

# NAHMAanalysis

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

## Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

National Affordable Housing Management Association – 400 N. Columbus Street, Suite 203 - Alexandria, VA 22314  
Phone 703-683-8630 - Fax 703-683-8634 - [www.nahma.org](http://www.nahma.org)



December 9, 2016

NAHMAanalysis 2016-1209

### **Final Rule: Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (SAFMRs) in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs**

#### **Background**

On November 16, 2016, HUD published the Final Rule on “Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (SAFMRs) in Housing Choice Voucher (HCV) Program Instead of the Current 50th Percentile FMRs.” HUD’s noted purpose for this regulation is to help public housing authorities (PHAs) deconcentrate HCVs by replacing the 50th percentile FMR with SAFMRs, based on zip codes. According to HUD, “experience with the 50th percentile regime has shown that the majority of HCV tenants use their vouchers in neighborhoods where rents are low but poverty is generally high. SAFMRs will complement HUD’s other efforts to support households in making informed choices about units and neighborhoods with the goal of increasing the share of households that choose to use their vouchers in low poverty opportunity areas....ZIP codes are small enough to reflect neighborhood differences and provide an easier method of comparing rents within one ZIP code to another ZIP code within a metropolitan area.” HUD anticipates that by using SAFMRs, HCV tenants will access areas of “high opportunity and lower poverty areas,” thereby the number of tenants living in areas of high poverty will be significantly reduced.

During the proposed rule, NAHMA joined with our industry colleagues to oppose the implementation of SAFMRs, because the zip code methodology was unproven. HUD was conducting a demonstration on the effectiveness of SAFMRs. To date, HUD has not published the results for their SAFMRs demonstration, which tested this approach in 5 locations. This NAHMA Analysis will highlight the selected areas for SAFMRs and HUD responses to our industry concerns.

#### **Small Area FMR Criteria and Selected Areas**

In addition to the final rule, HUD published the following selection criteria to determine the initial metropolitan FMR areas subject to SAFMRs for use under the HCV program:

- 1) There are at least 2,500 HCVs under lease;
- 2) At least 20 percent of the standard quality rental stock within the metropolitan FMR area is in small areas (ZIP codes) where the SAFMR is more than 110 percent of the metropolitan FMR;

- 3) The percentage of voucher families living in concentrated low income areas relative to all renters within the area must be at least 25 percent;
- 4) The measure of the percentage of voucher holders living in concentrated low income areas relative to all renters within these areas over the entire metropolitan area exceeds 155 percent;
- 5) The vacancy rate for the metropolitan area is higher than 4 percent.

There are 24 areas that meet these criteria. According to the final rule, “these areas contain approximately 368,000 (18 percent) of the HCV households nationwide....there are 217 PHAs in metropolitan areas.” These metropolitan FMR areas met the SAFMRs requirements and were selected:

<b>1. Atlanta-Sandy Springs-Marietta, GA HUD Metro FMR Area</b>
<b>2. Bergen-Passaic, NJ HUD Metro FMR Area</b>
<b>3. Charlotte-Gastonia-Rock Hill, NC-SC HUD Metro FMR Area</b>
<b>4. Chicago-Joliet-Naperville, IL HUD Metro FMR Area</b>
<b>5. Colorado Springs, CO HUD Metro FMR Area</b>
<b>6. Dallas-Plano-Irving, TX Metro Division</b>
<b>7. Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Metro Division</b>
<b>8. Fort Worth-Arlington, TX HUD Metro FMR Area</b>
<b>9. Gary, IN HUD Metro FMR Area</b>
<b>10. Hartford-West Hartford-East Hartford, CT HUD Metro FMR Area</b>
<b>11. Jackson, MS HUD Metro FMR Area</b>
<b>12. Jacksonville, FL HUD Metro FMR Area</b>
<b>13. Monmouth-Ocean, NJ HUD Metro FMR Area</b>
<b>14. North Port-Bradenton-Sarasota, FL MSA</b>
<b>15. Palm Bay-Melbourne-Titusville, FL MSA</b>
<b>16. Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA</b>
<b>17. Pittsburgh, PA HUD Metro FMR Area</b>
<b>18. Sacramento--Arden-Arcade--Roseville, CA HUD Metro FMR Area</b>
<b>19. San Antonio-New Braunfels, TX HUD Metro FMR Area</b>
<b>20. San Diego-Carlsbad-San Marcos, CA MSA</b>
<b>21. Tampa-St. Petersburg-Clearwater, FL MSA</b>
<b>22. Urban Honolulu, HI MSA</b>
<b>23. Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR Area</b>
<b>24. West Palm Beach-Boca Raton-Delray Beach, FL Metro Division</b>

### **Industry Concerns**

During the proposed rule NAHMA and industry colleagues strongly opposed the implementation of SAFMR, because it fails to consider the possible effect on residents who choose to remain or are forced to remain due to a lack of vacant units in a “high opportunity” zip code, and the potential disinvestment in the neighborhoods that lose support when payment standards decline. We recommended that the existing FMRs serve as the SAFMR’s floor in neighborhoods that would otherwise experience reductions in HCV payment standards under HUD’s proposal.

The following is an examination of how HUD responded to our concerns:

## **1. Lack of Evidence that SAFMRs are More Effective**

**Industry Concern:** The research findings cited in the proposed rule paper fail to consider tendency to move or neighborhood characteristics for the 50th percentile FMR program, and therefore provides no basis for concluding that SAFMRs or any other program is superior to 50th percentile FMRs according to these measures. In addition, the Collinson-Ganong conclusions about benefits accruing to property owners rather than tenants are not valid, due to their failure to consider a possible causal link between rental income and unit quality. Absent other research HUD can cite, we conclude there is currently no evidence that SAFMRs are more or less effective than 50th percentile FMRs.

**HUD Response:** While HUD acknowledges that more information on the overall effects of the Small Area FMR approach will be forthcoming when the results of the Small Area FMR demonstration are available to inform broad policy, HUD believes that it is not premature to implement Small Area FMRs on this limited basis in those areas where it has the potential to address significant voucher concentration concerns. Through this final rule, HUD seeks not only to employ a better tool than the 50th percentile policy to expand housing opportunities for families where voucher concentration is a particular challenge but to also provide PHAs with the administrative flexibility to implement appropriate tenant protections to families currently under HAP contract and to address changing market conditions.

## **2. Criteria for Implementation Need to Consider Negative Effects on Remaining Residents and Investment in Communities**

**Industry Concern:** The SAFMR proposal is flawed because it fails to consider the possible effect on residents who choose to remain and the potential disinvestment in the neighborhoods that lose support when payment standards decline.

**HUD Response:** HUD did not provide a response to this concern.

## **3. Hold Harmless Principle**

**Industry Concern:** If HUD feels it must move ahead with an SAFMR program, it should establish a floor at the current FMR, holding areas harmless and not allowing the payment standard to decline anywhere simply due to a change in methodology.

**HUD Response:** In response to the commenters' request that HUD hold disabled and elderly tenants harmless under this policy, HUD is prohibited from treating one or more protected class differently under the Fair Housing Act and other civil rights requirements, absent statutory authority. HUD in this rule is implementing robust tenant protections for all tenants, including those enacted in the Housing through Opportunity Modernization Act (HOTMA). HUD will study the specific impact on elderly and disabled voucher recipients as a result of this rule change to determine if additional policy changes are necessary.

In the Preamble of Final SAFMR Rule, HUD states that “the regulations at § 982.505(c)(3) with the portion of section 107 of HOTMA, which provides PHAs with the option to hold families under a Housing Assistance Payments (HAP) contract harmless from payment standard reductions that are currently required at the family’s second annual recertification if the family’s payment standard falls outside of the basic range as the result of a decrease in FMRs (including a decrease in FMR attributable to the implementation of Small Area FMRs). As an additional protection, the final rule provides that should a PHA choose not to hold the payment standard at its current level for families under HAP contract in an area experiencing a payment standard reduction, the PHA may set the payment standard for families that remain under HAP contract at any amount between the current payment standard and the new normally applicable payment standard amount, and may further reduce the payment standard for families under HAP contract over time to gradually bring the family’s payment standard down to payment standard that is normally applicable to the area for the PHA’s program or reduce the gap between the two payment standards. The rule further extends these same flexibilities to the PHA in cases where the payment standard decrease is not the result of a FMR decrease.”

“The rule further provides that if the PHA chooses to apply a reduction in the payment standard to the family’s subsidy calculation during the HAP contract term, the earliest the PHA may implement the initial reduction in the payment standard is the second regular reexamination following the effective date of the decrease in the payment standard amount. Section 107 of HOTMA also provides new requirements for publishing HUD’s FMRs on the HUD’s website.”

## **Conclusion**

In FY2017, HUD plans to issue implementation guidance and support to PHAs implementing SAFMRs; produce webinars on lessons learned and best practices from PHAs already implementing SAFMRs; and explore whether there is interest among implementing PHAs in providing HUD with payment standard data to inform the development of a mobile application that will enable tenants to confirm a unit’s payment standard by entering the address. NAHMA will keep members updated on this information.

In conclusion, NAHMA and industry colleagues have expressed serious concerns with HUD’s implementation of SAFMRs. We would have preferred that HUD wait to see the results of their demonstration, which is still in process, and examine the findings to ensure this policy change does not negatively impact HCV tenants and neighborhoods. We will continue to make this case to the new HUD leadership.