NATIONAL HOUSING CONFERENCE

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

FR-6070-N-01 Public comment on Notice for Suspension of Small Area Fair Market Rent (Small Area FMR) Designations

The National Housing Conference (NHC) welcomes the opportunity to comment on the suspension of Small Area Fair Market Rent (SAFMR) rule and appreciates HUD's willingness to review comments on this decision. 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 that we encourage HUD to pursue. During the suspension period, HUD should take steps to improve the rule and create a process for improvement over time to avoid unintended negative consequences.

Small area FMRs are an important policy improvement that NHC wants to see HUD implement and believes the suspension period offers time to ensure that small area FMRs achieve their desired goals. NHC is aware of the recent court decision in favor of small area fair market rents. We submit these comments and suggestions for strengthening the small area fair market rents regardless of the outcome of the suspension, for HUD's review.

I. About the National Housing Conference

Everyone in America should have equal opportunity to live in a quality, affordable home in a thriving community. The National Housing Conference educates decision makers and the public about housing policies and practices to move housing forward together. NHC convenes and collaborates with our diverse membership and the broader housing and community development sectors to advance our policy, research and communications initiatives to effect positive change at the federal, state and local levels. Founded in 1931, we are a nonpartisan, 501(c)3 nonprofit organization. NHC's research team operated as the Center for Housing Policy until the organizations merged in 2013.

II. Evaluation of the Small Area Fair Market Rents

NHC supports the goal of more efficient and effective use of rental assistance, but we recognize the inherent tensions embedded in that goal. The rule grapples directly with the struggle to balance helping the greatest number of people with housing assistance and enabling recipients to live in higher-opportunity but higher-cost areas. Using small area fair market rents is a step in the right direction to better match government payments to the value received. However, the implementation of SAFMRs 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,

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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.[1]

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. Risks to shifting to SAFMRs

The primary risks from using SAFMRs are twofold:

1. Reducing 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. PHAs that operate mostly in low cost areas may see a decrease in their average HAP, although the Housing Opportunity Through Modernization Act of 2016 (HOTMA) allows PHAs to grandfather payment standards for tenants that remain in place. The final SAFMR rule implemented the HOTMA provision and provides additional flexibilities for PHAs in setting payment standards for families currently receiving assistance in areas where the FMR decreases. This provision and these flexibilities may effectively reduce this risk, but HUD will need to monitor this risk closely to avoid harmful outcomes for tenants.

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.

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 rents, further limiting the housing choices of low-income households, even those with vouchers.

C. Risk of faulty methodology for SAFMRs

For 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.

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[1] Median incomes from 2010-2014 American Community Survey 5-Year Estimates.

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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.[2] The chart below summarizes the great variability we found.

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

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

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.

We encourage HUD to replicate and extend this analysis for all areas that will be implementing 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.

III. Recommendations for implementation

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:

- 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 rent[3]

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.

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[2] 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.

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

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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. 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.

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.

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 accordingly.

Regardless of the outcome of the suspension, we recommend that HUD make these improvements to small area fair market rents as well as look for opportunities for improvement and ways to solicit additional stakeholder input on ways to strengthen the rule at implementation. NHC also encourages HUD to move forward with previously announced resources including implementation guidance and webinars, in partnership with PHAs to help PHAs prepare to effectively implement SAFMRs.

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NHC stands ready to assist HUD, PHAs, and communities to help achieve safe, decent, and affordable housing options for all. To discuss any of these comments in further detail, please contact Rebekah King, Acting Director of Policy, National Housing Conference, (202) 466-2121 x248, rking@nhc.org.

Sincerely,

Rebekah King

Rebekah King
Acting Director of Policy