Enterprise®

July 2, 2015

Regulations Division
Office of the General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0001

Docket Number FR-5855-A-01: 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; Advanced Notice of Rulemaking

To Whom It May Concern:

Enterprise Community Partners (Enterprise) appreciates the opportunity to comment on HUD's advanced notice of rulemaking on Small Area Fair Market Rents (SAFMRs). Enterprise is a national nonprofit organization whose mission is to create opportunity for low- and moderate-income people through affordable housing in diverse, thriving communities. We work to achieve this by introducing solutions through cross-sector public-private partnerships with financial institutions, governments, community organizations and other partners that share our vision. Since 1982, Enterprise has raised and invested $18.6 billion to help finance nearly 340,000 affordable homes across the United States.

Enterprise's generational goal is to end housing insecurity in the United States. We believe that opportunity begins when people have a safe, healthy, and affordable place to call home. It grows with access to jobs, good schools, transit and health care. Enterprise therefore believes in increasing housing opportunities and supports the goal of expanding housing choices for families and individuals using the Housing Choice Voucher (HCV) program.

Since 2012, Enterprise has called for a more balanced approach to fair housing by supporting affordable housing in both high-opportunity areas and in communities where housing is part of concerted, long-term revitalization plans, a position recently affirmed by the Supreme Court as "two reasonable approaches."[1] Enterprise's general position on fair housing is best described by Enterprise Community Partners President

[1] Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc., 576 U.S. _____ (U.S. Supreme Court 2015).

and CEO Terri Ludwig, "[W]e strongly support distributing federal resources in a manner that allows low-income people to make housing choices that are best for themselves and their families. Public policy should support both preservation and mobility so that each individual or family can choose the community in which they want to live."

Enterprise believes that, when structured properly, the use of SAFMRs has the potential to affirmatively further fair housing by opening up higher rent ZIP codes (as an imperfect proxy for neighborhoods) to HCV holders, with the assumption that higher average rents are primarily a reflection of better neighborhood amenities (as opposed to unit quality, with a recognition that the two may be highly correlated). At the same time, however, there is also significant risk of exacerbating disinvestment in low-opportunity neighborhoods by reducing rents in those areas below the level at which responsible landlords can reasonably operate and maintain the existing stock and create new stock.

While the notice requests comment specifically on the use of SAFMRs for the HCV program, it also seeks comment on the potential use of the SAFMRs for Project-based Vouchers (PBV). Assistant Secretary Katherine O'Regan wrote in a recent issue of *The Edge* that in 2016 HUD will create Small Difficult to Develop Areas (Small DDAs) based on the SAFMRs.[2] Enterprise would therefore like to take this opportunity to provide comments on all potential SAFMR uses for HUD's consideration in advance of rulemaking.

<u>Small Area FMRs</u>

This advanced notice of rulemaking announced HUD's intention to amend the FMR regulations for the HCV program (24 CFR part 888). Generally, we support HUD's intention to provide HCV tenants with greater access to areas of opportunity by better reflecting the local rental market. Currently, HUD establishes the FMR for an entire metropolitan area, often covering several counties. Metropolitan areas have many sub-markets and the rents can vary widely across a region. The large variation in rents often restricts housing choices, as determined by HUD PD&R findings and a lawsuit in Dallas, Texas, settled in 2010.

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[2] "HUD Policy Changes to Improve Access to Low Poverty Neighborhoods | HUD USER," *The Edge*, June 15, 2015, http://www.huduser.org/portal/pdredge/pdr_edge_frm_asst_sec_061515.html.

After noting that setting program rents at the 40^{th} percentile of the market did not provide access to enough places within a metropolitan area, HUD created an exception in 2000, allowing for PHAs to use the 50^{th} percentile rents in a metropolitan area to determine program rent limits. Collinson and Ganong[3] have shown that the 50^{th} percentile exception is not a particularly effective tool in increasing housing choice. Rather, landlords were the main beneficiaries of the exception over tenants, thus making a higher FMR an ineffective policy tool. Given the choice between across-the-board increases or a more nuanced approach like SAFMRs, Enterprise would support the latter. We believe that a well-constructed SAFMR policy could provide significant benefit to voucher users.

While the experience in Dallas has demonstrated, based on Collinson and Ganong, that it is possible to provide increased access to higher opportunity neighborhoods while serving roughly the same number of families for the same budget, we have significant concerns that in most other places, the inherent tension between these objectives will not be so easily resolved. In fact, Dallas may not be a good indicator of the typical outcomes of a shift to SAFMRs because of its generally low rents. The study's authors note that even with an ongoing concentration of HCV use in below average quality ZIP codes, "it is surprising that instituting ZIP code-level FMRs did not save money."[4] Part of that finding may stem from an effective floor on rents based on the cost of providing a unit, evidenced by the fact that median rents were the same in the worst quality neighborhoods as in those ranked just below average.

In markets where only the lowest quality neighborhoods (if any) see rents constrained by an effective floor, the result of the laudable goal of creating greater access to higher opportunity neighborhoods is likely to be a reduction in the number of families helped (assuming no change in budget), unless the distribution of rents and movers is such that the costs of paying above FMR rents in many places are offset by the reductions in rents paid for those who stay where they are or otherwise move to other ZIP codes with SAFMRs set below the current FMR. Further research is required to understand how these dynamics would play out in other geographies.

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[3] Robert A. Collinson and Peter Ganong, "The Incidence of Housing Voucher Generosity," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, May 1, 2015), http://papers.ssrn.com/abstract=2255799.
[4] Ibid.

In particular, we see challenges to the success of a SAFMR-based HCV program in three types of neighborhoods: (1) current ZIP codes with high concentrations of HCV recipients and low SAFMR to FMR ratios, (2) rapidly gentrifying areas, and (3) high opportunity ZIP codes with very high SAFMR to FMR ratios.

Low SAFMR-to-FMR Ratio ZIP Codes: These ZIP codes are most likely to have high current concentrations of HCV recipients, with landlords very willing to accept vouchers because of the premium they may receive over local market rents and the reliability of the rent stream. With a shift to SAFMRs, landlords may be less willing or even able to provide adequate quality units, thus displacing HCV households with little or no alternatives. Our analysis of the impact on Washington, DC, based on the current hypothetical SAFMRs, reveals a very significant decline in the number of units available to would-be voucher users. In the three ZIP codes with the highest concentration of vouchers, the new rent limits would drop by more than a third, from $1,458 per month to under $1,000. Out of 51 two-bedroom apartments listed on Zillow in those ZIP codes on June 19, 2015, 40 were offered at rents at or below current FMR. Under SAFMR, that number drops to only *four*—a 90 percent decline—with no guarantee that units at the lowest end of the rent distribution would meet Housing Quality Standards.

Should HUD proceed with SAFMRs, we would recommend considering a floor on the Rental Rate Ratio applied to any ZIP code in order to minimize involuntary moves by HCV recipients. To maintain budget neutrality, it may be necessary to allow PHAs to phase in a SAFMR ceiling as well. This could slow the expansion of access to high opportunity ZIP codes, but it would give PHAs more certainty about costs. This is an area for further exploration in consultation with PHAs. (Alternatively, rather than establish a minimum Rental Rate Ratio that would lead to changing SAFMRs each year, as part of the transition to SAFMRs, the minimum ratio could be applied the first year and the resulting rent would serve as a firm floor going forward. In future years, the higher of the floor or the calculated SAFMR would apply to the ZIP code. While it would not eliminate above–local market payments to landlords immediately, it would curtail them over a period of years.)

It is also important to note that all voucher holders may not want to move to significantly more expensive zip codes. It is safe to assume that most families and individuals desire opportunity, but community