



**Strengthening Neighborhoods.
Improving Lives.**

Council of Large Public Housing Authorities

455 Massachusetts Avenue, NW, Suite 425

Washington, DC 20001-2621

Executive Director: Sunia Zaterman

phone: 202.638.1300 | **fax:** 202.638.2364

web: www.clpha.org

August 15, 2016

Regulations Division
Office of General Counsel
US Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-7000

Re: [Docket No. FR-5855-P-02] 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

To Whom It May Concern:

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. We support the nation's largest and most innovative housing authorities by advocating for the resources they need to solve local housing challenges and create communities of opportunity. Our members own and manage nearly half of the nation's public housing program, administer a quarter of the Housing Choice Voucher (HCV) program, and operate a wide array of other housing programs. We appreciate the opportunity to submit on comments on the proposed rule to replace 50th percentile Fair Market Rents (FMRs) with Small Area FMRs (SAFMRs) and support HUD's goal to provide greater mobility and opportunity for low-income families.

CLPHA strongly believes that the proposed rule is premature and will have negative effects on current participants, particularly in tight rental markets, and impede efforts of PHAs attempting to revitalize and reinvest in their communities. As detailed below, we believe that uniformly mandated use of SAFMRs could lead to fewer families served because of higher per unit costs, loss of housing choices for families in low-vacancy markets and a reduction in landlord participation.

When CLPHA submitted comments on last year's *Advanced Notice of Proposed Rulemaking 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*, published on June 2, 2015 (80 FR 31332), we outlined several concerns: a one-size-fits-all approach will not work equally well in all locations and markets; HUD should not mandate housing authorities to utilize a single approach to improving HCV tenants' access to opportunity; and pending the results of the SAFMR demonstration there is not yet enough evidence to determine whether this policy works across metropolitan areas.

However, HUD has decided to move forward with requiring a subset of housing authorities to set their payment standards based on SAFMRs. **CLPHA strongly believes that the proposed rule is premature and that HUD should table the rule until the results of the demonstration are known.** We would like to reiterate the following comments:

HUD should wait for the results of the SAFMR Demonstration which will likely show that flexibility to address local conditions is key.

In the Notice, HUD “agrees that concluding the current demonstration and reviewing the results is an important step before deciding whether or not to implement Small Area FMRs...” However, this has not stopped the agency from pursuing these changes. We understand from Abt Associates, who is conducting the evaluation, that results from the Demonstration will not be reported until March 2017. HUD has also claimed that “SAFMRs have been shown to be a more direct approach to encouraging tenant moves to housing in lower poverty areas by increasing the subsidy available to support such moves,” but only cites a single article that looks at a single metropolitan area (Dallas, TX). This is not evidence-based policy making, indeed, HUD intends to implement SAFMRs without any analysis from the Demonstration except for Dallas.

Those housing authorities who have had success in implementing SAFMRs through the Demonstration have accounted for local variances in their housing markets and have developed programs specific to their local conditions. For instance, The Dallas area has implemented SAFMRs in the specific context of the *Walker v. HUD* consent decree. In that area, the Inclusive Communities Project works specifically to “provide the counseling and other forms of assistance to Black families seeking to use their DHA Section 8 voucher to move into low-poverty, non-minority concentrated areas throughout the Dallas metropolitan area,” and brings counseling and financial assistance resources to the table. In conversations with the Housing Authority of Cook County (HACC) about their experience with the SAFMR demonstration, they gave a favorable review, but noted that HACC had established a robust mobility counseling program several years prior to joining the demonstration. Additionally, Cook County passed source-of-income protection not long after HACC implemented SAFMRs; this could have increased access to opportunity even if the housing authority had not been participating in the demonstration. It is clear that local conditions have a significant impact, yet HUD is pursuing a national standard that does not allow room for local flexibility.

HUD should set all FMRs at the 50th percentile as a starting point for all PHAs to increase opportunity.

In the Notice, HUD states that “50th percentile FMRs do not provide adequate subsidy to help voucher holders find suitable units in areas of opportunity.” However, CLPHA believes that HUD should set all FMRs (including SAFMRs) at the 50th percentile. Voucher holders deserve access to units that rent for up to the median price for a given area. As HUD stated when setting the FMR at the 40th percentile, “the reduction in the FMR standard is a cost savings measure. The streamlined Section 8 program will save taxpayers money...” (60 FR 42222). However, with the current budget-

based funding system, the lower FMR does not affect total Housing Assistance Payment costs. Housing authorities should have the authority to determine how best to spend their funds to encourage voucher holder success in establishing housing stability with access to opportunity. Those that wish to limit payment standards in order to serve more families have that option; in fact, many have made that choice in the face of funding shortfalls. In some areas, however, the housing authority may want to use a higher payment standard to encourage landlords to improve the quality of their units beyond the basic Housing Quality Standards or to invest their own resources in project-based revitalization efforts.

Implementing SAFMRs will introduce administrative and cost burdens that could lead to serving fewer families.

As HUD saw in trying to recruit participants for its demonstration, housing authorities are reluctant to undertake these kinds of efforts without the additional funding to support them. Implementing SAFMRs will alter their administrative and operational processes in ways that make them inherently more complicated for the long-term, as well create costs around communicating the changes with voucher holders, landlords, and other stakeholders. At a time when the Secretary has pointed to “clear evidence on what local housing authorities already know to be true – that current funding limits on their administrative fees don’t come close to meeting the reasonable costs of operating a well-run voucher program,” it is unreasonable for HUD to force housing authorities to incur greater administrative costs. The funding to support these efforts is simply not there.

HUD has proposed policy changes to ease administrative burden and cost, but analysis shows that these proposed policy changes are not adequate. For example, in the Notice HUD “is proposing to change the percentage decrease in FMRs that triggers rent reasonableness redeterminations from 5 percent to 10 percent for Small Area FMR PHAs,” and seeks comments on whether this is the appropriate trigger. CLPHA does not believe that this change will reduce the administrative burden nearly enough. Analysis from New York City Housing Authority (NYCHA) and New York City Housing Preservation and Development (NYCHPD) shows that with the 5% trigger, they will need to perform rent redeterminations on 85% of their units and that increasing the trigger point to 10% only reduces that percentage to 82% of their units.

CLPHA has completed its own analysis of the administrative impact of the Proposed Rule. According to our calculations, within the 31 FMR areas being required to use SAFMR by the proposed rule, we estimate that 409,855 rent reasonableness redeterminations (for **69.5%** of the voucher units in these areas) would be necessary with a 5% trigger. Increasing the trigger to 10% would reduce that number to 339,565 rent reasonableness redeterminations (for **57.6%** of voucher units in these areas). Though the increase in the trigger reduces the number of required redeterminations by 17 percent, **the housing authorities in these areas would still have to reconsider the rents of nearly 60% of their vouchers!** Housing authorities will be forced to cut services and basic operation functions if they have to devote their limited resources to reconsidering 60% of the approved rents.

The costs are not only on the administrative side. While these changes could possibly be relatively cost-neutral with regard to HAP expenses, HUD cannot ignore the fact that if they have the intended effect—more vouchers leased in higher-opportunity (and thus, higher-cost) areas—per-unit HAP costs will rise. The Housing Authority of the County of San Bernardino (HACSB), which has undertaken sub-FMR-area payment standards based on census tracts, has seen its initial cost savings level off as more of its voucher holders move to higher-cost areas.

HUD also explicitly states that if the proposed SAFMRs have the intended effect—more vouchers leased in higher-opportunity (and thus, higher-cost) areas—per-unit HAP costs will rise and “fewer households would receive assistance without an overall increase in program funds.” Given the relatively flat federal funding for the HCV program over the past several years, increased funding to match the higher per-voucher costs is very uncertain. We find it very worrisome that fewer low-income families could be served after SAFMRs are implemented. If HUD waited for the results of the Demonstration, there could be a clearer understanding of how SAFMRs will impact per-unit HAP costs.

HUD should clarify SAFMRs impact on Moving to Work (MTW) agencies.

In a footnote in the Notice, HUD states that, “Moving to Work (MTW) agencies have the authority to waive [24 CFR 982.503](#) and can propose, for HUD approval, alternate rent policies in their Annual MTW Plan.” While MTW agencies do not have authority to waive the statute and regulations regarding FMRs, they can waive the statute and regulations for payment standards, contract rents, tenant payments, etc., to achieve the same goals. CLPHA believes that HUD and the proposed rule are not accurate in the assumption that the only tool for MTWs to approach this is alternative rent policies and that this is too narrow a reading of the MTW agreements. HUD should clarify that MTW agencies are not subject to the rule, given the other waivers that are authorized, which go beyond alternative rent policies.

HUD should not put Project-Based Voucher (PBV) projects in financial jeopardy or prevent PHAs from using PBVs as a revitalization tool.

HUD should apply SAFMRs to project-based voucher (PBV) contracts prospectively to encourage placement of PBVs in high-opportunity areas, but to avoid unnecessary disruption it should permit existing PBV contracts and extensions of those contracts to continue to use metro FMRs. The effective date of prospective implementation of SAFMRs for new PBV contracts should be designed to exempt projects that have obtained financing commitments or submitted applications for Low-Income Housing Tax Credits or other competitive subsidies that relied on PBVs that were based on the metropolitan FMR, and would be jeopardized by switching to SAFMRs. Additionally, if a PBV project meets site and neighborhood standards then it should also have the benefit of metro FMRs, since the basis for meeting site and neighborhood is generally that it makes sense to reinvest in a given underserved neighborhood.

HUD's proposal to require that SAFMRs apply to allowable PBV rents whenever the notice of owner selection is issued after the effective date of the SAFMR designation is unlikely to provide adequate flexibility to achieve these goals. Substantial planning and possible preliminary funding commitments will in many cases occur before a PHA makes a final decision to commit PBVs to a property. To avoid disrupting these transactions, in the initial transition to use of SAFMRs the effective date *for PBV rent determinations for projects not yet subject to an AHAP or HAP contract should be one year* after publication that the area is subject to SAFMRs. This would result in use of metro FMRs for projects for which notice of owner selection is issued within 12 months after the SAFMR designation, unless the PHA and owner agree to apply the SAFMR during the transition period. (We assume that the concept of "owner selection" under 24 C.F.R. 983.519(d) will apply to the non-competitive selection of certain structures owned or controlled by a public housing agency under new subparagraph (N) of section 8(o)(13), inserted by the recently enacted Housing Opportunity Through Modernization Act of 2016 (HOTMA), P.L. 114

Any effort to move families to higher opportunity areas should include significant mobility support.

Many voucher holders need additional supports in order to consider, much less succeed, in making opportunity moves. For example, none of the MTW agencies that have established variable payment standards can state definitively that increases in lease-ups in areas with higher payment standards can be attributed to that policy change. All of the agencies changed their payment standard policy in conjunction with use of MTW funding flexibility to support opportunity moves, such as establishing mobility counseling programs and providing assistance with affording security deposits. In contrast, the Houston Housing Authority, which does not have MTW flexibility, established a tiered payment standard system in which they assigned each zip code one of three payment standards based on different percentages of the FMR (within the 90-110 percent range). In contrast to the MTW agencies with the ability to afford mobility supports, HHA has not seen notable locational outcomes.

SAFMR's could negatively impact tenants by making it impossible for participants to remain in their units of choice and drastically reducing options in tight rental markets.

With the exception of Dallas Housing Authority, each of these housing authorities made voluntary choices to try to find a way to increase their voucher holders' access to opportunity, each of which made sense in a particular local context. In some contexts, reducing payment standards in areas in need of revitalization will only serve to impede any efforts to improve housing conditions in those areas. Every unit leased with an HCV must meet rent reasonableness standards, so the contract rents for those units will not change with changes in the payment standard. Instead, voucher holders who choose to remain will need to pay a greater proportion of their incomes for rent, increasing their housing cost burden. They could make this choice for any number of reasons—from a desire to live near family to a need to have access to transit, to an inability to undertake a substantial housing search while working to a sheer inability to find an appropriate and affordable unit in another area—and in a program with choice in its title, we should not judge their decision-making. We are

particularly concerned because CLPHA members that have reduced payment standards in some areas noted the challenges presented by the impacts on the voucher holders who remain.

In the Notice, HUD states that voucher holders in areas where the payment standard decreases will not face lower housing assistance payments until the second annual reexamination of income following the payment standard decline. In conversations with CLPHA members about this issue, NYCHA and NYCHPD expressed concern that tight rental markets, especially in higher income neighborhoods, make relocation extremely difficult. Further, NYCHA and HPD conducted analyses of voucher holders in New York City by zip code to assess what the impact of implementing SAFMRs might be. They found that in New York an astounding number of voucher holders, over 40% of the total HCV tenants, live in ZIP codes that would experience a decrease in payment standard. Other CLPHA members including Oakland Housing Authority expressed similar concerns about tight rental markets. HUD should consider adding an exclusion for low-vacancy, high rent areas as part of its criteria for determining which housing authorities will adopt SAFMRs.

According to CLPHA's analysis of HUD data, within the 31 FMR areas required to use SAFMRs by the Notice, the average difference between 2BR FMR and 2BR SAFMR, weighted by number of vouchers, is -13.18%. This means that on average, the value of each voucher could drop as much as 13.8%. Among the areas where SAFMRs are lower than metro-wide FMRs, the declines range from **-144.91%** to -.06%, with a weighted average of -20.2%. It is completely unimaginable that someone could absorb the cost of a voucher going from a value of 90-110% of \$1,623 to a value of 90-110% of \$660.

SAFMRs could impact landlord participation.

Reducing payment standards in areas that are rebounding or are poised to rebound reduces incentives to landlords to engage in the revitalization of the area. Again, contract rents are predicated on rent reasonableness, so a higher payment standard does not indicate that the housing authority is paying landlords more than they should. Knowing that there is still room to raise the rent up to the payment standard may lead landlords to consider improving the condition of their properties so that their rent reasonableness determination supports a higher contract rent. Those landlords will not expend significant funds on property upgrades should the payment standard not provide that room for growth in revenue as a result of such efforts. This is problematic, given HUD's acknowledgement that "addressing disparity in access and exposure to adverse conditions requires a balanced approach that...provides for strategic investment in areas that lack key community assets or are exposed to adverse community factors, [and]...opens up housing opportunities in asset rich areas and provides for resident mobility" (79 FR 57953).

Additionally, CLPHA members expressed concern that if payment standards decrease property owners may simply opt of the voucher program. This is particularly worrisome in tight rental markets where demand for housing is already strong. HUD should not be enacting a policy that disincentivizes existing landlord participation in the voucher program. HUD also assumes in enacting this policy that landlords in higher rental markets would be willing to rent to voucher

holders without significant incentive to do so. This assumption should be tested as part of the Demonstration.

HUD does not take into account the impact that SAFMRs will have in gentrifying neighborhoods.

CLPHA members expressed strong concern that implementing SAFMRs may result in tenants being forced to move out of the very neighborhoods that the housing authorities are actively trying to remain in. Gentrification is in process in some of the zip codes in which payment standards would have to decline with the use of SAFMRs and which voucher holders would be forced to leave, since they cannot afford to pay what the landlord would require to let them stay. Eventually, the SAFMRs *may* catch up to what will be rising rents (at least for some units). But if so, the lag in data will still create a situation in which voucher holders will be forced out of improving neighborhoods. These voucher holders will only be able to return when the SAFMR eventually comes to reflect the neighborhood revitalization. And there will likely be less affordable units available once that revitalization has occurred.

HUD should take into consideration how SAFMRs might interact with new fair housing requirements.

HUD seeks comment on “whether there are certain situations or any specific groups of voucher recipients within the general population, such as persons with disabilities or elderly voucher recipients, where an alternate policy should apply that should exempt them from having their voucher level change as a result of this policy due to specific hardships they may encounter by having to choose between staying in their current area and receiving a smaller voucher or moving to a new area for the sake of obtaining a larger voucher.” We believe that the majority of voucher holders will experience hardships if the SAFMR where they currently live is significantly less than the FMR. This is especially true for elderly and disabled households with fixed incomes. However, if the housing authority were to put in place an alternate policy that would exempt specific populations, then there would be a disproportionate number of elderly and disabled voucher holders in certain areas, since they would be the only ones able to stay. Consequently the housing authority would have to come up with a solution to that disproportion in their Affirmatively Furthering Fair Housing Plan. This is counter to HUD’s own policies and priorities around fair housing.

The methodology for calculating the bases for payment standard should be updated.

Regardless of what HUD decides with regard to 50th percentile FMR areas and SAFMRs, it is absolutely imperative that HUD improve its methodology for calculating the bases for payment standards so that they more accurately reflect the area’s rental housing options. For example, both FMRs and SAFMRs lag significantly behind the changes in local markets. This appears to be an even greater concern with regard to SAFMRs. HUD must clarify why it has continued to use rent ratios based on 2010 5-Year American Community Survey (ACS) data to calculate SAFMRs for

FY2014 and FY2015, while using more recent data to calculate standard FMRs. As noted in the Inclusive Communities Project's complaint filed on April 22, 2014, this appears to conflict with HUD's "statutory and regulatory requirements to update FMRs using the most current census data available."

Sub-FMR-Area payment standards can work if PHAs can tailor policies to fit their local markets.

The CLPHA members who have undertaken sub-FMR-area payment standards have largely been pleased with the impacts on their HCV programs and the locational outcomes of their voucher holders. We note, however, that they have taken a variety of approaches. Using HUD-calculated zip-code SAFMRs, Cook County has been able to consolidate to provide tenants with ten sets of payment standards. However, while Dallas Housing Authority (DHA) also consolidated in its first year using SAFMRs, it now has 168 payment standards, as it has sought to adjust payment standards to support tenants' ability to stay in opportunity areas. Housing Authority of the County of San Bernardino (HACSB) has nine submarket payment standards, defining submarkets in terms of clusters of census tracts, because its zip codes cover too much area and thus include parts of multiple submarkets. Atlanta Housing Authority's market study also identified nine submarkets, defined in terms of clusters of census tracts. San Diego Housing Commission increased the payment standard uniformly across the nine zip codes where the average census tract poverty rate is below ten percent and did not reduce payment standards in the rest of their jurisdiction. All are relatively satisfied with the impacts that the policy changes appear to have made, but each solution was tailored to a specific community.

In conclusion, CLPHA has significant concerns over the Proposed Rule as it exists. For the reasons listed above, we believe that HUD should table the rule until final analysis of the SAFMR Demonstration is complete. If HUD moves forward with the rule, SAFMRs should be made entirely voluntary and housing authorities should be given wide flexibility to tailor payments standards according their local conditions and housing markets. Additionally, we would encourage HUD to revisit the selection criteria used to determine which metro areas are subject to SAFMRs. HUD is currently using point-in-time data that may not capture trends over time or shifting markets. CLPHA members have expressed concern that the selection criteria does not appropriately reflect the challenges of tight rental markets, where housing in high-income neighborhoods will always be limited.

Thank you for the opportunity to submit these comments.

Sincerely,



Sunia Zatterman
Executive Director