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

Re: Notice of Demonstration Project of Small Area Fair Market Rents in Selected Metropolitan Areas for Fiscal Year 2011, Docket No. FR-5413-N-01

These comments are submitted by the Center on Budget and Policy Priorities. The Center is a non-partisan research organization and policy institute that conducts research and analysis on a range of government policies and programs affecting low- and moderate-income families and individuals.

We support HUD's proposal to test use of zip code areas to set FMRs in 2011 and move toward a national system of small FMR areas. Using smaller areas will result in more accurate FMRs, and could substantially expand voucher holders' access to low-poverty areas and improve the cost-effectiveness of the voucher program. The comments below address several specific aspects of the proposal.

Protections Against FMR Reductions

The most significant shortcoming in HUD's proposal is that it does not establish adequate protections against FMR declines or provide for any phase-in of FMR changes. This could unnecessarily expose many families to hardship and result in other harmful effects.

Current regulations protect families already using vouchers from payment standard reductions until their second annual recertification after the change (a one- to two-year grace period), and HUD's demonstration proposal appears to allow PHAs to continue this protection indefinitely if they choose to do so. These measures might be sufficient in the face of more modest FMR changes, but they are not adequate safeguards against the deep, widespread FMR cuts HUD's proposal would bring about. Based on HUD's estimates of hypothetical 2010 zip code-level FMRs, its proposal would reduce two-bedroom FMRs by more than $300 dollars in over 800 zip codes around the country. FMRs would fall by $500 or more in several dozen zip codes. If these changes translate into comparable payment standard cuts — even one or two years later — they will raise rent burdens sharply and in some cases displace low-income families from their homes.

HUD should take two additional measures to limit the adverse effects of FMR declines. First, it should *require* agencies to permanently exempt families already in place from payment standard reductions, both under the demonstration and by establishing a regulatory protection for the entire voucher program before small area FMRs are implemented nationally.

Second, HUD should phase in overall FMR reductions resulting from the switch to small areas — and other future methodological changes — by limiting them to 5 percent per year. Small area FMRs can be expected to open up opportunities in higher rent neighborhoods, but it could take time for owners in these neighborhoods to become accustomed to renting to voucher holders and for PHAs to take measures to support voucher use there. A phase-in would ensure that this process has some time to play out before large reductions (which will make it somewhat harder to use vouchers in low-rent areas) are fully implemented. This will be particularly important when FMRs are due to drop substantially in zip codes where most vouchers in an area are used today.

The Section 8 Voucher Reform Act would require a gradual phase-in of large FMR changes driven by methodological changes. There is no guarantee, however, that SEVRA will become law before the FMR demonstration begins — or even before the plan is scaled up nationally — so HUD should not rely on SEVRA to provide the protections that will be needed. Moreover, HUD has broad authority to phase in FMR changes (and regulate payment standard reductions), so there is no need for it to wait for Congressional action to do so.

Exception Payment Standards

Exception payment standards will likely be much rarer under a small area FMR system, but HUD nonetheless should retain a mechanism to allow exceptions because they will continue to be needed under certain circumstances. For example, PHAs may wish to set separate payment standards for portions of zip codes that lump together neighborhoods with sharply different rent levels. Often the rents in these sub-areas will be within 10 percent of those for the zip code, but when they are not an exception payment standard should remain an option.

Exceptions could also be needed when local rents change more rapidly than can be reflected in five-year ACS data, when rent ratios among different unit sizes in a zip code are substantially different from the metropolitan area ratios HUD's proposal would use, and in some of the many metropolitan and rural areas where HUD's proposal would set FMRs based on county rent data.

50th Percentile FMRs

Once small area FMRs are established nationally, HUD should revise the existing 50th percentile FMR standard to allow 50th percentile small area FMRs in metropolitan areas (or portions of metropolitan areas) that meet any of several criteria, including concentration of voucher holders in a small number of neighborhoods, high rent burdens among voucher holders, and low voucher success rates. In qualifying areas, it should allow 50th percentile FMRs to remain in place for an extended period, to avoid the frequent, disruptive shifts between 50th and 40th percentile FMRs that have occurred under the current standard.

Caps and Floors

We support HUD's proposal to maintain an FMR floor at the same level used today, since without such a floor there would be a risk that FMRs in some areas would be inadequate to rent decent-quality housing.

The case for an FMR cap seems less clear. In general, HUD should seek to set FMRs that are high enough to rent housing in relatively high-cost neighborhoods, since these will tend to be neighborhoods with strong schools and other characteristics that are important to family wellbeing. Some cap may be needed to avoid extremely high FMRs. But if HUD finds that the proposed cap at 150 percent of the metropolitan area FMR results in below-market FMRs for a large number of zip codes, it should consider raising it to some higher percentage (such as 200 percent).

In addition, HUD should set a national lower limit on the cap, to avoid unnecessarily restricting FMRs in moderate-cost metropolitan areas. It is not clear why HUD would need to set a cap as low as $1,100 in an area like suburban Cincinnati, and it seems inequitable to do so when HUD would permit the majority of zip codes in areas such as Los Angeles and New York to have FMRs far above that level. HUD could avoid this outcome by capping FMRs in each area at the higher of a percentage of the metropolitan area FMR or some nationally applied level (such as $1,500 for a two-bedroom unit, perhaps set as a percentage of the national median rent so that it would adjust automatically for rent inflation).

In addition, housing agencies should be permitted to use exception payment standards in areas where FMRs are capped and where higher payment standards are needed to pursue important goals, such as providing voucher holders access to high-quality schools.

Rent Reasonableness

Zip code-level FMRs will come far closer than current FMRs to replicating the rent comparisons that PHAs make to enforce rent reasonableness. HUD should consider whether it could permit comparison with the new FMRs to take the place of rent reasonableness determinations for some units, by deeming the FMRs (which exclude very low-rent units that are most likely to be substandard or assisted) to meet the broad statutory requirement that the determinations be based on "comparable dwelling units in the private unassisted local market."

For example, units with rents below 100 percent of the FMR could be considered automatically reasonable, perhaps with limited exceptions for unit types that are likely to have market rents below the local norm (such as apartments in areas where nearly all rentals are single family homes). Allowing the FMRs to be used for this purpose could greatly reduce agency administrative burdens. Alternatively, if HUD concludes that current law would not permit this approach, it could request that Congress amend the rent reasonableness statute.

As a first step to help determine whether these measures should be pursued, HUD should permit agencies participating in the small area FMR demonstration to experiment with use of the new FMRs to replace some rent reasonableness determinations.

Use of 2000 Census Data

Under the process described in HUD's notice, the 2011 FMR demonstration will rely on data from the 2000 census to determine zip-code FMR differentials, and HUD will switch to using five-year ACS data in later years. This approach has two significant drawbacks.

First, zip code FMRs set based on eleven year-old census rent differentials will reflect local rents considerably less accurately than if they were set with recent ACS data, especially in areas where rents have changed sharply. In some gentrifying urban neighborhoods and growing exurban areas, use of 2000 data could cause FMR reductions when current rent levels would justify increases.

Second, the shift from using 2000 census data to set zip code differentials in 2011 to using five-year ACS data in 2012 could result in sharp changes in FMR levels, similar to the rebenchmarking that occurred in the past when new decennial census data were incorporated into FMR calculations. Areas participating in the FMR demonstration consequently will experience two consecutive years of widespread FMR changes, and some zip codes will almost certainly see substantial declines followed by substantial increases. This will cause unnecessary disruption for PHAs, owners and tenants, and create the potentially harmful impression that using zip-code areas leads to ongoing FMR volatility.

HUD plans to begin the first small area FMR demonstrations on October, 1 2010, close to the time that the Census Bureau is expected to release five-year ACS data. Given this timeline, HUD should consider delaying the demonstration so that ACS data can be used to set zip code differentials from the start. At a minimum, HUD should use ACS data for demonstrations that begin after those data are released.

Goals of the Demonstration

HUD's plan to move toward small area FMRs is a promising, far reaching policy change that is likely to strengthen the voucher program considerably. In implementing and evaluating the demonstration, however, it will be important for HUD and stakeholders to recognize that the benefits of small area FMRs in improving cost-effectiveness and access to low-poverty areas are likely to be realized only over a number of years. At the same time, any short-term disruption that results from the transition to smaller areas will be concentrated during the period of the demonstration.

The results of a brief demonstration consequently should not be taken as a prediction of the likely long-term effects of small FMR areas. Instead the demonstration should be viewed primarily as an opportunity to fine-tune the small area FMR system before scaling it up nationally.

Thank you for considering these comments.

Sincerely,

Will Fischer
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