



August 15, 2016

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

Re: Comments on small area FMR: RIN 2501-AD74

To Whom it May Concern:

The National Housing Conference (NHC) welcomes the opportunity to comment on the Small Area Fair Market Rent (SAFMR) proposed rule. We share HUD's commitment to making the voucher program more effective and efficient at serving the housing needs of Americans. Using smaller geographic areas to improve precision and accuracy of the payment standard is a step in the right direction, but it also risks serious unintended negative consequences. Our comments focus on ways to improve the rule at implementation and create a process for improvement over time.

The great need for affordable housing frames our recommendations. In places of high employment and economic growth, housing costs outstrip incomes for many, while in places of economic distress, lack of investment constrains revitalization. Research from NHC's Center for Housing Policy shows that more than 9.6 million working households struggle to afford housing that costs more than half of their income.¹ Extremely low-income households suffer the most, and the consequences of the mismatch between housing costs and incomes are most severe for those who have the least.

Declining housing affordability is not a sudden crisis, but a long-term problem that has been building for many years and promises to grow further.² The problem demands concerted, creative actions that link the energy of the private sector to the positive outcomes that stable affordable housing produces. Our comments, explained further in the balance of this letter, aim to encourage the innovation and change needed to help change housing affordability for the better.

¹ Mindy Ault. Housing Landscape: An Annual Look at the Housing Affordability Challenges of America's Working Households. 2016. Washington, DC: National Housing Conference. <http://www.nhc.org/#!/2016-housing-landscape/s06lv>

² Enterprise Community Partners and the Harvard Joint Center for Housing Studies. Projecting Trends in Severely Cost-Burdened Renters. 2015. <http://www.enterprisecommunity.com/resources/ResourceDetails?ID=0100886#sthash.5KuAva6O.dpuf>

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 professional, 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. Evaluation of the Small Area FMR proposed rule

NHC supports the goal of more efficient and effective use of rental assistance, but we recognize that there are inherent tensions embedded in that goal. The proposed rule grapples directly with the tradeoff between helping the greatest number of people with housing assistance and enabling recipients to live in higher-opportunity but higher-cost areas. Back in 1995, HUD confronted this tension very differently, choosing to lower the payment standard by “changing the definition from the 45th percentile of the rental distribution of standard quality rental housing units to the 40th percentile as a cost saving measure.”³ The current proposed approach is a step in the right direction to better match government payments to the value received. However, the rule requires additional fail-safes and flexibilities to manage unintended consequences.

A. The appeal of setting rents by geography

Setting a fixed payment standard for portable vouchers in a geographic area will attract the lowest quality housing that can command the payment standard unless the government uses other policy tools to counteract the trend. For instance, HUD uses regulation of physical standards to eliminate poor quality housing from the voucher program, but public housing authorities' (PHAs') have limited capacity to inspect units and residents may be afraid to report violations of quality standards. Inspections also add a task for property owners and therefore add a cost to accepting vouchers. Furthermore, high-quality housing is about more than just the physical condition of the housing, it is about the surrounding neighborhood, which inspections cannot assess and for which it is difficult to penalize a property owner.

When a single payment standard applies to a large geographic area, the problem gets worse. If for instance both Lynn (\$47,195 median income) and Newton, Massachusetts, (\$118,639 median income) have the same payment standard that applies to the entire Boston metro area, a voucher can cover rent at one of many low-cost apartments in Lynn and very few, if any, in Newton.⁴

³ Department of Housing and Urban Development, “Fair Market Rents for Section 8 Existing Housing; Amendments to Method of Calculating,” RIN 2501-AB76, Federal Register / Vol. 60, No. 157 / Tuesday, August 15, 1995 p 42222.

⁴ Median incomes from 2010-2014 American Community Survey 5-Year Estimates.

Using smaller geographic areas, like ZIP codes, to set rents therefore has an obvious appeal. If the methodology produces accurate estimates of rent over the smaller areas, fewer low-quality apartments will qualify for too-high rents, and the payment standard will be higher in places with higher-quality, higher-rent apartments. Voucher holders should be able to carry their voucher from places where it is worth less to nearby places where it is worth more, reducing concentrations of poverty. The shift to using smaller geographic areas involves trade-offs between competing values.

B. Trade-offs in using smaller areas to set rents

The federal resources devoted to easing housing affordability pressures are far too scarce: only about one in four people who qualify for housing assistance actually receive it.⁵ Waiting lists for assistance in many areas are long, and some jurisdictions have simply closed their lists. Scarcity of resources forces trade-offs between competing values:

- Should a PHA pay higher rents to allow some households to move into areas of higher opportunity, or pay lower rents to house more households in lower-cost areas?
- Should a PHA devote more resources to physical inspections to ensure all assisted apartments are adequate, or devote more resources to rental assistance at the risk of it being in lower quality housing?
- Should a PHA let vulnerable households continue paying rent above a new, lower SAFMR to avoid displacement, thereby foregoing savings that could help more households?
- Should existing voucher recipients have the same purchasing power as new voucher recipients, even if that means existing voucher recipients may have to either move elsewhere or pay more out of pocket to stay in their current home?

These trade-offs are much more about competing values than about technical policy questions. If the federal government allocated more funding for affordable housing, the trade-offs would be less severe, although they would not vanish.

C. Risks to shifting to SAFMRs

The primary risks to shifting to SAFMRs, if the proposed methodology works as intended, are twofold:

1. Reducing of the value of a voucher in distressed areas could force people currently receiving voucher assistance to choose between moving to a lower-rent apartment (likely of lower quality) or paying more out of pocket to stay in their current home. For extremely low-income households, especially older adults and people with disabilities, neither choice may be viable.
2. Recipients using vouchers to rent in higher opportunity areas may not find apartments affordable even at the somewhat higher payment standard, and property owners may still not accept vouchers.

⁵ Congressional Budget Office. Federal Housing Assistance for Low-Income Households. September, 2015. Retrieved 1/15/16 from <https://www.cbo.gov/sites/default/files/114thcongress-2015-2016/reports/50782-LowIncomeHousing-OneColumn.pdf>.

These risks will manifest very differently in different places, because of the features of local real estate markets and community supports. For instance, in places where higher-opportunity areas are more distant from existing concentrations of voucher households, transportation costs, job access, and social ties may make relocation harder. Places with strong networks for providing social services may make it easier for vulnerable recipients to relocate, as long as they can still access the help they rely upon. If economic change happens rapidly, as it is in many localities now, HUD-calculated payment standards may not keep pace with actual street rents, further limiting the housing choices of low-income households, even those with vouchers.

D. Risk of faulty methodology for SAFMRs

For the change to SAFMRs to succeed, HUD’s measurement of ZIP-code level rents must be accurate. SAFMRs set too low will prevent voucher holders from renting in the market, and SAFMRs set too high will consume more resources than needed.

Potentially worse would be SAFMRs that change year to year more than actual market rents change. The property owners, lenders, developers, and investors who together create housing can manage the normal fluctuation in market rents (although at a cost). They cannot, however, manage the risk of variation created by the SAFMR methodology. If SAFMRs are too unpredictable, it will deter property owners from accepting them and prevent real estate development from responding to the demand voucher holders represent.

NHC and the Public Housing Authorities Directors Association analyzed the hypothetical SAFMRs calculated by HUD from 2011 to 2016 to see what payment standards the methodology would have produced had SAFMRs been used.⁶ The chart below summarizes the great variability we found.

Number of ZIP codes affected by change in SAFMR year-to-year

<i>Year</i>	<i>5% to less than 10% decrease</i>	<i>More than 10% decrease</i>	<i>5% to less than 10% increase</i>	<i>More than 10% increase</i>
2011 to 2012	586	624	79	344
2012 to 2013	146	125	712	584
2013 to 2014	21	2	179	3
2014 to 2015	7	0	327	4
2015 to 2016	134	135	762	478

To illustrate the problem visually, we attach maps showing how SAFMRs could vary greatly year-to-year in the same place. Applying the SAFMR methodology for 2011, 2012 and 2013 produces large and concerning changes in payment standard for the same ZIP code, year to year. The maps attached to this letter show the magnitude and direction of change in SAFMR: red indicates a rent decrease, blue indicates

⁶ Brian Stromberg, National Housing Conference and Jonathan Zimmerman, Public Housing Authorities Directors Association, “The potential impact of the small-area fair market rents methodology,” NHC Openhouse blog, August 10, 2016, <http://www.nhcopenhouse.org/2016/08/the-potential-impact-of-small-area-fair.html>.

a rent increase, and darker colors indicate larger changes in the indicated direction. Flip back and forth between the two maps a few times to see some ZIP codes increasing more than 10% in one year and then decreasing more than 10% the next, and vice versa. The MSA's illustrated in the attached maps are:

- Philadelphia-Camden-Wilmington PA-NJ-DE-MD
- Hartford-West Hartford-East Hartford, CT
- Jackson, MS
- Colorado Springs, CO

We encourage HUD to replicate and extend this analysis for all areas proposed for SAFMRs. HUD should seek to identify ZIP codes that exhibit large variation (such as more than 5%) from year to year, or ZIP codes that exhibit alternating positive and negative changes from year to year. These may be indications of variation produced by the methodology rather than actual change in rents.

E. Lack of data to evaluate SAFMRs

SAFMRs are new. Of the three areas piloting the program, Dallas is the only completed test. New York and Chicago have yet to complete their pilots and evaluate the results. Although the Dallas results are encouraging, it is significantly distinct from other housing markets.

Dallas has fewer restrictions on new apartment supply. Land use restrictions are less of a barrier to new construction than in many other places. Furthermore, Dallas has less of a mismatch between wages and housing costs than many places. Dallas ranks 70th out of 210 metro areas in NHC's Paycheck to Paycheck survey of housing affordability challenges for working renters. Many places have much worse affordability pressures on lower-income households.⁷

Simply put, the proposed SAFMRs and the methodology for implementing them require more study.

III. Recommendations

In a preferable world, HUD would have more time evaluate the results of the three pilot locations for SAFMRs and adjust its methodology for calculating SAFMRs to reduce excess variability. Since HUD is choosing to move forward with the rule now, we offer recommendations and comments to mitigate potential negative unintended consequences.

A. Require data collection

The initial areas selected for SAFMR implementation will provide the first large-scale test of the approach. HUD should require participating PHAs (both those that are required to participate and those that opt in) to gather data sufficient to test whether the SAFMR program is effective. Data PHAs should collect include:

⁷ National Housing Conference, Paycheck to Paycheck 2016, forthcoming September 2016, available at www.nhc.org.

- Counts of vouchers by zip code, including relevant data on race, ethnicity, disability status and other factors relevant to fair housing concerns.
- Numbers of vouchers and participating property owners by zip code
- Voucher turnover rates
- Voucher success rates
- Numbers of voucher holders paying more than 30% of income for rent⁸

Data collection does add more work for PHAs already struggling to manage after many years of tight budgets. However, these data should be measurable using existing sources. Moreover, they are essential to knowing the consequences of shifting to SAFMRs.

B. Evaluate SAFMRs in parallel to implementation

HUD should begin the process of evaluating the SAFMR at the same time it implements the change. Rigorous program evaluation takes time, so waiting until a year after implementation to begin the evaluation process could mean two or three years before results are known. If instead, the researchers tasked with evaluating the program can be part of the process from the beginning, results can be known sooner. Evaluation results may also be more detailed and useful if researchers can help participating PHAs collect the right data in a format that is easy to analyze.

C. Include vacancy rate in selection criteria for SAFMR locations

If voucher holders have no available apartments to use their voucher, higher SAFMR payment standards will not empower mobility. HUD should add vacancy rate as a qualifying criterion for selecting areas for SAFMR implementation. Areas with very low vacancy rates (below 4%, possibly) should not be required to adopt SAFMRs. Overall apartment vacancy rates are an acceptable measure, but vacancy rates for apartments at or below the proposed SAFMR levels would be an even better measure, if data are available.

D. Recognize project-based vouchers as distinct

Project-based vouchers present different circumstances and solutions from portable vouchers. When a PHA allocates project-based vouchers to a specific property, it generally does so through a competitive process that involves detailed underwriting and ongoing oversight of the property. That process represents far more involvement than with an apartment occupied by a portable voucher holder. PHA oversight of project-based vouchers should be sufficient to prevent federal resources from flowing to low-quality apartments.

Project-based vouchers are a way to create higher-quality housing in distressed areas. They can be a tool to preserve and upgrade existing properties as part of a plan to bring more economic activity and maximize the value of past federal investments in housing. They can create permanent supportive housing with services to help residents achieve more success and live with more dignity.

⁸ National Housing Law Project suggested many of these variables and provides more detail in its comment letter.

All of these activities approach the underlying real estate differently than typical apartments in distressed areas. Maintaining higher-quality apartments over the long term may well require rents higher than the rents paid for market-rate apartments not being well-maintained. We therefore recommend that HUD not limit project-based vouchers to SAFMR rent levels that are below existing FMRs while allowing PHAs to set project-based voucher rent levels at SAFMRs if they are above existing FMRs. HUD should rely on PHA's underwriting and oversight to ensure efficient use of subsidy dollars.

E. Give PHAs flexibility to manage trade-offs

Implementation of SAFMRs will create uncertainty for current voucher holders, people waiting for assistance, and real estate professionals working to meet demand. Risks are substantial for all and the value trade-offs involved are difficult. We do not see a simple, nationwide regulatory solution to these challenges. Giving PHAs flexibility to adjust to localized real estate market fluctuation and varying resident need is an imperfect solution, given wide variation in PHA capability. However, we do not see a better alternative.

For instance, blanket prohibitions on displacement would protect current recipients only, and only as long as they stay in place, which limits their buyers' leverage with their current landlord. New recipients could face the same displacement risk as rents change in the future. Setting a long phase-in period would not reduce the impact of the eventual change when it occurred, but simply push it further off into the future.

Therefore, we recommend HUD give PHAs maximal flexibility to adjust rents within the SAFMR framework. PHAs should be able to:

- Smooth out fluctuations in rent levels that result from the methodology, rather than actual rent changes. This could mean keeping rents higher when the payment standard drops or limiting rent increases when the payment standard rises. PHAs should document all such decisions in a way that HUD can measure for program evaluation purposes.
- Maintain rent levels to prevent displacement, especially for older adults or people with disabilities on fixed incomes. Each PHA will have to manage the cost implications of its decisions, and results will necessarily vary in different communities, commensurate with varying housing opportunities and social supports.
- Group ZIP codes with similar rent levels into categories to simplify administration. The proposed rule already addresses much of this flexibility.

IV. Conclusion

The value trade-offs inherent using smaller geographic areas for to set rents are difficult. PHAs appear to be best positioned to manage the scarce resources available to meet localized need. HUD should monitor the results carefully, highlight best practices emerging from the PHAs implementing SAFMRs and be prepared to adjust policy. It would be preferable to move slower and gather more information from



ongoing pilots, but failing that, HUD and PHAs can still manage the process to mitigate unintended consequences.

NHC stands ready to assist HUD, PHAs, and communities to help achieve safe, decent, and affordable housing options for all.

Sincerely,

A handwritten signature in black ink that reads "Chris Estes". The signature is written in a cursive, flowing style.

Chris Estes
President and CEO