



August 10, 2016

Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
451 Seventh Street SW, Room 10276  
Washington DC 20410-0500

Re: Docket No. FR-5855-P-02 Establishing a More Effective Fair Market Rent (FMR) System

To Whom It May Concern:

The Local Initiatives Support Corporation (LISC) is pleased to provide comments on the proposed rulemaking regarding the use of Small Area Fair Market Rents (SAFMR) in the Housing Choice Voucher (HCV) program in lieu of the current 50<sup>th</sup> percentile FMRs. LISC strongly supports efforts to expand housing choice and opportunities for low-income persons, and applauds HUD's continuing efforts to improve its programs to offer affordable housing options to low income families in the neighborhoods of their choice.

LISC is a national non-profit housing and community development organization that is dedicated to helping community residents transform distressed neighborhoods into healthy and sustainable communities of choice and opportunity. LISC mobilizes corporate, government and philanthropic support to provide local community development organizations with loans, grants and equity investments; as well as technical and management assistance. Our community development corporation (CDC) partners use a host of funding sources and federal programs to provide quality affordable housing in their communities. Many of the residents served by our CDC partners benefit from the HCV program and some of our CDC and development partners own properties assisted by project based voucher (PBV) contracts.

LISC has local offices in 31 cities across the country, including high-cost, low-vacancy markets and legacy cities fighting population loss, as well as a rural network of 75 community based organizations serving more than 1400 counties. Throughout its national urban and rural footprint, LISC partners with local stakeholders to devise comprehensive community

revitalization strategies to address housing, education, health, safety and other needs in severely distressed neighborhoods. LISC works to make sure that residents can stay in their existing neighborhoods and drive change, but also supports efforts for residents to move to areas of higher opportunity. With this as context, we offer the following comments with respect to the proposed rule.

### **Overarching Comments:**

We are encouraged that SAFMRs will provide greater opportunity for residents and we applaud HUD for its thoughtful approach to formulating the proposed rule. While we believe that the criteria for designation of SAFMR areas include some notable improvements over the criteria in the Advanced Notice of Proposed Rulemaking (ANPR), we remain concerned that the selection criteria may include high-cost, low-vacancy markets where SAFMR are unlikely to facilitate housing choice, but could increase rent burden for existing voucher holders putting them at risk of displacement. We strongly encourage HUD to exclude these tight markets with vacancy rates below five percent (5%) and to make other modifications to the selection criteria to better identify markets that will benefit from SAFMR. Housing agencies, advocacy groups and other stakeholders from these tight rental markets, including New York City, have offered thoughtful comments and recommendations on the application of SAFMR in these markets. We strongly urge HUD to carefully consider and address these comments.

Even in markets where SAFMR are more likely to be effective, the small nature of SAFMR may not offer an accurate reflection of the market in all zip codes. Zip codes vary greatly in size, housing stock and population density and rental markets can change rapidly. SAFMRs that are skewed low may limit voucher holders access to amenities such as transit and high performing schools or result in economic hardship or displacement for existing residents. In order to ensure that the goals of resident choice and access to opportunity are met, we urge HUD to create clear guidance on a streamlined process for obtaining exception rents and to maximize the flexibility afforded both PHAs and HUD field offices in granting exception rents. We also encourage HUD to conduct regular monitoring of PHAs involved in the first round of SAFMR designations for declines in voucher utilization, increases in tenant displacement, or other indicators that the designations are decreasing access to affordable housing. Where broad negative impacts are seen, HUD should consider what relief should be available to the PHA.

We also note that the recently passed Housing Opportunity through Modernization Act of 2016 includes some provisions that will impact the implementation of SAFMR, including Section 107(b) which amends Section 8(o)(1) of the United States Housing Act of 1937 to provide that PHAs shall not be required to reduce payments standards for existing tenants where the payment standard declines due to a change in SAFMR and Section 112, which changes the

calculation of rent/assistance where vouchers are used for manufactured housing. We strongly encourage HUD to reflect the changes and flexibilities under HOTMA in the final SAFMR rule. Finally, we urge HUD to acknowledge the PHAs' increased administrative burden in the initial implementation of SAFMR with respect to both HUD's Office of Public and Indian Housing (PIH) staff and PHAs; and to request an increase in funding that would allow for additional HUD staff training and resources as well as a special addition to the administrative fee for these PHAs.

**1. *Project Based Vouchers (PBVs)*: Should HUD allow PBVs that are either currently in the pipeline or PBVs proposed shortly after the SAFMR designation, to continue using metropolitan FMRs?**

As noted in our comments to the Advanced Notice of Proposed Rulemaking (ANPR), to the extent that HUD decides to apply SAFMR to PBVs, LISC strongly encourages HUD to apply SAFMR to only new PBV contracts. PBV contracts already executed, as well as those in the pipeline, should continue to use the metropolitan wide FMR unless the owner opts into SAFMR. Existing PBV projects have been underwritten based on current standards for setting and adjusting rents. A shift to a new rent setting mechanism may benefit some projects, but others may experience rent reductions that would leave the project unable to support the financing that was sized based on existing rent setting formulas. For these reasons, we ask that HUD clarify that SAFMR will not apply to renewals of existing PBV. These renewals were often contemplated at the time a deal was structured.

Similarly, projects in the pipeline typically involve multiple financing sources and significant underwriting and preliminary approvals that are often conditioned upon the award of PBV, even before the final notice of selection is awarded. To avoid disruption and the significant expense of reprocessing these transactions under a new rent setting framework, the initial effective date for the application of SAFMR to PBV contracts for which a notice of selection has not yet been issued should be twelve months after the SAFMR designation. This time frame will allow flexibility to complete the transactions in the pipeline.

HUD proposes to permit the application of SAFMR to existing PBV contracts upon mutual agreement of the PHA and the owner. For owners of projects with existing PBV contracts or projects in the pipeline, mutuality of consent is not assured. PHAs will have an incentive to encourage owners to apply SAFMR in zip codes where the payment standard will decrease in order to manage their own budget needs. Given owners' reliance on the PHA not only for continued PBV assistance, but also for other consents needed under the PBV contract and for awards and consents related to other contracts, owners may feel compelled to consent to the application of the SAFMR where it is not in the best financial interest of the PBV project in order to maintain a better working relationship. To mitigate this risk while making

SAFMR available where it will enhance access to opportunity or otherwise support quality affordable housing, we encourage HUD to permit the application of SAFMR to existing contracts only upon the owner's request. To further facilitate housing in areas of higher opportunity, HUD should permit the PHA and owner to apply SAFMR to new contracts and contracts in the pipeline at the owner's request during the 12 month phase-in period described above so that SAFMR may be leveraged for underwriting and transaction structuring.

HUD has proposed amendments to the rent redetermination (24 CFR 983.502) and reasonable rent (24 CFR 983.503) regulations to create a higher threshold for when a rent redetermination is required in markets where SAFMR are implemented. In order to clarify the threshold applicable to existing PBV projects in SAFMR markets and to avoid confusion about when a rent redetermination will be triggered, we recommend that HUD add the underlined clarifying language to the proposed changes to both 24 CFR 982. 502 (a)(2) and 983.503(b)(1): "unless the Small Area FMRs under 24 CFR 883.113(c)(3) are applicable to the PHA and the project."

We note that Section 8(o)(13)(I) permits owners and PHAs to agree that the maximum rent under the PBV contract for future rent adjustments will not be less than the initial rent. Where implemented, this provision will facilitate access to opportunity by supporting improved underwriting for PBV projects. We encourage HUD to acknowledge in the final SAFMR regulations that should the parties include a provision in the PBV contract that the maximum rent under the PBV contract for future rent adjustments will not be less than the initial rent, this provision will apply notwithstanding the SAFMR requirements.

While in some communities SAFMR will facilitate the construction or preservation of affordable housing in higher opportunity communities using PBV, in other areas, the SAFMR payment standard may fall short of what is needed to support the financing and operation of quality affordable housing. Housing assisted with PBVs and other federal housing funds is often subject to higher construction standards and more robust monitoring making it higher quality, but more costly housing than other modest rental properties reflected in the SAFMR calculation. PBV-assisted projects, including some Rental Assistance Demonstration (RAD) projects, may also be critical elements of neighborhood revitalization strategies. In these instances rents in other parts of the zip code may not reflect the cost or comparable market rent of the PBV units in the revitalization area. In applying SAFMR to PBV transactions, HUD should provide PHAs with maximum flexibility permitted under the statute to create exception rents capped by market comparables so that PBV can remain a tool to support development and operation of high quality affordable housing.

**2. *Codify SAFMR area selection parameters: Should the SAFMR area selection parameters be codified in regulatory text or be incorporated into each annual proposed FMR notice?***

SAFMR area selection criteria should be codified in regulation, but should include limited flexibility in the specific parameters for each criteria (e.g. percentages, populations) so that HUD may make adjustments in future rounds of SAFMR designations without a formal rule making. PHAs and owners will be better able to implement SAFMR and make informed decisions about program participation if they are confident of the criteria.

**3. *Significant decreases in FMRs & tenant protections: What additional policies or requirements would mitigate the impact of significant decreases in the FMRs for families currently under HAP contract?***

**4. *Should HUD limit declines in FMRs for a zip code resulting in SAFMR***

Phase-In

HUD should protect existing tenants by phasing in SAFMR where they would result in sharp declines in the payment standard relative to metropolitan FMRS. As the Center for Budget and Policy Priorities (CBPP) notes in its comments, there are more than 450 zip codes for which the 2016 SAFMR was at least \$400 lower than the metropolitan wide FMR. If the PHA maintains the payment standard at 100% of FMR and the unit owner does not lower the rent, a family renting a unit at the payment standard would have to pay the difference between the lowered payment standard and the unit rent which could be hundreds of dollars per month. This is a significant burden for families already paying 30% of their income towards rent.

We share the concerns expressed by CBPP, the Preservation Working Group and others that increases in rent burdens could lead to displacement or significant financial hardship for families in zip codes where SAFMR are lower than metropolitan FMRS. To the extent that HUD does not require PHAs to hold existing tenants harmless, HUD should provide minimum tenant protections by requiring PHAs to phase in any reductions in payment standards that result from the application of SAFMR at a rate not exceeding ten percent of the metropolitan wide FMR per year. This is consistent with tenant protections and rent increase phase-ins used in HUD multifamily programs and should allow the tenants a longer period of time to address the increased cost of remaining in their unit while still allowing PHAs to move payment standards towards targeted levels. Given that rents under this phase in will not exceed the payment standard created using the metropolitan FMR, which will still be calculated for other purposes, the phase in of SAFMR is consistent with the statute.

We further note that Section 107 of HOTMA amends Section 8(o)(1) of the U.S. Housing Act to provide that no PHA shall be required to reduce the payment standard applicable to an existing voucher holder due to a reduction in the FMR. To allow PHAs the further flexibility provided under HOTMA, the SAFMR final rule should in addition to requiring a phase in as described above also include the PHA's new statutory discretion to apply an exception standard and include a streamlined process for HUD approval of these exception rents.

#### Tenant Notice and Briefings

The process by which SAFMR will be implemented and may drive reductions in payment standards and increases in housing costs is technical and may unfold over several years. Even with a phase in of decreased payment standards driven by SAFMR, some residents will face rent increases that will influence their housing choices. To inform the tenants and equip them to make the best housing choices for their households, HUD should work with PHAs to provide briefings and resources for tenants and landlords.

PHAs and the local HUD office should organize tenant briefings for all zip codes where payment standards will decrease. Ideally these briefings will cover a small group of zip codes experiencing the same or similar changes in payment standard and will be held at multiple points during the implementation of SAFMR and offered at times and in locations that maximize participation. This will give tenants an opportunity to more clearly understand how these changes may impact them and to learn about resources and protections.

When the payment standard for their unit decreases at the next recertification, HUD should ensure that the PHA provides sufficient notice and resources for tenants. Under current policy, tenants are notified of the changing payment standard at the time of recertification. When this notice is provided twelve months in advance of a potential rent increase, tenants can be confused or even forget there is a pending increase. To provide additional timely notice, HUD should require PHAs to include information about the change in payment standard in the notice of recertification and require that it be sent to tenants before the recertification at which the new payment standard is expected to apply to the tenant. Further, HUD should permit PHAs to use federal funding to provide support including relocation counseling and moving assistance to those tenants that experience an increase in their portion of rent due to a decrease in the payment standard decreasing. HUD should permit an increase in administrative fees to cover these expenses and should request a corresponding increase in appropriations for the voucher account.

6. ***Reducing the administrative burden on PHAs:*** HUD is proposing to change the percentage decrease in FMRs that triggers rent reasonableness redetermination to 10 percent for SAFMR PHAs. Is 10 percent the right trigger for program-wide rent reasonableness redetermination? Are there other changes that would reduce the burden for PHAs?

The SAFMR program and other recent programmatic changes have increased the administrative burden on PHAs. Increasing the threshold at which an FMR decline triggers a rent reasonableness redetermination to 10% across all programs is an opportunity to reduce the PHA's administrative burden. HUD could further reduce the PHA's administrative burden by providing clearer guidance on the rent reasonableness.

7. ***Expanding the use of SAFMRs within the HCV program:*** Would other HUD rental assistance programs benefit from using SAFMRs in their operations? Ex: HOPWA?

Given that a robust evaluation of SAFMR has not yet been completed and that HUD has not had the opportunity to review the additional considerations that may apply to other rental assistance programs, we urge HUD to postpone application of SAFMR to other programs until further evaluation has been completed.

8. ***Exempting certain populations:*** Are there certain situations or specific groups of voucher recipients where an alternate policy should apply that should exempt them from having their voucher level change as a result of SAFMRs due to specific hardships they may encounter?
9. ***Are there specific groups of voucher holders that would find this policy particularly burdensome?***

As noted above, the transition to SAFMR may be confusing for many voucher households. The application of SAFMR and the potential resulting decreases in payment standards may prove particularly challenging for elderly or disabled households, many of whom live on fixed incomes that would make any rent increase burdensome. These households may also have physical or other challenges to exploring housing options in other zip codes and may have special needs in their housing. While there may be particular burdens for the elderly and disabled, families with children will face many of the same challenges and will have their own unique challenges and potential for hardship as they too must consider not only the type of housing available, but also schools and child care available. Rather than creating additional exemptions, HUD should implement SAFMRs with flexibilities that allow PHAs to address voucher holder needs on an individual basis.

HUD has rightly acknowledged that an exception payment standard should be provided for any disabled voucher households that require one as a reasonable accommodation. HUD should provide guidance that acknowledges that the application of SAFMR may cause hardship for some households and encourage PHAs to utilize their statutory authority under HOTMA to apply an exception standard and not reduce rents as a result of a decline in the FMR where particular hardship will occur.

HUD should require that the additional notices and briefings discussed above include discussion of the PHA's flexibility and how it can be applied to address tenant hardships. HUD should also issue guidance streamlining the approval of exception rents for these purposes.

**10. *Criteria for determining metropolitan areas:* Did HUD use the correct criteria in determining which metropolitan areas should be impacted by the shift to a SAFMR? What other criteria should HUD be using to select metropolitan areas and why are those criteria important?**

HUD has identified three criteria for selecting SAFMR markets: number of vouchers, voucher concentration in low-income areas and availability of units with high SAFMR relative to the metro FMR. We appreciate the thoughtful approach HUD has taken to identifying these criteria, but note that the preliminary list of SAFMRs includes a number of high-cost, low-vacancy rental markets where implementation of SAFMR may be challenging. In these tight markets the potential benefit of their implementation may be limited by the number of available units and SAMFR rents that are still insufficient to access new neighborhoods. At the same time, declining SAFMR in some areas of these markets could increase tenant rent burdens since low vacancies leave existing tenant with few options. To better achieve its goals of improved access to opportunity, we encourage HUD to adopt the changes suggested by the CBPP in its comments, including considering absolute voucher concentration in addition to relative concentration, easing the requirement for units with high-SAFMR zip codes and excluding low vacancy markets. Further, HUD should not apply SAFMR in markets where metropolitan vacancy rates are five percent (5%) or lower.

**11. *Applying SAFMRs for manufactured home space:* Should current voucher holders using their voucher for a manufactured home space be exempt from SAFMRS at their current address?**

Given the significant cost and difficulty of moving a manufactured home, existing voucher holders using their voucher for lot rent for a manufactured home they own should be exempted from SAFMRs where the SAFMR would result in a reduced payment standard.



Voucher holders in zip codes where the payment standard will increase under SAFMR should be permitted to benefit from the increased payment standard. Access to the increased payment standard may be particularly helpful following the implementation of Section 112 of HOTMA which includes the amortized cost of purchasing the manufactured housing, insurance and property taxes in the calculation of rent. This more equitable calculation of assistance will acknowledge the true cost of manufactured housing, which may be higher than previously understood. Families that wish to move their manufactured home to a new areas using SAFMR should also be permitted to do so.

***12. Amending the Exception Payment Standard rules: Are there other amendments HUD should make to the Exception Payment Standard Regulation to better facilitate the approval process of Exception Payment Standards.***

We appreciate that HUD has clarified in the proposed rule that where SAFMR are applied, the FMR area will be the zip code. As written in the Notice, the small size of zip codes may in some cases make existing exception payment standard regulations impractical, particularly in instances where an exception payment standard may be needed for a full zip code area or for an area that overlaps multiple zip codes. In cases where rents are rapidly rising or the SAFMRs are generally unrepresentative of the housing market in the exception area, it is possible that a majority of units would require exception rents. In these cases, the population limit established in 24 CFR 982.503(c)(5) may preclude the needed exception. Further, in such full zip code exception areas, neither the median rent nor the 40th percentile/SAFMR method will necessarily yield an increased payment standard. We encourage HUD to eliminate the population limit for exception rent areas in general and to more clearly address the calculation of exception rents in SAFMR areas.

Clear guidance and an expedited path for the approval of exception rents is critical for the success of SAFMR in all markets. Exception rents will allow PHAs to address resident hardships and to address changes in the local market driven by gentrification or other market forces. We urge HUD to create a single, standardized process for approval of exception rents, rather than separate thresholds for local office or HUD headquarters approval. HUD should also clarify that exception rents may exceed 150% of SAFMR. Such exceptions may be necessary in high costs markets where gentrification pressures are significant.

We applaud HUD's efforts to implement SAFMR in a way that will most effectively offer residents choices and opportunities using limited government funds. We encourage HUD to provide PHAs flexibility and create streamlined procedures for exception rents that can be

applied where needed to provide mobility to better neighborhoods, protect tenants and support preservation of existing housing.

We thank you for this opportunity to provide comments. If you have any questions please contact Andrea Ponsor, Policy Director, at [aponсор@lisc.org](mailto:aponсор@lisc.org).

Sincerely,

A handwritten signature in cursive script, appearing to read "Matt Josephs", written in dark ink.

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Matt Josephs  
Senior Vice President, Policy