August 15, 2016

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

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

To Whom It May Concern:

On behalf of Enterprise Community Partners, thank you for the opportunity to provide input on HUD’s proposed rules for the use of Small-Area Fair Market Rents (FMRs) in administering the Section 8 Housing Choice Voucher program.

Enterprise works with partners nationwide to finance, build and advocate for affordable housing for low- and moderate-income families. Over the past 33 years, Enterprise has helped build or preserve more than 358,000 affordable homes across all 50 states, invested $23.4 billion into communities and touched millions of lives. That total includes more than $11 billion in Low-Income Housing Tax Credit (Housing Credit) investments syndicated through Enterprise Community Investment, making Enterprise one of the largest Housing Credit intermediaries in the country. Enterprise also has a deep programmatic presence in 10 U.S. markets – including many cities impacted by the proposed rule – where we’re working with public and private partners to solve some of the toughest housing and economic problems facing low-income families and communities.¹

Enterprise strongly supports HUD’s goal of ensuring that recipients of Section 8 vouchers have access to neighborhoods with good schools, jobs and other opportunities. Thanks to recent research from Stanford’s Raj Chetty, we know that each year a child spends in a low-poverty neighborhood – as opposed to a higher-poverty neighborhood with fewer opportunities – increases her chances of going to college, decreases her chances of becoming a single parent and increases her expected earnings as an adult.² However, in 2014 nearly 60 percent of families with children receiving a voucher lived in a neighborhood with a poverty rate of more than 20 percent, while 14 percent lived in a neighborhood with a poverty rate of more than 40 percent.³ Similarly, in 2008

¹ Enterprise’s 10 programmatic offices include Chicago, Denver, the Gulf Coast, the Mid-Atlantic, New York, Northern California, Ohio, the Pacific Northwest, the Southeast and Southern California. Learn more at www.EnterpriseCommunity.org.
³ Douglas Rice and Barbara Sard, Realizing the Housing Voucher Program’s Potential to Enable Families to Move to Better Neighborhoods, Center on Budget and Policy Priorities (November 2015):
only one in four families with children receiving a voucher lived near an elementary school that ranked in the top half of the state.\textsuperscript{4}

It is clear that HUD’s current 50\textsuperscript{th} percentile FMR rule, despite good intentions, has been ineffective at opening up low-poverty neighborhoods to voucher holders. In certain markets, transitioning from the 50\textsuperscript{th} percentile rule to the proposed Small Area FMR rule has the potential to meaningfully improve locational outcomes for voucher recipients with little or no budgetary impact.\textsuperscript{5} At the same time, however, there is risk of exacerbating disinvestment in higher-poverty neighborhoods by reducing rents below the level at which responsible landlords can reasonably maintain the existing stock or create new housing in those neighborhoods. A sudden transition to Small Area FMRs could also lead to economic hardships and even displacement for current voucher holders in higher-poverty neighborhoods, particularly in low-vacancy cities where landlords would have little incentive to lower rents based on the new payment standards.

Below we offer a set of changes to the proposed rule to ensure that Small Area FMRs are as successful as possible, with the dual goals of improving locational outcomes and minimizing economic hardships for current and future voucher holders. Specifically, we recommend that HUD:

1. Set a minimum threshold for rental vacancy rates when selecting metro areas that will be required to transition to Small Area FMRs.

2. Establish protections for current voucher holders in neighborhoods that would see a significant drop in voucher value under the proposed Small Area FMRs.

3. Set a reasonable floor and cap for the Small Area FMR in a particular zip code relative to the current metro-level FMR.

4. Clarify the process through which Public Housing Authorities (PHAs) can appeal the new Small Area FMRs in particular zip codes or regions using additional public and private data.

5. Provide PHAs with more flexibility to consolidate zip codes or come up with a more intuitive way of defining geographies within a metro area.

6. Maintain the current metro-level FMRs for the preservation of existing affordable housing using project-based Section 8 contracts.

The following sections discuss each recommendation in more detail, with a focus on specific questions posed in the proposed rule.


\textsuperscript{5} For example, when small-area rent limits were tested on a pilot basis in Dallas, studies found that voucher holders were able to move to neighborhoods with 17 percent less violent crime and poverty rates that were two percentage points lower, all while bringing down the total cost of the program.
1. **Set a minimum threshold for rental vacancy rates when selecting metro areas that will be required to transition to Small Area FMRs.**

The proposed rule lays out a set of criteria used by HUD to select the 31 metro areas that would be required to transition to Small Area FMRs. Specific metrics include the total number of voucher holders in the area, the relative concentration of those vouchers in high-poverty neighborhoods, and the percentage of the area’s total rental housing stock that is located in higher-cost zip codes. The point of this criteria is to identify the metros in which voucher holders would be most likely to benefit from Small Area FMRs.

We recommend adding a fourth metric in the selection criteria: metro-wide rental vacancy rates. In some markets, if the value of the voucher declines in a lower-cost neighborhood, it is reasonable to expect the landlord to respond by lowering the rent, assuming that the new Small Area FMR reflects the current market rents in that neighborhood. But in markets with low vacancy rates and a tight rental supply, there is no guarantee that landlords will lower rents in response to reduced subsidy levels, especially if they can reasonably demand the current rent from a new tenant. As a result, the current tenant would either: a) have to pay the difference out of pocket, leading to a significant rent burden; or b) be forced to move with no guarantee that they will be able to find a suitable and available unit in a better neighborhood. Either of these options is a negative outcome for the tenant, and both would require low-income families to incur significant costs and other economic hardships.

By setting a minimum threshold for rental vacancy rates in a metro area – say, 5 percent, which is generally considered to be the threshold for a tight rental market – HUD can mitigate these risks and ensure that the Small Area FMR rule targets the most appropriate metro areas. HUD could then choose to lower the threshold vacancy for future rounds of Small Area FMR expansion, assuming this round proves successful.

While we do not think that it is appropriate to test the Small Area FMR approach in low-vacancy cities at this time, we support HUD’s decision to allow any PHA to opt into Small Area FMRs as part of a broader plan to Affirmatively Further Fair Housing. In addition, we urge HUD to work with all PHAs – particularly those in high-cost markets that are not impacted by the rule – to develop alternative policies that improve mobility options for voucher holders. For example, HUD could work with PHAs to expand support for mobility counseling and minimize jurisdictional barriers to regional mobility initiatives, building on the successes of Baltimore’s Housing Mobility Program, Dallas’ Inclusive Communities Project and Chicago’s Regional Housing Choice Initiative.6

2. **Establish protections for current voucher holders in neighborhoods that would see a significant drop in voucher value under the proposed Small Area FMRs.**

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6 For a full list of steps HUD can take to improve mobility options for voucher holders, see the Center on Budget and Policy Priorities’ “Realizing the Housing Voucher Program’s Potential to Enable Families to Move to Better Neighborhoods,” available at: http://www.cbpp.org/research/housing/realizing-the-housing-voucher-programs-potential-to-enable-families-to-move-to.
Section 107 of the Housing Opportunity Through Modernization Act of 2016 (H.R. 3700), which was signed by the president in July, states that “no public housing agency shall be required as a result of a reduction in the fair market rental to reduce the payment standard applied to a family continuing to reside in a unit for which the family was receiving assistance ... at the time the fair market rental was reduced.” The section also states that HUD must “allow public housing agencies to request exemption payment standards within fair market rental areas.”

We interpret this to mean that each PHA has the authority, pending HUD approval, to hold harmless any existing voucher holders from a reduction in payment standards caused by the transition to Small Area FMRs. Assuming that is an accurate interpretation, HUD must set clear guidelines for what a PHA can and cannot do to protect current voucher holders from excessive rent burdens or possible displacement. One could reasonably interpret H.R. 3700 as only giving PHAs the choice between maintaining current rent levels or accept the Small Area FMR levels. Instead, we urge HUD to provide flexibility to set rent levels that meet the overall goal of the Small Area FMR rule without unduly harming current voucher holders. For example, HUD could permit PHAs to set payment standards for eligible voucher holders that fall anywhere between the Small Area FMR and the metro-level FMR.

Alternatively, if HUD decides that H.R. 3700 does not grant PHAs this hold harmless authority, we urge the agency to establish strong protections for existing voucher holders in the proposed rule. For example, HUD could allow PHAs to hold harmless certain vulnerable populations of voucher holders who wish to stay in their current homes, including elderly or disabled adults, residents of permanent supportive housing, formerly homeless households and large families with children. The transition to Small Area FMRs should not cause vulnerable households that are unable or unwilling to move to lose much-needed subsidy dollars.

3. Set a reasonable floor and cap for the Small Area FMR in a particular zip code relative to the current metro-level FMR.

Under the current program rules, HUD caps the Small Area FMR in a particular zip code at 150 percent of the metro-wide FMR. This rule might make sense from a budgetary perspective, but it also limits access to high-opportunity neighborhoods for voucher recipients, particularly in high-cost cities with a wide range or a right-skewed distribution of market rents. We urge HUD to either eliminate the cap on Small Area FMRs or set it at a significantly higher level – say, 200 percent of the metro-wide FMR. At the very least, HUD should give PHAs the opportunity to cap Small Area FMRs at a level they deem appropriate, considering budgetary restrictions and local market conditions.

Given the concerns mentioned above regarding current voucher holders in higher-poverty neighborhoods, HUD should also consider setting a floor for Small Area FMRs in zip codes that would experience a drop in rent limits. For example, HUD could establish a minimum Small Area FMR in a particular zip code at 90 percent of the metro-wide FMR for the first year, then 80 percent

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8 This floor would be implemented alongside the proposed “trigger” for rent reasonableness tests in zip codes that would see a decline of 10 or more percent during the transition to Small Area FMRs.
for the second year, and so on. Assuming that there are no additional resources for Section 8 vouchers – which seems to be reasonable assumption in today’s fiscal climate – HUD must calibrate both the cap and the floor to ensure that the total number of available vouchers remains unchanged.

4. Clarify the process through which PHAs can appeal the new Small Area FMRs in particular zip codes or regions using additional public and private data.

As mentioned above, in order for the proposed rule to improve outcomes for voucher holders, the Small Area FMRs set by HUD must accurately reflect the current cost of renting a typical unit in each zip code. Unfortunately, the Census American Communities Survey (ACS) data used by HUD to estimate FMRs lags the market by at least two years, which is particularly problematic for rapidly gentrifying neighborhoods that experience significant rent changes from year to year. In addition, the ACS data may not adequately cover each zip code within a metro area, which can lead to significantly distorted FMRs.

Given these limitations in the methodology, HUD should establish a clear process through which PHAs can appeal the designated Small Area FMRs in a particular zip code. Under current rules, PHAs can apply to HUD for an “exception payment standard” for a specific voucher holder, but it is unclear whether PHAs will be able to apply for a similar exception for an entire zip code. HUD should make clear in the rule that PHAs will have the opportunity to provide additional data on the cost of renting an apartment in a particular neighborhood, for example by overlaying verified public and private datasets with HUD and ACS data. In addition, HUD should allow PHAs to apply for exception payment standards for particular types of rental units within a zip code, such as apartments suitable for elderly adults, people with disabilities or large families.

5. Provide PHAs with more flexibility to consolidate zip codes or come up with a more intuitive way of defining geographies within a metro area.

Even if the Small Area FMRs were set at a mutually agreeable level, there would still be significant administrative barriers to implementing the rule across a metro area, especially in large and complex cities. For example, a number of large PHAs contain more than 100 zip codes in their jurisdictions – it would be extremely difficult for agencies to administer unique FMRs for each zip code. And perhaps most importantly, it would likely create a very confusing situation for voucher holders, in which the same voucher would be worth a certain amount on one block and significantly more or less on the next block, as neighborhood boundaries and zip codes do not inherently align.

As drafted, the proposed rule only addresses this concern by rounding Small Area FMRs to the nearest $10 to “make it easier to arrange small areas into payment standard groups.” We urge HUD to take further steps to ease the administrative burden on PHAs and voucher holders. As one option, HUD could provide additional flexibility for PHAs to establish payment standards across zip codes within a certain geography, including allowing for the payment standard to exceed 110 percent of the Small Area FMR as necessary. Alternatively, HUD could allow PHAs to simply consolidate zip codes or come up with a more intuitive way of defining geographies within a metro area, such as by city, borough or neighborhood. HUD should also allow large and complex PHAs
additional time to develop and implement a transition plan, beyond the proposed three-year period.

6. **Maintain the current metro-level FMRs for the preservation of existing affordable housing using project-based Section 8 contracts.**

While we agree that Small Area FMRs have the potential to help improve outcomes in the Housing Choice Voucher program in certain markets, we have a number concerns with the rule’s proposed application to the Project-Based Voucher program. As previously discussed in this letter, moving voucher holders to higher opportunity areas is a laudable and achievable goal, but it is simply not possible to move all voucher holders to these areas. Some low-income families will choose to remain in lower-cost neighborhoods, and efforts must be made to improve those areas. The importance of this “both/and” approach – the need to both expand access to high-opportunity neighborhoods and invest in areas of concentrated poverty – was reinforced in HUD’s recent Affirmatively Furthering Fair Housing rule, as well as the Supreme Court’s decision to uphold the use of disparate impact assessments in fair housing disputes.9

Enterprise believes there is real value in reinvesting in neighborhoods that have historically experienced disinvestment. New construction in these neighborhoods provides options that are fundamentally different from the existing housing stock and provide a healthier environment and increased opportunity, particularly when matched with comprehensive revitalization activities. If Small Area FMR were applied to all developments with project-based voucher contracts, however, new construction would be considerably harder to finance and likely need additional sources of subsidy or gap financing to offset reduced access to permanent debt.

In addition, many PHAs use project-based vouchers to strategically preserve affordable housing in lower-income communities that are likely to be gentrified in the future. Those neighborhoods are likely to see a significant decline in subsidy in the transition to Small Area FMRs due to weak current market conditions, which would make these investments much more difficult even as their value in providing affordable housing in an opportunity-rich environment grows over time.

At the very least, HUD should maintain the current metro-level FMRs for all existing properties with project-based Section 8 contracts, including any future contract renewals and properties being converted through the Rental Assistance Demonstration, a crucial tool for addressing the capital repairs backlog for the nation’s aging public housing stock. Preservation of at-risk affordable housing must remain a top priority for HUD, and a sudden transition to Small Area FMRs could fundamentally alter the economics of certain properties, which could make it much more difficult to keep those properties affordable over the long term.

That said, one could make a strong argument for applying Small Area FMRs for certain new construction projects using project-based vouchers. In theory, allowing for a more generous subsidy in high-opportunity neighborhoods could make it easier to build new affordable housing developments in high-opportunity neighborhoods. Before HUD pursues this policy, however, the

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agency should study whether the Small Area FMRs in those high-opportunity neighborhoods are actually high enough to make feasible a new construction project using project-based vouchers.

If HUD decides to apply Small Area FMRs to new construction projects using project-based vouchers, the agency should allow projects that are already in the development pipeline to run their course under the current metro-level FMR rules. For example, a project might have already applied for or received Housing Credits from the state under certain assumptions based on metro-level FMRs. The transition to Small Area FMRs should not unnecessarily impede or halt those projects. To avoid this, HUD can either delay implementation of the Small Area FMR for project-based vouchers by 18-24 months (some PHAs have a development pipeline of up to two years) or establish a rule holding harmless all current project-based voucher projects that are beyond a certain point in the development process (for example, any development that applied for Housing Credits before the rule’s effective date).

**Next Steps**

Again, thank you for the opportunity to comment on this important issue. We welcome the opportunity to meet with HUD staff to discuss the proposed Small Area FMR rule and any of the above recommendations.

If you have any questions about this letter, please contact me at lblatchford@enterprisecommunity.org or John Griffith, Enterprise’s National Director for State & Local Policy, at jgriffith@enterprisecommunity.org.

Sincerely,

Laurel Blatchford  
Senior Vice President for Solutions  
Enterprise Community Partners, Inc.