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January 6, 2021

Office of General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 7th St. SW, Room 10276
Washington, DC 20410
Submitted electronically through www.regulations.gov

Re: Docket No. FR-6092-P-01, Housing Opportunity Through Modernization Act of 2016—Housing Choice Voucher (HCV) and Project Based Voucher Implementation; Additional Streamlining Changes

To Whom It May Concern:

The following comments are submitted on behalf of the Poverty & Race Research Action Council (PRRAC), the Lawyers Committee for Civil Rights Under Law, and the National Fair Housing Alliance, along with the Open Communities Alliance, Baltimore Regional Housing Partnership, Housing Choice Partners, Fair Share Housing Center, Inclusive Communities Project, and the Metropolitan Milwaukee Fair Housing Council.

We are writing specifically to comment on the "Payment Standards" provisions of the October 8, 2020 proposed rule, §§982.503 and 982.505, including responses to questions 7, 8, 9 , and 10; and one section of the proposed rules on project based vouchers.

Our experience working with advocates and with public housing agencies around the country has convinced us of the value of enhanced payment standards in expanding choice for families with Housing Choice Vouchers, and the need to ensure that payment standards are able to keep pace with local market conditions. These technical regulatory points also have obvious racial justice overtones, implicating HUD's duty to affirmatively further fair housing, as payment standards directly impact where low income families of color are allowed to move with their vouchers.

***Question 7:* Procedures for increasing payment standards above 110% of the FMR or Small Area FMR.**

PHAs need the flexibility to respond to increases in housing costs in higher opportunity communities, without the need to submit a rent study to HUD. The Small Area Fair Market Rent rule was a huge step forward, but current market conditions may not be fully reflected in the SAFMR, which involves a look-back at the last several years of rental data from the American Community Survey. Rent studies can take significant time to prepare, and many months to receive HUD approval, while families search in vain for affordable rentals in higher opportunity areas. <u>To support PHAs that are trying to expand housing opportunities for voucher families, we recommend permitting PHAs to increase payment standards as of right up to 120% of the</u>

SAFMR, but only for zip codes with SAFMRs that exceed the regional FMR. We do not expect this flexibility to be used frequently, as most PHAs are reluctant to increase payment standards above the basic range due to budget concerns, but this flexibility will be valuable for PHAs that are trying to expand geographic choice for their families. This flexibility will also be important to protect families' right to remain in gentrifying neighborhoods, where the current calculation method for SAMFRs is often inadequate to keep pace with rapidly increasing housing costs.

For increases in the payment standard above 120%, the current requirement of a census-based rent study using the median rent method is adequate to protect HUD's interests.

In addition to additional regulatory flexibility offered to PHAs, HUD can do more to encourage PHAs to increase payment standards where appropriate. For example, as part of these rules (or in a renewed AFFH rule), a PHA with significant disparities between voucher concentration in higher poverty neighborhoods and affordable unit distribution[1] could be *required* to increase payment standards in low poverty neighborhoods. Financial incentives could also be offered through the annual budget process or the administrative fee rules, but these incentives are beyond the scope of this letter.

Finally, we also believe that simply permitting PHAs to exercise greater payment standard flexibility is not sufficient to address the needs of families that are seeking to move to a lower poverty area. Just as families with disabilities have the right to demand higher payment standards as a reasonable accommodation, we believe that families seeking to move to a low poverty community should have the ability to petition the PHA for an enhanced payment standard (up to 120% of the SAFMR) when they have found a unit that they would not be otherwise able to rent.

Question 8: **Upper limit on exception payment standards?**

We believe that upper limits on exception payment standards are unnecessary. The experience of PHAs that have worked to adjust payment standards to address high cost markets and expand opportunity have shown the need for maximum PHA flexibility in seeking higher payment standards. For PHAs seeking exception payment standards above 120% of the SAFMR, there are at least two natural limitations on "excessive" rents – first, a rent study would be required to justify the higher standard, and second, a PHA would face budget concerns above a certain point (including potential reduction in the agency's administrative fee income). We see no need for HUD to impose additional restrictions unrelated to local market conditions.

Payment Standards Below the Basic Range, §982.503(e) and Payment Standard Reductions, §982.505(c)(3)

We strongly support the additional delays in payment standard decreases for families who remain in their current units, but these protections do not go far enough – families who remain in their current unit should be fully protected from payment standard decreases for as long as they remain in their current unit. This is currently an "option" for PHAs, not a guaranteed protection for voucher families, but there is no reason it should not be mandated for all PHAs.

[1] See, e.g., indices included in "Where Families With Children Use Housing Vouchers: A Comparative Look at the 50 Largest Metropolitan Areas" (CBPP-PRRAC, January 2019)

Similarly, if HUD is considering permitting all PHAs to use the SAFMRs to reduce payment standards in selected zip codes (§982.503(e)), it should only do so if families living in these zip codes are held harmless as long as they remain in their current unit.

Question 9: **Thresholds for HUD monitoring of HCV rent burdens**

We have no opinion as to the correct threshold to trigger HUD monitoring and intervention of rent burdens for families in the HCV program, but it is <u>crucial that this data be transparent and publicly available</u> so that advocates can seek increases in payment standards where HUD fails to do so.

Setting exception payment standards, §982.503(d)

One of the challenges we have seen in implementing exception payment standards using Small Area FMRs is the wide variation in rents and voucher concentration across some zip codes. Thus, the provision in the rule that "[t]he exception payment standard must apply to the entire ZIP code area" can have the effect of undermining the goals of the Small Area FMR rule. For example, if one side of a zip code includes higher rents and high performing schools, while the other side has lower rents and high voucher concentrations, a PHA may be reluctant to increase payment standards because of budgetary concerns. <u>Giving PHAs the flexibility to apply SAFMRs to a defined portion of a zip code</u> would make the SAFMR exception payment standard tool much more cost-effective as a vehicle to expand housing opportunities in low poverty areas.

Question 10: **Should HUD retain success rate payment standards?**

As noted in the preamble to the Small Area FMR rule, success rate payment standards have not been shown to be effective in addressing voucher concentration issues. However, they may be effective in improving success rates for HCV families searching for housing in tight rental markets. Keeping both of these objectives in mind, we would recommend restricting the use of success rate payment standards to metro areas with very low vacancy rates, and requiring other metro areas to take advantage of the flexibility afforded by the Small Area FMR rule.

Question 12: **Expansion of project based voucher cap in higher opportunity areas**

The proposed rule would implement the HOTMA provisions permitting higher percentages of project based vouchers (as a percentage of total HCVs) in "area[s] where vouchers are difficult to use" by defining such areas as "(i) A ZIP code area where the rental vacancy rate is less than 4 percent; or (ii) A ZIP code area where 90 percent of the Small Area FMR is more than 110 percent of the metropolitan area FMR." As to part (i) of this definition, we would recommend including a poverty threshold (such as 20%) to avoid increasing voucher concentrations in higher poverty neighborhoods. As to part (ii) of this definition, based on our initial review of data from two metro areas where we have been working (Cleveland and Buffalo), the SAFMR > 110% of FMR appears to be a good proxy for areas of opportunity, and we expect that this approach would also be appropriate in other regions with similar patterns of segregation and voucher concentration.

Thank you for the opportunity comment on these proposed rules.

Sincerely,

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