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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. Enterprise would therefore like to take this opportunity to provide comments on all potential SAFMR uses for HUD’s consideration in advance of rulemaking.

**Small Area FMRs**

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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After noting that setting program rents at the 40th 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 50th percentile rents in a metropolitan area to determine program rent limits. Collinson and Ganong3 have shown that the 50th 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.

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
networks and access to family and friends are also very important. Households that have close community
ties through religious or civic institutions, family, and neighbors might be reluctant to leave their networks
and move to distant, unfamiliar neighborhoods. We urge HUD to consider the potential neighborhood
preferences of voucher holders and the valuable role of mobility counseling as it decides how to move
forward.

*Rapidly Gentrifying Areas:* Substantial increases in rents in once affordable ZIP codes could inadvertently
eliminate housing units from eligibility in the HCV program, particularly cities where a large number of
units are in transitioning neighborhoods. As neighborhoods improve, families and individuals exposed to
market rents may be priced out just as those places see significant improvement in opportunity and
quality of life. It is in these gentrifying areas that the preservation of the affordable housing stock is most
urgent. Yet, because of the methodology employed in calculating FMRs (a lagged, multi-year survey) and
especially SAFMRs (the Rental Rate Ratio calculation relies on a sample in which 20 percent of the data is
from 2006), these improving ZIP codes would also see cuts to the rent limit, making it hard for current HCV
users to remain in these communities.

We should note that the problem of reliance on old data is a problem even under the current FMR system
and would urge exploring use of private data sets that would offer a much more accurate and real-time
picture of the rental market. Nevertheless, the problem is more acute for SAFMRs because while the rents
are pegged to the FMR derived from the 2013 5-Year American Community Survey, the often significant
adjustment to the rate is based on the ratio of the ZIP code to the MSA as it existed between 2006 and
2010. It is precisely in gentrifying areas where that all-important ratio between ZIP code and metropolitan
area rents is likely to have changed the most, with the danger that the adjustment may actually run
counter to the intent of the shift to SAFMRs.

In order for SAFMRs to have the greatest impact in gentrifying communities, rent calculations should be
based on current market data. If a sufficiently comprehensive private data set is unavailable, HUD should
consider merging multiple datasets and building its own index. Similarly, we would also suggest offering
PHAs greater flexibility in setting rents within ZIP codes or other market areas based on local data that
they may provide to HUD.
High Opportunity ZIP codes with High SAFMR to FMR Ratios: As Chetty, Hendren, and Katz have found, moving to high-opportunity neighborhoods can be extremely beneficial to low-income families, particularly in regard to long-term outcomes for children. If SAFMRs can be implemented in a way that allows families to move to such areas, the outcomes could be positive. However, there are many challenges for program participants to use housing vouchers in higher quality neighborhoods. First, there must be an adequate stock of rental units. (Not all ZIP codes have large numbers of housing units, and only a fraction of those units may be used for rental.) Second, landlords in high-opportunity areas may not want to rent to voucher holders. Unlike in high-poverty areas where landlords prefer voucher holders because rent payments will be guaranteed, landlords in higher end areas often prefer not to rent to HCV users. Most residents living in expensive areas are able to pay rent in a reliable fashion, so landlords see less value in government-guaranteed rent payments. Additionally, very few localities in the US extend protections to voucher holders; several large cities and 12 states have prohibited discrimination based on source of income.

Not only might it be difficult for voucher holders to find cooperative landlords in expensive areas, it may also be difficult for voucher holders in high-cost cities to find available units in higher end neighborhoods that have eligible rents. Rents in many cities have risen drastically while vacancy rates have plummeted in recent years, making it increasingly difficult for middle-income households to find affordable and available housing, with the problem even worse for low-income households. While SAFMRs would increase the amount that vouchers cover in expensive zip codes, the number of eligible units are likely to be limited. Voucher holders may not be able to compete in such a tight rental market. In an analysis Enterprise performed using Zillow data in Washington, DC, we found that rental units were unavailable in most high-opportunity zip codes when using SAFMR limits, even though the SAFMR exceeded the FMR. The least

expensive available two-bedroom unit in most ZIP codes cost several hundred dollars more than the SAFMR—an unreasonable out-of-pocket expense for any HCV recipient.

We believe it could be challenging for a large number of households to use vouchers in expensive ZIP codes because program costs would likely come up against budget limits, especially in high-cost cities. While SAFMR “tilting” allows the lower rents at the bottom distribution of ZIP codes to offset the higher rents at the top, the high costs and wide distributions of rent in some cities could quickly exceed the cost savings from non-movers. HUD should also be mindful that the distribution of rents within any given ZIP code will likely be much narrower than for the metropolitan area as a whole, so applying the metro area’s ratio of the 40th percentile rent to median rent at the ZIP-code level may lead to significantly fewer than 40 percent of the units within the ZIP code affordable to HCV users.

In short, Enterprise is very supportive of HUD’s goal to deconcentrate voucher holders living in high-poverty areas; however, we are concerned that in higher cost cities, use of SAFMRs could lead to a reduction in the overall number of housing vouchers. At a time when millions of families are paying more than half their income in rent and could benefit from federal rental assistance, it would be extremely harmful to further reduce the number of available vouchers. We recommend that HUD fully model the likely impacts of SAFMRs on the overall number of eligible units (and the quality of the neighborhoods in which they are located) in a range of MSAs with different market typologies, especially including a high-cost metropolitan area, so it can determine the impacts of using SAFMRs in such rental markets.

In the context of discussing current problems with the 50th percentile FMR areas, the notice indicates that cycling in and out of 50th percentile FMRs has been disruptive to the program. We are concerned that the adoption of SAFMRs could have similar impacts in practice because of the likely greater volatility in annual rent changes at the ZIP code level. Keeping the Rental Rate Ratio fixed over time would reduce the volatility to that of the metro area overall, but, as we noted previously, at the expense of reflecting the true state of the market at the local level. As HUD considers adoption of SAFMRs, care should be paid to strike the appropriate balance between creating a degree of cost certainty for landlords and program administrators (and minimizing involuntary displacement) and accurately responding to market conditions.
SAFMRs and Project-Based Vouchers

While the concept of SAFMRs could help to improve the HCV program, we have a number of concerns with its potential application to the Project-Based Voucher (PBV) program. As previously discussed in this letter, moving voucher holders to higher opportunity areas is a laudable goal, but it is simply not possible to move all voucher holders to these areas given budget realities. In order to maximize the number of voucher recipients, some will inevitably remain in lower cost neighborhoods; efforts must be made to improve those areas.

At Enterprise, we believe there is real value in reinvesting in neighborhoods that have historically experienced disinvestment. New construction in these neighborhoods provide housing 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. Newly built affordable housing would almost certainly be among the highest quality units (likely—by design—in the 90th percentile or greater) in currently low-opportunity neighborhoods. If SAFMRs were directly applied to PBV projects, 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 provided by the private sector. (Enterprise does not underwrite to HCV limits, but we do use project-based contract rents.)

A policy of applying SAFMRs to newly built affordable units would have the effect of furthering disinvestment in places that stand to benefit the most from reinvestment. SAFMRs are designed to reflect the 40th percentile quality unit within a ZIP code, but the cost of providing quality units is not primarily a function of ZIP-code specific factors. Although land costs are highly localized, labor and material costs are determined at the metro level. Moreover, the stark quality differential between new construction and the existing stock is also reason to consider leaving the current FMR calculation in place or using true comparables for setting PBV rents.

Small Area DDAs

HUD has put forth that SAFMRs will help increase the number of metro areas with Difficult-to-Develop Areas (DDA) through the designation of Small DDAs (SDDAs) by increasing the number of metro areas
participating in the DDA program from 35 metro areas to 233 metro areas with at least one DDA. Metro areas such as Baltimore, which did not have DDA designation in the past, will have 56 SDDAs.

Greater reach of the DDA program is laudable goal, but many high-cost and high-opportunity areas would be ineligible from receiving the basis boost as part of the Low-Income Housing Credit (Housing Credit) program. This is partly due to the statutory limitation on the number of DDAs, which is limited to 20 percent of the total population of all metro areas (IRC Section 42(d)(5)(B)).

Several members of the High-Cost Cities Housing Forum (HCHF), a peer-to-peer learning collaborative staffed by Enterprise for housing commissioners in high-cost cities, are concerned these changes will eliminate certain neighborhoods from receiving the much-needed basis boost necessary for winning Housing Credit awards in high-cost neighborhoods. The concerns of HCHF members were previously expressed by New York City’s Department of Housing Preservation and Development (NYHPD) and New York’s Housing Development Corporation (HDC) December 2011 letter to HUD. NYHPD and NYHDC expressed their concern for the loss of eligible areas in half of Manhattan, more than half of Brooklyn, and most areas of the Bronx. Not only would this eliminate many high-opportunity and revitalizing areas, it would also make housing preservation more difficult in many rapidly gentrifying areas of New York.

One possible solution for creating much-needed balance between minimizing the impact on overall high-cost metropolitan areas while expanding DDAs to other metropolitan areas with pockets of higher development cost is to seek a statutory change that would grandfather large cities using objective criteria such as high-construction costs or rapidly increasing rents. Such a solution would meet the needs of large, complex metropolitan markets, while at the same time extending the reach of the DDA program. In this way, we would be creating many more eligible high-opportunity areas within reach of the Housing Credit program, thus furthering fair housing.

In conclusion, Enterprise agrees that the use of the 50th percentile exception has proven ineffective and should be eliminated. While the use of SAFMR seems promising in certain markets, greater research should be done to understand the possible decline in landlord participation and the impact on the aggregate number of eligible units as a result of the shift to SAFMRs, with particular attention paid to the
three types of neighborhoods we identified. Use of more current data is advised, and HUD should consider establishing a floor on downward adjustments to minimize involuntary displacement of residents.

Finally, while the shift to SAFMRs may be beneficial in certain markets, we believe the changes should take place as part of a broader public discussion of improvements to and expansion of housing vouchers and other critical resources to support vulnerable individuals and families. Research has demonstrated the individual and societal benefits of increased access to opportunity. As a mechanism, a well-constructed SAFMR policy can play a crucial role, but a robust conversation on how to pay for it must also take place.

We appreciate the opportunity to provide comments at this time and look forward to ongoing engagement with HUD as the rulemaking advances. If you have any questions regarding these comments, please contact Manuel Ochoa at (202) 407-8715.

Sincerely,

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Enterprise Community Partners