August 15, 2016

Regulations Division

Office of General Counsel

451 7th Street SW, Room 10276

Department of Housing and Urban Development

Washington, DC 20410-0500

*Submitted electronically through www.regulations.gov*

Re: Docket No. FR 5855-P-02: “Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs”

To the Regulations Division, Office of General Counsel, HUD:

The following comments are submitted on behalf of the Supportive Housing Network of New York (The Network) regarding the proposed rule published on June 16, 2016, “Establishing a More Effective Fair Market Rent System. The Network consists of over 200 member agencies that operate and build supportive housing and work to end homelessness in New York State.

The Network strongly supports HUD’s goal of expanding housing choice for voucher families. However, under the proposed rule, *current* voucher families risk eviction, subsidy termination, and even homelessness. Moreover, in high cost markets, including the entire New York City Metro area, Small Area Fair Market Rents (SAFMRs) cannot achieve its goal, because the lack of available and affordable units is endemic to those high cost areas. In these high cost, low vacancy markets, HUD’s requirement that the shift to SAFMRs be revenue neutral is an impossibility without imposing higher costs on voucher holders and/or lowering the number of people that can be helped.

We urge HUD to consider changes to the rule that would mitigate harm to participants including (1) hold current tenants harmless in the wake of SAFMR implementation, (2) allow an exception for public housing authorities (PHAs) in areas with low vacancy rates, (3) revise the methodology used to calculate fair market rents (FMRs) and SAFMRs to better reflect market rents and improve voucher choice. Finally the Network is also concerned about potential negative effects that the SAFMR will have on Project Based Vouchers. Our concerns are outlined in more detail below.

***To Minimize the Negative Impact on Existing Participants, HUD Should Hold All Current Voucher Tenants Harmless***

HUD’s goal in implementing SAFMRs is to establish a more effective means for HCV tenants to move into areas of high opportunity and lower poverty by replacing FMRs with zip-code level rent data, thereby raising the subsidy amount is some areas and lowering it in others. For tenants entering the voucher program, zip-code based rents may lead to greater housing choice and provide families with subsidies adequate to rent homes in neighborhoods with high-performing schools, public transportation, and other community resources. At the same time, it will provide disincentives for families to move to low-rent neighborhoods, reversing the current trend among voucher families.

While it may expand choices for new participants, the proposed rule fails to respect the choices made by existing voucher holders. They will face higher out of pocket expenses, unless they negotiate lower rents, which is historically rare in the NYC market. Under the SAFMR rule, voucher participants will be faced with a difficult decision: pay more or move.

The number of families that will be forced to make this decision must not be understated. For example, in New York City (NYC) it is estimated by two NYC Housing Authorities (NYCHA and HPD) that about 55,000 individual households will face increased housing costs. While that may be seen as an incentive to move to a high opportunity area, the available apartments in those areas do not exist. NYCHA estimates that only 400 families could find affordable housing in those higher cost areas.

In Westchester County, a high opportunity area, Briarcliff, has SAFMRs that are $780/month higher that the low FMR rate in Yonkers. However Yonkers has about 15 times more apartments available (180 units vs. 2,650). The lack of apartment choices means that there cannot be a mass migration to high rent areas, where PHAs have to pay higher FMRs. Current Yonkers tenants will not realistically have to offset the higher rent, so holding them harmless will not create additional significant burdens on the PHA budget.

The only way to avoid these negative consequences is to require PHAs to hold all tenants harmless under the final SAFMR rule. In all of its policies, HUD should promote housing stability and security.

H.R. 3700 gives PHAs the discretion to not apply rent increases as a result of a decrease in the FMR, but this solution simply does not go far enough. The benefit to tenants of H.R. 3700 relies on PHA action and most, if not all, PHAs may decide to shift the cost of implementing SAFMRs to existing voucher tenants. Families will suffer as a result. HUD regulations should give tenants the right to remain in place at their current rent level.

***HUD Should Implement a Vacancy Rate Exception***

SAFMRs rely on the fact that there is adequate housing available for voucher families in high opportunity areas. The incentive to move near high performing schools, jobs, and transportation is meaningless if there is an insufficient supply of housing. For this reason, the final rule should exempt PHAs that lie within areas that have low vacancy rates from mandatory implementation of SAFMRs. In its final rule, HUD should not ignore market conditions that directly affect the rates at which tenants are able to find new housing.

We suggest that HUD adopt the following policies regarding vacancy rates: (1) allow PHAs with low vacancy rates to opt-out of SAFMRs, even if they meet HUD’s criteria and (2) require PHAs with low vacancy rates that choose to adopt SAFMRs to hold current tenants harmless. HUD should define low vacancy rate as an area with a vacancy rate of 5% or below. NYC’s rate is approximately 3.5% Vacancy rates below 5% are considered to be emergency levels.

***HUD Must Revise the Methodology Used to Calculate FMRs and SAFMRs***

The current FMR formula is far from perfect, often lagging behind the market. A shocking example occurred on Long Island when rents were *lowered* after Hurricane Sandy. That lag continues to be a factor in the SAFMRs. The NYCHA/HPD analysis of the SAFMRs in NYC indicates that the 260 zip codes do not delineate any logical neighborhood and rental geographies. In a high cost/low vacancy market, several “low opportunity” rental markets heat up rapidly each year, and new voucher holders may find themselves priced out in those areas. While the proposed changes allow for different calculations of the SAFMR, using real time rental data should be an option for PHAs, although the difficulty of implementing this without additional funding for the PHA in a complex urban environment cannot be overstated.

***HUD Should Allow Metropolitan FMRs to Remain in Place for Existing, Renewal and New Project Based Vouchers***

The Network is grateful that existing project based supportive housing projects will be exempt from SAFMR changes that could have lowered payment standards in existing buildings. We remain concerned, however that pipeline projects and year fifteen refinancing projects may be hurt by a change to lower FMRs. Projects in high cost areas cannot sustain lowered operating budgets and maintain high quality settings. The costs for operating housing in the market will increase annually as utilities, materials replacement cost escalates. Private investors in these buildings will not want to invest in projects if the projected rental income trends downward because of this rule change. The result could slow development in the areas that need it the most.

The ability to develop new project based sites in “high opportunity areas” will not improve with higher SAFMRs because market conditions in those areas already place the acquisition of property to develop beyond the means of affordable housing developers. The increased capital costs make those neighborhoods too costly for projects to be considered feasible. The net result of this change will lower the amount of affordable and supportive housing that gets built.