NATIONAL LOW INCOME
HOUSING COALITION

July 13, 2010

Office of the General Counsel, Rules Docket Clerk
Departmnent of Housing and Urban Development
451 Seventh Street, SW
Room 10276
Washington, D.C. 20410-0001

Re: Section 8 Housing Choice Voucher Program – Demonstration Project of Small Area Fair Market Rents in Certain Metropolitan Areas for Fiscal Year 2011.

Docket No. FR-5413-N-01

Dear Sir/Madam

The National Low Income Housing Coalition (NLIHC) is pleased to submit these comments in response to the request published in the Federal Register May 18, 2010 by the Assistant Secretary for Policy Development and Research.

These comments summarize NLIHC's support for the Section 8 Housing Choice Voucher Program Small Area Fair Market Rents Demonstration Project and provide responses to a selection of the questions asked in the request for comments. The comments conclude with additional actions that NLIHC believes HUD should take in designing and implementing the demonstration project. Chief among these actions are to 1) exempt tenants with Housing Choice Vouchers and Housing Assistance Payment (HAP) contracts at the time the new FMRs are implemented from declines in payment standards; and 2) to commit to phasing in the year-to-year changes in the FMR. If necessary, this second action should occur in advance of any eventual passage of the Section Eight Voucher Reform Act (SEVRA), which contains a similar provision.

NLIHC Support for the Small Area FMR Demonstration Project

NLIHC is dedicated solely to achieving socially just public policy that assures people with the lowest incomes in the United States have affordable and decent homes. With this mission in mind, NLIHC has advocated for smaller Fair Market Rent (FMR) areas for some time and therefore supports the demonstration project proposal. Smaller FMR areas should reduce the incidence of above market rents in the Housing Choice Voucher program and the costs of enforcing rent reasonableness. At the same time, smaller FMR areas should also allow recipients to match market rents and access homes in a wider variety of neighborhoods than is currently possible. Under the current FMR regime, in the lowest rent, lowest opportunity neighborhoods, nearly all of the rents qualify for the program and in high opportunity communities, rents are well out of reach.

The result of implementing a system of small area FMRs should be a more effective and efficient Housing Choice Voucher Program that provides recipients with the range of housing choices and opportunities the program has long promised.

NLIHC is aware, however, that no matter how well intentioned, any change to an existing program, particularly one serving over 2 million households, also has the potential to disrupt people's lives and livelihoods. HUD should take the costs of this transition seriously, and NLIHC stands ready to be a partner in this effort.

Responses to HUD Questions and Suggested Topics

Caps and Floors

NLIHC supports the continued use of the non-metropolitan minimum rent as a statewide floor to increase the opportunity to rent standard units in areas with particularly thin or inactive rental markets or generally poor quality rental stock. In Washington, D.C., a jurisdiction that is not associated with a nonmetropolitan area, a separate means of determining a floor should be found.

Since the FMR will be based on the fortieth percentile of the eligible two-bedroom units for each ZIP code or the surrounding county and HUD already uses the unit size adjustment to exclude exceptions such as luxury lofts, an additional cap does not seem warranted. Moreover, HUD's proposal to use county ratios in place of ZIP code ratios where there are fewer than 1000 eligible observations makes it still less likely that unpalatably high rents will emerge.

If political or fiscal concerns suggest an additional cap is necessary, however, the proposed cap of 150% of the metropolitan area FMR seems fairly arbitrary given the significant variation in housing markets and the distribution of rents and rental units across metropolitan areas. HUD should instead consider a standard based on FMR-area market data. For example, FMRs could be capped at a high percentile of the rents of FMR eligible units (e.g. the 90th percentile) in the entire metropolitan area. This would assure tenants can access units throughout the region while protecting the program from the cost or political risk of recipients renting units at a cost well above the area's norm. If a cap is required and the 150% standard continues to make empirical or practical sense, however, NLIHC would like to see this standard further justified.

50th Percentile FMRs

A system of small area FMRs and the possibility of exception payment standards (discussed below) should be sufficient to address the concerns that originally motivated the FMR boost. There may be issues related to the transition to the new FMR regime in current 50th percentile areas, but these should be treated as related to the transition to the new FMRs. Geographically untargeted FMR boosts should be discontinued after the transition period.

Exception Payment Standards

NLIHC recommends that HUD maintain the option of exception payment standards. These standards could be granted to address fair housing concerns and to compensate in situations where ZIP codes are demonstrably ill-suited to the underlying distribution of rents. For example, neighborhoods within ZIP codes may have dramatically different rents due to important factors such as school catchment areas or proximity to transportation. The need for such exceptions will likely be greater where data limitations will lead HUD to set FMRs at the county level under the methodology proposed in the request for comments. There is also a role for exceptions in the case of a disaster or rapid economic change that affects the housing stock in an FMR area and requires a more rapid adjustment.

Administrative Burden

As HUD suggests in the request for comments, small area Fair Market Rents should reduce the administrative burden of determining rent reasonableness by requiring less comparative data when these decisions are made. The use of ZIP codes and Counties, which are likely to be known to owners, managers and most current residents of a property and to real estate professionals should make the determination of FMRs for a specific property easy, particularly with a web based information system.

Use of 2000 Census Data

NLIHC has two significant concerns about the use of 2000 Census data for the demonstration.

First, in most metropolitan areas there are likely to be a number of ZIP codes where relative rents have increased or decreased dramatically over the past 11 years and the resulting FMR will likely be highly inaccurate. Second, when FMRs determined with 2000 data in 2011 are replaced with FMRs determined with five-year ACS data in 2012, there will likely be widespread changes across any given FMR area as well as dramatic changes in some ZIP codes. Some areas that saw FMRs drop in the first year may see sharp increases and vice versa.

Together these effects may lead participants and the public to wrongly conclude small area FMRs are disconnected from reality and inherently volatile and therefore an impractical and perhaps even malign reform. Therefore, NLIHC encourages HUD to delay the implementation of the demonstration project until the five year data are available. If HUD proposes to continue based on 2000 Census rents, this would make a plan to phase-in FMR changes (discussed below) all the more important.

Update Schedule for Rent Ratios

An additional methodological concern is HUD's intention to only update the local-to-metropolitan area rent ratios every five years. Five years is too long a cycle for active metropolitan rental markets and relying on the exception rent process for adjustments in the interim seems inefficient. If annual or three year updates are not practical at this small a geographic scale, NLIHC recommends ratios based on five-year

data every three years when the majority of observations are new. The use of the five-year data every three years will provide sufficient data and also should smooth the series further allowing tenants and landlords to adjust incrementally to long term trends.

Eligibility Requirements

NLIHC supports the eligibility requirements. At this stage it is important to see that the program can be implemented, so the focus on areas that have sufficient rent variation and experience with variable rent structures seems appropriate. NLIHC interprets the "flexibilities within the voucher program" as being the standard rules of the program applied to the majority of the agencies and not those associated solely with the Moving to Work (MTW) program. Agencies in the MTW program can already implement small area rents. To the extent possible, agencies outside the MTW program should be given preference in selection for the demonstration project.

Additional Comments

Purposes of the Demonstration

At the outset, there should be a plan to evaluate the *long-term* outcomes of the reforms in the pilot areas and as the program is implemented nationwide. However, NLIHC believes that HUD should continue to make explicit that the purposes of the demonstration project are to learn about the implementation of small area FMRs and to identify potential problems and fixes prior to national implementation. It will take many years for contract renewals to take place and tenant and landlord choices to begin to affect the distribution of vouchers, the rental market, and the costs of the program. This will be particularly true if the changes are phased in to allow tenants and landlords time to adjust. Therefore it is NLIHC's position that nationwide implementation should not be dependent on any *short-term* evaluation of the cost, tenant mobility, or other outcomes from the change.

Technical Assistance

NLIHC would like to see implementation be paired with an explicit commitment and program to reach out to new and existing Housing Choice Voucher Tenants and landlords to make them aware of the changes and opportunities and provide technical assistance related to the program and relocation. While this might be a required part of the application from local PHAs, it would also be important that HUD offer PHAs and tenants organizations technical assistance as well.

Phase-in Changes

In order to have the best chance at success, NLIHC believes the small area FMR program needs to be phased in. In communities that face sharply declining rents from one year to the next, many landlords may be tempted to drop their participation in the program. Similarly, in other communities it will likely take some time for the promise of sharply higher FMRs to be met with participating landlords and available units. As a result, instituting the FMR changes in full in year-one is likely to unnecessarily constrict the choices voucher tenants have.

HUD should instead adopt a phase-in policy similar to the recently announced practice in determining income limits or an FMR provision contained within SEVRA. For example, by limiting FMR reductions to 5% or $100 (inclusive of rounding), whichever is less in any given year, landlords, PHAs, and housing markets will have time to adjust to changes and a measure of certainty about the extent of the changes. This in turn should limit transition costs and losses in program participation.

Exception rents in individual cases are an alternative way to limit the costs of transition. Given the burden of reviewing and deciding on what may be a large number of individual cases in the first years of implementation, however, phasing in the changes should provide a more general buffer for program staff and landlords.

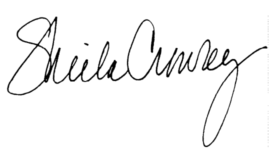
Additional Tenant Protections

Phasing in the FMR does not entirely remove the likelihood that some owners who are currently participating in the program will choose not to lower rents and instead leave the program. In these situations, tenants may be forced to move after a grace period expires, which can range from a year to two, until the second annual recertification after the change. The current proposal provides PHAs the flexibility to renew existing contracts using payment standards outside the normal 90 to 110% range, which should provide them with the flexibility to keep tenants in place. To reduce the burden and the uncertainty of PHAs having to reach decisions in individual cases, however, HUD should take the additional step of categorically exempting tenants with a HAP contract on the date the new FMR structure is implemented from a reduction in their payment standard as long as they remain in their existing unit. While this will further delay the full implementation of the program and any assessment of its outcomes, this should also greatly reduce the disruption caused by this reform and reduce potential opposition from tenants and advocates to the pilot program and its eventual implementation.

Conclusion

Thank you for taking these comments into consideration. NLIHC applauds HUD for taking this bold step toward a better targeted, efficient and effective Housing Choice Voucher Program.

Sincerely,



Sheila Crowley
President/CEO