Housing Partnership Network

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Regulations Division
Office of General Counsel
Department of Housing and Urban Development
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Room 10276
Washington, DC 20410-0001

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Housing Partnership Network (HPN) appreciates the opportunity to comment on the Proposed Rule establishing a more effective Fair Market Rent System for Housing Choice Vouchers.

HPN is a member-driven organization comprised of nearly 100 entrepreneurial, high capacity nonprofits that operate all across the country. The members are diversified social enterprises combining a mission focus with business acumen. HPN members' businesses include multifamily development, lending, property management, and housing counseling. All of our members work to link their communities to services – education, workforce development, and health care. Collectively, HPN members have developed or rehabilitated more than 350,000 affordable homes, and assisted 9.8 million people through housing, community facilities, and services.

HPN is best described as a business collaborative. The members' senior leadership comes together with their peers to exchange information, solve problems, and share best practices. Their collaborations have spawned member-owned businesses that improve member operations and advance innovations in the practice of affordable housing and community development. For example, when insurance costs spiked after 9/11, members launched a captive property and casualty insurance company that today insures more than 60,000 homes with a total value of $7.5 billion. Other businesses that have emerged from these collaborations include a group buying service, a new web-based approach to homebuyer education, and a multifamily real estate investment trust.

HPN's members develop and manage multifamily housing in revitalizing communities and in high opportunity neighborhoods and they often have residents with Housing Choice Vouchers. The Housing Choice Voucher program is intended to mitigate the intergenerational transmission of poverty by helping voucher holders and their children access opportunity. Moving to Small Area Fair Market Rents (SAFMRs) has great potential to allow voucher holders access to more affluent communities, thus helping the HCV program achieve the promise of choice and opportunity for families that has always been part of its design. It is important to remember also, though, that the idea of choice also includes the decision to stay. Care should be taken with the final rule to ensure that families who would like to stay in their homes are able to do so.

We applaud HUD for considering the many comments it received on the Advanced Notice of Proposed Rulemaking that was issued last summer. There are many improvements we saw in the proposed rule that indicates thoughtful consideration of issues raised by the commenters. There still may be unintended consequences that arise in the move to the new system, however, and it is important to guard tenants against reduction in their housing choices. The behavior of landlords and tenants may confound the system that HUD and the PHAs are trying to institute, and thus the new system needs to be flexible to adapt so that families don't lose their housing.

Selection of SAFMR areas:
HUD's proposal uses three selection factors: the number of vouchers in the area, the voucher concentration in low-income areas, and the availability of units that would benefit from the higher SAFMRs in the area. These factors logically suggest which areas would benefit from a change to SAFMRs, but the list of cities that met the criteria suggest that HUD should adjust the criteria somewhat to ensure that the move to SAFMRs works to increase housing choice everywhere it is imposed. If rental markets are tight, landlords may not be willing to rent to voucher holders, even with higher SAFMRs. We don't know the impact of SAFMRs on landlord behavior so it makes sense to implement the program first in softer real estate markets where landlords seem to have more incentive to rent to voucher holders. If HUD added a criteria of a minimum vacancy rate (such as 5%) for the metro areas selected for the move to SAFMRs, this change for voucher policy would be more likely to succeed. Over time, with more practical experience with SAFMRs, HUD could expand the program into markets with low vacancy rates with more confidence.

Applicability to Project-based Vouchers:
We appreciate that the proposed rule does acknowledge some real differences between the Housing Choice Voucher program and Project-based Vouchers. There are some very significant differences between HCVs and PBVs. With HCVs, the tenant finds a unit and thus HCV administrators have more limited authority to select the landlords they work with. PBVs are allocated to landlords and voucher administrators can choose mission-driven nonprofits as a preferred delivery system.

HUD's statement in the proposed rule that only apply SAFMRs prospectively to PBV projects where the PHA notice of owner selection occurred after the area's designation as a SAFMR does not go far enough to protect this inventory. The process of financing affordable housing involves many different subsidy sources and PBVs are but one piece of an intricate puzzle. The effective date of prospective implementation of SAFMRs for new PBV contracts should be designed to exempt projects that have obtained financing commitments or have pending applications for Low-Income Housing Tax Credits or other competitive subsidies that relied on PBVs that were based on the metropolitan FMR, and would be jeopardized by switching to SAFMRs.

HUD's proposal to require that SAFMRs apply to allowable PBV rents whenever the notice of owner selection is issued after the effective date of the SAFMR designation is unlikely to provide adequate flexibility. Substantial planning and possible preliminary funding commitments will in many cases occur *before* a PHA makes a final decision to commit PBVs to a property. To avoid disrupting these transactions, in the initial transition to use of SAFMRs, the effective date for PBV rent determinations for projects should be one year after publication that the area is subject to SAFMRs, unless the PHA and the owner mutually agree to use SAFMRs.

Exception Payment Standards:

In the proposed rule, HUD asks whether there should be revisions to the Exception Payment Standard regulations. HUD should streamline and simplify the EPS regulations to make it easier for PHAs to increase payment standards in areas where voucher holders are blocked out of high opportunity areas. PHAs should be able to use census tract data when it is available to set EPS and should be not arbitrarily restricted to using EPS in less than half of an area. PHAs should be allowed to set an EPS up to 120% of FMR without HUD approval to streamline program administration and make it consistent with the EPS rule on reasonable accommodation.

Impact on families currently assisted:
One of the most troubling unanswered questions about this change in HUD policy is the impact on existing voucher holders renting units in neighborhoods where a move to SAFMRs will result in lower payment standards. It is far from clear that landlords will lower rents for existing tenants due to a change in HUD policy. It is more likely that the residents will pay additional rent in order to keep their housing and may become cost-burdened. HUD's notice states that it is considering delaying application of SAFMR-driven payment standard reductions for currently assisted families from the second annual recertification to the third, fourth, or fifth.

It would be simpler instead for HUD to affirmatively protect all current tenants by holding them harmless from increased rent burdens due to the move to SAFMRs. Current law, Section 107(b) of H.R. 3700, which the President signed into law on July 29, 2016, requires that when an FMR is reduced, PHAs are allowed to opt indefinitely not to reduce the payment standards of families using a voucher to remain in the same unit. This does not go far enough to protect tenants because PHAs can choose to not exercise this authority and shift the costs to the residents. HUD should establish a policy in the final notice that existing tenants that wish to remain in their current unit are held harmless.

Impact on specific populations:
Another place in the proposed rule that impacts residents is the proposal to continue to permit exception payment standards as reasonable accommodations for people with disabilities. As

suggested above, it seems reasonable that HUD should provide the same tenant protections to all demographic groups. It would be particularly problematic if the extended hold harmless or other tenant protections applied to the elderly and people with disabilities but not to other households.

Non-elderly, non-disabled families with children whose payment standards drop sharply would face serious risks. In many markets, it is more difficult for families with children to find housing than for those without children, posing risks of loss of HCV assistance. This could in turn lead to housing instability which has been linked to long-term adverse effects on children's health and development. In addition, if a payment standard reduction compelled a family with children to move, their children will often have to change schools; frequent school moves have been found to undermine academic achievement.

Data and Methodology:

The SAFMRs will not achieve their promise if HUD continues to use data on rents that is many years out of date. This is a longstanding complaint about FMRs that is not remedied in the proposed new system. Grafting a new system onto an old system that does not reflect current market data will not achieve HUD's goals of greater choice for voucher holders.

HUD sets FMRs (including those for metro areas and counties as well as SAFMRs) using American Community Survey data for three years earlier, because these are the most recent data available when HUD develops proposed FMRs. For example, 2016 FMRs were set using ACS data through 2013. HUD then adjusts this data using a mixture of regional data and national trend factors. This method will set FMRs too low in areas where rents are rising rapidly, since actual local rent inflation from 2014 to 2016 in those areas will exceed the national trend factor.

HUD should examine the use of other methodologies to set FMRs such as relying on the percentage change in MSA-wide rents published as part of HUD PD&R's quarterly *US Housing Market Conditions Regional Reports*. It would seem that using an MSA-specific trend factor like this would be more accurate than applying national trend factors to all areas.

Flexibility in Implementation:

HUD should set up a procedure whereby PHA that are seeing drops in voucher absorption and rent-burdened voucher holders can apply to HUD to go back to metro wide FMRs. HUD has acknowledged this concern in the proposed rule with the changes to exception payment standards and some limits in how fast rents can drop. It may happen in some markets that landlords in neighborhoods where rents are lowered decide to stop participating in the voucher program and landlords in higher rent neighborhoods continue to refuse to rent to voucher holders. This could particularly happen in areas that lack "source of income" legal protections. There are many unknowns with a change of this sort, and it makes sense to build some flexibility into the system to make sure that the policy is having the intended effect of increasing choice for residents.

Please feel free to contact me at Siglin@housingpartnership.net if you are interested in discussing these comments further. Thank you for your attention to HPN's views.

Sincerely,
Kristin Siglin
Senior Vice President, Policy