NATIONAL HOUSING CONFERENCE

July 2, 2015

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th St, SW Room 10276
Washington, D.C. 20410-0500

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

The National Housing Conference (NHC) appreciates the opportunity to comment on HUD's advance notice of proposed rulemaking to use small area fair market rents (SAFMR) instead of the 50th percentile fair market rents (FMRs). NHC supports HUD's efforts to give individuals and families using Housing Choice Vouchers more housing choice and expand their access to higher opportunity neighborhoods. The current method of allowing 50th percentile rents through a time- and geography-limited approach has not succeeded in deconcentrating poverty. Using rents tied to smaller geographical units has the potential to make HUD's payment standards more accurate and therefore make the programs that use them more efficient in terms of public dollars expended and more effective at empowering households.

To guide HUD in this rulemaking, NHC highlights several concerns about how the proposed change to SAFMRs could be implemented and implications of the change. The mobile voucher program offers a way for families to access high opportunity neighborhoods; it also provides a way to stimulate investment in struggling neighborhoods. Program changes need to address both neighborhood investment and mobility; HUD needs to be careful to do no harm to existing voucher holders and participating property owners who have made long-term household and economic investments in where they live. HUD should also provide PHAs with the flexibility to implement SAFMR in ways that works for their communities.

Helping voucher holders access higher opportunity areas will necessarily involve tradeoffs between the additional costs incurred and the number of families served. Cost savings from lower payments on some vouchers are unlikely to offset cost increases overall and certainly will not do so in all areas, as we discuss later in more detail.

The comments below raise NHC's concerns about implementation and execution of this proposal as well as respond to some of the questions HUD has raised. NHC supports HUD's efforts to innovate and pursue strategies to make the voucher program provide more opportunity for participating families. We urge HUD to strike a careful balance with the need to invest in low-income neighborhoods and to give families true housing choice that includes the ability to stay in communities that are improving economically.

I. About the National Housing Conference

The National Housing Conference represents a diverse membership of housing stakeholders including tenant advocates, mortgage bankers, non-profit and for-profit home builders, property managers, policy practitioners, real estate professionals, equity investors, and more, all of whom share a commitment to safe, decent and affordable housing for all in America. We are the nation's oldest housing advocacy organization, dedicated to the affordable housing mission since our founding in 1931. As a nonpartisan, 501(c) 3 nonprofit, we are a research and education resource working to advance housing policy at all levels of government in order to improve housing outcomes for all in this country.

II. Overall comments on Small Area Fair Market Rents

To guide HUD in its development of the SAFMR regulation, NHC offers comments on several aspects.

A. Costs

Helping voucher holders access higher opportunity areas will necessarily involve tradeoffs between the additional costs incurred and the number of families served. It is not possible to obtain housing in more desirable neighborhoods for the same number of households without raising total cost. Reductions in costs paid for currently assisted households who stay in place are likely to be small and unable to offset cost increases.

In areas where SAMFRs cause the payment standard to go down, there will be cost savings to the program, either because property owners are willing to accept a lower rent (an efficiency gain for the program) or because they stop accepting the voucher (a loss of service by program). Indeed, the Center on Budget and Policy Priorities' (CBPP) research[1] found that average voucher costs would decrease by 6 percent if SAFMRs were implemented nationally and voucher holders remained in the same neighborhoods. However, CPBB acknowledges that these estimated savings would decrease if families move to higher rent neighborhoods. CBPP's conclusion that some savings would still occur relies on the fact that discrimination and refusal by property owners to participate in the voucher program will limit relocation to higher cost areas.

NHC is concerned that savings would not materialize at all, because in many metro areas, rental shortages in high-opportunity areas would require pushing the payment standard to the proposed maximum of 165% of FMR. If many property owners in high-opportunity areas refuse to accept vouchers, rents charged by the remainder that do accept vouchers could rise even higher.

Assessing costs at the national level can obscure challenges that may arise locally. Even if cost savings offset cost increases nationally, in some areas, cost savings from SAFMR reductions may be small

[1] Fischer, Will. "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/research/housing/neighborhood-based-subsidy-caps-can-make-housing-vouchers-more-efficient-and

compared to the higher costs in more desirable neighborhoods. For the PHA administering vouchers in that area, its ability to serve needy households could shrink dramatically.

B. Methodology

The SAFMRs suffer from some of the same methodological difficulties as the FMRs that may limit the desired effect of the rule change. Put simply, **FMRs lag behind actual rents in ways that adjusters have not fixed**. The methodology relies on annual American Community Survey (ACS) data to set rent levels, which HUD then adjusts using the Consumer Price Index and information on recent movers to approximate current market rents. Furthermore, HUD uses five-year ACS data to estimate the differentials between the overall metro area and individual ZIP codes, which results in an even longer lag between actual neighborhood change and the SAFMR's reflecting that change. Housing markets move significantly in a year and rents can change quickly, so despite adjustments, SAFMRs will lag behind actual rents.

The effect of this lag is worst in gentrifying areas where rents are increasing rapidly. The older data will generate low SAFMRs, but in the meantime, actual rents are rising and voucher-assisted residents will be priced out of the neighborhood. If the payment standard does not keep pace, residents will already have been displaced by the time the payment standard catches up. The existing SAFMR demonstration in Dallas has found the SAFMR levels to be somewhat inaccurate in gentrifying neighborhoods, making the program less effective.[2]

C. Implementation

Changing from the current FMR system to SAFMRs can be disruptive, potentially in long-lasting ways. NHC offers several suggestions for HUD to consider around implementation of SAFMRs.

1. Phase in SAFMRs when possible.

Small area fair market rents should be phased in so that voucher holders currently housed and property owners currently participating are not disrupted, especially in zip codes where the decreases will be significant. HUD's existing regulations provide some protection, but since lower SAFMRs could lead to relocation costs and possibly substantial rent increases for families who want to remain but must pay more in rent because of a decreased voucher amount, they will need time to plan for that change. Abrupt FMR decreases would also be detrimental because it will take time for new rental opportunities to open up in high-opportunity neighborhoods. It will take time to recruit landlords in those areas and for PHAs to develop the processes to serve those areas for the first time.[3] Phasing in SAFMRs increases their likelihood of success.

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[2] Fischer, Will. "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/research/housing/neighborhood-based-subsidy-caps-can-make-housing-vouchers-more-efficient-and

[3] Ibid.

2. Encourage property owners to accept vouchers

HUD should carefully examine zip codes where rent levels will decrease because if voucher rents fall significantly, property owners may simply opt not to accept vouchers. If payment standards decrease below unit maintenance costs, some property owners may decide not to maintain their units adequately and wait for HUD inspections to catch up. HUD and the PHAs who participate need a strategy for property owner recruitment in high-opportunity zip codes. Property owners in those areas will have less financial incentive to participate because the market demand is already strong. If property owners in low-cost areas leave the program and property owners in high-opportunity areas do not opt into the program, families with vouchers may struggle even more to find appropriate housing.

SAFMRs will also have greater change year over year than existing FMRs because of serving the smaller geography. This year over year change and financial uncertainty could be a disincentive for property owners for whom the reliability of the voucher income stream offsets the additional compliance costs. HUD should seek ways to minimize volatility in SAFMRs, both to encourage participation and to limit disruption of markets that have high concentrations of vouchers.

3. HUD and PHAs need to plan mobility strategies.

The proposal will have a range of impacts on families with mobile vouchers. For PHAs that implement SAFMRs, some families will be able to afford a rental unit in a high opportunity neighborhood for the first time, giving them access to better schools and community amenities. For very high-cost areas, the change to SAFMRs will still not be sufficient to make those areas affordable for voucher holders. For jurisdictions that have exclusionary zoning and little to no rental housing, SAFMRs will not provide access to those communities. Voucher holders will also face discrimination based on source of income. Only 12 states and the District of Columbia have source of income protection. HUD and participating PHAs need to have a strategy to address this reality as well. In Austin, for example, the Austin Tenant's Council found 78,217 rental units that voucher holders could afford or 56 percent of the rental units surveyed. However, only 8,590 accepted vouchers and did not have minimum income requirements.[4]

Mobility counseling will be an important tool as SAFMRs are expanded, but PHAs do not have sufficient resources to provide it. For families where the high-opportunity neighborhoods are across town and far from existing social support networks, having assistance in understanding the value of their different housing options will be important. Many PHAs do not have the capacity to help voucher holders find units, so under SAFMRs, voucher holders could simply receive a list of rent standards by zip code, which could be very overwhelming, further illustrating the need for mobility counseling and support for voucher holders in learning this new process.

4. Plan for mid-course corrections

[4] Semuels, Alana. "How Housing Policy is Failing America's Poor." *The Atlantic*. June 24, 2015. http://www.theatlantic.com/business/archive/2015/06/section-8-is-failing/396650/

The one prediction we can make confidently is that SAFMRs will play out differently in different places. HUD needs to give program participants, including PHAs, landlords and voucher holders, the opportunity to provide feedback as SAFMRs are implemented as well as provide mechanisms for mid-course corrections to make the policy more effective.

5. Strengthen PHA's capacity to apply rent reasonableness to payment standards.

Part of the rationale for SAFMRs is that in some places, the current payment standard is above actual market rent and that therefore a PHA may allow owners to charge too much. However, in addition to using the payment standard and testing housing quality, PHAs are also tasked with evaluating rent reasonableness, that is, determining that the rent being asked by a property owner is appropriate. A study by Abt Associates in 2001 found that the median housing authority rejects between 25-50% of units on the first inspection. HUD also audits housing authorities' leasing processes and finds rent reasonableness to have one of the highest compliances rates.[5] This application of rent reasonableness prevents property owners from receiving rents that are too high. Helping PHAs develop more efficient systems for rent reasonableness will complement the more finely tuned SAFMR payment standard.

III. HUD's specific requests for comment (questions in italics)

In the notice, HUD posed specific questions on various aspects of the proposed rulemaking. NHC responds to some of those questions below.

A. Specific solicitation of comment 3: In terms of number or percentage of metropolitan-area vouchers (which is 1.9 million), what should be the size of the SAFMR program?

If HUD sets the criteria defining eligibility for the program, but then chooses a small subset of eligible PHAs to participate, HUD will need a clear decision making methodology to explain why some PHAs were chosen over others, one that focuses on the underlying characteristics of the housing markets affected and the people served.

B. Specific solicitation of comment 4: PHA or metropolitan-wide: Should SAFMRs apply to all PHAs in a metropolitan area or only to PHAs that display a pattern of HCV tenant concentration in high-poverty census tracts?

Rents are a feature of a market, not an agency jurisdiction. If PHAs with overlapping or even adjacent jurisdictions have very different payment standards, it will be confusing to program participants initially. In the medium term, confusion will give way to adverse selection, as program participation flows to PHAs that can offer the highest rents. We strongly urge HUD to apply payment standards in line with housing markets.

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[5] Collinson, Robert A. and Ganong, Peter, *The Incidence of Housing Voucher Generosity* (May 2015). Available at SSRN: http://ssrn.com/abstract=2255799 or http://dx.doi.org/10.2139/ssrn.2255799

C. Specific solicitation of comment 5: Voluntary participation: Should a PHA be allowed to use SAFMRs even if the PHA or the underlying metropolitan area would not qualify for the use of SAFRMs?

PHAs should have the option to participate in the program, but they should be provided with clear data explaining how their rent standards would be impacted by participating in the SAFMR demonstration. HUD should be prepared for the likelihood that PHAs that see a net increase in the payment standard across their portfolio are more likely to opt-in.

D. Specific solicitation of comment 6: PBV Use of SAFMRs: Should SAFMRs be applied to PBVs at least for future PBV projects?

NHC urges extreme caution in expanding SAFMRs to project based vouchers (PBVs). Projects using PBVs have long-term financing based on tight underwriting; changes to PBV rent levels could undermine a project's ability to continue operating. Any extension of a new payment standard to PBVs would need to be very carefully designed to do no harm to existing properties, and a change to SAFMRs should only come at an appropriate time, like at HAP contract reauthorization. Grandfathering existing properties would be an obvious approach, but doing so risks creating yet another time-delimited cohort of affordable housing properties operating under dated and obscure rules.

For higher-opportunity neighborhoods, which are higher cost, more subsidy dollars would be needed in order for new PBV projects to make sense financially. For new construction projects, HUD would also need to examine how much rents could change year over year and provide enough flexibility to negotiate changes to SAFMRs when needed, given operating costs. Additionally, the expansion of SAFMRs in the mobile program needs to complement assisted rental housing projects like Low Income Housing Tax Credits (LIHTCs). The potential volatility within SAFMRs has the potential to disrupt these projects' cash flow. HUD should consider an exception standard for assisted housing, separate from market rate housing.

IV. Conclusion

NHC appreciates the opportunity to comment on this advanced notice and commends HUD for its proactive efforts to strengthen and improve access to opportunity neighborhoods for mobile voucher holders and to creating better opportunities in distressed neighborhoods. Please contact Rebekah King, Policy Associate (rking@nhc.org) with any questions.

Sincerely,

Chris Estes

Chris Estes
President and CEO