



August 15, 2016

Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW, Room 4130  
Washington DC 20410-0500  
Submitted electronically to [www.regulations.gov](http://www.regulations.gov)

Re: Docket No. FR 5855-P-02, "Establishing a More Effective Fair Market Rent System: Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50<sup>th</sup> Percentile FMRs"

To Whom It May Concern:

The California Housing Partnership is private nonprofit organization dedicated to helping government and nonprofit housing agencies preserve and expand the supply of affordable homes for lower-income households in California. We are writing to express our support for HUD's proposal to implement Small Area Fair Market Rents (SAFMRs) in communities where households with Housing Choice Vouchers (HCVs) are concentrated in high-poverty areas. We believe that the SAFMRs will afford voucher holders greater choice and, for those who elect to move, will support the program's goals of residential mobility, poverty de-concentration, and increased opportunity. However, some elements of the Proposed Rule that could seriously undermine the success of the program in costly and competitive real estate markets, including many communities in California.

### **Tenant-Based Voucher Comments**

**Problem: The methodology for calculating SAFMRs in 24 CFR 888.113 (a-f) does not reflect current market rents in most parts of California and is particularly inaccurate in communities where rents have increased sharply in recent years.** Like FMRs, SAFMRs lag substantially behind actual market rents because they are based upon older data, and they skew low in communities with limited supply and high demand because they do not weight recent years' data more heavily or use accurate inflation factors. This is demonstrated well in the Oakland-Fremont MSA, where HUD's published FMRs have either remained stagnant or decreased in recent years when market rent increases was among the highest in the nation. A group of local governments and nonprofit housing agencies were so outraged by this that they collected donations to conduct rent studies in 2013 and 2015. In response, HUD approved FMR increases of 16% in 2013 and 34% in 2015, confirming the inaccuracy of the published FMR. Similarly, the Counties of San Mateo, San Francisco and Marin commissioned a joint rent study this year that concluded that FMRs should be almost 30% higher than the current levels.

The magnitude of this adjustment sheds light on the FMR calculation lag, and on its material implications for voucher holders. If the SAFMRs do not correct this, many voucher holders may not be able to stay in their current units but will also be unable move to another unit because the SAFMRs do not have the buying power in higher-rent neighborhoods that they should due to the inaccurate FMRs. This could be a

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particularly acute problem in gentrifying neighborhoods, where tenants may be forced to move out of neighborhoods that are actually improving due to falling or lagging SAFMRs.

Further, it is unreasonable to expect local governments in the most heavily impacted jurisdictions to pay for their own rent studies. The two rent studies in the Oakland-Fremont MSA cost \$60,000 and \$100,000, respectively and the joint San Mateo-San Francisco-Marin rent study cost \$108,000. Those prices do not include the additional costs associated with initial feasibility studies, planning and communication with HUD, coordination between housing authorities and other departments (often across multiple counties), and other contracting and procurement processes, all of which are borne by the local governments. HUD must solve this problem by ensuring that FMRs are accurate, rather than leaving that responsibility up to the MSAs, many of which will not have the resources to conduct rent studies themselves.

**Recommendations:**

1. As proposed by the Center on Budget and Policy Priorities, HUD should:
  - a. Calculate 40<sup>th</sup>-percentile rents with data specific to different unit sizes (rather than indexing the rents to the 2-bedroom units);
  - b. Rely upon local rather than national CPI data in order to trend FMRs forward; and
  - c. Adjust SAFMRs automatically to reflect the results of all rent studies submitted.
2. **HUD should exempt the communities with vacancy rates lower than 5% from SAFMR designation**, at least until the SAFMRs more accurately reflect real market rents. Even in neighborhoods where FMRs are accurate, landlords in tight rental markets often choose not to accept vouchers, due to discrimination against voucher-holding households, lack of familiarity with the program rules, reluctance to submit units to annual re-inspection, or the perceived administrative burden of subsidy administration. Between 2010 and 2015, the number of landlords participating in the HCV program in Contra Costa County (part of the Oakland-Fremont MSA) decreased from 4,245 to 3,614, a reduction of almost 15%, even after the two rent studies raised the FMRs. These non-financial factors present additional barriers to the mobility of voucher holders and will further diminish the possibility of securing units in higher-rent neighborhoods. Along these lines, HUD should be tracking vacancy rates more closely in order to grant these exemptions on a timely and accurate basis.
3. **HUD should revise the element of the SAFMR designation formula concerning voucher holder concentration.** More specifically, as explained in detail by CBPP, the current definition would exclude some of the communities where voucher holders are most concentrated and would most benefit from de-concentration. To correct this, HUD should measure the difference between voucher and renter concentrations (not the ratio) as well as absolute (rather than relative) measures of concentration. These modifications would ensure the SAFMR designations were most closely aligned with the intent of the policy.
4. **To streamline the process for requesting and receiving approval of Exception Payment Standards, HUD should obtain data directly from local housing authority rent reasonable databases to grant exception payment standards more immediately.** This will alleviate the burden that housing authorities currently face with respect to getting Exception Payment Standards approved.
5. **In order to minimize administrative burdens, HUD should establish a minimum differential to trigger a required change from FMR to SAFMR rents.** For example, a change of \$3 in monthly rent should not require a PHA to renegotiate contracts, issue notices, etc.

**Problem: While the proposed rule expands choice for new voucher holding households, it could render current voucher-holding households deeply vulnerable.** For example, if a household chooses to stay in a neighborhood where the SAFMR is lower than the metro-level FMR, their voucher value will decrease but it is highly unlikely that their landlord will accept lower payment, particularly in California. We also expect that many of the households who would like to move will not be able to, due to the scarcity of available units, and the fierce competition for them. A rough analysis of the California MSAs that are designated for SAFMRs in the Proposed Rule shows that, for each voucher-holding household that does not move, the average monthly value of their voucher will go down: by \$66 in Oxnard/Ventura, by \$99 in San Diego, by \$120 in Santa Clara County, and by \$564 in Oakland-Fremont. Sacramento is the only exception, where the value increases by \$9. In California's very competitive rental markets, with landlords who are unwilling to adjust rents downward – voucher holders will likely bear the cost of such reductions themselves in the form of greater rent burdens and/or intensified housing instability. It is imperative that there are sufficient protections for voucher holders who are unable to move.

**Recommendation: HUD can ensure that current voucher holders do not suffer under these changes by holding current tenants harmless upon SAFMR designation.** New voucher holders would use the SAFMRs, but existing tenants would not be faced with steep increases in rent or the loss of housing.

**Problem: HUD has proposed the SAFMR designation only for the Housing Choice Voucher program, such that other rental assistance programs would not be subject to SAFMR designation.** Limiting the SAFMRs to the HCV program would present a sizable administrative burden for housing authorities, many of which many multiple voucher programs. It would also present another barrier for landlords and tenants. Most landlords that accept vouchers accept multiple types of vouchers, such that rents for the HCV program would now have a different rent schedule from other programs, likely leading to landlord confusion and the unintended consequence of landlords refusing to accept vouchers from those programs with the lower rents.

**Recommendation: In the metro areas where SAFMRs will be used for the Housing Choice Voucher program, SAFMRs should also be used for new voucher holders in other programs providing rental assistance (like VASH, Continuum of Care programs, HOME TBRA, etc.).** As noted, we have a number of implementation concerns about the SAFMR designation. Presuming that HUD addresses those concerns, we believe that the changes should at least be uniform across the rental assistance programs in a metro area. Further, any households that are currently using a voucher through any of these programs should be held harmless so that they do not risk losing their housing or becoming rent-burdened.

**Problem: HUD has not provided clear guidance for housing authorities with Moving to Work status about the degree to which they will be subject to SAFMR designation.** This is of particular concern in MSAs with multiple housing authorities, including some with MTW status and some without.

**Recommendation: HUD should state more clearly which, if any, elements of the SAFMR designation will apply to MTW agencies,** including guidance for MSAs with multiple housing authorities.

### **Project-Based Voucher Comments**

CHPC fully supports the policy goals of de-concentrating poverty and expanding the choices available to low-income families, but applying the SAFMRs to PBVs must be considered very carefully to ensure that it will achieve those goals without dismantling one of the most successful tools for creating new affordable rental housing in California. In the neighborhoods of opportunity that are most out-of-reach for voucher holders, developers seeking to build affordable housing also face the most prohibitive land costs, the highest impact

fees, the most community opposition, and the longest approval timelines. As such, SAFMRs will not guarantee that new affordable units will be built in neighborhoods with greater opportunities.

1. **Problem: The “mutual agreement” provision in 24 CFR 888.113 (h)(3) does not sufficiently protect owners of properties who rely upon PBVs.** The Proposed Rule allows a Public Housing Authority (PHA) to apply the SAFMRs to PBVs only when the PHA and property owner “mutually agree” to its application. However, in our experience providing technical assistance and financial structuring services to numerous housing authorities and affordable housing developers throughout California, property owners are typically not in a position to refuse this type of request from the housing authority for fear of losing out on future opportunities to secure PBVs. As such, the “mutual agreement” provision does not afford sufficient protection against reductions that could undermine property viability.

**Recommendation:** Only allow conversion of existing contracts when the conversion to SAFMRs results in rents that are on average equal or higher than the existing contract rents.

2. **Problem: The lack of clarity in the effective date of the new SAFMR rents in 24 CFR 888.113 (h)(2) is a problem for owners needing to finance or refinance their properties.** Many properties with PBVs may require refinancing at the time of a voluntary PBV rent conversion. Refinancing can be time-sensitive and property owners may have a short window to verify the new SAFMR-based rent amounts.

**Recommendations:**

- a. **HUD should define the effective date of the converted PBV SAFMR rents within 30 days, but also allow property owners to request a delay for up to 12 months** to provide additional flexibility on timing on an as-needed basis.
  - b. **In the case of setting rents for a new PBV contract or upon a renewal or extension, the effective date of prospective implementation of SAFMRs should exempt properties that have obtained financing commitments or submitted applications for Low-Income Housing Tax Credits or other competitive subsidies that relied on PBVs based on the metro-level FMR, and which would be jeopardized by switching to SAFMRs.**
  - c. **Similarly, the effective date for PBV rent determinations for properties not yet subject to an AHAP or HAP contract should be one year after publication that the area is subject to SAFMRs.** Per 24 CFR 888.113(h), SAFMRs will apply to PBV rents whenever the notice of owner selection is issued after the effective date of the SAFMR designation. This does not afford sufficient flexibility for property owners, as their predevelopment planning and process of securing other funding will be well underway before the PHA makes the final decision to commit PBVs to a property.
3. **Problem: Raising the threshold for rent reasonableness studies from 5% reduction to a 10% reduction in conjunction with the SAFMR rent conversion, as proposed in 24 CFR 982.507 (a)(2)(ii), will likely create unintended consequences by triggering rent reasonable studies that result in a significant loss of income to owners of PBV contracts.** For properties in which this income was assumed as part of initial financing or refinancing, the property is likely to become financial unstable and unable to meet its obligations.

**Recommendation: PHAs should not conduct rent reasonableness studies for any PBV contract where vouchers are used to leverage debt and SAFMRs are lower than FMRs, until the termination of the PBV contract term.** Properties in which the PBV contract renewal was pre-

committed upon execution of the initial contract was executed should be allowed to continue to use the metro-level FMR when a lower SAFMR will jeopardize the financial feasibility of their operations. For example, using the proposed SAFMRs, a building with 40 two-bedroom project-based units in the Mission Hills neighborhood of San Diego (92104) would be faced with a 21% rent reduction, equal to \$309 per unit per month, or \$148,320 per year. For many properties with an existing permanent loan, a decrease of that magnitude would mean that the property would be unable to pay its annual debt service, risking default and foreclosure. If this property were under development, reducing projected rents in that amount would reduce the amount of permanent financing that the property could leverage by roughly \$2.1 million. In these areas, there are properties – particularly those serving households at the lowest income levels – that may never be feasible at the lower amounts.

### **Conclusion**

HUD should stay focused on the larger policy goals of the proposed initiative – de-concentrating poverty and expanding opportunities for lower-income households – rather than the prospect of cost neutrality. Collinson and Ganong’s research on the use of SAFMRs in Dallas makes a powerful case for how SAFMRs allowed for greater mobility and de-concentration among voucher holders. It also demonstrates that the conversion to SAFMRs was mostly cost neutral, since the increased SAFMRs for households that moved were mostly offset by the reduced SAFMRs of those who chose to stay. This is an excellent outcome, but the applicability of the Dallas example is limited, as most real estate markets in California have much less absorptive capacity and far more stringent land use regulations than Dallas.

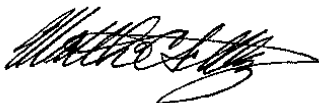
In Dallas, 44% of the households studied moved during the three-year study period. In a market like the city of Oakland, where the success rate for placing voucher holders is less than 1 in 5, such mobility is unlikely without better incentives for landlords and greater buying power (i.e. more up-to-date SAFMRs) for households. In other words, ensuring mobility in tight, competitive real estate markets will likely cost more.

For that reason, when evaluating the success of this initiative, we urge HUD to focus on the mobility of voucher-holding households, the de-concentration of vouchers, and the ongoing viability of affordable housing that uses project-based vouchers. If an MSA is able to achieve those goals, the use of SAFMRs should be seen as a success, even if it is not cost-neutral.

Along those lines, with respect to evaluating the initiative, it will be essential for HUD to collect and make publicly available data about the success of the initiative, including voucher turnover rates, voucher success rates, data on rent-burdened households, data on participating landlords, and zip-code-level counts of voucher holders with key demographic information (to assess progress with respect to Affirmatively Furthering Fair Housing). Ongoing review of this data, and corresponding adjustments to the program, will be essential to the success of the initiative.

We appreciate the opportunity to comment on the proposed rule.

Sincerely,



Matt Schwartz  
President and CEO