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

To Whom It May Concern:

On behalf of the High-Cost City Housing Forum (HCHF), 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.

The HCHF is a peer-to-peer group comprised of the local housing commissioners from nine of the most expensive cities in the United States: Boston, Chicago, Denver, Los Angeles, Miami, New York City, San Francisco, Seattle and Washington, DC. The forum, which is convened by Enterprise Community Partners, serves as a venue for policymakers to discuss housing policy, offer program ideas and exchange best practices. The cities represented in the HCHF share many unifying characteristics, including expensive real estate, robust population and economic growth and a housing stock characterized by more multifamily than single-family housing.

The HCHF strongly supports HUD’s goal of ensuring that recipients of Section 8 vouchers have access to neighborhoods with good schools, jobs and other opportunities. In certain markets, transitioning from the 50th 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.

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.

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1 While only three of the cities represented in the HCHF would be directly impacted by the proposed rule (Chicago, New York City and Washington, DC) the content of this letter reflects the collective views of all nine HCHF commissioners.

2 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 less violent crime and lower poverty rates, all while bringing down the total cost of the program.
Below we offer a set of changes to the proposed rule to ensure that Small Area FMRs are as successful as possible in high-cost cities, with the dual goals of improving locational outcomes and minimizing economic hardships for current and future voucher recipients.

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. We recommend adding a fourth metric to the selection criteria: metro-wide rental vacancy rates.

The point of the selection criteria is to identify the cities in which voucher holders would be most likely to benefit from Small Area FMRs. 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 actual cost of renting in that neighborhood. But in markets with low vacancy rates and a tight rental supply – like many of the cities represented in the HCHF – there is no guarantee that landlords will lower rents, especially if they can reasonably demand the current rent from another tenant. As a result, the existing tenant would either: a) have to pay the difference out of pocket, leading to a significant rent burden; or b) be forced to move — either by choice or by eviction — with no guarantee that they will be able to find a suitable and available unit in a better neighborhood. 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 healthy rental market – HUD can mitigate these risks and ensure that the Small Area FMR rule targets the most appropriate metro areas.

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

Under Section 107 of the Housing Opportunity Through Modernization Act of 2016 (H.R. 3700), which was signed by the president in July, each PHA appears to have 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.

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. HUD should also allow PHAs to hold harmless certain vulnerable populations of voucher holders who wish to stay in their current homes, including elderly or disabled

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3 This seems to have been the outcome in Dallas, based on the findings of HUD’s Small Area FMR pilot. It’s worth noting, however, that metro Dallas has a rental vacancy rate of nearly 8.7 percent, well above the national average (7.0 percent) and nearly twice the rental vacancy in New York metro area (4.5 percent).

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. 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 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.**

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. A number of large PHAs – including some in cities represented by the HCHF – 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 consolidate zip codes to establish a small number of payment standards to administer, such as through a “systemic waiver” rather than a zip-code by zip-code approach. 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.

There is tremendous 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 FMRs 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 communities that are likely to see significant rent increases in the future. Those neighborhoods are likely to see a decline in subsidy due to the transition to Small Area FMRs, which would make these investments much more difficult.

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. 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.

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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 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 Low-Income Housing Tax 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 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). Alternatively, HUD could establish a rule holding harmless all current project-base voucher projects that are beyond a certain point in the development process – for example, any development that applied for Low-Income Housing Tax Credits before the rule’s effective date.

Next Steps

Again, thank you for the opportunity to comment on this important issue. If you have any questions about the HCHF or this letter, please contact John Griffith, Enterprise’s National Director for State & Local Policy, at jgriffith@enterprisecommunity.org.

Sincerely,

*The High Cost Cities Housing Forum*

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6 The HCHF consists of the local housing commissioners from Boston, Chicago, Denver, Los Angeles, Miami, New York City, San Francisco, Seattle and Washington, DC. Individual commissioners or city agencies may submit comments or hold a positions differing from what is presented here. The comments in this letter reflect the views of HCHF.
Attachment 1: Commissioners of the High Cost Cities Housing Forum

Sheila Dillon (Chair)
Chief of Housing and Director of the Department of Neighborhood Development
Boston

Vicki Been
Commissioner of the Department of Housing Preservation Development
New York City

Rushmore Cervantes
General Manager of the Housing & Community Investment Department
Los Angeles

Polly Donaldson
Director of the Department of Housing & Community Development
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Olson Lee
Director of the Mayor’s Office of Housing
San Francisco

George Mensah
Director of the Department of Community & Economic Development
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Rick L. Padilla
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Anthony Simpkins
Managing Deputy for Housing at the Department of Planning & Development
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Steve Walker
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