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August 15, 2016

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

Re: Docket No. FR 5855-P-02: “Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs”

Dear Regulations Division, Office of General Counsel, HUD:

The following comments are submitted on behalf of the National Housing Law Project (NHLP) and the Housing Justice Network (HJN) regarding the proposed rule published on June 16, 2016, “Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs.”¹ NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for protected classes. NHLP hosts the national Housing Justice Network, a vast field network of over 1,000 community-level housing advocates and tenant leaders committed to protecting affordable housing and housing rights for low-income families and individuals nationwide. The following comments draw on NHLP and HJN’s decades of experience working with advocates, residents, and Public Housing Authorities (PHAs) to implement and operate the voucher program.

We strongly support HUD’s goal of expanding housing choice for voucher families. The proposed SAFMR rule, as applied to *new* voucher participants will enable some voucher families to afford higher rents in areas of higher opportunity, allowing HUD to take a demonstrable step to fulfill its duty to affirmatively further fair housing. However, under the proposed rule, as detailed *infra*, *current* voucher families risk eviction, subsidy termination, and homelessness, because of potential significant reductions in payment standards and HAP subsidies. The Department should implement changes to the rule that would mitigate harm to participants including (1) hold current tenants harmless in the wake of SAFMR implementation, (2) create an exception for PHAs in areas with low vacancy rates, (3) revise the methodology used to calculate FMRs and SAFMRs to better reflect

¹ Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs, 81 Fed. Reg. 39,218 (Jun. 16, 2016) (hereinafter “SAFMR Proposed Rule”).

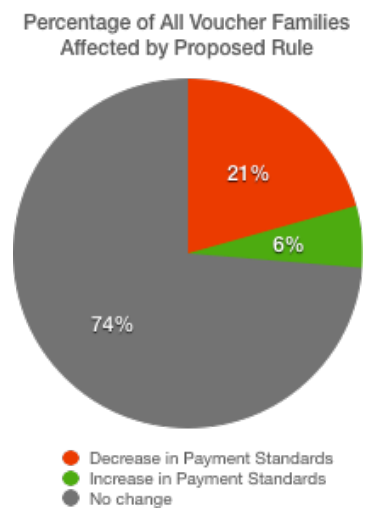
market rents and improve voucher choice, and (4) adjust SAFMRs to reflect rent surveys completed by PHAs. These suggestions and responses to HUD’s specific requests for comment are outlined in more detail below.

HUD Must Revise the Rule to Protect Existing Voucher Families from Economic Displacement

Introduction

HUD’s goal in implementing SAFMRs is to “establish a more effective means for HCV tenants to move into areas of high opportunity and lower poverty” by replacing Fair Market Rents (FMRs) with zip-code level rent data, thereby raising the maximum subsidy amount in some areas and lowering it in others.² For tenants entering the voucher program, proper PHA utilization of zip-code based FMRs to set payment standards may lead to greater housing choice by providing families with subsidies adequate to rent homes in higher rent neighborhoods, which often have high-performing schools, access to public transportation, and other community resources. At the same time, SAFMRs could result in more accurate and often lower subsidies for low-rent neighborhoods, which in turn could alter tenant choices about where to rent a voucher unit and reduce concentration in lower-rent distressed neighborhoods.

While it expands choices for new participants, the proposed rule fails to respect the choices made by many existing voucher holders. **In fact, about one fifth of all voucher holders in the country will be affected by the proposed rule, most of whom will see a reduction in their payment standards.** Although some of these families live in low-rent neighborhoods because they have been shut out of housing in areas of opportunity, other families chose to be near family, friends, a local church, medical care, or other support networks. In a number of areas, SAFMR implementation will result in unaffordable rent burdens for existing voucher families if rents are set at, above, or near the payment standard and landlords refuse to lower them when payment standards are reduced. Rent rigidity will be especially prevalent in stronger housing markets, where landlords can charge similar rents to unassisted tenants. Under the SAFMR rule, a significant number of voucher participants already facing tight budgets will have to make a difficult decision: pay more or get priced out. Many families will be forcibly displaced and uprooted from their neighborhoods.



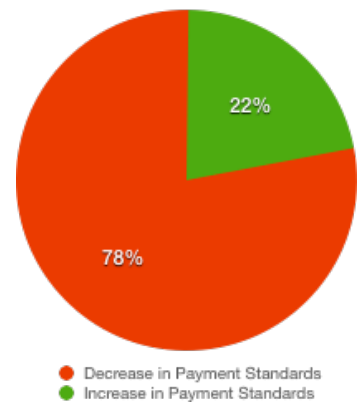
It is absolutely vital to note that any alleged oversubsidization occurring in the voucher program in lower rent neighborhoods is not the result of tenant inaction. For every voucher unit, the PHA has a duty to evaluate the rent charged for reasonableness, in light of market comparables for unassisted units in the area. This duty is totally independent of setting the payment standard. If the rent exceeds true market value, that is the direct result of the PHA’s inappropriate approval, or HUD’s inadequate administrative guidance. In theory, there should never be a significant incidence of oversubsidization. In any event, it should not be the result of FMR policy, if PHAs are performing their legally assigned functions. Thus, it is especially unjust that HUD would threaten existing tenants with higher rent burdens or displacement by revising FMR policy to authorize or require SAFMRs.

² SAFMR Proposed Rule at 39,219.

To Minimize the Negative Impact on Existing Participants, HUD Should Hold All Current Voucher Tenants Harmless

The number of families that will be forced to make the decision to pay more or move must not be understated. **Approximately 78% of current voucher holders in the areas that meet HUD’s SAFMR criteria, or over 435,000 voucher families, will likely experience reduced payment standards under the proposed SAFMR rule.**³ In all but two of the areas that currently meet HUD’s criteria, more than half of the voucher families in that region will experience a reduction in the payment standard, if PHAs use the same percentage of FMR to set the new payment standards.⁴ Moreover, rent burdens will become severe for many participants. For example, **in the Washington-Arlington-Alexandria HUD Metro FMR Area, the payment standard for the average current 2-bedroom voucher holder will decrease by \$281.97.**⁵ For those voucher tenants whose rents already match the payment standard, this equates to a \$281.97 rent increase.

Impact of Proposed Rule on Voucher Families' Payment Standards



For some tenants, any increased rent burdens will result in difficulties paying the rent and eventual eviction for nonpayment of rent, which in turn usually results in termination and loss of the voucher. Many other families will have no choice but to search for new housing. Moving, however, comes with inherent risks to both individual families as well as the voucher program itself.

- Families may not be able to find replacement housing with their voucher, even with new payment standards established under SAFMRs. Many PHAs report historically high voucher turn back rates as it has become increasingly difficult to use a housing voucher. **For example, in Santa Clara County, California, one of HUD’s designated SAFMR areas, only 14% of existing voucher families were able to use their housing voucher under the current metro-wide FMR framework in June 2014.**⁶ Additionally, a vast majority of jurisdictions do not protect voucher families from source of income discrimination by housing providers, adding another barrier to finding housing. Families that don’t find housing within the allowed search time risk permanently losing their housing subsidy.⁷ With low-wage jobs or public benefits, many families cannot afford market rents – that’s why they’ve qualified for vouchers. As a result, families will be displaced from their communities and may become homeless.

³ NHLP, Understanding the Impact of HUD’s Proposed Small Area Fair Market rent (SAFMR) Rule at <http://safmrnhlp.blogspot.com/> Note that this figure excludes Dallas. NHLP compiled data in order to assess the impact of the rule on current tenants. Please refer to the website to see our data and methodology. See also Appendix A, a summary of data for the 31 areas that currently meet HUD’s SAFMR criteria.

⁴ According to NHLP data, the two areas where the majority of voucher holders won't experience a decline (Nassau/Suffolk County, NY and Monmouth/Ocean County, NJ) are suburbs of New York with relatively few voucher holders.

⁵ See <http://safmrnhlp.blogspot.com/>

⁶ Santa Clara County is part of the San Jose-Sunnyvale-Santa Clara, CA HUD Metro FMR Area that meets HUD’s criteria for SAFMRs. The Housing Authority for the County of Santa Clara’s voucher success rate has risen since June 2014 but remains low.

⁷ Participants whose vouchers expire are typically not entitled to a termination hearing and, despite the voucher termination, are generally not afforded due process.

- Second, forcing participants to move will add families into the voucher pool and create even more competition for access to the limited housing available to voucher families.
- Third, those landlords unwilling to reduce rents will exit the voucher program as tenants move out. In addition, future landlords may not want to participate in the voucher program because of the reduced rents. This will lead to fewer housing opportunities for voucher families overall, unless those landlords return to the program with new voucher tenants and lower rents.
- Finally, PHAs could see a decline in utilization rates as voucher families move out of their current units and fail to lease-up. This could cause programmatic and financial instability for many PHAs.

The only way to avoid these negative consequences and promote housing stability is to require PHAs to hold all current tenants harmless under the final SAFMR rule. In other words, prevent PHAs from reducing the payment standard as long as the tenant remains in the same unit under the HAP contract.

H.R. 3700⁸ gives PHAs the discretion to reduce the payment standard as a result of a decrease in the FMR, but this solution does not go far enough. Most, if not all, PHAs may decide to pursue subsidy savings by reducing payment standards and shifting rent burdens to existing voucher tenants. Families will suffer as a result.

If current tenants are exempted, as they should be, some PHAs could have increased costs if new voucher families move to high opportunity neighborhoods with higher payment standards and rents, while existing participants benefit from current payment standards. This outcome is unlikely, however, as SAFMRs will not result in a flood of tenants moving to high opportunity areas. Rather, if the program succeeds, it is more likely that PHAs see a steady, but modest, increase in the number of voucher tenants choosing to live in higher-rent neighborhoods. This is true for several reasons, including:

- Most PHAs do not provide mobility counseling or financial assistance to voucher participants. Mobility counseling is essential to educate families about the advantages of moving to high opportunity areas. Moving is also expensive, creating an additional obstacle for families who wish to move. To the extent it was successful in moving families to areas with lower crime rates, the Dallas SAFMR pilot relied on mobility counseling as a means to assist families to move to high opportunity areas.⁹
- There are not a lot of existing housing opportunities for voucher families in high opportunity zip codes. This was certainly true in HUD's SAFMR demonstration areas. For example, in Westchester, NY, zip code 10510 has a payment standard of \$2120 for two-bedroom units, one of the highest in the County. In that zip code, there are 180 two-bedroom units (according to the ACS rent distribution data). On the other hand, zip code 10705 has a payment standard of \$1340 for two-bedroom units, one of the lowest in the region. In that zip code, there are

⁸ Housing Opportunity Through Modernization Act of 2016, P.L. 114-201, Title I, Sec. 107, amending 42 U.S.C. 1437f(o)(1)(B) (“...no public housing agency shall be required as a result of a reduction in the fair market rental to reduce the payment standard applied to a family continuing to reside in a unit for which the family was receiving assistance under this section at the time the fair market rental was reduced.”)

⁹ Robert Collinson and Peter Ganong, Incidence and Price Discrimination: Evidence from Housing Vouchers, Joint Center for Housing Studies, Harvard University, April 2016

2,650 two-bedroom units. **In other words, there are approximately 15 times the number of units in the low-rent zip code than in the high-rent one.**¹⁰

- In order for SAFMRs to be successful, PHAs must do outreach to landlords, which takes up PHA time and resources. As mentioned above, outright discrimination against voucher holders frustrates PHAs' efforts to increase landlord participation and most areas lack effective legal protections against voucher discrimination.
- In many locations, even SAFMRs are too low to provide an adequate subsidy for families to live in high opportunity neighborhoods.

For all of these reasons, HUD should create a categorical exemption to the SAFMR rule for all existing voucher tenants who continue to reside in their current units.

HUD Should Implement a Vacancy Rate Exception

The availability of potentially higher payment standards created by SAFMRs to move near high performing schools, jobs, and transportation is meaningless if there is an insufficient supply of rental housing. The goal of SAFMRs to enable expanded housing choice relies on the availability of adequate rental housing that is accessible to voucher holders in lower poverty neighborhoods. Along with holding all current tenants harmless, **the final rule should exempt PHAs that have jurisdiction in low vacancy rate areas.** Specifically, HUD should adopt a policy that allows PHAs that administer vouchers in low vacancy rate areas to opt-out of SAFMRs, even if they meet HUD's other criteria. HUD should define "low-vacancy rate" as an area with a vacancy rate of 5% or below as indicated by ACS data.¹¹ In areas where a PHA's jurisdiction is larger than the low-vacancy rate area, PHAs should be exempt from using SAFMRs in the low vacancy rate area only. This should also be the case if the PHA is administering a ported voucher.

Additionally, in the proposed rule, HUD gives all PHAs the discretion to replace FMRs with SAFMRs. Giving PHAs local control of SAFMRs is a sound policy, if PHAs properly expand housing choice while maintaining affordable rent burdens. However, because tenants in low-vacancy rate areas are especially vulnerable if forced to move, should HUD not revise the rule to hold *all* current tenants harmless as suggested above, HUD should require PHAs that choose to adopt SAFMRs in low-vacancy rate areas to categorically exempt current tenants.

HUD Should Revise Its Methodology Used to Calculate FMRs and SAFMRs to More Accurately Reflect Market Rents

In order for SAFMRs to expand voucher use in areas of high opportunity, it is imperative that they reflect actual current market rents. SAFMRs suffer from many of the same methodological issues as FMRs. There are two methodological issues that, if corrected, could make SAFMRs more closely conform to the market reality that voucher holders experience when searching for a unit (assuming that the PHA then uses an appropriate percentage to establish adequate payment standards by unit size).

¹⁰ The Long Beach area provides yet another example. Zip code 90808 has a payment standard of \$1730 for two-bedroom units, one of the highest in the region; it has 475 two-bedroom units in the ACS rent distribution. Zip code 90813 has a payment standard of \$1160 for two-bedroom units, one of the lowest in the area; it has 5,160 two-bedroom units in the ACS. There are approximately 11 times the number of units in the low-rent zip code than in the high-rent one.

¹¹ See the Census Bureau's Housing Vacancies and Homeownership data at <http://www.census.gov/housing/hvs/index.html>

First, HUD should alter the current FMR methodology to account for trends in local rental markets. The new SAFMR methodology relies on the traditional FMR methodology. The new “rent ratio” is multiplied by the old FMR to determine rents. HUD should cease using the “Trend Factor” to calculate FMRs, which measures the forecasted changes in *national* gross rents. Instead, HUD should use the percentage change in MSA-wide rents published as part of HUD PD&R’s quarterly U.S. Housing Market Conditions Regional Reports. Using the MSA, instead of the whole nation, as the unit of analysis for measuring rental market changes will result in a trend factor that is more sensitive to local conditions. The FMRs and payment standards will therefore more closely represent actual rents. Moreover, the data is already available for the majority of proposed SAFMR areas (PD&R issues quarterly reports on the annual rent changes for all major MSAs in the eleven HUD-defined regions) and thus could be easily adopted. For those areas not covered by regional reports, HUD could rely on region-level data published in the Housing Market Conditions Regional Reports, which is less accurate than MSA data, but still a significant improvement from national data.

Second, HUD should adopt a methodology for calculating SAFMRs that would allow access to 40% of units in all ZCTAs. HUD’s proposed SAFMR methodology does not enable voucher holders to gain access to 40% of the units in all zip codes. Instead, the SAFMR methodology estimates the payment standard needed for accessing higher rent zip codes, using median rent information, without taking into account actual rent distributions. As part of the SAFMR demonstration program, HUD released Census data on rent distributions for ZCTAs in the 6 areas subject to SAFMRs, allowing PHAs in those areas to calculate the actual payment standard needed to access 40% of units in each ZCTA. If the PHAs found a difference between the payment standards under the two methodologies, HUD allowed them to apply the payment standards determined by the more accurate alternative methodology.¹²

Although only Dallas appears to have successfully adopted the alternative methodology, using the alternative methodology would have increased payment standards by at least \$30 per month for 2 bedroom units in more than 100 ZCTAs across the 6 areas. Importantly, it would not have resulted in appreciably higher payment standards overall; the average payment standard would have increased by only 2% under the alternative methodology. And, many ZCTAs would have seen a reduction in the payment standard when implementing SAFMRs using this methodology. In order to guarantee that the SAFMR rule enables residents access to 40% of units in all neighborhoods, HUD should, when adequate data is available, automatically adopt this alternative payment standard in the annual release of SAFMRs. PHAs should not be required to do the calculations on their own.

Adjust SAFMRs to Reflect PHAs’ Rent Surveys

HUD should adjust SAFMRs if a jurisdiction completes a competent rent survey. In 2016, the Seattle, Portland, Oakland, and Burlington areas conducted rent surveys that HUD accepted as alternatives to their FMRs. But the hypothetical SAFMRs that HUD released were calculated using the non-rent survey FMRs, resulting in much lower SAFMRs across the jurisdictions. For example, in Oakland, HUD used a 2-bedroom FMR of \$1,620, instead of the rent survey-determined 2-bedroom of \$2,103, to calculate SAFMRs. The result was that nearly all ZCTAs had lower payment standards than the

¹² HUD, Distribution Guidance for 2016 SAFMRs at https://www.huduser.gov/portal/datasets/fmr/fmr2016p/distribution_guidance_final.pdf

rent survey-determined FMRs, negating any positive effects of the proposed rule. HUD should therefore use rent survey-determined FMRs when calculating SAFMRs.

Responses to HUD's Request for Comments

1. Should HUD provide for PBVs that are in the pipeline to continue using FMRs? Should HUD require newly proposed PBVs to use SAFMRs?

HUD should apply SAFMRs to PBV contracts prospectively to encourage the development of more PBV-funded developments in higher opportunity areas that invariably have higher rents and development costs. At the same time, HUD should take special care to ensure that adoption and implementation of SAFMR policy has no unintended collateral consequences on the existing inventory of PBV-supported affordable properties that would create financial instability or that it leads to systemic disinvestment in low-rent neighborhoods. Existing PBV contracts should continue to be based upon rents determined per their terms, under the existing regulatory scheme that utilizes metro-area FMRs.

Specifically, the HUD proposal that SAFMRs should govern maximum PBV rents for new PBV properties where a PHA's owner selection occurs after the effective date of the SAFMR designation would disrupt many other pipeline PBV transactions that are based upon the current system but necessarily utilize additional financing sources. **SAFMRs should only apply to new PBV contracts that have not yet obtained financing commitments or submitted applications for LIHTCs or other competitive subsidies that rely on PBV contract rents underwritten under current rules and metro FMRs or approved exception payment standards.** HUD should also consider providing additional flexibility for PHAs to accommodate the needs presented by specific transactional situations.

The rule proposes that a PHA and property owner may "mutually agree" to apply the SAFMRs to a project already under an AHAP or HAP contract before the effective date of the SAFMR designation. Our concern is that PHAs could exert undue influence on some owners or developers to agree to accept SAFMRs and reduce PBV contract rents to help alleviate pressures on PHA budgets. Some owners or developers may be reluctant to withhold consent since the PHA may remain an important source of funding for future PBV-assisted developments. Accordingly, HUD should restrict the "mutual agreement" provision for applying SAFMRs to existing PBV contracts only if using SAFMRs will provide higher contract rents that will benefit the property or tenant services. The same protection from such undue influence should apply to PBV contract renewals where the owner pre-committed to renewal at execution of the initial contract.

HUD should also clarify related regulations pertaining to rent-setting for PBV properties where SAFMRs may apply. Where PHAs and owners have agreed to a rent floor of initial rents per the HERA amendment to the PBV statute, HUD should acknowledge in the final SAFMR regulations that such a provision applies, notwithstanding any SAFMR requirements.

Finally, HUD has proposed amendments to the rent redetermination (24 CFR 983.302) and reasonable rent (24 CFR 983.303) regulations to create a higher 10% reduction threshold for when a reasonable rent determination is required from SAFMR implementation. To promote the financial stability of existing PBV properties in such areas, HUD should clarify the threshold applicable to existing PBV projects in SAFMR markets by adding the underlined clarifying language to the

proposed changes to both 24 CFR 983.302(a)(2) and 983.303(b)(1): “unless the Small Area FMRs under 24 CFR 883.113(c)(3) are applicable to both the PHA and the project, in which case...”

2. Should the SAFMR criteria be codified?

HUD should codify the criteria for selecting SAFMR areas (after taking into consideration stakeholder comments). However, the final regulations should allow HUD to revise the SAFMR criteria if necessary, through notice and opportunity for public comment, in the federal register. In order to analyze HUD’s SAFMR criteria, HUD should closely monitor PHAs that use SAFMRs and require that they gather and make available data related to the program, as outlined in more detail in response to question 13 below.

3. What additional policies or requirements should the final rule include to mitigate the negative impact on tenants?

Please see our general comments above. In order to mitigate the negative impact on current voucher tenants, HUD should (1) hold all current tenants harmless upon implementation of the final rule, (2) include an exemption for PHAs in low vacancy rate areas, (3) revise its FMR methodology and (4) apply completed rent surveys to SAFMRs.

In addition, HUD should require PHAs to analyze SAFMRs with respect to their duty to Affirmatively Further Fair Housing (AFFH). HUD could add a requirement in the regulations that SAFMRs must be considered for purposes of deconcentration when a PHA’s Analysis of Fair Housing (AFH) reveals the need for policies that improve housing opportunities for voucher tenants in low poverty areas.

4. Should the final rule limit the potential decline in the FMR for a zip code area to ensure that sufficient housing opportunities remain available to voucher families?

A categorical exemption for current voucher tenants is the only way to ensure that sufficient housing opportunities remain available to voucher families. In its proposed rule, HUD presents other policy options to phase in SAFMRs. We do not believe that the options proposed by HUD are adequate. HUD’s first proposal, to allow PHAs to establish exception payment standards above the basic range for impacted zip codes, would be left to the PHA’s discretion and therefore many families would not benefit from such a policy. HUD’s second proposal, to increase the amount of time before a family experiences a lower payment standard, is prolonging an inevitable rent increase and not actually mitigating any harm.

Short of a categorical exemption for existing tenants, we support a similar policy as outlined by our colleagues at the Center on Budget and Policy Priorities to phase in payment standard reductions based on a percentage of the current FMR. However, we believe that the phase-in should be gradual by setting SAFMRs no lower than 95% FMR for the first year, 90% FMR the second year, and so on. While such a phase-in policy only defers adverse consequences to tenants, it will benefit participating families to a much greater degree than allowing PHAs to set exception payment standards above the basic range by protecting families from huge reductions in SAFMRs as compared to FMRs. In addition, a gradual change in payment standards based on the FMR will allow tenants and landlords to plan for any changes in rents or rent burdens. Last, phasing in SAFMRs would keep units available, at least in the short term, to voucher tenants.

5. Should HUD phase out 50th percentile rents?

HUD should continue to allow PHAs to use 50th percentile rents. However, if HUD allows PHAs to maintain 50th percentile rents, it should require PHAs to demonstrate, using reliable data, that 50th percentile rents benefit voucher families to a greater extent than adoption of SAFMRs.

6. How can HUD reduce administrative burdens on PHAs and simplify transition to SAFMRs? Is 10% the right trigger for rent reasonableness determinations?

In order to reduce the administrative burden of SAFMR implementation, HUD should take two steps related to rent reasonableness: (1) increase the trigger for revised rent reasonableness determinations to 10% and (2) publish guidance to PHAs on the rent reasonableness analysis. First, requiring PHAs to perform a rent reasonableness analysis when there is a 10% change in the FMR will lessen administrative burdens for relatively small FMR revisions. Second, the primary cause of any asserted oversubsidization in lower rent neighborhoods is due to poor PHA rent reasonableness determinations. Advocates report that the manner in which PHAs currently apply the rent reasonableness requirements is inconsistent and unclear. Because there is little guidance from HUD on the factors a PHA must consider in the analysis,¹³ PHAs continue to overpay some landlords, while denying voucher tenants real choice in high opportunity and gentrifying neighborhoods based on the alleged “unreasonableness” of higher market rents in those areas. If HUD publishes improved guidance on rent reasonableness, the program will have fewer but more efficient and accurate rent reasonableness determinations. PHAs and tenants would both benefit from clearer HUD guidance in order to make rent reasonableness effective. HUD should also require PHAs to be transparent with the data used to perform the analysis and make it publicly available.

7. Should HUD expand SAFMRs to all rental assistance programs?

HUD should implement the SAFMR policy for *new participants* in all tenant-based rental assistance programs including the Continuum of Care and VASH. SAFMRs will help HUD and local PHAs meet their fair housing obligations.

With respect to applying SAFMRs to other programs, however, HUD should be aware of the conflict that could arise for PHAs. Public housing residents, for example, would benefit from SAFMRs if the result is lower than the FMR because minimum flat rents are tied directly to the FMR.¹⁴ Public housing residents may also support lower SAFMRs in order to keep higher-income families in public housing (families will be more likely to move if they are forced to pay rents higher than flat rents based on a percentage of their income). On the other hand, new voucher participants and developers of project-based voucher units will advocate for application of SAFMRs when it leads to an increase in the payment standard. Voucher holders want expanded housing choice and project-based voucher developers often need additional subsidies in the form of higher contract rents to support financial feasibility in higher cost areas. Although different stakeholders will have distinct interests in a SAFMR policy, HUD should center its policy development on the interests of tenant beneficiaries of the voucher program.

¹³ HUD provides some guidance in Chapter 9 of the Housing Choice Voucher Guidebook and HUD Notice PIH 2011-46 (HA) but much about the analysis remains unclear.

¹⁴ HUD, Changes to Flat Rent Requirements – FY Appropriations Act, PIH Notice 2015-13 (HA) (Sept. 8, 2015).

8. Should HUD apply the rule differently to special groups that would face certain hardships?

HUD should protect all voucher holders that are negatively impacted by the rule including seniors, families with children, and people with disabilities. All low-income voucher participants are at risk of harm should PHAs have the discretion to implement significant reductions in payment standards. HUD recognizes this potential harm, yet takes no steps in the proposed rule to mitigate it. As we suggest above, HUD could provide a sweeping protection by creating a categorical exemption for current participants. In the absence of such a broad protection, EPS become one of a PHA's few tools to avoid the negative impact of SAFMRs on families with a member who experiences a disability.

We support that HUD continues to explicitly allow PHAs to use Exception Payment Standards (EPS) for people with disabilities in the proposed rule under 24 C.F.R. § 982.503(b)(iii). EPS are an important protection for people with disabilities who will face particularly severe hardships if they have to move as a result of SAFMRs. Due to HUD's reliance on EPS to avoid hardship to voucher holders with disabilities, **HUD should (1) notify all tenants who will experience a reduced payment standard of their right to a reasonable accommodation based on disability, (2) identify tenants, based on their participant file, who might be entitled to an EPS based on disability and take affirmative steps to accommodate them, and (3) publish additional guidance with the final rule that directs PHAs to allow EPS as a reasonable accommodation in any instance when a voucher family will experience a disability-related hardship as a result of being forced to pay over 30% of their income in rent or move.** For example, HUD should include the following examples of when a PHA is required to grant reasonable accommodations for an EPS:

- A voucher holder has a mobility impairment that makes it difficult to pack belongings and physically move from the family's current home.
- A family is unable to find an available unit that meets a family member's accessibility requirements based on disability (for example, an apartment is needed that can fit an extra-large wheelchair) within the jurisdiction of the PHA.
- A family that includes a child with a disability must live within the school district where the child receives services.
- An individual with a mental health disability may have a particularly stable living environment that helps mitigate the symptoms of the disability. For example, a voucher tenant may have a good relationship with a landlord who understands the individual's disability and need for a behavioral accommodation.
- A voucher tenant is living near required medical services.

There are countless other situations which would warrant an EPS as a reasonable accommodation. We therefore urge HUD to enhance a PHA's explicit right to grant an EPS, a vital protection for voucher families with a member who experiences a disability.

9. Are there groups for whom this policy would be particularly burdensome?

As explained above, we believe this policy would be burdensome for all voucher families who experience a rent increase as a result of SAFMRs. HUD should implement tenant protections that apply to all current participants as long as they reside in their current units under an existing HAP contract.

10. Did HUD use the correct criteria for analyzing SAFMR regions?

HUD should refine the selection criteria to ensure that the proposed SAFMR rule benefits areas where voucher tenants are most highly concentrated. In order to accomplish this goal, HUD should change the measure of relative voucher concentration. Following the Center on Budget and Policy Priorities' recommendation, HUD should measure the difference between the percentage of all renters in low-income areas and the percentage of all voucher holders in low-income areas, rather than relying on the ratio between these two percentages. Instead of a ratio of 1.55, HUD should use the criteria that there must be at least a 15% difference between renter and voucher holder concentration in low-income areas. Such a move would result in only slightly fewer areas being subject to the rule: CBPP estimates 10 areas would be dropped and 9 new areas would be added. Moreover, on average, in the 9 areas added, 48% of vouchers are in low-income areas versus only 31% in the 10 areas that would be dropped.

We also urge HUD to consider ways to enhance housing choice in high opportunity areas for the estimated one in ten voucher families who live in non-metro areas.¹⁵ The proposed SAFMR rule addresses the issue of racial and ethnic concentrations of poverty in cities, but those living outside of metropolitan areas with more than 2,500 vouchers (proposed selection criteria 1) also face significant barriers to housing choice.

Note that, at this time, we do not support a change in the selection criteria that would significantly expand the number of PHAs or vouchers required to use SAFMRs. Instead, we urge HUD to cap the number of effected vouchers until additional data is available to analyze the effect of the policy on voucher families.

11. Should voucher holders using their voucher for a manufactured home space be exempt from SAFMRs at their current address?

We strongly support a wholesale exemption for families using their voucher to pay the space rent for a manufactured home. As with other tenants, an unaffordable space rent increase puts them at risk for eviction and subsidy termination. However, because of the difficulty and expense of moving the manufactured home, program participants using their voucher for space rent also risk the loss of investment in their manufactured home.

12. What amendments should HUD make to the Exception Payment Standard regulations?

PHAs throughout the country, especially in heated housing markets, suffer from high voucher turn-back rates because HUD's FMRs do not keep up with market rents. HUD created a method by which PHAs could establish an Exception Payment Standard but unfortunately few PHAs choose to apply for EPS with HUD. HUD should streamline and simplify the process in order to encourage PHAs to increase payment standards in areas where voucher families are blocked out of housing in high opportunity neighborhoods. It is also imperative that PHAs have a useful tool to lower payment standards in low rent areas where there is evidence that landlords are being oversubsidized. HUD should make the following revisions to the EPS regulations:

¹⁵ Center on Budget and Policy Priorities, Policy Basics: The Housing Choice Voucher Program at <http://www.cbpp.org/research/housing/policy-basics-the-housing-choice-voucher-program>).

- Clarify that PHAs can use census tract data, when available and reliable, to set EPS.
- Lift the cap in 24 C.F.R. § 982.503(c)(5) that EPS can only be used for less than half of an area.
- Allow PHAs to set a payment standard up to 120% FMR without HUD approval (this will streamline the regulation to be similar to the rule for EPS as a reasonable accommodation).

13. What additional data should HUD look at to assess the impact of implementation?

SAFMRs are a radical change from HUD's existing rent-setting methodology and must be studied closely. HUD should require PHAs to report and make publicly available the following data:

- **Voucher Success Rates:** Voucher holders are currently subject to significant barriers in selecting units, including discrimination. SAFMRs may further complicate a family's ability to lease-up within the search time. HUD should require PHAs to report on the average time it takes to lease-up for both new voucher participants and current tenants that move with continued assistance (either within the jurisdiction of the PHA or when they port their voucher). With this data, HUD will be able to track whether SAFMRs are correlated with low success rates.
- **Data on Rent-Burdened Vouchers:** HUD should require PHAs to report the count and distribution by zip code of voucher holders in their jurisdiction that report rent burdens (more than 30% of monthly income going to rent) during initial lease-up and recertification. This information will be invaluable in determining whether SAFMRs are adequately balancing the need to open up new areas for voucher holders with the need for affordable housing.
- **Data on Participating Landlords by Zip Code:** HUD should publish the number of voucher landlords and units associated with those landlords by zip code. PHAs are currently required to provide information on housing opportunities to tenants. The data is already public, but not easily available or centralized. This data will help HUD and the public assess how PHAs, in the absence of dedicated mobility counseling, are helping new voucher holders access lower poverty areas and the extent to which landlords have expressed an interest in participating in the program. It will also show whether landlords are exiting the program as a result of SAFMRs.
- **Publicly available zip-code-level counts of voucher holders and their race.** Currently, HUD makes the number of voucher holders in a particular area available in two ways: (1) on HUD's Open Data website and (2) as part of the underlying data used in the AFH Data and Mapping Tool. Both give voucher counts on the Census tract level, while the latter source includes a count of the number of non-white voucher holders in each tract. Although HUD releases a crosswalk file that matches Census tracts and ZCTAs, the process of converting HUD's tract-level data to ZCTAs is complex and rife with potential for errors. Since SAFMRs use ZCTAs, not Census tracts, as the primary unit of analysis, HUD should release voucher counts at the ZCTA level in order to evaluate the impact of SAFMRs. The race count will also allow evaluation of how the SAFMR rule impacts jurisdictions' AFFH obligations.

- Voucher Turnover Rates: In order to analyze the impact of SAFMRs on program participants, it is critical to know how many participants are leaving and entering a PHA's program each year. Especially if HUD adopts our recommendation to hold current tenants harmless, this data would help advocates analyze how many people are no longer subject to FMRs in a given area.
- Data on PBV Developments: HUD should require PHAs to submit data on the number of PBV units before and after SAFMRs are adopted by a PHA, by zip code. This will help determine the extent to which SAFMR implementation is effecting development in different neighborhoods.

Prior to the SAFMR rule, the largest mobility program enacted by HUD was Chicago's Gautreaux program, which moved 7,100 families over more than a decade. The proposed SAFMR rule will impact about 75 times the number of families, without an adequate study of the impacts in demonstration areas. HUD should therefore require PHAs to report on the data above and perform ongoing analysis of the program's effects starting immediately following the publication of the final rule and SAFMR implementation.

Thank you for your consideration of our comments and recommendations. We look forward to working with HUD and are happy to further discuss our comments on SAFMRs. Please contact Deborah Thrope (dthrope@nhlp.org) should you wish to talk with NHLP and/or HJN members to clarify our position on these important issues.

Sincerely,

Deborah Thrope, National Housing Law Project

On behalf of HJN:

Victor Bach, Community Service Society of New York
 Fred Fuchs, Texas RioGrande Legal Aid
 Debra Gardner, Public Justice Center
 Judith Goldiner, The Legal Aid Society
 Lisa Greif & Bob Capistrano, Bay Area Legal Aid
 Jeffrey M. Hearne, Legal Services of Greater Miami, Inc.
 Janet M. Hostetler, National Law Center on Homelessness & Poverty
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 Kim Pederson, Senior Attorney, Law Foundation of Silicon Valley
 Rasheedah Phillips & George Gould, Community Legal Services of Philadelphia
 Michael Rawson, The Public Interest Law Project
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Appendix A

Summary data for 31 areas that meet HUD's criteria for SAFMRs. All data assumes payment standards are set at 100% of FMR. The voucher counts and weighting are based on NHLP estimates of voucher location based on HUD tract-level voucher data and HUD zip code to tract crosswalk information. For NHLP's full data analysis, please see <http://safmrnhlp.blogspot.com/>

HUD-Defined Area	Percent of vouchers with decline in payment standard	Percent of vouchers with increase in payment standard	Number of vouchers with decline in payment standard	Number of vouchers with increase in payment standard	Monthly change for average HCV in 2bdrm unit	Yearly change for average voucher in 2bdrm unit	Percent change for average voucher in 2bdrm unit
Atlanta-Sandy Springs-Marietta, GA HUD Metro FMR Area	61%	39%	17,089	11,017	\$(42.03)	\$(504.36)	-4%
Bergen-Passaic, NJ HUD Metro FMR Area	52%	48%	6,082	5,676	\$10.45	\$125.40	1%
Charlotte-Gastonia-Rock Hill, NC-SC HUD Metro FMR Area	65%	35%	4,860	2,658	\$(26.01)	\$(312.12)	-3%
Chicago-Joliet-Naperville, IL HUD Metro FMR Area	87%	13%	58,168	8,435	\$(42.03)	\$(504.36)	-12%
Colorado Springs, CO HUD Metro FMR Area	79%	21%	2,192	568	\$(73.08)	\$(876.96)	-8%
Dallas-Plano-Irving, TX Metro Division	X	X	X	X	X	X	
Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Metro Division	67%	33%	6,961	3,424	\$(50.72)	\$(608.64)	-4%
Fort Worth-Arlington, TX HUD Metro FMR Area	58%	42%	7,357	5,418	\$9.20	\$110.40	1%
Gary, IN HUD Metro FMR Area	62%	38%	2,058	1,269	\$(22.20)	\$(266.40)	-3%
Hartford-West Hartford-East Hartford, CT HUD Metro FMR Area	90%	10%	11,542	1,333	\$(114.67)	\$(1,376.04)	-9%
Jackson, MS HUD Metro FMR Area	69%	31%	2,846	1,292	\$(46.15)	\$(553.80)	-6%
Jacksonville, FL HUD Metro FMR Area	86%	14%	5,588	886	\$(84.60)	\$(1,015.20)	-9%
Monmouth-Ocean, NJ HUD Metro FMR Area	30%	70%	2,308	5,445	\$102.69	\$1,232.28	7%
Nassau County-Suffolk County, NY Metro Division	21%	79%	2,471	9,068	\$158.85	\$1,906.20	10%
New York, NY HUD Metro FMR Area	91%	9%	112,580	11,089	\$(229.54)	\$(2,754.48)	-15%
North Port-Bradenton-Sarasota, FL MSA	87%	13%	2,040	294	\$(56.71)	\$(680.52)	-6%
Oakland-Fremont, CA HUD Metro FMR Area	95%	5%	29,414	1,576	\$(563.54)	\$(6,762.48)	-27%
Oxnard-Thousand Oaks-Ventura, CA MSA	78%	22%	4,372	1,206	\$(69.75)	\$(837.00)	-4%
Palm Bay-Melbourne-Titusville, FL MSA	72%	28%	1,781	679	\$(33.14)	\$(397.68)	-4%
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	87%	13%	33,032	5,131	\$(164.52)	\$(1,974.24)	-14%
Pittsburgh, PA HUD Metro FMR Area	63%	37%	9,617	5,620	\$(35.69)	\$(428.28)	-4%
Sacramento--Arden-Arcade--Roseville, CA HUD Metro FMR Area	62%	38%	7,954	4,912	\$9.22	\$110.64	1%

San Antonio-New Braunfels, TX HUD Metro FMR Area	80%	20%	11,641	2,900	\$(69.98)	\$(839.76)	-8%
San Diego-Carlsbad-San Marcos, CA MSA	66%	34%	18,324	9,499	\$(98.91)	\$(1,186.92)	-7%
San Jose-Sunnyvale-Santa Clara, CA HUD Metro FMR Area	79%	21%	12,378	3,315	\$(131.28)	\$(1,575.36)	-7%
Tacoma-Lakewood, WA Metro Division	71%	29%	4,512	1,850	\$(67.77)	\$(813.24)	-6%
Tampa-St. Petersburg-Clearwater, FL MSA	72%	28%	12,198	4,658	\$(23.54)	\$(282.48)	-2%
Urban Honolulu, HI MSA	75%	25%	4189	1,429	\$(230.89)	\$(2,770.68)	-12%
Virginia Beach-Norfolk-Newport News, VA-NC HUD Metro FMR Area	78%	22%	10,456	2,911	\$(150.88)	\$(1,810.56)	-13%
Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR Area	82%	18%	26,210	5,788	\$(281.97)	\$(3,383.64)	-17%
West Palm Beach-Boca Raton-Delray Beach, FL Metro Division	72%	28%	4,518	1,726	\$(82.60)	\$(991.20)	-7%