July 2, 2015

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW
Room 10276
Washington, DC 20410-0500

Re: [Docket No. FR-5855-A-01] Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (SAFMRs) in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs; Advanced Notice of Proposed Rulemaking

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I am pleased to offer the following comments in response to the proposed rule (FR-5855-A-01) entitled “Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (SAFMRs) in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs; Advanced Notice of Proposed Rulemaking,” published in the Federal Register on June 2, 2015. Formed in 1933, NAHRO represents over 20,000 individual and agency members. Collectively, our membership administers approximately 1.7 million vouchers, and is deeply invested in the national policy debate about the role of the Housing Choice Voucher (HCV) program in efforts to increase access to opportunity for all.

NAHRO would like to commend the Department for its transparency in this rulemaking to establish a more effective fair market rent system. NAHRO believes that HUD best serves the interests of its diverse stakeholders when it works collaboratively in crafting regulations, and NAHRO deeply appreciates HUD’s decision to publish an "Advanced Notice of Proposed Rulemaking" to solicit ideas and potential feedback before an initial proposed rule has been published. Soliciting feedback before a proposed rule ensures that all stakeholders have ample opportunity to participate in the rulemaking process and offers the Department a better-informed viewpoint from which to develop a proposed rule. As a result, the process is more likely to result in a policy that adequately addresses the interests of multiple stakeholders.
HUD should consider a broad range of policy alternatives before choosing a course of action.

The opportunity to participate in a dialogue with the Department is particularly important in this instance, where the very title of the notice suggests the Department’s desire to move forward with a particular policy approach, the Small Area Fair Market Rent (SAFMR). NAHRO is concerned, however, that the framing of the rulemaking suggests that implementing the SAFMR is, in and of itself, the objective; NAHRO is deeply concerned about this approach, and urges the Department to maintain a focus on the actual objective--providing households with safe, decent places to live in communities of their choice. While SAFMRs may be one tool, NAHRO asserts that they are by no means the only tool for achieving this goal, and that a serious initiative to expand access to neighborhoods of opportunity must consider other approaches to solving a complex problem that is further complicated by the varied contextual realities in which voucher programs operate.

It is not clear that higher rents are a predictor of better neighborhood quality.

While the focus on expanding opportunity is one that NAHRO fully supports, we believe that such a policy conversation should be underpinned by rigorous research. According to a 2014 study published by Raj Chetty and Nathaniel Hendren, only 20 percent of the variation in neighborhood quality is correlated with rent, while the remaining 80 percent of the variation is uncorrelated with rents. As a result, policies which use market rents as a proxy for neighborhood quality are intrinsically limited, achieving only a fraction of their intended outcome. Instead, this research suggests that policy alternatives that focus on other opportunity measures could have much more significant impacts on the outcomes that households experience. NAHRO encourages the Department to engage in a more robust dialogue that explores a larger set of potential approaches to identifying communities of opportunity and working to expand access to them before pursuing a single, limited policy that has not been shown to be effective.

Expanding the use of SAFMRs before the SAFMR Demonstration is complete is premature.

NAHRO was surprised to see the Department propose a broad expansion of the use of SAFMRs given the early stage of the SAFMR Demonstration. The demonstration, for which HUD was only able to attract five PHAs to join on a voluntary basis, was intended to 1) evaluate the effectiveness of SAFMRs in improving tenants’ housing choices in areas of opportunity while also assessing the impact on tenants in areas with SAFMRs below the metropolitan-wide FMR, and 2) discover the administrative and budgetary impacts of operating the tenant-based voucher program using SAFMRs. An evaluation of these two critical components is key to understanding the impacts of SAFMRs, and NAHRO believes that moving forward to expand the application of SAFMRs absent such evaluation is ill-advised. Given that existing voucher-holders participating in the demonstration did not experience any reduction in payment standards until their second annual recertification, the entire universe of tenants was not affected by SAFMRs until September 30, 2014. The Demonstration is not scheduled to conclude until September 30, 2016. Why does the Department wish to move forward with expansion when the Demonstration has not yet achieved its purpose?

In an April 20, 2011 Federal Register notice, HUD emphasized the fact that SAFMRs are not a substitute for 50th percentile rents. At that time, several commenters noted concerns about SAFMRs.
The Department stated that “[it would] not eliminate the 50th-percentile policy for metropolitan FMR areas not participating in the small area FMR demonstration project.” Given that the demonstration has not yet concluded and an evaluation has not yet been completed, NAHRO is troubled by the Department’s complete reversal of its position.

Robert Collinson and Peter Ganong, in a paper released in May 2015, studied the effects of SAFMRs in the Dallas metro area, but did not analyze data from the five other sites using SAFMRs. Although they found positive results, NAHRO does not believe that this analysis is a viable substitute for the more robust evaluation that is planned. NAHRO believes that a program change of this magnitude requires a greater empirical examination than simply looking at SAFMR data from one city.

Many important questions about SAFMRs have not yet been answered. In addition to the observations that may result from the Demonstration, there are additional issues that need to be considered before SAFMRs are put into use. For example, what will be the impact of SAFMRs on adjacent communities that continue to use traditional FMRs? What impacts will SAFMRs have on portability, both with respect to port-ins and port-outs? What is the interaction between overall community vacancy rates and SAFMR success? Will SAFMRs result in more households needing longer search periods in order to successfully lease up? To move forward with expanding use of SAFMRs before these and other questions are answered is premature. NAHRO also wonders whether actual voucher holders, not the advocacy groups that purport to represent their interests, have been consulted about this policy. Has a survey been conducted to assess the views of those who will be personally impacted by a shift to SAFMRs?

**NAHRO has serious concerns about the implementation of SAFMRs**

Fewer landlords will participate:
NAHRO believes that any expansion of the use of SAFMRs should only be done with ample evidence showing that such a transition will not negatively impact voucher holders and low-income communities. In particular, NAHRO is concerned that SAFMRs may have several unintended negative consequences, including limiting the supply of affordable housing available to voucher holders. In communities where SAFMRs are lower than existing FMRs, landlords may end their participation in the HCV program rather than accept rent reductions. In each of these communities, rent reasonableness analyses are already being conducted. Assuming the analyses are accurate, these landlords will be able to rent their units at a higher price point to unassisted tenants than they would to voucher holders, thereby reducing voucher holders’ ability to compete. Meanwhile, landlords in higher-priced segments of the market who have not historically participated in the voucher program may not enter the program to supplant those that exit. In most places, there are no protections against “source of income” discrimination, meaning that landlords are well within their rights to reject a household on the basis of their intention to use a voucher to supplement their rent.

One PHA described its landlord outreach experience by dividing landlords into three categories: 1) landlords that would always remain with the HCV program; 2) landlords that would never participate in the HCV program; and, 3) landlords that want to participate in the program, but would leave if the administrative costs or burdens became too onerous. In this PHA’s jurisdiction, few landlords fall into the first category, while many of the landlords fall into the third category. The staff of this PHA expressed their concern that SAFMRs had the potential to drive away many landlords from the third
group, without attracting any new landlords in the more expensive SAFMR areas because the landlords in higher payment standard areas would not want to deal with the administrative burdens of the program. Put simply, if current landlords leave the program and new landlords do not enter, the supply of available units will be reduced and voucher utilization rates are likely to fall.

**Some neighborhoods will be left behind:**
NAHRO is also concerned about the impact on certain zip codes and neighborhoods of decreasing allowable rents as a result of SAFMRs. Incentivizing people to move away from a particular zip code or neighborhood may set off a chain reaction of disinvestment. Lower HCV rents may exert downward pressure on rents such that there will be a loss of affordable housing units in those areas over a medium- to long-term time horizon if rents become so low as to be insufficient for landlords to maintain their units as safe, decent housing. NAHRO encourages the Department to ensure that the scope of any evaluation of the SAFMR Demonstration is sufficiently broad so as to capture these types of impacts. Such a study should also consider the impacts of moves on household members. Evidence from the Moving to Opportunity Demonstration (MTO) shows that such moves have a range of both positive and negative impacts on various household members. These kinds of analyses should inform the development of any policy that would alter the options available to HCV households.

**Households will not have true “choice”:**
Under the current system, households are given more flexibility in determining their own relative priorities and preferences. For each household, different locations will have different value. For example, a household without a private car may place a premium on access to transit, while one that does not depend on public transit may not. A family with children will be more likely to focus on school quality. An elderly household is less likely to prioritize access to jobs, but more likely to value proximity to social networks. Additionally, while some households may be more sensitive to neighborhood conditions, others may place more value on the interior of the unit, focusing on the size and physical condition of the unit. NAHRO is concerned that many of the households who live in “better” units in “worse” locations will be negatively impacted by a conversion to SAFMRs. In essence, households will no longer have the option to prioritize the value of the unit itself over the value of its location. NAHRO does not believe that this form of artificially constrained “choice” fits the ideals of enabled and empowered choice that the Department has extolled.

If, despite concerns raised by NAHRO and others, HUD does move forward with the use of SAFMRs, for zip codes where a transition to SAFMRs would reduce payment standards, HUD should institute a “hold harmless” provision whereby current voucher holders are not affected until the voucher turns over. This will ensure that current voucher holders will remain housed and not suddenly face a drop in subsidy. In addition, the Department should phase in reductions to FMRs, providing an opportunity for landlords and communities to adjust to the changes over time. NAHRO recommends a reduction of five to ten percent in the payment standard yearly.

Finally, NAHRO also believes that payment standards and exception payment standards should still be offered in any SAFMR implementation. PHAs should still retain the discretion to set their payment standard between 90 percent and 110 percent of the SAFMR. Additionally, in those
circumstances where the 90 percent to 110 percent range is not adequate, PHAs should still have the option to employ exception payment standards.

**NAHRO is also concerned about the potential for significant additional administrative and programmatic costs.**

*Administrative Costs*

SAFMRs would be much more burdensome to administer, both in the long and short term, than the existing program structure wherein most PHAs deal with only a single FMR. Given the dramatic underfunding of HCV administrative fees, NAHRO is particularly concerned that the Department has not given appropriate consideration to the implications of levying these additional costs on PHAs that are already stretched far too thinly. PHAs will need to make large up-front investments in IT upgrades and developing new systems to deal with many FMRs, as well as providing training to staff. NAHRO is not aware of any proposal to fund these added costs.

In addition to the upfront costs, there are long-term, recurring administrative costs associated with SAFMRs. PHAs will need to evaluate the annual FMRs and determine appropriate payment standards for each one to more accurately reflect the rental market conditions. One of the largest challenges PHAs will face will be to provide appropriate education to both existing and prospective voucher holders. Each household will need to understand that the value of the voucher fluctuates depending on the zip code in which the unit is located. They will also need to be able to access both a schedule of the SAFMRs for each zip code as well as information on zip code boundaries, which do not generally correspond to any recognized geographical or neighborhood delineations. PHAs will also be responsible for setting their payment standards against these new SAFMRs, and may need to select different payment standards for different zip codes. A transition to a complex system will certainly require PHAs to create additional resources, such as maps illustrating SAFMRs and payment standards for each zip code. Assisting voucher holders to navigate through this new labyrinth will require additional resources. In Dallas, much of the anecdotal success of the SAFMR Demonstration has been attributed to the robust mobility counseling that has been made available. Does HUD intend to provide PHAs with the resources to provide the necessary supports to make a system like this accessible to voucher households? Landlords will also require significant additional education, in particular for landlords of multiple units that would be subjected to varying SAFMRs.

NAHRO believes that many current voucher holders will not see the use of SAFMRs as a “pro-resident” policy. Ironically, it will be PHAs, the majority of whom oppose a mandatory transition to SAFMRs, who will be in the untenable position of having to explain to existing voucher holders why a policy intended to help them has left them with the unenviable choice of having to shoulder a greater rent burden or having to leave the place they call “home.” NAHRO also believes that a transition to SAFMRs will result in many more requests for exception payments as reasonable accommodations for persons with disabilities. For many of these households, finding a unit that meets their specific needs is a challenge. In areas where the new SAFMRs are lower than the existing FMRs, PHAs will need to apply to HUD for a regulatory waiver to approve an exception payment to enable the household to remain in their unit. In addition to the administrative costs, there may be
significant implications with respect to HAP payments since disabled households make up a large share of voucher holders.

**Programmatic Costs**

NAHRO is deeply concerned by the potential for very large programmatic costs associated with higher per-unit Housing Assistance Payment (HAP) eligibility. The theory that the higher HAP associated with units in higher cost areas would be balanced out by the reduction in payments in lower cost areas has not been rigorously tested in a range of circumstances. Despite anecdotal assertions that this has been the case in the Dallas demonstration site, NAHRO is deeply skeptical that such a balance will actually result at all time and in all communities.

If NAHRO’s concerns are founded and the impact of a shift to SAFMRs is not net zero, PHAs would be forced to balance between accommodating these higher payment standards and issuing fewer vouchers. With already lengthy waiting lists, most PHAs are extremely reluctant to implement policies that will reduce the number of vouchers they can afford to issue. Furthermore, many PHAs already have voucher authority in excess of their available resources. NAHRO simply cannot support a policy that would further reduce the number of vouchers that PHAs can issue.

**HUD does not have adequate data to calculate reliable SAFMRs.**

Finally, NAHRO believes that small area FMRs share some of the same weaknesses as the current FMRs. The main weakness that both share is that they rely on outdated data. To calculate SAFMRs for FY 2015, HUD uses “rent ratios developed in conjunction with the calculation of FY 2013 FMRs based on 2006-2010 5-year ZIP Code Tabulation Area (ZCTA) median gross rent data.” Several of NAHRO’s members emphatically stated that having a methodology that uses more recent data that accurately tracks the local rental market would be better for the voucher program than the use of SAFMRs. The rationale behind this statement is that even in areas where SAFMRs offer a higher payment standard, the differential is not high enough to warrant all of the additional costs that SAFMRs impose. A new methodology for calculating FMRs that relies on more up-to-date data would offer many of the positive benefits of SAFMRs, without the additional costs and administrative burdens.

Even setting aside all of our other concerns, our deep lack of confidence in the data underpinning HUD’s actual SAFMRs would be sufficient to persuade us that HUD should not require PHAs to use SAFMRs for HCV program operations.

**Answers to specific ANPRM questions:**

Questions 1, 2, 5, 7: NAHRO rejects the basic premise that there exist appropriate threshold criteria at which HUD should mandate use of SAFMRs. NAHRO believes that participation by PHAs in the SAFMR program should be completely voluntary. The PHA, as the administering entity of the HCV program, is best positioned to know if SAFMRs make sense in its local rental market. Additionally, each PHA is best positioned to evaluate whether the tradeoffs between potential higher payment standards in certain small area FMRs are worth the additional costs. No specific poverty rate or concentration level should be set as a threshold for participation; instead, each PHA should have the
opportunity to make a decision based on a broad set of information. In addition to reviewing the SAFMRs for their community, PHAs would also be able to look at their available budgetary resources, their waiting list, rental vacancy rates in the community, availability of supplemental mobility counseling resources, and other factors that would inform a responsible decision-making process. These factors must be considered holistically to determine whether the use of SAFMRs is an appropriate policy in a given locality.

Question 3: By asking about the optimal size of a SAFMR program, HUD appears to be treating this policy as a demonstration. If HUD is concerned that the policy has not yet been adequately vetted and tested to be applied to the full universe of vouchers, would it not make sense to delay any further rulemaking until such time as the existing SAFMR Demonstration has produced results?

Question 4: One PHA’s decision to use SAFMRs should not bind its neighboring PHAs to the same. Again, given the number of factors that would influence the success of SAFMRs, it would be illogical to impose them on one PHA for the sole reason that they are being used by another.

Question 5: Notwithstanding NAHRO’s general opposition to the mandatory use of SAFMRs, NAHRO believes that a consistent methodology should be used for both tenant-based and project-based vouchers (PBVs). That is, if a PHA uses SAFMRs for the HCV program, then it should also use small area FMRs for its PBV program. Uniformity between programs is a high priority for NAHRO’s members with respect to this issue. However, NAHRO believes that existing PBVs should be “grandfathered” in, protecting the stability of the underwriting that has been done for these developments’ financing.

In conclusion, small area FMRs should not be implemented without additional research into their effects. The potential for harm to low-income households and neighborhoods is significant, and much remains to be learned about the true costs of SAFMRs. We appreciate the opportunity to comment on this advanced notice of proposed rulemaking, and look forward to continuing to work with HUD to develop policies that expand access to opportunity for low-income households and communities.

Sincerely,

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