



## NATIONAL LOW INCOME HOUSING COALITION

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Regulations Division

Office of General Counsel

Rules Docket Clerk

Department of Housing and Urban Development

451 7<sup>th</sup> Street SW

Room 10276

Washington, DC 20410-0500

Via regulations.gov

Re: 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 50<sup>th</sup> Percentile FMRs; Advanced Notice of Proposed Rulemaking.

I submit these comments on behalf of the National Low Income Housing Coalition (NLIHC), an organization whose members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on what is in the best interests of people who receive and those who are in need of federal housing assistance, especially extremely low income people.

NLIHC commends HUD for its intent to move forward with Small Area FMRs (SAFMRs). NLIHC has advocated for smaller Fair Market Rent (FMR) areas for some time and therefore supports HUD's intention to amend the FMR regulations to replace the 50<sup>th</sup> percentile program with SAFMRs in certain metropolitan areas as a means of reducing the concentration of Housing Choice Voucher (HCV) residents in some neighborhoods.

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SAFMRs should reduce the incidence of above-market rents in the HCV program. As HUD states in the *Federal Register* notice, the use of metropolitan-wide 40<sup>th</sup> and 50<sup>th</sup> percentile FMRs primarily benefit landlords in low-rent submarkets by enabling them to collect subsidized rents greater than market rents. These unwarranted, high, subsidized rents also can cause rents to be inflated for non-subsidized rental units in the FMR area, contributing to overall rental housing inaffordability.

At the same time, SAFMRs should also allow recipients to match market rents in order to access homes in a wider variety of neighborhoods than is currently possible. In addition, SAFMRs can reduce the cost of enforcing rent reasonableness. Under the current FMR system, in the lowest rent, lowest opportunity neighborhoods, nearly all of the rents qualify for HCVs, while in high opportunity communities rents are well out of reach. Implementing a system of SAFMRs should result in a more effective and efficient HCV program that provides recipients with the range of housing choices and opportunities the program has long promised. SAFMRs will also help facilitate the goals of affirmatively furthering fair housing.

Fair housing considerations are important to the success of a SAFMR program; merely offering a tenant a voucher able to meet higher market rate rents in areas of higher opportunity does not mean a tenant can successfully utilize the voucher. Discriminatory behaviors by landlords can still prevent voucher households from moving to higher-opportunity communities. NLIHC urges HUD to consider means of helping to lower the barriers to voucher utilization in higher-opportunity areas, such as:

- Include successful leasing in higher-opportunity areas as a factor in a PHA's SEMAP score.
- Adjust the administration fee formula for SAFMR PHAs that institute or augment opportunity counseling.
- As with the Success Rate Payment Standard, voucher households in areas with SAFMRs should have an automatic 90-day extension of the search period.

Reiterating NLIHC's very strong support for the use of SAFMRs, NLIHC offers the following responses to the questions posed in the Advance Notice of Proposed Rulemaking.

**1. Measurement of undue voucher concentration: What poverty rate and concentration level should be used to determine the criteria for selecting SAFMR areas?**

To guide HUD in selecting areas that will be required to use SAFMRs, NLIHC endorses measuring whether vouchers are concentrated in high-poverty areas. Because research HUD cites in the *Federal Register* notice indicates that a 20% poverty rate is the tipping point for negative outcomes for residents, it makes sense that HUD use that threshold.

As HUD notes, simply measuring the share of voucher holders in areas with poverty rates above a 20% threshold may be inadequate because this share will tend to be higher in metro areas with generally high poverty rates.

HUD asks whether SAFMRs should be targeted to areas where the concentration of voucher holders in high-poverty tracts, however defined, is generally greater than the concentration of rental units. If expressed in terms of census tracts as HUD's question is framed, NLIHC is concerned that census tracts and ZIP codes that have prevented the development of multifamily housing would not be factored into HUD's decision to include a metro area for the SAFMR program. Perhaps HUD should consider a protocol that looks at the concentration of voucher holders in high-poverty tracts (20% of poverty and above) that is greater by some factor (150%? 200%?) than the concentration of rental units in the *metro* area.

**2. SAFMR effectiveness: What percentage of an area's rental stock should be above and below the FMR? What is the appropriate "sufficient" threshold proportion of units in ZIP codes with rents substantially different from metro-wide FMRs?**

NLIHC agrees that in addition to consideration of areas of high poverty with the most intensive concentration of vouchers, it makes sense to select areas for required participation to be those with a substantial number of units in neighborhoods where SAFMRs are significantly above or below the 40<sup>th</sup> percentile FMR. NLIHC, however, does not have adequate data to assess what the "sufficient" thresholds should be.

**3. Program scale: In terms of number or percentage of metro areas vouchers, what should be the size of the SAFMR program? Would SAFMRs of similar size (in terms of the number of vouchers used) to the current maximum-ever 50<sup>th</sup> percentile FMR (350,000 vouchers, 300 PHAs) be appropriate?**

NLIHC would prefer to see the concept of SAFMRs applied universally. However, we recognize that HUD would prefer to keep the SAFMR program limited while it is still in a beginning period. If the SAFMR program is to be limited, NLIHC recommends required participation in the SAFMR program for any area that meets the criteria HUD establishes related to the issues in questions #1 and #2 above. In other words, limiting the SAFMR program to fixed numbers such as 175,000 or 350,000 vouchers would be an arbitrary limitation, but limiting its scope by areas that meet criteria established following questions #1 and #2 might make more sense.

**4. PHA or metro-wide: Should SAFMRs apply to all PHAs in a metro area or only to PHAs that display a pattern of HCV tenant concentration in high-poverty census tracts?**

HUD's *Federal Register* notice indicates that the primary purpose of SAFMRs is to provide voucher tenants with access to better housing and better neighborhoods and to reduce poverty concentration. NLIHC agrees that the goal of SAFMRs is to facilitate voucher holder access to higher-opportunity areas where rents are higher. Therefore, SAFMRs should apply to all PHAs in a metro area. To exclude some PHAs in a metro area might result in excluding the very communities the SAFMR program seeks to open up.

**5. Voluntary participation: Should PHAs be allowed to use SAFMRs even if the PHA or the underlying metro area would not qualify for the use of SAFMRs?**

NLIHC endorses voluntary use of SAFMRs by any PHA that chooses to use them. Voluntary use of SAFMRs would be one way in which a PHA not required to use SAFMRs can demonstrate an activity to affirmatively further fair housing.

**6. PBV use of SAFMRs: Should SAFMRs be applied to PBVs at least for future PBV projects?**

NLIHC definitely supports the application of SAFMRs to all future PBV projects in order to potentially increase the number of PBV units in areas of higher opportunity. HUD should also consider applying SAFMRs for existing PBV units upon renewal of 15-year HAP contracts. However, such use should not automatically apply; HUD must assess whether introducing SAFMRs to existing PBV units upon HAP contract renewal would discourage owners from renewing their HAP contract.

**7. Success Rate Payment Standards: In addition to using SAFMRs as a tool to alleviate concentrations of voucher tenants in high-poverty areas, should SAFMRs also be used in areas that qualify for success rate payment standards?**

NLIHC suggests that HUD continue to use the 50<sup>th</sup> percentile for PHAs that are not in the SAFMR program that HUD has approved to use the Success Rate Payment Standard. For areas required to use SAFMRs, the Success Rate Payment Standard should be set at the 50<sup>th</sup> percentile of the SAFMR.

**Additional Comments**

**Exemptions, Phase-In, and Assessment of Market Pressures**

As enthusiastically supportive of implementing SAFMRs throughout the voucher program as NLIHC is, we are equally concerned about destabilizing the housing of existing voucher holders. Thankfully, HUD's current rule allows postponement of rent increases for voucher holders who remain in place until a one- to two-year hold harmless period has expired if a payment standard reduction results in a rent increase. However, for families who remain in the same apartment beyond the hold-harmless period, destabilizing rent increases could result in the loss of affordable housing for the nation's lowest income households.

To protect existing voucher holders, NLIHC recommends that HUD categorically exempt tenants from any reduction in the tenant payment standard for as long as the household remains in their existing unit if they have a Housing Assistance Payment contract on the date the SAFMR structure is implemented.

Further, in order to prevent or minimize landlords from exiting the voucher program due to a sharp drop in payment standards and subsequent rents in the wake of a change to SAFMRs, NLIHC recommends HUD set SAFMRs no lower than 90% of metro FMR in the first year, no lower than 80% in second year, and so on. This will give housing markets, landlords, and PHAs time to adjust to the new normal.

Of course, for families in areas with SAFMRs who wish to move with their existing voucher, they must be allowed to take advantage of the expanded opportunities provided by the SAFMR.

Before requiring an area to use SAMFRs, HUD should also assess whether gentrifying market pressures exist. If SAFMRs are imposed on such areas, existing tenants could be displaced as landlords exit the voucher program knowing that a tight rental market will enable landlords to replace voucher households with eager renters who do not need rental assistance.

While taking years to fully phase in such a laudable policy is frustrating, the concentration of voucher holders in high-poverty, low-opportunity zip codes has taken place over 40 years of investment; improvement of current policies in ways that truly increase choice and opportunity will take needed time.

Again, NLIHC applauds HUD's intent to move forward with SAFMRs.

Sincerely,

A handwritten signature in cursive script, reading "Sheila Crowley". The signature is written in black ink and is positioned to the left of a vertical line that extends downwards from the end of the signature.

Sheila Crowley  
President and CEO