



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: 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, Docket No: FR-5855-P-02

To Whom It May Concern:

On behalf of the state Housing Finance Agencies (HFA) it represents, the National Council of State Housing Agencies (NCSHA) appreciates the opportunity to comment on the Department of Housing and Urban Development's (HUD) proposed rule expanding the use of small area fair market rents (SAFMR) in certain metropolitan areas to replace HUD's existing 50th percentile fair market rent (FMR) policy.

HFAs are state-chartered housing agencies that operate in every state, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. Though they vary widely in their characteristics, including their relationship to state government, HFAs have in common their public-purpose mission to provide affordable housing to the people of their states who need it. HFAs administer a wide range of affordable housing and community development programs, including Housing Choice Vouchers (vouchers), Section 8 Project-Based Rental Assistance, the HOME Investment Partnerships Program (HOME), the Community Development Block Grant, Housing Opportunities for Persons with AIDS, and the Housing Trust Fund. In addition, HFAs administer federal housing programs outside of HUD's authority, including the Low Income Housing Tax Credit (Housing Credit) and tax-exempt private activity Housing Bonds.

While we strongly support the goals articulated in the SAFMR proposed rule, including expanding housing choice and access to high-opportunity neighborhoods for voucher holders, we are concerned that implementation of SAFMRs as envisioned in the proposed rule may have unintended consequences that could negatively impact some voucher holders, particularly those

in high-cost metropolitan areas with low vacancy rates, and create problems for developments that rely on rental assistance from Project-Based Vouchers (PBV). We also are concerned that HUD may be underestimating the administrative burden public housing authorities (PHA), including state HFAs, will incur if required to implement SAFMRs.

NCSHA opposes any actions that would result in current voucher holders losing their housing. As such, we urge HUD to give PHAs the flexibility to retain the current voucher payment standard for existing voucher holders until such time as they opt to move. We also encourage HUD to consider vacancy rates when determining those PHAs it will require to adopt SAFMRs.

We also urge HUD to ensure that changes to payment standards do not have a negative impact on existing developments that rely on rental assistance from PBVs or future developments currently in the development pipeline.

Lastly, we encourage HUD to consider delaying the final SAFMR rule until it fully evaluates the ongoing SAFMR demonstration and can apply any lessons learned to the final policy. Evidence and findings produced from this demonstration will be crucial to understanding the impacts SAFMRs have on voucher holders, landlords, and the PHAs that administer this program.

Hold Harmless Current Voucher Holders

SAFMRs are intended to allow voucher participants to move to high-opportunity areas with better schools, lower crime rates, and lower poverty rates. This is a laudable and important goal that NCSHA strongly supports. However, we are concerned that, in practice, SAFMRs may not work as intended in certain markets, especially those where high-opportunity areas have particularly low vacancy rates. In those markets, voucher holders who seek to move to high-opportunity areas may not be able to find housing, even with the higher payment standard that SAFMRs provide.

Moreover, voucher holders may have a difficult time maintaining housing in the areas where they currently reside if HUD reduces the payment standard in those areas to make up for the higher payment standard in high-opportunity areas. If a voucher holder is unable to or does not wish to move to a high-opportunity area and HUD lowers the payment standard in their current area, the household would be forced to pay a larger share of its income for rent to remain in its home or find another apartment in the area within the limitations of the new, lower payment standard. Voucher holders may risk eviction and even homelessness if lower payment standards result in higher rent burdens.

We urge HUD to provide PHAs with the option of retaining the current payment standard in areas that may otherwise see payment standard reductions for voucher holders who remain in

their current units. This would be consistent with the newly passed Housing Opportunity Through Modernization Act (HOTMA), which allows PHAs, when faced with an FMR decrease, to opt indefinitely to maintain payment standards of voucher households that remain in the same unit.

Further, we urge HUD to consider vacancy rates in its criteria for determining whether to subject an area to SAFMRs. Specifically, we urge HUD to exempt areas with extremely low vacancy rates from the SAFMR rule.

Ensure Stability for Affordable Housing with HAP Contracts

Often, PHAs enter into Housing Assistance Payments (HAP) contracts with HFAs to assign PBVs to housing financed with the Housing Credit or other capital assistance programs, thus providing greater affordability to very and extremely low-income tenants living in those properties than can be achieved through capital sources alone.

Existing affordable housing properties with HAP contracts have been underwritten assuming the applicable metropolitan FMR payment standard. Any future reduction in the payment standard could jeopardize a property's financial health, while a future increase in the payment standard may be unnecessary and an inefficient use of finite housing resources. We therefore urge HUD to maintain the current metropolitan FMRs for all existing properties with HAP contracts and allow future contract renewals at the metropolitan FMR payment standard.

We also have concerns about how changes to PBV payment standards that occur during the development process due to SAFMRs could impact new affordable housing developments or developments undergoing recapitalization currently in the pipeline. State agencies, developers, and investors must know in advance the payment standard of the PBV so that they can ensure that the capital resources devoted to the property during the underwriting process will be sufficient to ensure long-term financial feasibility, while not over-subsidizing the property.

The proposed rule would apply SAFMRs to PBVs if the notice of owner selection to enter into a HAP contract occurs after the effective date of the SAFMR designation. However, the underwriting process is lengthy, and PHAs often make preliminary commitments to projects prior to finalizing the HAP contracts for those projects. Developers and investors are therefore assuming a certain payment standard based on the metropolitan FMR and assembling financing accordingly. We urge HUD to allow any deals currently in the pipeline to move forward using the metropolitan FMR payment standard, even if the payment standard changes due to the SAFMR before the HAP contract is finalized, so long as a PHA has indicated its intent to commit PBVs to the development prior to the implementation of SAFMRs.

Mitigate Administrative Burden

Implementation of SAFMRs will make the voucher program more complicated to administer, as PHAs, including HFAs that administer the program, will have to contend with numerous payment standards across their areas of jurisdiction. We are concerned that HUD has not fully considered how implementation of SAFMRs will further increase the costs associated with administering the program. HUD's own studies have shown already that funding for program administration is inadequate—even before the implementation of SAFMRs—and as a result HUD has entered into a rulemaking process to adjust its administrative fee formula.

HUD can mitigate administrative burdens by streamlining the exception payment standard process. Some aspects of the existing exception payment standard process are unnecessarily vague, confusing, or rigid, and these shortcomings likely cause fewer PHAs to seek and obtain exceptions. Further, HUD should allow PHAs adequate transition time after publication of SAFMR designations before they are required to have SAFMR-based payment standards in place.

Option to Adopt SAFMRs for Other Rental Assistance Programs

The proposed rule would apply SAFMRs to the voucher program in certain metropolitan areas but asks for comments on expanding the use of SAFMRs to other tenant-based rental assistance programs, such as HOME tenant-based rental assistance, in use in those areas. NCSHA believes that administering agencies should have the option to adopt SAFMRs in other HUD programs after they assess the effectiveness of the new system on the voucher program and determine whether applying SAFMRs more broadly would help them achieve those programs' goals.

Thank you for your consideration of these comments. We look forward to working with HUD to modify the proposed rule so that it better provides opportunities for housing choice and opportunity while mitigating risks to the families, communities, and program administrators. Please do not hesitate to contact us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Garth Rieman", with a long horizontal flourish extending to the right.

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives