September 19, 2011

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

Re: Proposed Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2012
Notice and Request for Comments
Docket No. FR–5567–N–01

Dear Sir or Madam:

On behalf of the undersigned organizations, please find our comments on the above-referenced Notice for Proposed Fair Market Rents (FMRs) for the Housing Choice Voucher Program for Fiscal Year 2012 (FY12). Our organizations represent thousands of firms involved in the multifamily rental housing industry, including the building, operation, and management of affordable rental properties. Several of our organizations are also affiliated with local associations that work with HUD field offices and public housing authorities (PHAs). We strongly support the Housing Choice Voucher program, which provides rental assistance to over two million very-low income households who live in privately owned housing. We appreciate the opportunity to comment on the proposed FMRs for FY12.

New FMR Methodology, Large Changes and the Recent Mover Bonus Factor

We recognize that at some point it is necessary to establish base year rents using the five-year estimates from the American Community Survey (ACS), because these provide the only consistent source of data on rents across all FMR areas and their component geographies. No purpose would be served by delaying this now that the first set of five-year estimates has become available. We also recognize the challenges of working with estimates based on data collected over a five-year period, especially in the context of the regulatory requirement that FMRs be published as recent mover gross rents. The methodology developed by HUD, incorporating a recent mover bonus factor based on one-year ACS estimates, seems like one of the few ways all of the program requirements and data constraints could be addressed.

Nevertheless, this change in methodology results in very large changes in FMRs. Table 1 below shows Metropolitan Statistical Areas with large percentage changes— in both directions—in FMRs between FY11 and FY12:

Table 1. Metropolitan Areas with Large Changes in FMRs

FMR Area	2 Bedroom FMR Final 2011	Proposed 2012	change
Bond County, IL HUD Metro FMR Area	579	696	20.2%
Williamsport, PA MSA	631	728	15.4%
Butts County, GA HUD Metro FMR Area	627	723	15.3%
Brunswick, GA MSA	616	709	15.1%
Winchester, VA-WV MSA	778	895	15.0%
Norwich-New London, CT HUD Metro FMR Area	1,007	1,145	13.7%
Ocean City, NJ MSA	949	1,079	13.7%
Waterbury, CT HUD Metro FMR Area	951	1,075	13.0%
Morgantown, WV MSA	586	660	12.6%
Champaign-Urbana, IL MSA	713	802	12.5%
Jefferson County, WV HUD Metro FMR Area	808	908	12.4%
Baker County, FL HUD Metro FMR Area	596	665	11.6%
Pascagoula, MS MSA	863	668	-22.6%
Flagstaff, AZ MSA	1,136	887	-21.9%
Western Worcester County, MA HUD Metro FMR Area	874	713	-18.4%
Summit County, UT HUD Metro FMR Area	1,073	886	-17.4%
Fitchburg-Leominster, MA HUD Metro FMR Area	1,012	839	-17.1%
Gulfport-Biloxi, MS MSA	906	753	-16.9%
Cape Coral-Fort Myers, FL MSA	996	829	-16.8%
Rochester, MN HUD Metro FMR Area	867	722	-16.7%
Louisa County, VA HUD Metro FMR Area	826	688	-16.7%
Medina County, TX HUD Metro FMR Area	721	607	-15.8%
Lowell, MA HUD Metro FMR Area	1,311	1,107	-15.6%
Hillsborough County, NH (part) HUD Metro FMR Area	999	855	-14.4%

There are many examples of FMR areas with relatively small populations where the changes are even more extreme. For example, in Concho County, Texas, the proposed FY12 FMR list shows the two-bedroom FMR increasing 64.7 percent, from $595 to $980. In the East Aleutians, Alaska, the list shows the FMR declining by 48.9 percent, from $1,143 to $584. These year-to-year changes are much larger than usual. The list for FY11 showed proposed FMRs increasing by over 10 percent in only two areas and declining by over five percent in only three areas.

FMRs that change drastically from one year to the next can have a strong impact on local PHAs, property owners and tenants. A reduction of more than five percent in the published FMR triggers a rent reasonableness analysis on the part of the PHA with jurisdiction over the area (Housing Choice Voucher Guidebook, directive 7420.10G). If the PHA's analysis finds that the rent being charged by a property owner is no longer reasonable, the owner will be required to reduce the rent. If the owner determines that this reduction will adversely affect the financial stability of the property, the owner will likely choose to leave the program, and the tenant will then have to move. Another consequence of a large reduction in FMRs is that owners may have to defer maintenance items because cash flows are no longer adequate to cover operating expenses. One of HUD's objectives should be to avoid putting tenants, property owners, and PHAs through this process when it is unnecessary.

Beyond these issues, changes as large as many shown on the list of proposed FY12 FMRs may motivate PHAs to undertake Random Digit Dialing (RDD) surveys, causing them to incur significant cost without a strong reason to believe it will achieve a significant change.

We also believe that use of the term "bonus" for the recent-mover factor based on one-year ACS is misleading, because in some cases it can reduce the FMR. In Cape Coral, Florida, for example, the bonus factor is .9203—reducing the two-bedroom FMR by eight percent, from $866 to $797. To avoid confusion and make this more easily understood to all users of FMRs, it would be desirable to rename "bonus factor" to a more neutral term. It would also be useful to underscore this by publishing a list of all FMR areas where this factor is less than 1.0.

Recommendations

Due to the extreme changes caused by the adoption of new base year rents computed from a new data source, we recommend that HUD adopt a policy to limit decreases in FMRs for FY2012 to five percent in order to limit the burden on the PHAs and property owners who administer the program.

We further recommend changing the term "Recent Mover Bonus Factor" to "Recent Mover Adjustment Factor," which is more appropriate for a factor that can be greater or less than 1.0. We also recommend that HUD include a list of areas where this factor is less than 1.0 on future proposed FMR notices.

Formal Publication Date for Income Limits

We strongly support a formal publication date for income limits. We also commend HUD for recognizing the programmatic connections between FMRs and income limits and taking the initiative to introduce this important topic into the notice for proposed FMRs. As there is no statutory requirement to publish a notice and provide for public comments when income limits are published, we believe it is appropriate that HUD has chosen to request comments on income limits in this notice.

We understand that establishing a formal publication date on either October 1 or December 1 for income limits means that 2012 income limits would still be based on ACS data collected from 2005 through 2009; that the first 2013 income limits would be the first to incorporate ACS data collected through 2010; and that in future years, ACS data would become incorporated into income limits with a somewhat greater lag than at present.

Although trying to use more recent data is generally a desirable approach, in this particular case it does not outweigh the combined advantages of a publication date that is predictable, and one that makes income limits available to the housing industry slightly before the year to which they apply. Moreover, the underlying ACS data necessary to compute income limits has become available with increasing delays, causing limits to be published later and later under the current methodology, with the result that 2011 income limits were not published until May 31, 2011.

Of the many uses to which income limits are put, a primary example is establishing eligibility and rents for units under the Low Income Housing Tax Credit (LIHTC) program. In existing LIHTC properties, it typically takes one to two months lead time to provide tenants with adequate notice and implement rent changes. Thus, in 2011 rents were not changed to conform to the new income limits until half the year had passed, negating much of any advantages that may have been obtained by waiting until 2011 income limits could be based on 2009 ACS data. Given that the Census Bureau is now producing one-year, three-year, and five-year ACS summary and public use microdata files every year, in addition to processing the 2010 Census and managing other data systems in the face of considerable budget challenges, we see little prospect that the ACS data will start to become available earlier than it has been.

It is particularly difficult to make decisions about allocating LIHTCs to new projects and underwriting financing for the projects while the income limits, which set maximum revenue for the project, are not available. In addition, the current uncertainty about when income limits will become available can have material effects on the ability of projects to move forward once they have received an allocation.

Moreover, the method outlined by HUD in the notice on proposed FY12 FMRs to implement the policy in its first year—i.e., a year end CPI adjustment with additional trending similar to the one used to calculate 2011 income limits—would be moderate and predictable, thereby avoiding large fluctuations or disruptions to applicable housing programs.

Recommendation

For the above reasons, we strongly support HUD's proposal to formalize a publication date for income limits. We recommend that HUD establish a publication date of October 1 for income limits, if feasible, but we would also consider a predictable date of December 1 superior to the current system which has been marked by substantial and unpredictable delays in recent years.

FMR Publication Date and Comment Period

Our organizations also wish to reaffirm our strong support for the continuation of the statutory requirement that FMRs be published on October 1 and that a 30-day comment period is provided for interested stakeholders. We believe it is important to have this comment period to allow stakeholders to comment not only on the proposed FMRs, but also on general issues of overall methodology, such as exist in this notice, or as we might have in the future; for example, if ACS data shifts when counts are benchmarked to the 2010 Census, or if OMB delineates new metropolitan area boundaries.

Thank you for the opportunity to comment on the proposed FY12 FMRs. If you have any questions, please contact Paul Emrath, Vice President, Survey and Housing Policy Research, NAHB, at pemrath@nahb.org.

Sincerely,

Council for Affordable Rural Housing (CARH)
Institute of Real Estate Management (IREM)
National Affordable Housing Management Association (NAHMA)
National Apartment Association (NAA)
National Association of Home Builders (NAHB)
National Leased Housing Association (NLHA)
National Housing & Rehabilitation Association (NH&RA)
National Multi Housing Council (NMHC)