September 4, 2012

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 2013
Notice
Docket No. FR–5648–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 2013 (FY2013). 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 FY2013.

New Trend Factor

HUD is using a new trend factor to bring FY2013 FMRs current to the year to which they will apply. In response to HUD's March 2011 request for comments on the trend factor, our organizations responded that HUD should choose a methodology that minimizes year-to-year volatility in FMRs and would not produce a large shift in FMRs in the first year implemented due exclusively to the change in methodology. Our recommendation was to use a single, national trend factor, based on a rolling five years of national median gross rent data from the American Communities Survey (ACS). We suggested that a 10-year trend factor was no longer appropriate, given the switch from using 10-year Census data to the annually available ACS data.

HUD has chosen to calculate the trend factor as the annualized change in median gross rents as measured between the one-year 2005 ACS and the one-year 2010 ACS. The annualized change over this period was 3.26 percent, and over a 15-month time period to bring the FMRs current for FY2013, the effective trend factor is 4.1 percent.

We support and commend HUD's choice in methodology for the new trend factor. The new methodology will minimize volatility in FMRs year-to-year, which we believe is important for public housing agencies, property owners and tenants.

New Recent Mover Factor

Also in response to HUD's March 2011 request for comments, we further recommended changing the term "Recent Mover Bonus Factor" to "Recent Mover Adjustment Factor," which was appropriate for a factor that could be greater or less than 1.0.

For the FY2013 FMRs, HUD made a number of changes to the adjustment it applies to the standard quality base rents derived from the 5-year ACS estimates to compensate for the fact that these estimates are not based on recent movers. One was a change in the name of the adjustment to "Recent Mover Adjustment Factor," as we recommended. A second change was to establish a lower bound of 1.0 for the recent mover factor so that it now is never allowed to lower a standard quality base rent. We believe this is a very good change and well within the spirit of our previous recommendation that HUD employ methodologies which seek to minimizes year-to-year volatility in FMRs.

A third change involved the treatment of the recent mover factor in cases where a statistical test shows no significant difference between the recent mover and standard quality base rents in a particular FMR area. For the FY2012 FMRs, HUD simply set the recent mover factor to 1.0 in these cases. For the proposed FY2013 FMRs, HUD developed a new procedure to examine successively larger geographic areas until it can compute a recent mover factor that meets its statistical reliability criterion.

We believe this constitutes a clever use of the available data and a significant improvement to the methodology that more closely approximates the ideal of a rent estimate based on recent movers. Again, we support and commend HUD for taking the initiative for making these improvements to its recent mover adjustment methodology.

Areas with Large Declines

Although we recognize that HUD has made significant improvements in its methodology, in the absence of a hard floor, any methodology for determining FMRs across the entire nation will produce significant declines in some areas. The table below shows metropolitan areas where the proposed FY2013 2-bedroom FMRs declined by more than five percent:

Area Name	2-bedroom FMR		Percent
	2012	2013	Change
Waterbury, CT HUD Metro FMR Area	1,075	942	-12.4%
Martinsburg, WV HUD Metro FMR Area	782	708	-9.5%
Danbury, CT HUD Metro FMR Area	1,512	1,384	-8.5%
Burlington-South Burlington, VT MSA	1,124	1,029	-8.5%
Westchester County, NY Statutory Exception Area	1,580	1,468	-7.1%
Stamford-Norwalk, CT HUD Metro FMR Area	1,769	1,648	-6.8%
Newark, NJ HUD Metro FMR Area	1,289	1,202	-6.7%
Winchester, VA-WV MSA	895	839	-6.3%
Washington-Arlington-Alexandria, DC-VA-MD HUD	1,506	1,412	-6.2%
Nassau-Suffolk, NY HUD Metro FMR Area	1,682	1,583	-5.9%
San Francisco, CA HUD Metro FMR Area	1,905	1,795	-5.8%
Kenosha County, WI HUD Metro FMR Area	850	801	-5.8%
Ocean City, NJ MSA	1,079	1,019	-5.6%
Harrisonburg, VA MSA	784	741	-5.5%
Yuba City, CA MSA	857	812	-5.3%
Vallejo-Fairfield, CA MSA	1,229	1,166	-5.1%

Reductions of this magnitude can have a number of adverse consequences. For example, a reduction of more than five percent in 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.

Our favored approaches to dealing with declines in FMRs are as follows (in decreasing order of desirability): 1) a hard floor that limits decreases in FMRs from one year to the next to no more than five percent, 2) HUD setting aside funds and sponsoring its own surveys in cases where preliminary calculations show FMRs declining by more than 5 percent, 3) maintaining a period for public comment, so that affected stakeholders have an opportunity to contest proposed FMRs.

In the March 2011 request for comments, HUD contemplated a legislative change to eliminate the statutory requirement that it publish proposed FMRs with a reasonable period for public comment. In our response, we strongly opposed the elimination of a public comment period. Although we would still prefer the capping of FMR declines at five percent or HUD sponsoring its own surveys in these cases, we are nevertheless pleased to see that at least the period for public comment remains intact and that there has been no further discussion of eliminating it. We believe that declines on the order of magnitude of those noted in this section will stimulate some stakeholders to contest individual FMRs and demonstrate the essential necessity for the comment period.

Small Area Fair Market Rents (SAFMRs)

The Notice states that housing authorities in the Dallas, TX HMFA are the only PHAs managing the voucher program using SAFMRs but that HUD anticipates announcing additional PHAs authorized to operate using SAFMRS in the notice of the final FY2013 FMRs. Our organizations continue to have concerns about the use of SAFMRs for the voucher program, or any other housing program purpose. SAFMRs are based on zip codes, but zip codes were created to facilitate the delivery of mail, not delineate housing markets. Further, HUD solicited for comment in May 2011 whether Difficult to Develop Areas (DDAs) should be based on SAFMRs. Our organizations responded to that solicitation, expressing opposition to using SAFMRs to establish DDAs in the future.

In the March 29, 2011, Final Notice establishing the SAFMR demonstration program, we do not believe that HUD adequately addressed the potential for disinvestment in redevelopment and/or low-income areas if rents drop substantially because of use of SAFMRs. While HUD says it will impose a floor of 10 percent annually if rents decrease, this is still a substantial drop in revenue for the property. HUD says it will "continue to assess the likely impact of small area FMRs on other programs, and will provide another opportunity for public comment on the issue at a future date." At what point would HUD provide this opportunity?

As Dallas is the only metro area participating thus far, it would be helpful to understand why no other PHAs were selected to participate after HUD issued the first invitation to apply. Are there any preliminary results from the Dallas experience that can be shared?

The Office of Housing recently announced that SAFMRs must be used as a benchmark against which proposed rents must be compared in Rent Comparability Studies (RCS) submitted by property owners renewing their Section 8 project-based housing assistance contracts (HAPs). The current requirement is that renewal rents cannot exceed comparable market rents. SAFMRs are not market rents; it is clear from HUD's notice that SAFMRs are set at the 40th percentile. Thus, according to the April 2011 Notice, although it is stated that the housing choice voucher program is the "only program that will use small area FMRs, and only in those areas, and by those PHAs, selected for the demonstration," other program offices are not adhering to that intention. This is most troubling.

Thank you for the opportunity to comment on the proposed FY2013 FMRs. If you have any questions, please contact Claudia Kedda, Senior Director, Multifamily and Affordable Housing Finance, at ckedda@nahb.org or 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)
Leading Age
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)