the difference between the currently effective FY 2006 FMR and what it would have been if the new area had been used to calculate FY 2006 FMRs (the FY 2006 Equivalent Rent with Income Comparison).”

In FY 2005 the new OMB areas were proposed without any area modifications and without any “Modified Implementation of the New OMB Definitions” policy (described above). In FY 2005, in the wake of public comments, public opposition, and public examination through the media, HUD withdrew its proposal to adopt the new OMB area definitions for FMR calculations, and maintained the existing FMR areas and methodologies instead. HUD’s proposed FY 2006 FMR notice explained the department’s decision: “In response to the limited timeframe available for public comments and the number of comments received opposing use of the new definitions, HUD reverted to using the old definitions in its final FY 2005 FMR publication and in the FY 2005 income limit publication.”

The lack of transparency in HUD’s proposed FY 2006 notice regarding the department’s plan to apply its “modified implementation of the new OMB definitions” policy in subsequent years was a significant failure in the FY 2006 notice for public comment. The process to date did not adequately inform the public about one of the main modifications of the new OMB areas for use with the FMRs. This raises serious concerns about the ongoing application of HUD’s FMR area definitions, modifications and “hold harmless” policies in FY 2007 and future years.

In a comment letter filed by one of our colleagues concerning the notice of proposed FY 2006 FMRs, they raised a series of questions about this important matter by stating, “This year, HUD has elected to moderate the impact of using OMB’s CBSA definitions by creating exception FMR schedules for jurisdictions where the CBSA-based FMR schedule would result in changes in excess of 5 percent. It is unclear what the Department plans for future years. Will these communities continue to have exception FMR schedules in the future? Will the Department continue to apply its 5 percent rule of thumb in future years until those localities have exception FMR schedules that fall within 5 percent of the CBSA-based FMRs? Will those localities then be subsumed into OMB’s CBSA geographic definitions? Will HUD apply some other standard in future years? Lack of information from the Department concerning its plans represents another source of uncertainty and confusion and compromises HAs’ abilities to make informed decisions
over the value of contesting FMRs, or planning for future years in their voucher and other housing programs.”

Another one of our colleagues filed comments in FY 2006 on this issue as well by stating, “The proposed adoption of inappropriate FMR area definitions for Massachusetts is likely to create bigger problems in FY 2007 and beyond…As noted above, HUD has softened the impact of revising the FMR area boundaries by modifying its usual approach to recalculating the FMRs for communities that have been moved to a new geography. However, the June 2, 2005 Federal Register notice suggests that this modification will go away in FY 2007.”

Unfortunately, none of our colleagues’ comments on this issue were addressed in the final FY 2006 FMR notice or in the proposed FY 2007 FMR notice.

The former OMB areas adopted by HUD for purposes of the FMR area definitions remained in effect for 12 years (FY 1993 – FY 2005). It is conceivable that the new OMB area definitions HUD adopted in FY 2006 for purposes of the FMR area definitions could remain in effect for a considerable number of years into the future. If NAHRO’s recommendation above is not adopted in FY 2007 and future years, the department’s 5 percent modification and “hold harmless” policy will have provided a simple one year “fix” to a serious public policy issue, but would also embed the inequities created by the adoption of new OMB areas overall for each subsequent year it remains in effect. If HUD’s policy is implemented as proposed, the dilution of actual housing market values expressed by FMRs through the adoption and modification of new OMB areas would also have occurred without the benefit of proper public notification or comment. Should this take place, NAHRO would strongly object to this policy and the lack of proper notification to the public of this policy.

HUD excluded any county from the core CBSA if its FMR value under the new OMB area definitions would be significantly higher or lower than under the former FMR area definition (FY 1993 – FY 2005). The department included the rental housing values from former non-metropolitan counties in determining the FMR values of the MSAs or core CBSAs. NAHRO is currently undertaking an analysis of the impact of the department’s proposed policy in relation to these and other affected metropolitan counties. Specifically, NAHRO is in the process of performing a side-by-side analysis of HUD’s proposed FY 2007 policy, comparing the FY 2006 FMR to the Revised FY 2006 Rent that reflects the impact of the 2000 Census base median family income comparison for the new metropolitan area and its former FMR area components, versus NAHRO’s recommended policy as described above. NAHRO’s analysis will apply whether or not there was as a change of five percent or more in income limits.

**Intersection of Income Limits and FMR Values for Purposes of Defining FMR Areas**

In terms of HUD’s proposed FY 2006 income limits and FMRs, NAHRO supports a “hold harmless” and area disaggregation policy in FY 2007 and subsequent years. Specifically, NAHRO continues to recommend that the department disaggregate areas merged under the new

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OMB area definitions when their income limits differ by more than five percent to better reflect housing market relationships. The “hold harmless” and area disaggregation policy should apply to any separated areas which become either non-metropolitan counties, parts of different metropolitan areas, or form entirely new metropolitan areas. However, the association is troubled by the department’s implementation of the “hold harmless” and area disaggregation policy as it pertains to income limits and its intersection with FMR areas in FY 2007. NAHRO was surprised to learn that the 2007 proposed FMRs reversed the previous year’s policy on modified OMB areas.

In terms of content, in HUD’s proposed change in FY 2007 (as described above and in Attachment D) it appears that HUD has made the decision that changes of 5 percent or more in income limits is more important than changes of 5 percent or more in FMR values for purposes of establishing FMR areas. This occurred without any justification for the merits of such a decision. In terms of process, the notification to the public with both the FY 2007 FMRs and interim FY 2006 income limits as it pertains to this issue and the intersection between changes of 5 percent or more in income limits versus FMR values is completely inadequate. In light of GAO’s report titled, “Rental Housing: HUD Can Improve Its Process for Estimating Fair Market Rents,” which among other things focused on the need for greater transparency in the FMR determination process, we are concerned about ongoing data omissions.

The subject Notice states, “In order to minimize large changes in income limits in these combined areas with similar rents but differing income levels, HUD is proposing for FY 2007 FMRs to form FMR sub-areas within OMB-defined metropolitan areas in all cases where sub-area median family incomes differ from OMB-defined area median family incomes by more than 5 percent.”

The addition of the 2000 Census base median family income analysis can have three possible effects on an FMR area and the FMRs in that area as defined in FY2006:

1. A new sub-area may be formed (e.g., Kendall County, IL HMFA removed from the Chicago-Naperville-Joliet, IL HMFA). In FY 2006, HUD implemented the Chicago-Naperville-Joliet, IL HMFA. In FY 2007, HUD proposes to split Kendall county as part of the Kendall County, IL HMFA, from the counties of Cook, DuPage, Kane, Lake, McHenry, and Will as part of the Chicago-Naperville-Joliet, IL HMFA. However, the Chicago-Naperville-Joliet, IL HMFA was not listed in Section F table for purposes of comparing FMR values.

2. An existing sub-area may be assigned its own 2000 Census base rent instead of the CBSA base rent (e.g., Danbury, CT HMFA). In FY 2006 HUD implemented new CBSAs. As a result, the former New York, NY HMFA which included data from the five counties of New York City, Rockland, Putnam, and Westchester counties was merged with the counties of Monmouth and Ocean, NJ to form the New York – Northern New Jersey – Long Island CBSA. However in FY 2007, HUD proposed separating the five counties in the former New York, NY HMFA from the two counties in the former Monmouth-Ocean, NJ HMFA. HUD proposes to sever New York City’s connection to the new CBSA area and return it to the old geography: i.e., the New York,

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NY HMFA. The end result would be to nullify the OMB CBSA. NAHRO opposes this change from a standpoint of both substance and process.

(3) An existing sub-area may lose a component which affects the computation of the sub-area’s 2000-to-2005 update factor (e.g., Youngstown-Warren-Boardman, OH HMFA lost the new Sharon, PA HMFA). In FY 2006, HUD implemented the Youngstown-Warren-Boardman, OH-PA MSA. In FY 2007, HUD proposes to split Mercer county, formerly designated as a metropolitan county in FY 2006, into a non-metropolitan county in FY 2007, from the counties of Mahoning and Trumbell as part of the Youngstown-Warren-Boardman, OH HMFA. However, the counties of Mercer, Mahoning, and Trumbull were not listed in the Section F table for purposes of comparing FMR values. Upon closer examination of the underlying data, Mercer county’s two-bedroom FMR was $541 in FY 2006 when listed as part of Youngstown-Warren-Boardman, OH-PA MSA but when removed and classified as a non-metropolitan county its two-bedroom FMR is proposed in FY 2007 to drop to $519. Does this and other similar examples comport with the department’s stated “hold harmless” policy? If not, NAHRO requests that this and other similar areas be corrected to comply with HUD’s “hold harmless” policy.

In FY 2006, HUD listed out each of the county’s former areas next to the proposed MSA or HMFA to which they would be assigned. This helped affected stakeholders fully understand the geographic changes proposed by the department. In FY 2007, the department only listed each proposed MSA or HMFA created rather than demonstrating the former geographic areas as well. This matrix used in FY 2007 was less understandable than the FY 2006 side-by-side comparisons. HUD proposes that Metropolitan Statistical Areas implemented by HUD in FY 2006 be broken up into different areas in FY 2007, including counties in Maryland, West Virginia, Florida, New York, New Jersey, Ohio, Missouri, Kentucky, and Georgia. For a detailed listing of these area changes that were not well-documented, please see Attachment F.

**Inadequate Improvement, Alignment and Application of Annual Adjustment Factors**

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 factor (AAF) process. The report, reached through consensus, stated, “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, the above actions have either not been acted upon or not been made known to the public. NAHRO recommends that HUD do everything in its power to correct for prior inactions as appropriate, and to implement inflation factors from the American Community Survey as soon as possible.
The adequacy of HUD’s AAFs has reached even greater importance, in light of the fact that differences between the AAFs and inflation factors HUD uses from OMB in its annual budget assumptions and justifications for the Section 8 Housing Choice Voucher (HCV) program have contributed to the -4.75 percent and -5.25 percent pro-rations in voucher HAP funds in the last two years alone. It is our understanding that under HUD’s FY 2007 budget request and distribution formula, which was adopted in the House version of HR 5576, deep negative pro-rations could occur again, for the same reasons. NAHRO recommends that HUD look at the trend in the differences between OMB and AAF values, as the department contemplates its budget submissions to Congress in future years.

To adjust FMR values in FY 2002 and FY 2003, the department used the AAF with the highest cost utility excluded. However, in FY 2004 and FY 2005, HUD used the AAF with the highest cost utility included. Without publication of the FY 2007 AAFs or HUD’s planned use of them. It is not clear to us how HAs are to apply them. NAHRO requests an explanation of the department’s changed approach in applying AAFs.

**Missing CPI Update Factors or 2005 ACS Replacement Data for Class B and C Size Cities**

We understand that the department did not conduct regional RDDs in 2004 or 2005 in anticipation of 2005 American Community Survey (ACS) data that would replace missing regional CPI data for inclusion in the final FY 2007 FMRs. However, according to the preamble to the subject Notice, if the ACS data is not available, there is apparently no backup plan to properly inflate FY 2007 FMR data for Class B and C size cities to trend 15 months from the end of 2005. This will decrease the proposed FY 2007 FMR values for these cities.

Data from the 2004 ACS was not available in time for inclusion in the final FY 2006 FMR publication. As a result, in FY 2006, Class B- and C-sized cities did not have the benefit of local CPI update factors. NAHRO would object strongly on substantive grounds if the final FY 2007 FMR values for Class B and C size cities do not include local CPI update factors or the 2005 ACS data to replace that missing data for a second year in a row. If this should occur, HAs and the families they serve in Class B and C size cities should not be penalized for the department’s improper planning assumptions to cover the 15 month period from the end of 2005.

**Future FMR Annual Updates**

Section E of the subject Notices states, “future updates to FMRs will be made at the metropolitan area level and applied to all FMR areas within metropolitan areas where they have been separately designated.” NAHRO objects to the department’s future implementation of annual FMR updates as described in section E on grounds that are both substantive and process oriented. The Notice further states, “Once full-scale ACS data collections become available in the latter part of 2006, sample sizes will be large enough to estimate FMRs for the larger metropolitan areas on an annual basis and for other areas on a two- to four-year basis. To the extent such detailed data are available, the FY 2007 separation of sub-areas within metropolitan areas will be re-examined to determine if FMR area base rents and median family incomes from the new survey are sufficiently different to warrant their continued separation within the metropolitan
First, the department’s proposal to update future FMRs using the new MSAs rather than the more specific sub-area distinctions among housing markets within some of these areas is very vague in its description. The proposal is unclear whether the department is simply seeking to replace 2000 Census data with more recent ACS data coming available later this year and each subsequent year (with which we agree), or whether the department is proposing to abandon all of the distinct FMR areas such as sub-areas, etc., adopted in FY 2006 and proposed for FY 2007 in favor of using the new MSA areas which are much larger in their geographic areas. We disagree with this approach.

Second, the department’s proposal is based on a series of untested assumptions that have not been publicly reviewed. For example, the Notice says, “the new MSAs are probably better reflections of current rental housing markets than of 2000 rental housing markets, and will be shown to be increasingly good approximations of housing markets as more data are gathered in the future.” The impact of such a prediction could be sweeping without the benefit of adequate analysis and public review of HUD’s findings.

Third, proposing a change of this nature which will take place in FY 2008 and beyond is not within the purview of the department’s FY 2007 solicitation of comments. Insufficient information is provided or available to substantively comment on this prediction.

**FY 2007 FMRs Do Not Adequately Reflect Utility Cost Increases**

Forty-five HAs provided information in NAHRO's survey conducted from January 15 – April 30, 2006 about the impacts of HUD's FY 2006 FMRs. When asked about the impact of HUD's FY 2006 FMRs, 82 percent of respondents stated that the utility costs in their area increased, resulting in increased utility allowances of 10 percent or greater for 76 percent of agencies. *These utility-related increases were not reflected in the final FY 2006 FMRs, and are not reflected in the proposed FY 2007 FMRs.*

Despite requests from NAHRO and other industry groups for supplemental funding to pay for anticipated unmet utility expenses in FY 2006, the department did not seek supplemental funding for this purpose. In late June, the department sent notices to HAs around the country lowering their Operating Fund pro-ration from 92 percent to 85.5 percent, due to $283 million in increased utility costs through the third quarter of FY 2006 alone. NAHRO and other industry groups requested the department seek $243 million in supplemental funding for anticipated increases in private sector utility expenses in the Section 8 tenant-based program. The department did not seek such supplemental funding for this purpose. Based on the department’s acknowledgment about unmet utility expenses in the Public Housing program, for which there was no supplemental funding sought, we are similarly concerned about the programmatic impacts on voucher-assisted households throughout the country.
FMR Values Related to Hurricane-Impacted Areas

HAP levels for both the Disaster Voucher Program (DVP) and the Individuals and Households Program (IHP) are based upon HUD’s FMRs for approximately 500,000 households who were displaced due to the 2005 hurricanes. Under DVP and IHP the rental assistance standard is 100 percent of the applicable FMR.

FMR values are critical to providing adequate housing assistance to evacuees. Many 50th percentile FMR areas were reduced to 40th percentile FMRs. As of October 30, 2005, the communities within the areas covered by 50th percentile FMRs served approximately 347,647 of the 500,000 evacuees (70 percent) with FEMA application numbers. Specifically, the Baton Rouge Louisiana FMR area experienced a reduction in two bedroom FMRs in FY 2006, despite the fact that the area ranked third in the number of FEMA applicants. The Dallas-Fort Worth-Arlington Texas FMR area experienced a reduction in two bedroom FMRs despite the fact that it ranked tenth in the number of FEMA applicants. NAHRO’s FY 2006 comment letter, along with meetings with senior HUD officials, have together illustrated the fact that numerous housing agencies that accepted evacuees in communities around the country have been similarly affected.

NAHRO’s analysis indicates that approximately 20 FMR areas affecting many more counties and cities in Louisiana, Mississippi, Alabama and Texas will continue to be adversely affected by the adoption and modification of OMB area definitions with respect to the proposed FMRs. Because so many communities far outside FEMA-designated disaster areas are also impacted by displaced households seeking housing through IHP and DVP programs, the implications for assistance based on the FY 2007 FMRs and related utility allowances are far-reaching.

Despite several random digit dialing (RDD) surveys performed in the region, the proposed FY 2007 FMRs do not currently reflect the impact of the damage and dislocation in the affected areas. In areas damaged by recent hurricanes, as well as in the areas receiving displaced households, many housing units will need to be replaced by new construction. The methodology used for the proposed FY 2007 FMRs is based on existing units rather than units constructed over the last two years. As a result, the units used to derive FMRs tend to have lower housing values than newly constructed units. In both cases, the demand from displaced households will likely increase housing values.

We are appreciative that HUD is conducting special RDD surveys in several Gulf Coast FMR areas using a special protocol to detect possible changes in rents since Hurricanes Katrina and Rita, and look forward to seeing significant changes in rents as a result of these surveys. We hope the findings and modifications will be included in the final FY 2007 FMRs. With that stated, given that the department is well aware of the timing of ACS coming online for use in future FMR calculations, and the opportunity the department had in requesting supplemental funding for RDD surveys so that not all of existing RDD resources would be consumed by the obvious need to conduct them in the Gulf Coast, we are deeply concerned that only one RDD for non-Gulf Coast areas was completed in time for publication of FY 2007 proposed FMRs.

In order to address FMR and utility-related concerns stemming from Hurricanes Katrina and Rita, NAHRO recommends the following:
HUD should institute a moratorium on any reductions in 50th percentile FMRs for at least two years for any of the federally-declared disaster areas or surrounding communities which are providing housing assistance to evacuees;

HUD should enable the agencies in the impacted areas to go up to the 150th percentile FMR without HUD approval;

HUD should accept HAs exemptions in any reductions in 50th percentile FMRs for voucher-assisted households already under lease by the effective date of the final notice; and

HUD should provide notification of proposed FMR geographic changes that may affect re-qualification for the 50th percentile FMRs for FY 2007.

Further, HUD should provide supplemental utility allowance funding for the affected programs and other HUD-assisted programs, and publish a supplemental FY 2007 FMR notice which addresses fluctuating utility allowances. As utility (gas, water, electricity) rates continue to rise and utility allowances increase, the gross rents for participating units will also increase. The majority of participating landlords require families to pay for utilities which will have an impact on families’ rent burdens.

Finally, as we have noted previously, NAHRO recommends that HUD use the prior OMB area definitions for non-metropolitan and metropolitan counties (implemented from FY 1993 – FY 2005) and the prior methodologies used for the most recent U.S. Census Bureau data to re-benchmark FMRs and bedroom size intervals.

50th Percentile FMR Areas

The 50th percentile FMR policy was implemented under a prior administration in those metropolitan areas where we believe officials discerned that FMR increases were most needed to promote residential choice, help families move closer to areas of job growth, and to deconcentrate poverty. Our recommendations underscore the need to achieve the originally-stated goals and objectives which were then, and remain today, both laudable and achievable.

Re-Qualification for 50th Percentile FMRs Areas

The 39 Metropolitan Statistical Areas (MSAs) which qualified for 50th percentile FMRs in December 2000 did so under the FMR area definitions in effect in 2000. Had the department evaluated these 39 MSAs in December 2003 at the end of the three year period as established in the interim rule (dated October 2, 2000), the evaluation would have occurred under the identical FMR area definitions in effect in December 2000. However, the department’s evaluation of these 39 MSAs took place under OMB’s area definitions with modifications, which have changed significantly since 2000. Having omitted an explanation for the department’s delayed review and publication of the 50th percentile FMRs by December 2003, we call upon the department to provide a comparison of how the 50th percentile FMRs would have fared under the established
criterion for renewed 50th percentile FMR status. By virtue of the department’s delayed review and as a result of the subsequent change in the FMR area definitions, deconcentration will be impacted.

HUD’s FY 2006 FMRs resulted in the elimination of 34 areas formerly operating under the 50th percentile FMRs. The elimination of these 50th percentile FMRs will affect hundreds of HAs and hundreds of thousands of voucher-assisted households, as well as households assisted through the LIHTC and HOME programs around the country.

Reasons Areas Lost Their 50th Percentile Designations

The interim rule dated October 2, 2000 establishing the 50th percentile FMRs clearly stated that they would be re-evaluated after three years using the most recent decennial census. However, no mention was made in the interim rule that communities in the 50th percentile FMR areas would be subject to re-evaluation based on the most recent OMB area definitions. Despite this fact, the discretionary adoption of OMB’s new area definitions will result in the failure of 11 FMR areas to meet the 50th percentile FMR area size criterion primarily due to having fewer than 100 census tracts. HUD’s adoption of the new OMB area definitions may also have resulted in some of the 16 FMR areas achieving deconcentration based on a different set of census tracts than established under the interim rule, and as a result losing their 50th percentile FMR designation. With respect to the FMR areas, the department’s 50th percentile FMR re-evaluation was almost five years rather than the three years mentioned by the department when they were first created. This has resulted in a significant change to the interim rule to which these communities were subject. This was done without adequate notification of this change to the rule.

Moving-to-Work (MtW) agencies have not been subject to the same Form 50058 reporting requirements as other HAs. However, insufficient Form 50058 data relating to insufficient PIH Information Center (PIC) reporting rates in the FMR area played a factor in the department’s decision to rescind five areas’ 50th percentile FMR designation due to voucher-assisted households not making progress toward deconcentration. With respect to the threshold for 50058 data, the department’s 50th percentile FMR re-evaluation was almost five years rather than the three years mentioned by the department when they were first created, after which additional HAs signed MtW contractual agreements. This has resulted in a significant change due to the interim rule to which these communities were subject. This occurred without adequate notification of this change to the rule. NAHRO calls upon the department to publish a list of housing agencies that met the 85 percent reporting rate under the HCV program, absent MtW agencies in those same FMR areas. NAHRO also recommends the department reinstate agencies in these FMR areas that otherwise qualified, and that the department provide notification of future reporting rate requirements for continued 50th percentile FMR status.

Three metropolitan areas had their 50th percentile FMR designation rescinded because the share of the census tracts with significant numbers of rental units where at least 30 percent of two-bedroom units are affordable at the 40th percentile FMR exceeded 70 percent. The three

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6 Metropolitan areas including: Dallas, TX; Miami-Fort Lauderdale-Miami Beach, FL; Newark, NJ; Philadelphia-Camden-Wilmington, PA-NJ-DE-MD CBSA; and Sacramento--Arden-Arcade--Roseville, CA
7 Metropolitan areas including: Cleveland-Elyria-Mentor, OH; Tulsa, OK; and Wichita, KS
metropolitan areas in question scored 70.2 percent, 70.3 percent and 70.4 percent, which the department interpreted to have exceeded the aforementioned criteria. However, if the department had used standard rounding practices instead, communities in all three areas would have qualified for redesignation as 50th percentile FMR areas. The department’s methodology for establishing weighted averages was not provided to the public so there is no way of knowing, but it appears that the method used was to weight by population rather than by households. This appears to have contributed to these areas having weighted averages in excess of 70.0 percent rather than at or below 70.0 percent, if households had been used for average weighting purposes. NAHRO calls upon the department to publish its methodology and to provide an explanation of the accuracy of this methodology. NAHRO recommends the department reinstate agencies in FMR areas that otherwise qualified. In addition, the department should provide notification of future rounding methods used for continued 50th percentile FMR status.

HCV Program Funding and Program Structure Changes Undermined Deconcentration Services to Households

HUD’s notice regarding proposed FY 2006 40th percentile FMRs states that 50th percentile FMR areas could lose their status if the concentration of voucher holders in the area did not lessen and if the applicable HAs did not meet minimum deconcentration objectives for the past three years. NAHRO is concerned that the conditions under which the department will rescind 50th percentile FMRs will adversely affect hundreds of HAs. The budget-based funding policy outlined in PIH Notices 2004-7 and 2005-1 had a profound and adverse impact on the level of housing assistance HAs were able to provide households from 2000-2003 to assist in deconcentration.

HUD’s proposed FY 2001 FMR notice stated, “At the end of the three-year period, HUD will continue to set the FMRs at the 50th percentile rent only so long as the concentration measure for the current year is less than the concentration measure at the time the FMR area first received an FMR set at the 50th percentile rent.”

Since that time, the funding structure and program structure under which the HAs operated with 50th percentile FMRs from January 2004 to the present are more restrictive of their ability to help low-income families achieve deconcentration and qualify for the 50th percentile FMR when compared with the same time period from December 2000 to December 2003. Public statements by the department, later confirmed by a review of Voucher Management System data in 2004, show an unprecedented drop in the national average voucher lease-up rates from 97 to 93 percent. These rates are even lower through March 2006.

The importance of the December 2000 to December 2003 time frame, even though it was a short period of time where deconcentration would have been subject to a variety of macro-economic factors beyond the FMR values, is that it occurred during a period of time when the HCV program was funded for each voucher on actual HAP costs. So while demonstrating the causal relationship of 50th percentile FMRs and deconcentration would have been difficult from December 2000 to December 2003, the fact that the funding and essential program structures changed dramatically as of January 2004 and beyond will make a fair and equitable review of the causal relationship between 50th percentile FMRs and deconcentration even more difficult.
Compared with the HCV funding and program structure in place on December 2000, when the 50th percentile FMRs took effect in FY 2004:

- PIH Notice 2004-7 was issued more than four months after the FY 2004 omnibus appropriations act was passed by Congress with retroactive funding implications on agencies;
- HAs had capped HAP funding based on their prior year’s three month snapshot with an inflation factor that skipped the last five months of 2003, rather than basing their estimates on their actual voucher costs;
- HAs’ program reserves were reduced from one month to two weeks of annual program costs and not replenished for voucher costs beyond the level of August 2003 adjusted by their FY 2004 full AAF;
- HAs’ ability to engage in “maximized leasing” was removed, which reduced leasing for highly utilized HAs; and
- Administrative fees were cut by an average of 6.2 percent per year, relative to the administrative fee rates enacted following and since the passage of QHWRA.

The adverse impact of the funding and program structure of the HCV program in 2004 alone is well documented through NAHRO’s studies and newspaper articles from around the country. NAHRO’s 2004 study (http://www.nahro.org/pressroom/2004/200410renewalstudy.pdf) found that the budget-based renewal formula implemented under PIH Notice 2004-7 caused $93 million in housing assistance shortfalls and approximately $300 million in over-funding of HAs’ base renewal amounts. HAs had to offset these shortfalls in order to prevent approximately 52,000 low-income families from losing some or all of their housing assistance. Controlling for distinguishing characteristics among survey respondents, nationally over 205,000 low-income families have been put at-risk by HUD’s FY 2004 budget-based renewal formula, including families assisted by agencies in the 50th percentile FMR areas. As of July 2004 (before FY 2005 FMRs went into effect), funding shortfalls attributable to the funding policy implemented under PIH Notice 2004-7 forced agencies to take adverse actions including HAP contract terminations, canceling vouchers during families’ search periods, freezing turnover vouchers, denying new requests from voucher holders seeking portability transfers, a 9 percent average reduction in voucher payment standards, and imposing new minimum tenant rents.

In addition to all of the adverse impacts on low-income households described above, NAHRO’s survey also found that 38 percent of agencies estimate that 8 percent fewer voucher-assisted households will be successful in leasing utilizing their lowered payment standards, 6 percent of agencies lowered gross unit rents under HAP contracts for participating property owners, 21 percent of agencies shortened the time frames in which voucher holders must find a unit, and 9 percent of agencies starting serving more applicants above 30 percent of the area median income.

Prior to the issuance of PIH Notice 2004-7, 78 percent of agencies met the congressional “affordability standard” with payment standards (established under QHWRA) resulting in less than 40 percent of their families occupying units of any size who are paying more than 30

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8 NAHRO’s survey responses from 288 housing agencies results in a 90 percent confidence
percent of their adjusted income for rent. However, after having to lower their payment standards as a result of HUD’s FY 2004 renewal policy, NAHRO’s study found that only 27 percent of agencies state that they will be able to meet Congress’s “affordability standard.” At their lowered payment standard level(s) resulting from HUD’s FY 2004 renewal policy, NAHRO’s study found that only 28 percent of housing agencies will be able to house families at or below 30 percent of area median income without exceeding 40 percent of their monthly adjusted income for housing costs.

HUD’s FY 2006 FMRs have had an adverse impact upon housing agencies’ ability to comply with regulations governing the scope and extent of voucher-assisted households’ housing burdens. They also have had associated hardships on voucher holders relating to the statutory requirement limiting their initial housing burdens to no more than 40 percent of their monthly adjusted income.

HAs are obligated to set payment standards that meet Congress’s statutory “affordability standard,” which was codified under 42 U.S.C. § 1437f(o)(1)(E) and implemented by HUD through regulation. This standard, however, requires HUD to “monitor rent burdens and review any payment standard that results in a significant percentage of the families occupying units of any size, who are also paying more than 30 percent of adjusted income for rent.”

In 2004, NAHRO conducted a survey of 288 local and state housing agencies administering over 20 percent of the nation’s vouchers in 46 states. As a result of funding shortfalls attributable to budget-based funding policy outlined in PIH Notice 2004-7, agencies have been forced to lower their payment standards. At their lowered payment standard level(s), only 28 percent of housing agencies indicated that they would be able to house families at or below 30 percent of area median income without exceeding 40 percent of their monthly adjusted income for housing costs (Sec. 982.508).

While the statutory language is permissive with respect to HUD’s enforcement in particular cases, it does enunciate a clear congressional intent that a significant fraction of families served by the voucher program not bear undue rent burdens. Consistent with our FMR regulatory comment letter from last year, we remain concerned that the department did not undertake such a review prior to the issuance of proposed FY 2006 or FY 2007 FMRs. As a result, we are concerned that the proposed FMRs may in fact exacerbate affordability problems. NAHRO urges the department to undertake a review of voucher-assisted housing burdens as described above, and take necessary actions to comply with the statutory and regulatory requirements noted above before issuing final FY 2007 FMRs. In addition, under 42 U.S.C. 1437f the department has a statutory obligation to document excessive housing cost burdens showing the share of family income paid toward rent under the Housing Choice Voucher program. At least once a year the department is also required to submit a report to Congress.

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9 The Department has, in implementing regulations at 24 CFR § 982.503(g), established 40 percent as the “significant percentage” of families whose rent burden should not exceed 30% of adjusted income.
More to the point, Congress required HUD to deliver a report examining whether the fair market rent for areas where voucher-assisted households have excessive housing burdens is appropriate, and to make recommendations for legislative and administrative actions appropriate as a result of analysis of the data. Noting that these requirements do not appear to have been met to date, NAHRO calls upon the department to suspend implementation of the FY 2006 FMRs which, as documented in our comment letters and analyses, adversely impacts housing agencies.

**Administrative Fee Cuts Undermined Deconcentration Services to Households**

The services that HAs were able to provide households from 2000-2002 to assist in deconcentration were eroded in subsequent years due to cuts in administrative fees. Compared with the pre-QHWRA administrative fee rates, on average agencies’ per unit administrative fees have been reduced by approximately 16 percent. NAHRO’s 2004 survey found that 20 percent of housing agencies state having to layoff staff, 41 percent of respondents state having to increase their staff’s workloads, and 42 percent of respondents state that the uncertainty surrounding the administrative fee rate for increased authorized leased units since August 1, 2003 creates a financial disincentive to strive for 100 percent leasing.

**HCV Funding Structure Worsened Compared with FY 2004**

If the dramatic adverse impact on HAs’ ability to serve extremely low-income families with the goal of deconcentration was not bad enough, the program structure in 2004 became even more restrictive than FY 2004. Compared with the HCV funding and program structure in place on December 2000, when the 50th percentile FMRs took effect in FY 2005:

- HAs had capped HAP funding based on their prior year’s three month snapshot with an inflation factor, rather than based on their actual voucher costs resulting in a 96 percent pro-ration for HAs;
- HAs’ program reserves were reduced from two weeks to one week of annual program costs and not replenished for voucher costs beyond the level of August 2004 adjusted by their FY 2005 full AAF;
- HAs’ ability to engage in “maximized leasing” was removed, which created a chilling effect and reduced leasing for highly utilized HAs; and
- The Central Fund for increased authorized leasing beyond August 2004 levels at capped HAP costs was eliminated (and there was no AAF appeal process or funding).

NAHRO believes that the congressional funding for voucher renewals from FY 2004 – FY 2006 was sufficient to renew all families under lease, but that the inefficient “snapshot” budget-based funding formula employed since April 2004 (under PIH Notice 2004-7) resulted in over-funding of hundreds of millions of dollars as well as under-funding that resulted in an unprecedented 100,000-family drop in the number of families served in the voucher program. Newspaper articles from around the country have documented the hardships suffered by voucher-assisted households and participating property owners.

HUD’s final rule creating 50th percentile FMRs in areas where affordable rental units and voucher recipients were highly concentrated took effect in December 2000 and were to be
reviewed for ongoing eligibility three years later in December 2003. To the best of our knowledge, HUD PD&R performed a study of the 50th percentile FMRs to determine their costs and the extent to which they may or may not have helped HAs accomplish intended deconcentration benefits under the 50th percentile FMRs. However, to date the department has not published this report nor did the department perform its scheduled review for the ongoing eligibility of the 39 MSAs in question at the end of the three-year period.

In the past, NAHRO has supported PD&R’s study reports, which we believe have contributed to the education and awareness among lawmakers in their public policy development of housing and community development (HCD) programs. To help reestablish the value and relevance of HUD PD&R on important and timely housing policy matters, we request HUD to release its study of the 50th percentile FMRs to determine their costs and the extent to which they may or may not have helped HAs accomplish intended deconcentration benefits under the 50th percentile FMRs.

Lastly, we are encouraged by the addition of other areas to those that qualify for the 50th percentile FMRs in FY 2007, including West Palm Beach-Boca Raton HMFA, as well as the Dallas HMFA, the Fort Lauderdale HMFA, and the San Diego-Carlsbad-San Marcos MSA. As noted in our comment letter in FY 2006, the Dallas-Fort Worth-Arlington Texas FMR area experienced a reduction in two bedroom FMRs despite the fact that it ranked tenth in the number of FEMA applicants.

**Former Non-Metro County State Minimum FMRs**

We are pleased that in FY 2006 HUD rescinded its proposal to group non-metropolitan counties formerly designated as State minimum FMRs with other counties making up metropolitan areas for FY 2007. State minimum FMRs have been set at the respective state-wide median non-metropolitan rent level, but are not allowed to exceed the U.S. median non-metropolitan rent level. As such, it would be helpful if the department listed a side-by-side comparison of the non-metropolitan areas and their State minimum FMR values next to the FMR level capped at the U.S. median non-metropolitan, so that small non-metropolitan counties in the South with low rents could make this direct comparison.

**HUD’s Use of OMB Definitions**

OMB Bulletin 04-03 issued on February 18, 2004 states, “An agency using the statistical definitions in a non-statistical program may modify the definitions, but only for the purposes of that program.” NAHRO believes that the new OMB area definitions should not be used as a framework to determine eligibility or as a means to allocate funds for the Section 8 and HOME programs (including the calculation of FMRs) until the measures highlighted below are fully completed. Use of the new OMB area definitions for analytic purposes is completely consistent with one of the main purposes of using those definitions across federal agencies. This does not preclude the department from using the former FMR areas for purposes of program implementation, while at the same time using the new OMB area definitions for external reporting purposes to OMB, the US Census and Congress.
OMB Bulletin 04-03 states, “…OMB cautions that Metropolitan Statistical Area and Micropolitan Statistical Area definitions should not be used to develop and implement Federal, state, and local nonstatistical programs and policies without full consideration of the effects of using these definitions for such purposes. These areas are not intended to serve as a general-purpose geographic framework for nonstatistical activities, and they may or may not be suitable for use in program funding formulas.”

In OMB’s Federal Register comments on the standards used to define MSA and Micropolitan areas it states, “Programs that base funding levels or eligibility on whether a county is included in a Metropolitan or Micropolitan Statistical Area may not accurately address issues or problems faced by local populations, organizations, institutions, or governmental units…OMB urges agencies, organizations, and policy makers to review carefully the goals of non-statistical programs and policies to ensure that appropriate geographic entities are used to determine eligibility for and the allocation of Federal funds…”

In cases where there is no statutory requirement and an agency elects to use the area definitions in a non-statistical program, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. When an agency is publishing for comment a proposed regulation that would use the definitions for a non-statistical purpose, the agency should seek public comment on the proposed use of the definitions. Surprisingly, HUD’s proposed FY 2007 FMR notices did not mention that the public could appeal the new area definitions themselves, if they believed and could demonstrate that the proposed areas are inconsistent with their distinct housing markets.

It should be noted that OMB establishes and maintains these definitions solely for statistical purposes. In developing these definitions, OMB did not take into account or anticipate any non-statistical uses that may be made of the definitions. Even in those cases where there is legislation specifying the use of metropolitan areas for programmatic purposes, including allocating Federal funds, OMB, working with the Congress, continues to clarify the foundations for the metropolitan area definitions and the resultant, often unintended consequences of their use for non-statistical purposes. NAHRO recommends that the department suspend use of all new area OMB definitions for purposes of determining FY 2007 FMRs until such time as adequate analysis can be performed regarding the adequacy and suitability of these area definitions to distinct housing markets around the country.

We further recommend that before HUD makes any change in the FY 2007 FMR areas, it conduct an analysis of whether each new proposed area best conforms to the boundaries of a local housing market. To this end, the department should publish a list of factors, as well as thresholds for each factor, that it considers adequate to define distinct housing markets. It should also state the reasons for these determinations.

In the short term, and prior to the execution of any changes recommended here, NAHRO recommends that the department use the OMB area definitions in existence since 1993 for purposes of determining FMRs. This does not preclude the department from using the new OMB area definitions for purposes of collecting, tabulating, and publishing statistics that measure economic and social conditions of geographic areas. OMB has always acknowledged a
difference in establishing new area definitions for analytical purposes, separate and apart from a federal agency’s program purposes. OMB, we believe, fully planned for data users and analysts interested in demographic and economic patterns, trends, and processes to consider data from these new area definitions when conducting analyses. We understand that HUD is still able to group counties in the new OMB area definitions, which would not require the department to group counties by the new area definitions for purposes of determining FMRs.

Factors for Review in Establishing Adequacy of OMB Areas

Lowering the percent of employed workers that commute to a central county/counties as well as eliminating the graduated population density requirements and urban classification of outlying counties (taking into account their proportional population to the core county) seems to have significantly weakened the thresholds for determining their social and economic ties. This appears to have had a profound impact on FMR areas.

As proposed, a county qualifies as an outlying county if (a) 25 percent of the employed residents of the county work in the CBSA’s central county or counties, or (b) 25 percent of the jobs in the potential outlying county are accounted for by workers who reside in the CBSA’s central county or counties.

However, the following associated requirements were removed:

Conditions formerly requiring 50 or more people per square mile (ppsm) and two of the following: 1) 60 or more ppsm, 2) at least 35 percent urban population, 3) a population growth rate of at least 20 percent, 4) at least 10 percent or a population of 5,000 lives in qualifier Urban Area (UA). The proposed area definitions also dropped OMB’s previous criterion with additional requirements that formerly required less than 50 ppsm and two of the following: 1) at least 35 percent urban population, 3) population growth rate of at least 20 percent, 4) at least 10 percent or 5,000 of population lives in qualifier UA.

With respect to outlying counties, also eliminated from OMB’s prior area definitions were:

4) 50 percent or more of employed workers commute to the central county/counties of an MSA and: 25 or more ppsm, or at least 10 percent or 5,000 of the population lives in a qualifier UA; or

5) 40 percent to 50 percent of employed workers commute to the central county/counties of an MSA and 35 or more ppsm, or at least 10 percent or 5,000 of the population lives in qualifier UA; or

6) 25 percent to 40 percent of employed workers commute to the central county/counties of an MSA and 35 ppsm and one of the following: (1) 50 or more ppsm, (2) at least 35 percent urban population, (3) at least 10 percent or 5,000 of population lives in qualifier UA.
The Metropolitan Area Standards Review Committee (MASRC), responding to changes to OMB’s metropolitan area (MA) standards, concluded that “as changes in settlement and commuting patterns as well as changes in communications technologies have occurred, settlement structure no longer is as reliable an indicator of metropolitan character as was previously the case.” Noting this, it seems that the department’s proposed FY 2006 FMR notices provided no analysis of the adequacy of this change as it pertains to distinct housing markets in which rental housing units are in competition [as defined in 24 CFR 888.113(a)].

NAHRO recommends that the department provide the public with comments on its position, after having compared OMB’s prior and proposed criteria (as described above) and their respective suitability to distinct housing markets under 24 CFR 888.113(a).

**Employment Interchange Rate**

It appears that the use of employment interchange rates as currently proposed have also had a profound impact on the differences between the former and proposed area definitions. Many working households face high housing cost burdens or commute long distances from areas with more affordable housing. The employment interchange rate as a factor by itself is too simplistic and is an insufficient measure for all social and economic interactions between areas. NAHRO recommends that the department examine the incomes of those employed residents who make up the employment interchange, particularly for low-income households affected by the proposed FMRs.

Further, there can be many examples where the incomes of employed residents commuting into the central county are considerably less than the incomes of employed residents within the central county, and vice-versa. Clearly, the level in household incomes is a significant determinant in households’ ability to pay varying levels of rent. As such, they should be examined carefully and specific thresholds should be established for similar income ranges among employed commuter residents between outlying and central counties. Absent further examination of the incomes of employed commuters, significant distortions could have been introduced into the social and economic ties making up the new FMR areas.

In addition, neither the previous nor proposed criterion measures the incomes or median incomes of those employed residents commuting from one county to another. It appears that other aspects of OMB’s prior definitions were consistent with distinct housing markets without this test.

**Strongly and Moderately Self-Contained Areas**

While there was an examination of certain economic aspects of self-contained areas under HUD’s proposed FY 2006 FMR areas, the proposed rule did not contain an examination of the internal migration of residents moving within the county or city. The U.S. Census 2000 showed a major trend where the majority of moves took place within an existing county. NAHRO believes that internal migration should be considered a significant factor in determining a single housing market, as defined in 24 CFR 888.113(a).
Within Metropolitan Statistical Areas containing at least 2.5 million people, OMB has determined that counties that are strongly self-contained are ones that have 65 percent or greater of employed residents who remain in the county to work and have a .75 or greater ratio of jobs to resident workers. Secondary counties are considered moderately self-contained when consisting of 50 to 64.9 percent or greater of its employed residents who remain in the county to work and have a .75 or greater ratio of jobs to resident workers. NAHRO believes that without further examination of the “employment income containment” associated with these statistics, it is difficult to demonstrate meaningful socio-economic impacts on their housing markets.

**In Forming Distinct Housing Market Areas, Other Housing Factors Deserve Examination**

In forming distinct housing market areas, other critical factors such as median rents, distribution of bedroom sizes, percentage of renters, median home price, median gross rent as a percentage of household income, vacancy rates, and seasonal housing deserve examination. We believe that Census household income or family income, etc., should be examined when determining the adequacy of grouping counties (or cities and towns) into distinct housing market areas for purposes of determining FMRs. We believe analysis of HUD’s proposed FY 2007 FMR areas will demonstrate substantial housing market differences between counties considered to be within the same areas exists.

**Examining Disproportionate Impacts on Protected Classes**

No mention was made in the preamble to the notice as to whether the department undertook an analysis of the percentage of Section 8 and/or HOME household beneficiaries by county and/or city to determine whether the new area definitions will have a disproportionate impact. This is particularly important in those areas that have laws protecting against discrimination against households based on source of income. If no analysis of this kind was done, NAHRO recommends that this take place before final implementation of the proposed FY 2007 FMR areas. Similarly, we recommend an analysis by race and ethnicity, as well as by disabled assisted-households and other protected classes, be conducted.

**Exceptions to OMB Definitions**

In the past, HUD has granted exceptions when counties were removed from several large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. One such example is the Santa Barbara – Santa Maria, CA MSA which encompasses an area of over 2,750 square miles with two distinct housing markets – North County and South County\(^\text{11}\) – where housing market costs in the South County are twice that of the North County and they are separated by over an hour by automobile. Further examination of a representative number of proposed areas will undoubtedly reveal that there are a number of other areas which are larger than the housing market areas and should be granted exceptions to the OMB area definitions [24 CFR 888.113 (e)(iv)].

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\(^{11}\) North County is made up of the cities of Santa Maria, Lompoc, Buellton, Guadalupe and the Orcutt area. The South County is made up of the cities of Santa Barbara, Carpinteria, as well as the Goleta, Montecito and Isla Vista areas.
Similarly, outlying counties of large metropolitan areas whose income and rent characteristics differ significantly from their core metropolitan areas should also continue to receive exceptions to the OMB area definitions. To this end, the department should make known the income and rent characteristics, as well as the thresholds needed to qualify for such an exception.

**Intersection Between Budget-Based HCV Renewal Policy and Proposed FY 2007 FMRs**

Agencies that set their payment standards up to 110 percent of the FY 2006 FMRs would be forced through a combination of the FY 2006 budget-based renewal funding policy and the adoption and modification of OMB area definitions to request payment standards well below actual housing market costs or face financial insolvency. They would also be forced to serve fewer families. Moreover, due to current Section 8 HCV program funding constraints, housing agencies lack sufficient resources to mitigate FMR reductions by increasing payment standards.

By contrast, some housing agencies have already lowered their payment standards in reaction to the FY 2006 budget-based “snapshot” renewal policy. The proposed FY 2007 FMR amounts applied to their existing lowered payment standards would in fact be even lower than these agencies’ anticipated payment standards. Many agencies that have already completed annual recertifications over the last 90 days using their prior payment standards now face either having to increase their payment standards again or leaving them intact. However, they will be forced to redo all of those recertifications. This will create tremendous upheaval for these housing agencies as well as the households and participating property owners they serve.

Many metropolitan areas have proposed revisions in FY 2007. These revisions include counties previously designated as non-metropolitan areas. Some of these formerly non-metropolitan counties will find that the proposed FY 2007 FMRs are substantially higher. Counties with substantial increases in the new proposed FMR may find program implementation difficult because of insufficient funding. Previously, HUD advised these counties to apply to the Office of Public and Indian Housing for exception rents below 90 percent of the FMR standard (See 24 CFR 982.503) where appropriate. HUD’s proposed FY 2007 FMRs are increasing in some areas; HAs also have to lower per voucher Housing Assistance Payments within the annual budget-based amounts provided.

The FY 2007 proposed FMRs will require HAs to lower their payment standards and request waiver approvals to meet the implementation time frames for existing voucher-assisted households, and in some cases HAs will need to request exception payment standards lower than 90 percent of the FY 2006 FMRs and/or FY 2007 FMRs, not because the market warrants it, but for the sole purpose of keeping average HAP costs within insufficient annual funding provided under a budget-based “snapshot” funding system (PIH Notice 2005-1). By requesting a lower exception rent, HUD’s renewal policy puts housing agencies in a position of increasing the risk of households of not being able to locate units that meet the new artificially lowered payment standards while market rates continue to increase.

A reduction in the FMR/Payment Standards for the HCV participant families will cause them to experience difficulties in locating suitable units. This may result in increased family search time and possibly voucher expiration. As families turn over vouchers, housing agencies will
experience reduced utilization and leasing rates affecting Section Eight Management Assessment Program (SEMAP) indicators.

While HAs generally welcome increased FMRs that better reflect the market rates in their communities, such increases well above their actual market costs put additional pressures when there is no additional HAP funding to support the increased per voucher cost for existing voucher-assisted households that would accompany these increases. Therefore, it is important to keep FMRs at realistic and accurate levels.

In FY 2004, when HUD changed the voucher funding policy into a three-month “snapshot” budget-based funding system (under PIH notice 2004-7), many HAs around the country found that they were under-funded relative to their true voucher costs and actual annual leasing. Being fiscally responsible, many agencies found ways to reduce per voucher costs accordingly. While they were successful at doing so, it has regrettably been at the cost of reduced subsidy for the low-income households that we serve. These families are faced with higher rent burdens and shallower subsidies. These levels of low subsidies cannot be sustained over a long period of time, as property owners’ costs for utilities, insurance, taxes and more continue to increase.

HUD issued PIH Notice 2005-9 providing guidance designed to assist agencies under certain local conditions in offsetting funding shortfalls through program cost reductions allowed under the regulations, including shorter time frames for implementing lower payment standards and reducing utility allowances. Department officials’ public statements and notifications to HAs stated that waivers under PIH Notice 2005-9 will only be approved if the HA can demonstrate a shortfall that would result in the termination of participant families, and that waivers will not be approved to allow an HA to lease up more units.

To address this issue, we reviewed the department’s criterion and calculations for determining agencies’ waiver eligibility under PIH Notice 2005-9 and raised the following concern. NAHRO wrote to HUD in June 2005, requesting that the department address the harmful effects of its discretionary policy which prevents approval of HAs’ requests to lower their voucher payment standards and to be implemented in less time than existing households’ second re-examination (as described above). Specifically, we noted that HUD’s policy was having an adverse impact on communities’ housing affordability problems, afflicting homeless and at-risk populations among both owners and renters.

NAHRO wrote at that time, “recent waiver requests have been denied under PIH Notice 2005-9 that would have lowered HA’s average voucher Housing Assistance Payment costs that would have otherwise enabled them to lease additional authorized families with the annual funding amount available to them.”

To date, the department has not exercised its option to approve HAs' voucher payment standard reduction waiver requests under PIH Notice 2005-9 without the preconditions described above. NAHRO is concerned that the net effect of the department’s discretionary policy requires agencies not to lease turnover vouchers to other eligible families as a pre-condition to being eligible for waiver approvals under PIH Notice 2005-9. NAHRO believes that the department’s overly restrictive waiver policy pertaining to reduced payment standards has been a contributing
factor in an unprecedented 100,000-family drop in the number of families served in the voucher program.

HUD PIH Notice 2005-9 also suggested that HAs that find that the FMRs are too high due to low funding levels request exception rents so as to set their payment standards below 90 percent of the FMRs. Exception rents have been used over the past 30 years for situations where the FMRs were not high enough to meet the market rate demands of a community. If an HA must request an exception rent to decrease their payment standards, this provides a further indication of a fundamental flaw in the methodology used for existing FMRs or more likely in the “snapshot” budget-based distribution of otherwise adequate funding and the methodology.

It is also worth noting that NAHRO requested that the department issue an extension to PIH Notice 2005-9 which expired on February 28, 2006. To date, no such extension has been issued.

**Short-Term Needs to Improve FMR Methodology**

*Results in RDDs Shows A Dramatic Departure Relative to Previous Years*

As the department transitions to full use of the ACS, we are pleased to learn that HUD plans to follow GAO’s recommendation to continue its use of other surveys (including random digit dialing and the AHS) to assess the accuracy of its FMRs. The importance of being able to gauge the accuracy of HUD’s FMR process through RDD surveys and AHS assessments was raised by GAO in its recent report, which states that HUD needs to have a means to assure itself and others that any given FMR estimate is accurate. The GAO claims that having no reasonable alternative for assessing FMR accuracy “will not likely address the concerns of PHAs with reason to question FMR accuracy and may also contradict HUD’s own data quality guidelines.”

With each successive fiscal year, from each decennial census onward, HUD’s FMR values have been determined through a standard methodology. This approach has yielded results that have been progressively below the FMRs values determined through both RDD surveys and the AHS. In other words, the frequency and amounts by which FMRs were increased as a result of AHS and RDD surveys relative to HUD’s FMR methodology alone suggests the diminishing accuracy of Census-based rents with each successive year as well as the diminishing adequacy of using the Consumer Price Index (CPI) residential rent index to adjust FMRs. From FY 1997 - 2001, the percentage of HUD's FMRs has increased as a result from RDD and AHS findings. Specifically, FMRs resulting from AHS and RDD surveys have increased steadily compared with rents developed through the Census-based FMR methodology alone, from 25% in FY 1997 to 45% in FY 2001.

In FY 2003 and prior years, the department held that the AHS and RDD surveys provided a more accurate measure than the FMR methodology alone. However, in sharp contrast to prior experience, FMRs determined through HUD’s RDDs over the last two years have dramatically decreased proposed FMR values relative to HUD’s FMR methodology alone. In lieu of the implementation of the ACS in the near future, it would appear that either the department’s RDDs or AHS have lost their utility relative to the HUD’s new FMR area definitions or that the department’s new FMR area definitions are less accurate than HUD’s RDDs or AHS housing
assessments. However, without any public statements about the underlying reasons for the dramatic reversal in the trends resulting from RDDs and AHS surveys relative to the proposed FMRs alone, we have questions regarding the accuracy of HUD’s new proposed FMRs. We recommend that the department address this issue. The department’s response to this issue in FY 2006 reflects a different understanding of the point NAHRO is making. As such, we welcome the opportunity to discuss this matter further.

The Role of Utility Costs in Setting Fair Market Rents for Section 8 Housing

FMRs include utilities, which are based on costs for housing units, and are calculated prior to the beginning of the fiscal year to which they apply. By contrast, utilities are not included in the CPI residential rent index, and CPI data are based on actual costs for the period they cover. The scope of impact on FMR values is significant, because HUD uses CPI data for areas with metropolitan CPI surveys for over 60 percent of the populations.

The Legal Services Client Coalition published a paper entitled, “The Role of Utility Costs in Setting Fair Market Rents for Section 8 Housing.” The paper provided data revealing how seriously inadequate HUD’s proposed FMRs are when utility bills—particularly seasonal utility bills—are explicitly considered using 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.

With regard to the FMR methodology, HUD makes no mention of how utility costs implicit within “gross rents” are developed or determined. We appreciate the department’s providing a better explanation of the utility component of the gross rent in the FMRs than in previous years. However, NAHRO requests that utility components of the FMRs be published separately from the rents that make up each area’s FMR values. In addition, they are not published separately. Interested parties should be able to comment on the utility component of FMRs separately from the overall level of FMRs. In addition to this opportunity, the public should have available an accepted methodology, in much the same fashion as the FMRs as a whole now have available for contract rents. 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.

Insufficient Public Housing Minimum Percentile Used for Census-Based FMR Values

HUD’s current Census-based FMR rent determination methodology does not filter out all public, otherwise assisted, and substandard housing from its rental distributions. In an attempt to account for this problem before determining the applicable percentile FMR values, HUD excludes units falling below a minimum threshold (which varies from area to area) based on the 75th percentile distribution of public housing rents. NAHRO believes that HUD’s minimum threshold rent for public housing used to compute baseline FMR percentiles does not adequately adjust public housing rents to be consistent with unassisted units with a reasonable likelihood of meeting HQS.

12 "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)
Public housing rents are those based on household incomes rather than the total Allowable Expense Level (AEL)—the amount of money that is required to pay operating costs of the unit. Instead, housing assistance is provided by HUD to HAs to cover the gap between rent and operating costs, plus capital improvement needs. Therefore, the costs of maintaining public housing units are not adequately reflected in the rents used by HUD for determining the public housing cut-off levels.

As a result, public housing rents used by HUD for FMR purposes are significantly below rent levels found in the unassisted market with a reasonable likelihood of meeting their debt service associated with property owners’ ability to maintain Housing Quality Standards. To address this problem in the Census data before computing Census baseline FMR rents, NAHRO recommends HUD revise the FY 2006 FMRs using a public housing rent cut-off at the 95th percentile or higher.

**Relationship Between Quality of Rental Housing Stock and FMRs**

GAO’s recent report titled, “HUD Can Improve Its Process for Estimating Fair Market Rents” found that 14 percent of metropolitan area FMRs and 34 percent of non-metropolitan area FMRs did not fall within a 10 percent range of unassisted gross rents. In combination with HUD’s study results described below, NAHRO believes that significant improvements to capturing more accurate housing quality conditions is needed with respect to the department’s FMR methodology—even after full implementation of the ACS. Without further improvements, agencies' ability to adequately access the bottom 40th percentile of the housing market in most places around the country will likely continue to be compromised.

The HUD study referenced below suggests that a significant portion of units at the bottom end of the rental housing stock—8 percent to 14 percent—fail HUD's Housing Quality Standards (HQS) and do not have the rent revenue to support making the necessary repairs to come into compliance with HQS. Given that the majority of FMRs are at the bottom 40th percentile of the rental market, even the bottom 8th percentile represents 20 percent of the units under the FMR that are not of sufficient housing quality to qualify for the program. In these instances, HAs have only the bottom 9th to 40th percentile of the rental housing market available and affordable for program participation. Under this scenario, just 80 percent of the program qualifying units the FMRs are designed to access actually meet the housing quality standards.

HUD's “Study on Section 8 Voucher Success Rates Volume I - Quantitative Study of Success Rates in Metropolitan Areas” (November 2001) found that over two-thirds (68 percent) of the successful voucher holders submitted one Request for Lease Approval (RFLA) and the unit passed on the initial inspection. The remaining 28 percent also leased the first unit, but it had to be inspected multiple times before passing inspection. Only 4 percent of voucher holders lease a unit under the Section 8 program, but only after a second or third unit is inspected. The above figures suggest that approximately 14 percent of units inspected under HQS never pass inspection.
As part of the above study, HAs were asked to estimate the proportion of units presented for inspection that passed their first HQS inspection (without needing to be re-inspected). This variable is used as a proxy for housing quality in the local jurisdiction, on the assumption that the higher the proportion of units that pass initial inspection, the better the local stock. About 31 percent of voucher holders were assisted by HAs where no more than half of all units passed on the first inspection. Approximately 49 percent of voucher holders were assisted by HAs where 51 – 75 percent of units passed on the first inspection. Lastly, approximately 20 percent of voucher holders were assisted by HAs where over 75 percent of all units passed on the first inspection.

The above study’s estimates of “success rates” and the factors that affect them are based on a sample of more than 2,600 households that received vouchers from 48 HAs across the country. The sample is representative of all voucher holders in metropolitan HAs that administer programs with more than 800 units (The study universe includes about 60 percent of all vouchers.).

HUD's study titled, “Section 8 Rental Voucher and Rental Certificate Utilization Study” (October 1994) found that where the owner agreed to have the unit inspected and an inspection was performed, Section 8 enrollees moved into those units 89 percent of the time. The two principal factors for 11 percent of the units that were not leased under the program after an initial inspection were 1) failure of Housing Quality Standards or 2) the rent level could not be agreed upon by the property owner and HA.

Over the lifetime of the Section 8 Housing Choice Voucher program, HA program staff have used HUD's HQS to determine adequacy of their rental housing stock. Based on interviews with HA staff, HUD's study titled, “Costs and Utilization in the Housing Choice Voucher Program” (July 2003) found that on average 8 percent of the rental housing stock was classified as “poor.”

Based on the studies noted above, NAHRO believes the department should examine methods to evaluate the percentage of units that fail to meet HQS to determine the downward bias of the existing FMR and adjustment methodologies (AHS, RDD, etc.) and recommend a method to offset any biases found. Given that the ACS does not improve upon the quality of the data gathered about housing quality, this issue remains of continued importance to NAHRO members who are trying to access affordable housing opportunities for low-income households. In addition, this issue has a direct bearing on areas’ qualification for the 50th percentile FMRs.

Environmental Impact

Ordinarily, when the department publishes rules revising existing FMRs, an Environmental Impact section is included. However, the proposed rule did not include an examination of the environmental impact, and no mention was made as to whether it qualified for a categorical exclusion from the environmental assessment. NAHRO recommends the department provide the public with an explanation of the environmental impact of the proposed rule.
Medium and Long-Term Need to Improve FMR Methodology

NAHRO fully supports the implementation of the Census’s ACS. We understand that ACS data will be available for metropolitan areas by 2007, but it is possible that some adequate sample sizes for some areas around the country may be available in the near future. ACS data are expected to replace RDD surveys. However, RDDs would continue to be used until the ACS is fully implemented. While the ACS is likely to make substantial improvements to HUD’s underlying data for future FMR determinations, there are a number of ongoing concerns that we believe deserve further attention.

HUD's Definition of "Recent Movers" and "Stayers" Impact on FMRs

The 40th percentile FMR is drawn from the distribution of rents of all units occupied by recent movers, defined by HUD as renter households who moved to their present residence within the past 15 months. Under the RDD methodology, only 42 percent of the sample results are recent movers. In tight rental markets, renters tend to remain in occupancy longer and move less because their existing rents tend to be more affordable.

HUD PD&R should examine whether capturing only 42 percent of recent movers in the RDD methodology provides an accurate reflection of recent movers' impact on rental housing costs and make recommendations on possible improvements based on their findings.

The AHS definition comes closest to reproducing the Section 8 Housing Choice Voucher program's Housing Quality Standards for program participation. Out of the 2,704 FMR areas (354 metropolitan areas and 2,350 non-metropolitan county FMR areas), sample sizes and area definitions under each AHS limit its use to approximately 20 areas. RDD surveys provide the closest estimate to the Census determined rents. However, it is worth noting that the Census limited definition of deficient housing quality results in only 1.2 percent of America's housing stock being deficient (1990 Census).

In the past, HUD had considered adding the full set of AHS housing quality questions to some of its RDD surveys to study their impacts. Unfortunately, the ACS does not improve upon the housing quality data gathered beyond that collected in AHS surveys. NAHRO recommends that the department evaluate ways to improve the housing quality data captured for purposes of determining FMRs.

Exception Payment Standards

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, an HA may exceed the published FMRs by up to 20 percent for specified geographic submarkets of a larger FMR area. The most common way for HAs 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 HAs. Given the costly process to HAs and HUD in conducting RDDs, NAHRO recommends that the department make available to HAs via the Internet Census 2000 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. In light of the fact that there are over 300 counties with proposed decreases in their FY 2006 FMRs, HAs ability to access this information for purposes of applying for “success rate” payment standards is important.

**Insufficient Notification to HAs of Payment Standard Application to HUD Field Offices**

The harmful “snapshot” budget-based funding policy, coupled with diluted FMR values, has contributed to significantly lower voucher success and lease-up rates around the country. In addition, the department has not adequately informed housing agencies in recent years of HUD Field Office Economic Market Analysis Division’s resumption of the payment standard review process for HA requests above 110 percent of the FMR. This notification is essential to a sound FMR and payment standard policy, irrespective of the FMR methodology used.

On October 3, 2005, HUD issued an expedited electronic notification process for HAs in the federally-declared disaster areas to establish separate payment standard amounts up to 120 percent of the published FMR, with higher exception rents to be requested through a described expedited waiver process. An expedited waiver process is available to non-federally declared disaster communities that are hosting hurricane evacuees. NAHRO’s recent survey of HAs found that all of the respondents located in federally-declared disaster areas stated they either notified or requested an exception payment standard.

**Future FMR and AAF Annual Updates**

NAHRO fully supports the use of the ACS for the calculation of both FY 2007 FMRs and Annual Adjustment Factors (AAFs). The release of the Census Bureau’s ACS data will initiate a major change in FMR calculations. The surveys are large enough to provide annual FMR estimates for large metropolitan areas, and two or more years of data can be combined to provide reliable estimates for smaller areas. NAHRO supports the re-benchmarking of all metropolitan areas and FMR areas when sufficient ACS or other data are available to estimate rents at the same level of accuracy for all other FMR areas.

**HUD Local Market Surveys**

Until such time that use of the ACS is fully operational, NAHRO continues to support HUD economists’ field work and research of local market conditions, as well as HUD paid RDD surveys.
Conclusion

Attachment A contains a summary of NAHRO’s key recommendations covered in this letter in greater detail. We look forward to discussing these recommendations with the department and would be happy to address any questions that you might have.

Thank you for the opportunity to comment on the proposed FY 2007 FMRs. If you have any questions, please feel to call me at (202) 289- 3500 ext. 7215 or Jonathan Zimmerman at ext. 7213.

Sincerely,

John F. Bohm
Director of Legislation, Program Development & Media
Attachment A:
Summary of NAHRO’s Key Recommendations

Adoption of OMB Areas

NAHRO recommends that HUD use the prior OMB area definitions (implemented from FY 1993 – FY 2005) and the prior methodologies used for the most recent U.S. Census Bureau data to re-benchmark FMRs and bedroom size intervals.

NAHRO requests a detailed explanation as to why the extensive new ACS data which is collected and processed based on the new OMB definitions could not also be used by the department for purposes of calculating and publishing FMR values under the former OMB definitions (implemented from FY 1993 – FY 2005).

NAHRO requests an explanation of the annual criterion the department will apply to determine whether or not a strong program reason exists to rescind the modified OMB areas.

Changing Other Counties from Non-Metropolitan to Metropolitan under OMB Definitions

NAHRO recommends that the former metropolitan counties (FY 1993 to FY 2005) which were removed from their MSAs or CBSAs, have their FMRs based on the 2000 Census-based rent method used in the FY 2005 FMR calculations.

Under HUD’s proposed FY 2006 and FY 2007 FMR-modified OMB area definitions and methodology, the rental housing values from the nonmetropolitan counties are included in determining the FMR values of the core CBSA but are removed from the proposed FMR areas. Generally however, HUD assigned separate FMRs to component counties of CBSA Micropolitan Areas. There does not appear to be a good technical or policy reason for this double counting. The effect of this double counting, however, is to dampen FMRs in all affected FMR areas. NAHRO recommends that these counties should have their FMRs based on the 2000 Census-based rent method used in the FY 2005 FMR calculations.

Proposed Modifications to the County-based Statistical Areas (CBSAs)

For purposes of evaluating the 5 percent change, NAHRO believes that the FY 2007 proposed FMR values should not be compared with final FY 2006 FMR values because the FY 2006 FMRs already reflect values influenced by the adoption and modifications made to date with respect to the OMB area definitions. Instead, any FMR differences of 5 percent or more should be evaluated relative to the FMR values that would have existed absent adoption of the OMB areas or sub-areas (for FY 2006, FY 2007 and beyond). NAHRO supports a “Modified Implementation of the New OMB Definitions” policy which applies to the former OMB areas (FY 1993 – FY 2005)

To initiate its policy as proposed and implemented in FY 2006, the department should provide proposed FY 2007 FMR values (as well as proposed FY 2007 income limits) and supporting documentation as if the former OMB areas (FY 1993 – 1995) and corresponding methodologies
were in effect. After such calculations had been performed and compared with the proposed FY 2007 FMRs (and income limits) using the modified OMB area definitions (from FY 2006), then the 5 percent test could be applied. NAHRO recommends adherence to this recommended policy, as it is consistent with the changes resulting directly and solely from the adoption and modification of the new OMB area definitions (in FY 2006 and FY 2007) themselves. NAHRO’s recommendations concerning both area disaggregation and “hold harmless” policies, apply whether or not there is as a change of five percent or more in income limits.

Intersection of Income Limits and FMR Values for Purposes of Defining FMR Areas

In FY 2006, HUD implemented the Youngstown-Warren-Boardman, OH-PA MSA. In FY 2007, HUD proposes to split Mercer county, formerly designated as a metropolitan county in FY 2006, into a non-metropolitan county in FY 2007, from the counties of Mahoning and Trumbell as part of the Youngstown-Warren-Boardman, OH HMFA. However, the counties of Mercer, Mahoning, and Trumbull were not listed in the Section F table for purposes of comparing FMR values. Upon closer examination of the underlying data, Mercer county’s two-bedroom FMR was $541 in FY 2006 when listed as part of Youngstown-Warren-Boardman, OH-PA MSA but when removed and classified as a non-metropolitan county its two-bedroom FMR is proposed in FY 2007 to drop to $519. Does this and other similar examples comport with the department’s stated “hold harmless” policy? If not, NAHRO requests that this and other similar areas be corrected to comply with HUD’s “hold harmless” policy.

Inadequate Improvement, Alignment and Application of Annual Adjustment Factors

NAHRO recommends that HUD do everything in its power to correct for prior inactions on making improvements to AAFs as described in the final report issued on October 14, 1999 by the Negotiated Rulemaking Advisory Committee and prepared by The Consensus Building Institute. Further, the department should implement inflation factors from the American Community Survey as soon as possible.

NAHRO recommends that HUD look at the trend in the differences between OMB and AAF values, as the department contemplates its budget submissions to the Congress in future years.

NAHRO respectfully requests an explanation of the department’s changed approach in applying AAFs in FY 2002 – FY 2005, as it pertains to the AAFs with the highest cost utility included.

Missing CPI Update Factors or 2005 ACS Replacement Data for Class B and C Size Cities

Data from the 2004 ACS was not available in time for inclusion in the final FY 2006 FMR publication. As a result, in FY 2006, Class B- and C-sized cities did not have the benefit of local CPI update factors. NAHRO would object strongly on substantive grounds if the final FY 2007 FMR values for Class B and C size cities do not include local CPI update factors or the 2005 ACS data to replace that missing data for a second year in a row. If this should occur, HAs and the families they serve in Class B and C size cities should not be penalized for the department’s improper planning assumptions to cover the 15 month period from the end of 2005.
Future FMR Annual Updates

Section E of the subject Notices states, “future updates to FMRs will be made at the metropolitan area level and applied to all FMR areas within metropolitan areas where they have been separately designated.” NAHRO objects to the department’s future implementation of annual FMR updates as described in Section E on grounds of both substance and process.

FY 2007 FMRs Do Not Adequately Reflect Utility Cost Increases

The proposed FY 2007 FMRs do not reflect increased utility allowances of 10 percent or greater for approximately 76 percent of agencies. Based on the department’s acknowledgment about unmet utility expenses in the Public Housing program for which there was no supplemental funding sought, we are concerned about the programmatic impacts on voucher-assisted households throughout the country, and renew our previous request accordingly.

FMR Values Related to Hurricane Impacted Areas

In order to address FMR and utility-related concerns stemming from Hurricanes Katrina and Rita, NAHRO recommends the following:

- institute a moratorium on any reductions in 50th percentile FMRs for at least two years for any of the federally-declared disaster areas or surrounding communities which are providing housing assistance to evacuees;

- enable the agencies in the impacted areas to go up to the 150th percentile FMR without HUD approval;

- accept Has’ exemptions in any reductions in 50th percentile FMRs for voucher-assisted households already under lease by the effective date of the final notice;

- provide notification of proposed FMR geographic changes that may affect re-qualification for the 50th percentile FMRs for FY 2007; and

- provide supplemental utility allowance funding for the affected programs and other HUD-assisted programs, and publish a supplemental FY 2007 FMR notice which addresses fluctuating utility allowances.

Re-Qualification for 50th Percentile FMRs Areas

We call upon the department to provide a comparison of how 50th percentile FMRs would have fared under the established criterion for renewed 50th percentile FMR status.

NAHRO requests that HUD release its study of the 50th percentile FMRs to determine their costs and the extent to which they may or may not have helped HAs accomplish intended deconcentration benefits under the 50th percentile FMRs.
Reasons Areas Lost Their 50th Percentile Designations

NAHRO also calls upon the department to publish a list of housing agencies that met the 85 percent reporting rate under the HCV program, absent MtW agencies in those FMR areas. NAHRO recommends the department reinstate agencies in these FMR areas that otherwise qualified, as well as provide notification of future reporting rate requirements for continued 50th percentile FMR status.

NAHRO calls upon the department to publish its methodology with regard to several HAs’ share of the census tracts with significant numbers of rental units where at least 30 percent of two-bedroom units are affordable at the 40th percentile FMR exceeded 70 percent, and to provide an explanation of its accuracy. NAHRO recommends the department reinstate agencies in these FMR areas that otherwise qualified, and provide notification of future rounding methods used for continued 50th percentile FMR status.

While the statutory language is permissive with respect to HUD’s enforcement in particular cases, it does enunciate a clear congressional intent that a significant fraction of families served by the voucher program not bear undue rent burdens. Consistent with the FMR regulatory comment letter from last year, we remain concerned that the department did not undertake such a review prior to the issuance of proposed FY 2006 or FY 2007 FMRs. As a result, we are concerned that the proposed FMRs may in fact exacerbate affordability problems. NAHRO urges the department to undertake a review of voucher-assisted housing burdens as described above, and take necessary actions to comply with the statutory and regulatory requirements noted above before issuing final FY 2007 FMRs. In addition, under 42 U.S.C. 1437f the department has a statutory obligation to document excessive housing cost burdens showing the share of family income paid toward rent under the Housing Choice Voucher program. At least once a year the department is also required to submit a report to Congress.

NAHRO calls upon the department to suspend implementation of the FY 2006 FMRs which adversely impact HAs (as documented in our comment letters and analyses).

Rescind Restrictive Waiver Approval Standards in PIH Notice 2005-9

HUD issued PIH Notice 2005-9 providing guidance designed to assist agencies under certain local conditions in offsetting funding shortfalls through program cost reductions allowed under the regulations, including shorter time frames for implementing lower payment standards and reducing utility allowances. Department officials’ public statements and notifications to HAs stated that waivers under PIH Notice 2005-9 will only be approved if the HA can demonstrate a shortfall that would result in the termination of participant families, and that waivers will not be approved to allow an HA to lease up more units. NAHRO recommends that the department address the harmful effects of its discretionary policy which prevents approval of HAs’ requests to lower their voucher payment standards and to be implemented in less time than existing households’ second re-examination (as described above). NAHRO urges the department to

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reverse its positions on these issues in an expeditious and manageable fashion, within the confines of the law.
Attachment B:
Changing Other Counties from Non-Metropolitan to Metropolitan under OMB Definitions

Adopting OMB’s area definitions will result in increases in the FMR values for 184 formerly non-metropolitan counties being designated as metropolitan counties for FY 2006. These counties include approximately 14.7 million people. However, as previously stated, 51 formerly non-metropolitan counties with sufficient rental survey observations proposed for conversion to metro areas to be consistent with OMB’s area definitions also resulted in decreases in FMR metro values for the other counties in those metro areas. There was a 2 percent weighted average increase of the remaining 133 formerly non-metropolitan counties with sufficient rental survey observations proposed for conversion to metro areas to be consistent with OMB’s area definitions.

Unlike the department’s methodology for counties proposed to be added to metropolitan areas, HUD’s methodology did not provide counties that are proposed to be removed from metropolitan areas to have their FMRs based on the 2000 Census-based rent method used in the FY 2005 FMR calculations. This methodology resulted in sharp declines in their proposed FMR values, as well as an inequitable treatment of counties proposed for removal of metropolitan areas. There was a 5 percent weighted average decrease of the 77 formerly non-metropolitan counties with sufficient rental survey observations proposed for conversion to metro areas to be consistent with OMB’s area definitions. These counties include approximately 3.7 million people. Attachment C contains a list of the proposed impacts of converting former metropolitan counties into non-metropolitan counties. As stated in our earlier written comments, we believe that HUD should in these instances also base FMRs for the counties removed from metropolitan areas on the 2000 Census-based rent method used in the FY 2005 FMR calculations.

**NAHRO’s Estimated Percent Impact on Metro Area**

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<td>Lubbock, TX MSA</td>
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<td>-1</td>
<td>Lynchburg, VA MSA</td>
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<td>Macon, GA MSA</td>
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-3 percent    Monroe, LA MSA
-1 percent    Montgomery, AL MSA
-5 percent    Morgantown, WV MSA
-5 percent    Morristown, TN MSA
 0 percent    Nashua, NH HUD Metro FMR Area
 0 percent    Nashville-Davidson--Murfreesboro, TN HUD
 0 percent    Norwich-New London, CT HUD Metro FMR Area
 0 percent    Ogden-Clearfield, UT MSA
-1 percent   Omaha-Council Bluffs, NE-IA HUD Metro FMR
-1 percent    Owensboro, KY MSA
 0 percent    Parkersburg-Marietta, WV-OH MSA
-2 percent    Pascagoula, MS MSA
-1 percent    Peoria, IL MSA
-5 percent    Pine Bluff, AR MSA
 0 percent    Pocatello, ID MSA
 0 percent    Portland-Vancouver-Beaverton, OR-WA MSA
-1 percent    Portsmouth-Rochester, NH HUD Metro FMR Area
 0 percent    Provo-Orem, UT MSA
 0 percent    Reno-Sparks, NV MSA
-3 percent    Richmond, VA HUD Metro FMR Area
 0 percent    Roanoke, VA HUD Metro FMR Area
-5 percent    Rochester, MN HUD Metro FMR Area
 0 percent    San Angelo, TX MSA
 0 percent    San Antonio, TX HUD Metro FMR Area
-1 percent    Shreveport-Bossier City, LA MSA
-1 percent    Sioux City, IA-NE-SD MSA
-2 percent    Sioux Falls, SD MSA
-28 percent    Southern Middlesex County, CT HUD Metro FMR
 0 percent    Springfield, MA HUD Metro FMR Area
-1 percent    St. Joseph, MO-KS MSA
 0 percent    St. Louis, MO-IL HUD Metro FMR Area
-1 percent    Tallahassee, FL HUD Metro FMR Area
-3 percent    Topeka, KS MSA
-4 percent    Tuscaloosa, AL MSA
-2 percent    Valdosta, GA MSA
-1 percent    Victoria, TX HUD Metro FMR Area
 0 percent    Virginia Beach-Norfolk-Newport News, VA-NC
 0 percent    Washington-Arlington-Alexandria, DC-VA-MD
-2 percent    Waterloo-Cedar Falls, IA HUD Metro FMR Area
-1 percent    Wenatchee, WA MSA
 0 percent    Westerly-Hopkinton-New Shoreham, RI
-2 percent    Western Rockingham County, NH HUD Metro
-1 percent    Wichita Falls, TX MSA
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<tr>
<th>Town/County ’06</th>
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<th>FMR Area</th>
<th>Percent Impact (FY ’05 – ’06)</th>
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<td>Acadia Parish</td>
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<td>Adams County, IN</td>
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<td>Ashtabula County</td>
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<td>Ashtabula County, OH</td>
<td>-12 percent</td>
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<td>Carter County</td>
<td>Carter County</td>
<td>Carter County, KY</td>
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</tr>
<tr>
<td>Cayuga County</td>
<td>Cayuga County</td>
<td>Cayuga County, NY</td>
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<td>Cherokee County, SC</td>
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<tr>
<td>Clinton County</td>
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<tr>
<td>Columbiana</td>
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<td>Dale County</td>
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<td>Davidson County</td>
<td>Davidson County</td>
<td>Davidson County, NC</td>
<td>-13 percent</td>
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<td>DeKalb County</td>
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<tr>
<td>Genesee County</td>
<td>Genesee County</td>
<td>Genesee County, NY</td>
<td>-10 percent</td>
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<td>Harrison County</td>
<td>Harrison County</td>
<td>Harrison County, TX</td>
<td>-1 percent</td>
</tr>
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<td>Henderson County</td>
<td>Henderson County</td>
<td>Henderson County, TX</td>
<td>-1 percent</td>
</tr>
<tr>
<td>Hood County</td>
<td>Hood County</td>
<td>Hood County, TX</td>
<td>-22 percent</td>
</tr>
<tr>
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<td>Huntington County, IN</td>
<td>-2 percent</td>
</tr>
<tr>
<td>Island County</td>
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<td>Island County, WA</td>
<td>-22 percent</td>
</tr>
<tr>
<td>Lenawee County</td>
<td>Lenawee County</td>
<td>Lenawee County, MI</td>
<td>-23 percent</td>
</tr>
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<td>Madison County</td>
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</tr>
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<td>Mohave County</td>
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<td>Mohave County, AZ</td>
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<tr>
<td>Montgomery</td>
<td>Montgomery</td>
<td>Montgomery County, NY</td>
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<td>Ogle County, IL</td>
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<td>Rowan County</td>
<td>Rowan County</td>
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<tr>
<td>Scott County</td>
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<td>Scott County, IN</td>
<td>-5 percent</td>
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<tr>
<td>Webster Parish</td>
<td>Webster Parish</td>
<td>Webster Parish, LA</td>
<td>-21 percent</td>
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Attachment D: Impact of FY 2006 Reductions of 50th to 40th Percentile FMRs

NAHRO’s 2006 survey further illustrates the adverse programmatic impacts of the FY 2006 FMRs, with the areas and methodologies repeated in large measure in FY 2007. Forty- HAs provided information in NAHRO's survey conducted from January 15 – April 30, 2006 about the impacts of HUD's FY 2006 FMRs, which reduced 34 areas from 50th percentile FMRs to the 40th percentile. When asked about the impact of HUD's reduction of 50th percentile FMRs to the 40th percentile in FY 2006, respondents stated:

**Housing Agency's Voucher Lease-up Rates:** 57 percent of respondents stated that it will have adverse impacts on their voucher lease-up rates.

**Households' Searching Time & Households' Lease-ups:** 46 percent of respondents stated that it will have adverse impacts on voucher-assisted households' searching time and/or ability to lease-up with their voucher.

**Households' Housing Cost Burdens:** (i.e., rent + utilities or voucher homeownership costs): 64 percent of respondents stated that it will have adverse impacts on voucher-assisted households' housing cost burdens.

**Deconcentration of Poverty:** 55 percent of respondents stated that it will have adverse impacts on their ability to promote the deconcentration of poverty.

**Recruiting Property Owners:** 48 percent stated that it will have adverse impacts on their ability to recruit property owners in the HCV program, Section 8 project-based voucher (PBV) assistance program, HOME, and/or LIHTC program.

**Retaining Property Owners:** 48 percent of respondents stated that it will have adverse impacts on their ability to retain property owners in the HCV program, PBV assistance program, HOME, and/or LIHTC program.

**Utility Costs:** 82 percent of respondents stated that the utility costs in their area increased, resulting in increased utility allowances of 10 percent or greater for 76 percent of agencies. These utility-related increases were not reflected in the final FY 2006 FMRs, and are not reflected in the proposed FY 2007 FMRs.

**FMR Increases Versus Exception Payment Standards:** With the same amount of annual budget authority in FY 2006, 47 percent of respondents stated that there is a difference in their HCV program operations effective and efficient use of Section 8 funding between receiving an approved HUD exception payment standard (120 percent) versus HUD raising their area FMR values by 120 percent and allowing their HA to set payment standards between 90 - 110 percent (by bedroom size, neighborhood and for reasonable accommodations) of the increased FMR value. All respondents that were located in federally-declared disaster areas stated that with the same amount of annual budget authority in FY 2006, they would prefer HUD raising their area FMR values by 120 percent, allowing them to set payment standards between 90 - 110 percent of the increased FMR value.
Attachment E: Impact of FY 2006 FMRs in Hurricane Impacted Areas

NAHRO’s 2006 survey further illustrates the adverse programmatic impact of the FY 2006 FMRs as it related to federally-declared disaster areas, with the FMR areas and methodologies repeated in large measure in FY 2007. When asked in NAHRO’s recent survey about the impact of HUD's decision to not increase FY 2006 FMR values in the wake of hurricanes Katrina, Rita and Wilma, other than the expedited electronic process:

**Housing Agency's Voucher Lease-up Rates:** 13 percent of respondents stated that it has had adverse impacts on their voucher lease-up rates.

**Households' Searching Time & Households' Lease-ups:** 18 percent of respondents stated that it has had adverse impacts on voucher-assisted households' searching time and/or ability to lease-up with their voucher.

**Households' Housing Cost Burdens** (i.e., rent + utilities or voucher homeownership costs): 18 percent of respondents stated that it has had adverse impacts on voucher-assisted households' housing cost burdens.

**Deconcentration of Poverty:** 5 percent of respondents stated that it has had adverse impacts on their ability to promote the deconcentration of poverty.

**Recruiting Property Owners:** 5 percent of respondents stated that it has had adverse impacts on their ability to recruit property owners in the HCV program, PBV assistance program, HOME, and/or LIHTC program.

**Retaining Property Owners:** 5 percent of respondents stated that it had an adverse impact on their ability to retain property owners in the HCV program, PBV assistance program, HOME, and/or LIHTC program.
Attachment F: Counties Affected by Changes of 5 Percent in Income Limits

- In FY 2006 HUD implemented the Hagerstown-Martinsburg, MD-WV MSA and Washington-Arlington-Alexandria, DC-VA-MD HMFA from FY 2006. In FY 2007, HUD proposes to split the District of Columbia as part of the Washington-Arlington-Alexandria, DC-VA-MD HMFA from the counties of Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city as part of the Washington-Arlington-Alexandria, DC-VA-MD HMFA from Washington county as part of the Hagerstown, MD HMFA from the counties of Berkeley and Morgan as part of the Martinsburg, WV HMFA;

- In FY 2006, HUD implemented the Miami-Fort Lauderdale-Miami Beach, FL MSA. In FY 2007, HUD proposes to split Broward county in the Fort Lauderdale, FL HMFA from the counties of Miami-Dade as part of the Miami-Miami Beach-Kendall HMFA from the county of Palm Beach to form the West Palm Beach-Boca Raton, FL HMFA;

- In FY 2006, HUD implemented the Columbus, OH HMFA. In FY 2007, HUD proposes to split Union County as part of the Union County, OH HMFA from the counties of Delaware, Fairfield, Franklin, Licking, Madison, Morrow, Pickaway as part of the Columbus, OH HMFA;

- In FY 2006, HUD implemented the Jefferson City, MO HMFA. In FY 2007, HUD proposes to split Callaway county as part of the Callaway County, MO HMFA from the counties of Cole, Osage as part of the Jefferson City, MO HMFA;

- In FY 2006, HUD implemented the Louisville, KY-IN HMFA. In FY 2007, HUD proposes to split Shelby County as part of the Shelby County, KY HMFA from the counties of Bullitt, Henry, Jefferson, Oldham, Spencer, Trimble as part of the Louisville, KY-IN HMFA; and

- In FY 2006, HUD implemented the Macon, GA MSA. In FY 2007, HUD proposes to split Monroe County as part of the Monroe County, GA HMFA from the counties of Bibb, Crawford, Jones, Twiggs as part of the Macon, GA MSA. However, the Macon, GA MSA was not listed in Section F table for purposes of comparing FMR values.

If you have any questions, please feel free to contact me at 202-289-3500 or via e-mail at jzimmerman@nahro.org. Thank you for your consideration of our comments.