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Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th St. SW, Room 10276
Washington, DC 20410-0500
Submitted electronically through www.regulations.gov

Re: Docket No. FR-5855-A-01, Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (SAFMRs) in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs; Advanced Notice of Proposed Rulemaking

These comments are submitted by the Center on Budget and Policy Priorities. The Center is an independent, nonprofit policy institute that conducts research and analysis on a range of federal and state policy issues affecting low- and moderate-income families. The Center's housing work focuses on improving the effectiveness of federal low-income housing programs, particularly the Housing Choice Voucher Program.

Thank you for the opportunity to comment on HUD's advance notice of proposed rulemaking on expanding use of small-area fair market rents (SAFMRs) to replace HUD's existing 50th percentile FMR policy. We strongly support this approach. The available evidence suggests that SAFMRs will likely perform better than 50th percentile FMRs at enabling families to move to lower-poverty neighborhoods,[1] which research shows has a substantial, lasting impact on children's well-being.[2] Moreover, because SAFMRs are based on estimates of 40th percentile rents and would reduce payment standards in low-rent neighborhoods, replacing metro-wide 50th percentile FMRs with SAFMRs covering a similar or somewhat larger number of vouchers (such as the 350,000 vouchers mentioned in HUD's notice) is likely to reduce voucher costs and free up resources to assist additional families from waiting lists.[3]

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[1] Robert A. Collinson and Peter Ganong, "The Incidence of Housing Voucher Generosity," May 2015, http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2255799.

[2] Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment," May 2015, http://scholar.harvard.edu/files/lkatz/files/mto_manuscript_may2015.pdf; Barbara Sard and Douglas Rice, "Creating Opportunity for Children: How Housing Location Can Make a Difference," Center on Budget and Policy Priorities, October 15, 2014, http://www.cbpp.org/research/creating-opportunity-for-children.

[3] Will Fischer, "Neighborhood-Based Subsidy Caps Can Make Housing Vouchers More Efficient and Effective," Center on Budget and Policy Priorities, June 10, 2015, http://www.cbpp.org/sites/default/files/atoms/files/6-10-15hous.pdf.

The comments below discuss seven of the areas where HUD specifically requested input and two other aspects of SAFMR policy: phasing in sharp FMR declines; and improving the SAFMR methodology.

(1) Measurement of Undue Voucher Concentration

The current 50th percentile FMR criteria assess whether vouchers are concentrated in a small share of neighborhoods, but not the characteristics of those neighborhoods. HUD's proposal to select SAFMR areas based in part on the concentration of voucher holders in high-poverty neighborhoods would target SAFMRs on areas where they are likely to have the greatest benefit. Research shows that moving to lower-poverty neighborhoods improves outcomes for families, including substantial mental and physical health gains for parents and major growth in children's adult earnings and rates of college attendance.

There is strong evidence that living in neighborhoods where more than 20 percent of residents are poor has adverse effects (and the effects likely begin even below that level), so we recommend that HUD select areas at least partly based on concentration of voucher holders in neighborhoods above that threshold. Since research shows that living in the highest poverty neighborhoods is particularly harmful, HUD should use the 20 percent threshold together with higher thresholds, for example by selecting areas based on the concentration of voucher holders in neighborhoods with poverty rates above 20 percent and in neighborhoods with rates above 40 percent.

As HUD notes, simply measuring the share of voucher holders in neighborhoods with high poverty rates would be inadequate, since this share will tend to be higher in metro areas with high poverty rates regardless of the performance of the voucher program. Instead, HUD should measure whether voucher holders are *more* concentrated in high poverty areas than all renter households in the metro area. For example, HUD could require SAFMRs when the percentage of voucher households in neighborhoods with poverty rates above 20 percent or 40 percent is more than 1.5 times the percentage of all rental units in those neighborhoods (or another ratio that would result in an SAFMR expansion on the scale targeted by HUD).

(2) SAFMR Effectiveness

The current 50th percentile criteria assess whether an FMR increase would be well-suited to reduce voucher concentration by looking at the share and distribution of units with rents below the 40th percentile metro FMR. This standard has little relevance to use of SAFMRs to address voucher concentration, since SAFMRs would raise FMRs above the 40th percentile metro FMR in some zip codes and lower them in others. It is more important to consider whether a substantial number of rental units would have FMRs significantly above or below the 40th percentile metro FMR.

It would be reasonable to prioritize areas for use of SAFMRs based on the share of the area's rental units in neighborhoods with SAFMRs above 110 percent or below 90 percent of the metro FMR, as HUD's notice suggests. SAFMRs would have some impact in neighborhoods where the SAFMR is within 10 percent of the metro FMR (since any change relative to the metro FMR would alter the range in which payment standards could be set) but their impact will be greater in neighborhoods outside that margin. HUD should not require that more than 20 percent of units in a metropolitan area be located in zip codes outside the 90 to 110 percent range as a condition for requiring SAFMRs, however, since 20 percent would clearly be enough to substantially broaden opportunities for voucher holders.

(3) Program Scale

It would be appropriate to require SAFMR use in areas with approximately the same number of vouchers as areas that meet the basic criteria for 50th percentile FMRs today (including those that have been disqualified solely because voucher concentration did not decline while 50th percentile FMRs were in effect), or alternatively the same number of vouchers as all areas where 50th percentile FMRs have ever been used (which HUD estimates to be 350,000 vouchers). Such an expansion would reach the metropolitan areas where SAFMRs are most urgently needed while affecting fewer than one-fifth of all metropolitan vouchers. Rather than establishing a fixed unit cap, HUD should simply set the criteria discussed in #1 and #2 so that the areas that initially qualify would roughly match HUD's target for the size of the expansion.

The number of vouchers in areas where SAFMRs are potentially beneficial almost certainly exceeds 350,000. Within several years of the planned expansion, HUD should reevaluate whether to extend SAFMRs to additional (or all) metropolitan areas based on the results of the expansion and the existing SAFMR demonstration. HUD should also regularly require SAFMRs in additional areas that newly meet the criteria, even if the total number of vouchers affected rises above 350,000. (But HUD should *not* end the SAFMR requirement in areas that no longer meet the criteria, since that would discontinue SAFMRs in the areas where they have successfully reduced voucher concentration, and switching areas back and forth between SAFMRs and metro FMRs would result in harmful FMR fluctuations like those that occur under the current 50th percentile policy.)

(4) PHA or Metropolitan-Wide

HUD should require that all housing agencies in metropolitan areas that meet the criteria described above use SAFMRs, not just those whose vouchers are concentrated in high-poverty neighborhoods. An agency-by-agency requirement would deeply undermine the effectiveness of the SAFMR policy, since it would tend to require agencies in central cities and higher-poverty suburbs to use SAFMRs that fall below the metro FMR but retain inadequate metro FMRs in lower-poverty, higher-opportunity suburbs. A metro-wide SAFMR requirement would allow agencies adequate flexibility to set payment standards in their jurisdictions, since they would have discretion to set standards between 90 and 110 percent of the SAFMR and request exceptions where warranted.

Some housing agencies with low-poverty jurisdictions may manage to put most of their vouchers to use in the area they serve. But if other agencies' vouchers are concentrated in high-poverty neighborhoods elsewhere in the metro area, SAFMRs will still be needed in lower-poverty areas to enable voucher holders from high-poverty areas to move there. Moreover, some agencies whose vouchers are located in low-poverty areas may achieve this only by serving a relatively high-income population or by allowing high rent burdens; SAFMRs could enable such agencies to target needier families and make rents more affordable.

(5) Voluntary Participation.

HUD should permit agencies to use SAFMRs even if they are not located in metropolitan areas where SAFMRs are required. Many agencies already could set payment standards at the applicable

SAFMR today, since agencies can use SAFMRs to demonstrate that rents in a zip code justify an exception payment standard. Exception payment standards, however, would not be adequate in metro areas where most people live in neighborhoods with SAFMRs below 90 percent or above 110 percent of the metro FMR, because HUD rules prohibit exceptions covering more than half of an FMR area's population. In addition, voluntarily adopting SAFMRs would be simpler than requesting SAFMR-based exception payment standards, since exception payment standard requests must also show that payment standards above 110 percent of the FMR are needed to avoid hardship and that payment standards below 90 percent would not raise rent burdens excessively.

(6) PBV Use of SAFMRs.

HUD should apply SAFMRs to new project-based voucher (PBV) contracts, since PBVs can play an important role in expanding opportunities in low-poverty neighborhoods and SAFMR-based payment standards would encourage agencies to place PBVs in projects in those neighborhoods. SAFMRs should not, however, alter payment standards under existing PBV contracts or extensions of those contracts, since this would be unnecessarily disruptive and could undermine owners' ability to meet debt service obligations or maintain their properties.

(7) Success Rate Payment Standards.

HUD should retain its success rate payment standard policy. Our understanding is that few if any PHAs currently use these standards, but it is sensible to retain a policy allowing agencies with low success rates to use higher payment standards. This option may be useful, for example, in low-vacancy areas where vouchers are difficult to use in most of the area's neighborhoods.

If an agency in a metropolitan area where SAFMRs are required qualifies for success rate payment standards, the success rate standards should be set at the 50^{th} percentile SAFMR for each zip code (calculated the same way HUD calculates 40^{th} percentile SAFMRs, except using the 50^{th} percentile metro FMR rather than the 40^{th}) so that they continue to provide incentives and support for families to move to higher opportunity areas. If necessary HUD should modify the success rate payment standard regulation to make that clear.

Phasing in Sharp FMR Declines

HUD should phase in the sharpest FMR declines that would result from SAFMRs. The 2015 SAFMR was $400 or more below the metro FMR in over 300 zip codes. If the PHA sets payment standards at 100 percent of the FMR today and keeps them at 100 percent of the SAFMR after the policy change, a family renting a unit at the FMR would have to pay the amount of the reduction — $400 or more in these zip codes — *in addition* to the 30 percent of its adjusted income that it already pays. Most low-income families would struggle to cover such a large increase.

PHAs could offset FMR reductions by increasing payment standards to 110 percent of the FMR, but this would not make up for the largest FMR cuts and in any case PHAs would not be required to do so. Voucher holders who wish to remain in zip codes where FMRs decline would not be affected until their second annual recertification, but they could face abrupt rent increases at that point if sharp FMR reductions are implemented without a phase-in.

Moreover, large, abrupt FMR reductions could narrow housing choices for voucher holders who wish to move by closing out opportunities in low-rent areas before new opportunities emerge in higher-rent areas. It could take time for agencies to take steps to support voucher use in higher-rent areas and for owners in such areas to become accustomed to renting to voucher holders.

HUD could limit volatility by capping declines relative to the FMR in place just before SAFMRs are implemented. HUD's 2011 notice requesting applications for the SAFMR demonstration said that HUD would limit annual decreases to 10 percent.[4] HUD's voucher program counsel, however, later interpreted a U.S. Housing Act requirement that HUD set FMRs using "the most recent available data"[5] to prohibit any limit on FMR changes compared to a previous year's FMR.[6] HUD should reconsider this interpretation, since it is unclear why that statutory language would prohibit a one-time, policy-based decision to prevent SAFMR implementation from causing sharp, harmful FMR declines.

But even without changing its interpretation of the statute, HUD could limit how far SAFMRs can fall below the *current* metro FMR during the early years of implementation. For example, HUD could set SAFMRs no lower than 90 percent of the metro FMR in the first year of implementation, no lower than 80 percent in the second year, and so on. This would be comparable to HUD's existing policy of capping SAFMRs at 150 percent of the metro-area FMR, and should be deemed fully consistent with the statute since it makes no use of less-recent data.

A limit like this should not significantly raise administrative burdens. HUD could apply the phase-in through its FMR formula with only minor adjustments. State and local housing agencies would then establish payment standards based on the published FMRs, just as they implement new FMRs each year under the current system.

A less desirable alternative would be for HUD to permit state and local agencies to request payment standards above 110 percent of the SAFMR whenever this is needed to prevent sharp payment standard declines.[7] This would allow agencies to limit payment standard volatility, but it would be more burdensome for HUD and state and local agencies to administer than an SAFMR phase-in and would not consistently protect families from abrupt payment standard declines (since HUD could not require agencies to set payment standards above 110 percent of the SAFMR).[8]

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[4] Federal Register, volume 76, number 76, April 20, 2011, p 22124.

[5] 42 U.S.C. §1437f(c)(1).

[6] Federal Register, volume 78, number 192, October 3, 2013, p 61671.

[7] To permit this HUD would need to modify the regulation governing exception payment standards, since under the current regulation HUD can only permit a PHA to set the payment standard for a portion of its jurisdiction above 110 percent of the applicable FMR if the PHA submits data showing that rents in the area are higher than in the FMR area as whole. HUD has statutory authority, however, to allow payment standards above 110 percent of the FMR for other reasons, so it could issue regulations allowing such payment standards as a temporary measure to phase in the effects of SAFMRs. (24 CFR 982.503(c), 42 U.S.C. §1437f(o)(1)(D).)

[8] HUD does have authority to require payment standard increases if more than 40 percent of a PHA's voucher holders have rent burdens above 30 percent of their income, but only a portion of areas where SAFMRs are sharply below metro FMRs would meet that standard and under current regulations HUD cannot require payment standards above 110 percent of the FMR. (24 CFR 982.503(g), 42 U.S.C. §1437f(o)(1)(E).)

The phase-in proposed here would raise budgetary costs — or reduce savings — during the first years of SAFMR implementation. If necessary, HUD could offset that effect by delaying payment standard increases for voucher holders remaining in place so they take effect at the same time as payment standard reductions.[9]

Improvements to SAFMR Methodology

HUD should closely review the methodology it uses to set SAFMRs and make any needed improvements in time for development of the 2017 FMRs, at the latest. SAFMRs come much closer to neighborhood rent levels than metro-level FMRs do, but some housing agencies and advocates in areas where SAFMRs are used have pointed to data indicating that SAFMRs are not as accurate as they could be.

HUD's SAFMR methodology seems likely to distort SAFMRs in at least some neighborhoods. Most significantly, the use of a median rent covering all bedroom sizes to determine the ratio between metropolitan and zip code FMRs can be expected to cause SAFMRs to be too low in zip codes with a higher share of small units than the metropolitan area as a whole, and too high in zip codes with a lower share of small units. Sometimes the median rent method will end up comparing units at very different points in the local rent continuum – and in the extreme may compare a two-bedroom rent to a one- or three-bedroom rent.

HUD could likely reduce discrepancies by determining the ratio of each unit's rent to the median rent *for that bedroom size* in the metro area, and then using the median of those ratios to adjust the two-bedroom metro FMR. This should be feasible and statistically valid using the same survey data HUD currently uses to determine a median rent for all unit sizes (since it would use data from the same number of units).

In addition, HUD's practice of setting the SAFMR at the county FMR in zip codes with few rental units will sometimes result in SAFMRs that are much higher or lower than actual rents in the zip code. HUD could reduce this risk by using data for modestly larger areas before defaulting to county-level FMRs. For example, when a zip-code has few rental units, HUD could set that zip code's SAFMR by combining its data with data for all adjacent or nearby zip codes. Alternatively, HUD could use a more sophisticated system of adding nearby zip codes in sequence based on their similarity to the zip code with inadequate data, until a sufficient sample size is achieved. Either of

[9] Existing regulations delay application of payment standard reductions (and the resulting rent increases) for voucher holders remaining in place until the family's second annual recertification after the agency changes its payment standard, meaning the reductions would occur between one and two years after the agency change. Payment standard increases, however, apply at the family's next annual recertification — that is, within one year. (24 CFR 982.505(c).) These are sensible policies when payment standards change due to factors such as a rise (or fall) in market rents throughout a metropolitan area, since families should receive time to adjust to payment standard reductions but there is no need to delay payment standard increases. However, in the context of SAFMRs — which will raise payment standards in some neighborhoods but lower them in others — the existing rules mean that the cost of the transition is felt sooner than the savings. HUD could avoid this by revising its regulations to apply both reductions and increases in payment standards resulting from SAFMRs at the family's second annual recertification for voucher holders remaining in place. This policy would not limit moves to opportunity areas, since increases would still apply immediately for new voucher holders and current voucher holders who move. The delay would be straightforward to implement, since it would simply direct agencies to apply payment standard increases at the same time as payment standard declines.

these methods would usually result in SAFMRs that reflect rents in the zip code more accurately than county-level FMRs.

HUD should also provide clear guidance explaining that agencies using SAFMRs retain the same discretion as agencies using metro FMRs to request exception payment standards. This could allow agencies, for example, to a set a payment standard below 90 percent or above 110 percent of the SAFMR in portions of a zip code that contains multiple neighborhoods with widely varying rent levels.

Conclusion

Extending SAFMRs to additional areas could significantly expand opportunities for low-income families. We urge HUD to move forward promptly to propose and finalize regulations implementing this important, promising measure. Thank you for considering these comments.

Sincerely,

Will Fischer
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