Docket Number: HUD-2016-0063

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

Comments of Community Service Society, The Legal Aid Society and the New York Housing Conference

endorsed by 47 organizations listed on page 14.

These comments have been prepared by Community Service Society, Legal Aid and the New York Housing Conference and they are endorsed by the organizations listed below. Collectively, we thank the United States Department of Housing and Urban Development (HUD) for the opportunity to comment on the proposed rule to use Small Area Fair Market Rents (SAFMR) for the Housing Choice Voucher program. HUD's stated purpose in the proposed Rule is to provide voucher holders with a more effective means to move into areas of higher opportunity and lower poverty areas. We commend HUD for taking steps to improve the Housing Choice Voucher program by seeking to achieve improved mobility for families and to deconcentrate poverty in low-income communities. We support HUD's goals of deconcentrating poverty and promoting greater mobility. We strongly believe that tenants who want to move into areas of higher opportunity should be given enhanced tools to do so. However, without a significant budget increase, we have some serious concerns that the rule as currently proposed will result in unfavorable outcomes for the Section 8 voucher holders in low-vacancy metropolitan areas like New York City and may not achieve the mobility objectives of the proposed rule. HUD's proposed rule as currently conceived would lead to 55,000 New York City voucher holders households to face rents that are higher than the maximum payment standard for their zip code. After providing background on the New York housing market and examining HUD methodology for criteria, we outline concerns and make recommendations to improve this proposal

Landscape of rental housing in NYC

New York City is a city of renters where approximately two-thirds of all New Yorkers rent their homes.[1] About one million or about half of all rental apartments are covered under New York's rent stabilization system.[2] As part of the rent stabilization system, New York, through the United States Census Bureau, completes a tri-annual survey of New York City's housing market. In the most recent report, the Housing and Vacancy Survey of 2014, determined New York City's vacancy rate was 3.45%,[3] by surveying rents and incomes from three months in 2014. Apartments are even harder to come by at the lower end of the market -- for units with rents of less than $800 the vacancy rate is just 1.8%, while the rate for units asking above $2,500 is 7.32%.

In addition to an extremely low-vacancy rate, New York renters also suffer from high rent burdens. Over 50 percent of renter households pay more than 30% of their income towards their rent and almost 30% of renter households pay more than 50% of their income toward their

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[1] Elyzabeth Gaumer, Dr. Sheree West, City of New York Department of Housing Preservation and Development, *New York City Housing and Vacancy Survey* (HVS), 1.

[2] Id. at 2

[3] Id. at 3.

rent.[4] New Yorkers find their rent growing faster than their incomes, and for households with incomes of twice the poverty rate, the median income to rent ratio is 49%.[5] A recent report by Controller Scott Stringer found that in the period of 2000-2012, New York City lost 400,000 apartments that rented for less than $1000.[6] Overall, from 2002 to 2011, there has been a 39% loss in rental apartments that low-income households can afford.[7] Meanwhile, in that time period, the population of homeless families and individuals has skyrocketed. Nearly 60,000 individuals were sleeping in New York City's homeless shelters as of May 2016.[8] As of March 31, 2016, there were 258,880 families on the waiting list for Conventional Public Housing and 147,033 families on the waiting list for Section 8 housing. That list has been closed since 2007.[9]

While our rental stock is growing through significant local investment in affordable housing ($41 billion over 10 years) and through market-rate new construction, so is our population. New York City is expected to add 800,000 residents by 2040. In New York City's hot real estate market, demand for rental apartments outpaces construction of new units and rising rents outpace income growth, squeezing renters in a very tight market with drastically lower mobility than other parts of the country.

New York City is in the midst of an affordable rental housing crisis which is exacerbated by its low vacancy rate, impacting communities across the five boroughs. New York City's high demand for housing, has resulted in unprecedented levels of capital investment in real estate causing rapid changes on the neighborhood level. Gentrification is increasing and spreading out from core Manhattan and causing severe hardship on the city's lowest income residents. New York University's Furman Center "State of New York City's Housing and Neighborhoods in 2015" report found that the vast majority of additional housing units were built in gentrifying neighborhoods.[10] While gentrifying neighbors have actually seen a steeper drop in crime than those labeled non gentrifying and high income, many existing low-income residents are forced out of neighborhoods they have long considered home due to rising rents and thus miss out on the positive benefits of neighborhood changes.

Recommendations – Overview

In the light of interrelationship between the lack of affordable housing and vacancy rate we see in New York and other major metropolitan areas, the key change we recommend is that HUD include in its methodology for selecting SAFMR areas a locality's vacancy rate and exempt all areas with vacancy rate below 5%. Second, we recommend that HUD's hypothetical

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[4] Id. at 7

[5] Victor Bach & Tom Waters, Community Service Society, *Making the Rent 2016: Tenant Conditions in New York City's Changing Neighborhoods*, May 2016 at 2.

[6] Scott M. Stringer, New York City Comptroller, *The Growing Gap: New York City's Housing Affordability Challenge*, 2014, 6.

[7] Coalition for the Homeless, *State of the Homeless 2014: Turning Point: Amidst Unprecedented Homelessness – A New Focus on Housing Can Turn the Tide*, 14.

[8] Coalition for the Homeless, *Fact about Homelessness*, http://www.coalitionforthehomeless.org/the-catastrophe-of-homelessness/facts-about-homelessness/ last accessed July 27, 2016

[9] New York City Housing Authority, "Facts about NYCHA," *available at* http://www1.nyc.gov/assets/nycha/downloads/pdf/factsheet.pdf. Data accessed July 27, 2016.

[10] Austensen, et al., NYU Furman Center. *State of New York City's Housing & Neighborhoods in 2015* Released May 9, 2016, at 7.

SAFMR be revised to reflect current market conditions in New York City's rapidly gentrifying neighborhoods which are no longer properly classified as low opportunity neighborhoods with significant decreased payment standards. Absent such revision, low-income tenants in these neighborhoods will have to move and thus forgo the increased opportunity that these neighborhoods have experienced due to increased investment and new amenities. Until such revision is made and there is a greater understanding of New York's current market conditions, we recommend that HUD delay implementation of the proposed rule. Third, we recommend that HUD hold harmless all current tenants. Our analysis shows that should the proposed rule be implemented in its current form, 55,606 households in New York City would see their payment standards decrease and would be left with a choice of paying significantly more than 30% of their income in rent or risking the loss of their voucher while trying to transfer to another more affordable apartment. Because of New York City's affordable housing crisis, there is nowhere for these displaced tenants to go. Fifty-two percent of impacted households are elderly, disabled or both, who will be especially affected by this new rule. There must be protections put into place to ensure that they do not face challenges in remaining housed. We also recommend project based vouchers be exempt from these new rules. Finally, we recommend that HUD delay implementation until a significant budget is available to accompany this proposal and also to allow more time to study a more effective approach to achieve stated goals in low-vacancy areas. Each of our recommendations are further discussed below after a discussion of market conditions essential to understanding the recommendations.

Background – Market Conditions

The federal register notice for the Small Area Fair Market Rent proposal describes the purpose of the SAFMR system as establishing "a more effective means for [Housing Choice Voucher] tenants to move into areas of higher opportunity and lower poverty," but in fact the system can be expected to work through two mechanisms – both a pull mechanism in which higher payment standards for apartments in zip codes with high rents brings those rents into reach for voucher holders and a push mechanism in which lower payment standard in zip codes with lower rents make it harder for voucher holders to obtain and retain apartments there.

Because areas with higher rents are expected to have lower poverty rates and better supports for economic opportunity, such as better schools and lower crime rates, the combined effect of these pull and push mechanisms is expected to benefit voucher holder households. But it remains important to understand that the design of the proposed policy creates burdens as well as benefits for voucher holders. And it is particularly important to note that the balance between the burdens and benefits is likely to be affected by the housing market conditions in particular cities.

The most troubling outcome of increased burdens on voucher holders is increased risk of being unable to find an apartment and having to return the voucher after the end of the maximum allowed search period (which varies by voucher-issuing agency). In 2001, a HUD-commissioned study found that the national success rate for voucher holders' efforts to lease an apartment was only 69 percent[above you use % and here you spell out - you could make consistent], while the rates in New York City and Los Angeles were only 57 percent and 47 percent respectively. The study also found that success rates were lower in cities with tighter housing markets. Currently

50% of voucher holders need longer than six months to lease an apartment and 25% of movers are losing their vouchers because of failed searches.[11]

Local housing market conditions can be expected to affect both the pull and the push mechanisms of the SAFMR system. In cities with tighter markets, landlords may be less willing to rent to voucher holders in higher-income zip codes despite higher payment standards, undermining the benefits of the SAFMR system. Just as important, in the same cities landlords may be less willing to accept the reduced rents voucher holders would be able to pay in lower-rent zip codes under the SAFMR system.

It is worth noting that Collinson and Ganong, in the paper which provides much of HUD's rationale for the SAFMR system, interpret their findings in light of a model focused on voucher holders' "trade-off between finding a unit at all and finding a unit in a high-quality neighborhood" (p.5). This would suggest that the benefits they observed, in which Dallas voucher holders tended to shift from low-income center city neighborhoods to middle-income peripheral ones after the SAFMR system was introduced, should be balanced by a decrease in voucher holders' success rate in using their vouchers at all. (Collinson and Ganong do not report any effect of the policy change on success rates. They also describe their main findings as consistent with this model and present additional suggestive evidence that voucher holders are making this tradeoff, but do not claim to demonstrate that the model itself is correct.)

It may well be that in loose-market cities like Dallas, a small decrease in voucher success rates may be justified by an increase in voucher holders' neighborhood quality, but that in tight-market cities like New York, the trade-off would not be worth it. Attention to cities' varying market conditions is thus called for in designing a SAFMR policy.

Market conditions in U.S. cities vary widely. New York is one of a group of tight-market metropolitan areas where the vacancy rate is low, growth in the rental stock is low, rents are high and rising fast, moves are infrequent, and rents are much higher for recent movers than for others. Other big metropolitan areas generally fitting this pattern are Boston, Los Angeles, and San Francisco. Dallas is at the other extreme, along with Atlanta and Houston.

[11] Conversation with Cathy Pennington, Executive Vice President, NYCHA

	New York	Boston	Los Angeles	Dallas	Atlanta	Houston	US Metro Areas
Renter share in central city, 2014	66%	64%	60%	51%	55%	46%	49%
Vacancy rate, 2014	5%	5%	4%	8%	10%	9%	8%
Growth of rental stock, 2006 to 2014	11%	11%	12%	25%	26%	28%	18%
Median gross rent, 2014	$1,280	$1,250	$1,310	$950	$980	$940	$970
Share of recently available apartments affordable to median renter, 2014	22%	26%	21%	50%	37%	48%	35%
Increase in real center city median gross rent, 2006 to 2014	15%	6%	9%	2%	2%	1%	5%
Share of renters who have moved in last year, 2014	15%	26%	20%	33%	33%	32%	29%
Excess of median rent for recent movers over other renters, 2014	20%	27%	17%	2%	4%	7%	4%

Source: Ellen and Karfinkel 2016, except share of renters who moved in last year CSS analysis of ACS 2010-2014 Five-Year Sample table from American Factfinder and excess of median rent for recent movers calculated by CSS from table in Ellen and Karfinkel 2016.

All of these variables suggest a much tighter market in New York, Boston, and Los Angeles – and one where it would be particularly difficult for voucher holders to find a new apartment in order to either take advantage of higher payment standards in high-rent zip codes or respond to a decrease in their zip code's payment standard below their current rent.

The share of renters who moved in the last year and the excess of rent for recent movers over other renters are particularly significant because they illustrate the depth of hardship involved in moving for low-income households in these cities. When such tenants move, they rarely find new apartments as affordable as the ones they leave behind. If decreased payment standards under a SAFMR system prompt them to move, they will have little chance of finding apartments in any low-rent zip codes, making them extremely vulnerable to any discrimination or other barrier to accessing apartments in higher-rent zip codes with higher payment standards.

Recommendation One: Add Vacancy Rate to SAFMR Methodology

The implementation of SAFMRs will be challenging in tight rental markets with low vacancy rates where renters in general find it difficult to move. If the purpose of the implementation of SAFMRs is to enhance tenants' opportunities to move, there must be enough apartments to move to. It is therefore essential that, among the criteria HUD uses for selecting SAFMR areas, vacancy rate should be included.

Additionally, one of the assumptions in lowering the SAFMR for current tenants is that in apartments that are over subsidized, landlords will follow the market and lower rents. However, landlords in tight markets feel little pressure to lower rents since tenants, with or without vouchers, will pay the asking rent so to avoid homelessness.

In New York City, the annual move rate for voucher tenants is two percent. The reason behind this is that in a rental market with few vacancies and little turnover, there is little or no mobility for renters in general and, no doubt, less for voucher holders. Low-vacancy rate cities, like New York City have high turn-back rates for voucher holders seeking apartments. Unfortunately because of these market conditions, shifting to the SAFMR approach would have no appreciable effect in improving the location or housing quality of voucher holders. In neighborhoods of opportunity where vacancies are scarce, voucher holders face strong competition from unvouchered renters. More likely, this proposal will have adverse effects on many households HUD hopes to help.

Because of New York City's low vacancy rate, in low-rent areas, existing voucher holders would face hardship rent burdens if they remained in their homes. Lowered payment standards could result in an increase in owner lease terminations upon expiration, placing households at greater risk of eviction, displacement, and homelessness. At the same time, alternative housing opportunities would shrink. In low-rent areas, lower payment standards would create owner disincentives to participate in Section 8. Opportunities in higher-rent areas will not expand significantly with increased FMRs?, due to the competition for scarce apartments and unwilling owners. As a result, there would be a cumulative loss of units available to voucher holders and even higher turn-back rates.

Recommendation Two: Revise HUD's hypothetical SAFMR to reflect current market conditions in New York City's rapidly gentrifying neighborhoods which are no longer properly classified as low opportunity neighborhoods

HUD's hypothetical SAFMRs get New York City's market wrong on a fundamental level, failing to reflect current market conditions in New York City's rapidly changing neighborhoods. There have been rapid shifts in New York City's housing market in the last 20 years. One of the most noteworthy is that formerly low-income neighborhoods have begun to gentrify. Gentrification has brought many changes into these neighborhoods including higher income residents, more investment, more amenities and decreases in the crime rate. However, because of the lag in data used by the American Community Survey or perhaps the algorithm used to determine neighborhoods of low opportunity, or because zip codes are not meaningful boundaries delineating differences in neighborhood rents in New York City, HUD's hypothetical SAFMRs fail to reflect the reality on the ground. NYU's Furman Center recently released a report which examined the state of New York City's housing market. In that report, they designated fifteen neighborhoods as gentrifying.[12] Of those neighborhoods, twelve would see the SAFMRs decrease significantly, including Central Harlem, Lower East Side, Bushwick, East Harlem, Washington Heights/Inwood, Mott Haven/Hunt's Point, South Crown Heights, Brownville/Ocean Hill, Morrisania/Belmont, Bedford Stuyvesant, Sunset Park, and Morningside Heights. It is striking that many of the gentrified neighborhoods have zip codes with significant decreased payment standards. Low-income tenants in these neighborhoods will have to move

[12] Austensen, et al, NYU Furman Center. *State of New York City's Housing & Neighborhoods in 2015* Released May 9, 2016, at 6.

and thus forgo the increased opportunity that these neighborhoods have experienced due to increased investment and new amenities.

For example, according to HUD's hypothetical, SAFMRs upper Manhattan zip codes, 10039, 10030, 10037, and 10027 encompass the area known as Harlem. Harlem was a historically mixed income, African-American neighborhood. However, in recent years, Harlem has experienced change and gentrification. A study, based on the HVS found that between 2002 and 2014 rents for recent movers increased a shocking 90%.[13] This neighborhood has seen a significant decline in low-income residents, a decrease in African American residents, an increase in college educated high-income residents and an increase in the population of white residents. With this gentrification has followed an increase in amenities and investment and a decrease in crime. This should be a neighborhood that HUD's SAFMRs would encourage low-income voucher holders of color to remain in to gain the benefits of the neighborhood's increasing opportunity. Instead, the SAFMRs for these four zip codes see a significant decrease ranging from a declining payment standard for a two bedroom of $495 a month for 10039 to a decrease of $231 for 10027.[14] Similar changes have come to the Lower East Side (10002) where a formerly low-income Hispanic neighborhood has become whiter and higher income. This change in the income mix and racial mix is not reflected in HUD's hypothetical SAFMRs which instead encourage low-income voucher holders to leave the neighborhood by decreasing the payment standard for two bedrooms by $407. Significantly, neither of these areas have an extreme concentration of voucher holders.

Other issues have been discovered with HUD's hypothetical SAFMRs. One neighborhood that would see a significant decrease in payment standards is Bensonhurst, zip code 11214. Bensonhurst is a low- to middle-income neighborhood in Brooklyn with good schools and low crime rates. It ranks eleventh and twelfth out of 59 for its community district for fourth grade students performing on math and English tests, respectively.[15] It ranks 53rd out of 59 in crime rates.[16] Yet the hypothetical SAFMRs would decrease the payment standard here by $242 a month. Indeed, the whole area of South Brooklyn contains neighborhoods designated by NYC as high-opportunity school districts. However, the hypothetical SAFMR incentivizes voucher tenant to leave these neighborhoods with good schools. Other areas in Brooklyn that are beginning to see the changes brought by gentrification would see decreases such as Williamsburg/Bushwick (11206) at $297 a month, Crown Heights (11213) at $264 a month, and Prospect Lefferts Gardens (11225) at $242 a month.

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[13] Thomas J. Waters, Community Service Society, *As Albany Debates Rent Regulation, CSS Analysis Shows Rapidly Rising Rents in Many Parts of City*, June 8, 2015, Slide 3

[14] The analysis comparing current FMR to HUD's hypothetical FMRs made the following assumptions. Currently NYCHA's payment standard for a two bedroom is $1650. HPD's is $1697. We used NYCHA's payment standard. Additionally we assumed that both agencies would set the small market payment standard at 110% of the SAFMR.

[15] Austensen, et al., NYU Furman Center. *State of New York City's Housing & Neighborhoods in 2015* Released May 9, 2016, at 98.

[16] Id.

<u>Recommendation Three: HUD Should Hold Harmless All Current Tenants To Avoid Significant, Adverse Impacts</u>

Below we outline four primary adverse impacts implementation of the proposed rule would have at this time: (a) adverse impact on HCV payment standards and rent burdens; (b) adverse impact on voucher holders; (c) adverse impact on rent stabilized stock; and (d) impact on PHA administration and program participants. Each of these projected impacts supports our recommendation that current tenants be held harmless.

(a) <u>Negative Impact on HCV Payment Standards and Rent Burdens</u>

In HUD's June 30th webinar announcing and explaining the proposed rule on SAFMR, one participant asked whether HUD was concerned that the proposed rule would lead to displacement and whether HUD had analyzed whether the displaced voucher tenants would have someplace to land. The response from the HUD official was that the agency would appreciate hearing from the commentators about how to measure this. As part of our comments, we attempted to determine whether displaced voucher tenants would have someplace to go. Our findings are detailed below.

Our analysis shows that 55,606 voucher holder households in New York City would see their payment standards decrease and would be left with a choice of paying significantly more than 30% of their income in rent or risking the loss of their voucher while trying to transfer to another more affordable apartment. Despite? the intention that HUD's proposal be cost-neutral, SAFMRs will be lowered in many zip codes. HUD's proposal can only be achieved in a fully utilized Section 8 Housing Choice Voucher Program by 1) tenants negotiating a lower rent with their landlord to remain in their existing home in a low-income neighborhood 2) tenants increasing their rent burden to remain in their existing homes in a low-income neighborhood, 3) tenants who choose to remain in their low-income neighborhood but cannot pay a greater portion of their income on rent for their existing home moving to a cheaper apartment. These options free up the Section 8 budget used in low-income communities in order to provide greater opportunity to some families moving to higher-income communities. Without additional funding for the Section 8 Housing Choice Voucher Program, this proposal can have a detrimental effect on fully utilized voucher programs and existing families being served. In recent years, fifty percent of voucher holders who want to or must move take more than six months to move. With a potential floor for half of movers failing to lease up in time and losing their vouchers, the result would lead to fewer families served.

Bronx County is New York City's poorest county. An outsize number of New York City's voucher holders live in Bronx County, many of them choosing to live in neighborhoods close to family, church, schools and other community supports. Bronx County has twenty-five zip codes. Of New York City's sub borough areas, four out of the top five have the highest concentrations of voucher holders in New York City.[17] Indeed, 49,851 voucher holder households live in Bronx County with an average annual household income of $16,000.[18] The

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[17] Austensen, et al., NYU Furman Center. *State of New York City's Housing & Neighborhoods in 2015* Released May 9, 2016, at 155.
[18] HUD's Picture of Subsidized Households for Bronx County 2015.

proposed shift to SAFMRs would significantly affect these voucher holders. Thirty-one thousand, two hundred and sixty-five (31,265) households will be faced with the choice of moving or paying higher rents. Sixty-three percent of voucher holder households is the Bronx will be affected. Out of the Bronx's 25 zip codes, twenty two will see decreases to the SAFMR. The zip code that will see the largest decrease for two bedroom apartments is 10475, which will see low-income tenants paying almost $473 a month more to stay in their apartments. Twenty zip codes will see decreases of over $150 a month. HUD's proposal is intended to be an incentive for these families to leave areas of concentrated poverty but if they do not want to move or are unable to find a cheaper apartment locally or an apartment in a better neighborhood, how will these families afford to pay a greater share of income on rent?

An analysis of apartments with at least two bedrooms on Zillow found 960 apartments renting currently in the Bronx.[19] Comparing the apartments available for rent to the hypothetical SAFMRs for the 25 zip codes in the Bronx, 50 were advertised as being below the payment standards for the applicable zip codes. This means that under the new proposal approximately 5% of the apartments advertised would be available for tenants to use their vouchers.

One of HUD's apparent goals in publishing its proposed rule is to provide tenants with enhanced mobility. To that end, including the Bronx, ninety seven New York City zip codes would see decreases in the SAFMR for two bedrooms ranging between eleven dollars and five hundred and fifty dollars a month. The rest would see either no change or increases up to eight hundred and twenty five dollars a month. We conducted an analysis of apartments with at least two bedrooms on Zillow that were available for rent for the zip codes which would see increases. The analysis assumed that rents of up to fifty dollars above the payment standard would be approved by New York City's public housing authority. The analysis found 446 apartments available for the 55,606 voucher holder households who will be potentially displaced in New York City. These voucher holders will of course also be competing with families in the private market. In New York, as well as many of the high-rent, low-vacancy metropolitan areas, competition for housing is severe. While local law protects tenants from source of income discrimination, displaced voucher holders may still be at a great disadvantage in this market.

(b) ***<u>Adverse Impact on Voucher Holders</u>***

As stated above, this rule would cause 55,606 voucher holders in New York City to face the choice of finding a new apartment, and risk losing their voucher if their search is unsuccessful or paying an increase in rent to stay in their current neighborhood and risk eviction if they cannot afford to pay the increase. New York City voucher programs have an unusually high proportion of elderly and disabled households who are adult households. Indeed, 52% of the affected households are designated elderly or disabled or both. 63% of New York City voucher households have no children.[20] The great benefits of mobility described by Raj Chetty are felt by children under the age of 13. For children above the age of 13, mobility show little or even

[19] All apartments that had been on the Zillow website for more than sixty days were excluded from this analysis.
[20] HUD's Picture of Subsidized Households for Bronx County 2015.

negative effects.[21] Yet these households will be forced to move or pay increased rents for a policy that has little chance of improving their lives.

Indeed, there is much evidence that housing instability has adverse outcomes for families and individuals. Housing instability and homeless have been linked to long-term adverse effects on children's health and development. In addition, frequent moves have had negative effects on children's educational progress. For the families who choose not to or cannot move, they will experience higher rent burdens. Research has shown that children in families with severe rent burdens face adverse educational and health outcomes due to lack of funds in their homes.[22]

Elderly and disabled households would be particularly harmed by the proposed policy. Elderly and disabled households tend to be on fixed incomes so any increase in rent will have to come out of their incredibly limited income. Growing research shows that stable housing may help outcomes for individuals with chronic illnesses, such as HIV.[23] Additionally, these households would not experience the potential advantage of these programs. Studies have shown for the elderly population longer tenures in buildings are associated with lower levels of depression.[24] Being able to age in place is associated with better physical and mental well-being.[25]

In New York City, fifty percent of voucher holder families have lived in their apartments for ten years or more. Housing stability means that low-income households do not have to come up annually with the added expenses of broker fees, security deposits and moving fees. Low-income families who stay in the same communities have the ability to develop informal networks who can assist them with child care and elder care. Families that move frequently to various neighborhoods around the City will not have the same opportunity to develop these informal networks.

The voucher program is more properly called the Housing Choice Voucher Program. HUD is to be commended in seeking to enhance the opportunities of those who choose to move to neighborhoods of high opportunity. However, because this proposal is cost neutral, it means that those who choose to stay or are unable to move will see their rents increase to fund the mobility of other families. The only way for the voucher program to live up to its dual goals of housing stability and mobility is to hold all current tenants harmless. No current tenant should face the risk of homelessness because HUD has designated their neighborhood a neighborhood of low opportunity.

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[21] Raj Chetty, Nathaniel Hendren and Lawerence F. Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*; Harvard University and NBER, August 2015 at 3.
[22] Fletcher, Jason M., Tatiana Andreyeva, and Susan Busch, *Assessing the Effect of Increasing Housing Costs on Food Insecurity*. Social Science Research Network, September 9, 2009.
[23] Buchanan, David, Romina Kee, Laura S. Sadowski, and Diana Garcia. 2009. *The Health Impact of Supportive Housing for HIV-Positive Homeless Patients: A Randomized Controlled Study*. American Journal of Public Health 99 (S3): S675–S680.
[24] Robison, Julie, Jean J. Schensul, Emil Coman, Gretchen J. Diefenbach, Kim E. Radda, Sonia Gaztambide, and William B. Disch. 2009. *Mental Health in Senior Housing: Racial/Ethnic Patterns and Correlates of Major Depressive Disorder*. Aging & Mental Health 13 (5): 659–673,
[25] Viveiros, Janet, and Maya Brennan. *Aging in Every Place: Supportive Service Programs for High and Low Density Communities. Center for Housing Policy, National Housing Conference*, Washington, DC, March 2014.

(c) ***Negative Impact on Volume of Rent Stabilized Stock***

Many neighborhoods that have been affordable for years are now facing extreme market pressures as land prices and rents are both on the rise across the five boroughs. At present, one million of New York City's three million housing units are rent-stabilized under New York State rent laws. Tenants living in rent stabilized units are afforded protections for rent increases and lease renewals under the law. Sixty-one percent of New York City's voucher tenants live in rent stabilized housing.[26] This means that they have the right to a renewal lease and limits on increases on yearly rents. Many of these tenants have lived in their homes for many years.[27] If the proposed HUD rule effectively incentivizes existing tenants of rent-stabilized units to move, an unintended consequence could be the deregulation of rent-stabilized units. Even if these apartments do not become deregulated, the landlords will be able to increase the legal rents on these apartments by at least 20% impacting affordability in low-income neighborhoods for all renters. A recent report found that the largest contributor to rent increases in rent regulated apartments is the statutory vacancy allowance which provides an automatic increase every time an apartment is vacant.[28] In addition, New York landlords are permitted to charge additional significant increases based on improvements after vacancy. New York City has rent stabilization because our legislature has determined that so long as our vacancy rate is under 5%, New York City's housing market must be regulated to protect tenants. So unlike other jurisdictions where if the market rent is lower than the "legal rent," the rent on the apartment would decrease, in New York's rent stabilized apartments, landlords offer tenants a preferential rent, lower than the legal rent. However, the legal rent may be charged at the end of every renewal lease. This lessens the protections for rent stabilized tenants who are no longer secure in their tenancy.

We have seen further evidence of the pressure to deregulate rent-stabilized housing in the a troubling pattern among some owners who deliberately allow apartments to fail the housing quality standards inspection and then simply wait for the subsidy to end and the contract to cancel. Tenants are then forced to move out of their homes to preserve their Section 8 subsidies. These tenants have found it incredibly difficult to secure new housing after been forced out of their homes. Because these tenants are rent stabilized, under the law, their landlord is required to offer a renewal lease on the same terms and conditions as the previous lease. However, some landlords have found a loophole to this requirement by using the Section 8 program to force tenants out of their homes. These landlord then benefit by charging vacancy increases of at least twenty percent to the next tenant. Based on this example we have little reason to expect that rent stabilized landlords will lower contract rents in their apartments to reflect HUD's assumptions of what market rents are. In many gentrifying neighborhoods, low-income long term tenants are able to remain in their neighborhoods because of their Section 8 voucher. Because the hypothetical SAFMRs incentivize tenants to move from these neighborhoods, the rule would have the unintended consequence of hastening gentrification and displacement from

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[26] Analysis of the Community Service Society.

[27] An Analysis of the Community Service Society using the HVS showed that in the private market, the median voucher household have moved into its apartment in 2006, the median low income household move into its apartment in 2008 and the median renter household moved into its apartment in 2009.

[28] Victor Bach & Tom Waters, Community Service Society, *Making the Rent 2016: Tenant Conditions in New York City's Changing Neighborhoods*, May 2016 at 2.

neighborhoods which are beginning to see the changes brought by new residents and new investment. And lowering the volume of affordable, rent-stabilized housing?

(d) ***<u>Negative Impact on PHA administration and program participants</u>***

In a city like New York with almost 200 SAFMR zip codes, zip code boundaries are a meaningless geography. The sheer number would make administering a zip code based SAFMR impossible for tenants, landlords and housing authorities.

For voucher holders seeking housing, the process would be much more onerous and confusing with payments standard sometimes changing drastically on the same block. Unfortunately neighborhoods, which is how most New Yorkers think about their communities, do not follow zip codes and many zip codes cross over multiple neighborhoods. More confusingly, approximately 35 zip codes encompass no more than one city block, and some contain no more than one building. This change could also be a deterrent for landlords managing different payment standards at different buildings.

For housing agencies with many zip codes, this is a very complicated policy change to implement and surely one that will increase administrative costs through additional staffing requirements. The proposed SAFMR policy will also make it very difficult for housing agencies to manage budgets and utilization rates. When vouchers issued may hold enormously different values depending on where they are used, how will agencies predict unit months to ensure they stay within their budget and keep utilization high?

For all of these reasons, we recommend holding current voucher holders harmless to avoid the significant adverse impacts described above.

<u>Recommendation Four: Exempt Project-Based Vouchers from the Proposed Rule</u>

Thousands of affordable housing units in New York City have been developed with project-based vouchers underwritten at the Fair Market Rent. Reductions in SAFMR could jeopardize the financial stability of affordable buildings, the ability to maintain and preserve existing affordable housing through regular maintenance and repairs, service delivery to residents and revitalization of low- and moderate-income neighborhoods.

Project-basing mainly occurs in supportive and senior housing programs in New York serving extremely low-income disabled and/or elderly residents. Project-based vouchers often leverage private financing. In these cases, rental assistance is used to pay debt service on commercial mortgages, typically over 30 years. Most likely, lower SAFMR will result first in efforts to reduce maintenance costs before impacting debt service payments to lenders. Cutting corners on regular maintenance can lead to rapid deterioration of buildings and impact quality of life for tenants. Drastic reductions in SAFMR could prevent building owners from having sufficient cash flow to pay debt service and quickly put the buildings at risk of foreclosure.

Such action would not only impact existing tenants and owners while squandering public resources used to developer affordable housing, but it would also undermine a funding model that uses federal rental assistance to leverage significant private financing. Without the predictability of rental assistance levels, financial institutions will not be willing to lend to projects with unreliable cashflow. More public subsidy will be required if private debt is not accessible, resulting is less affordable housing.

In some existing projects, the difference between FMR and tax credit rents are used to fund or supplement on-site social services. Lowering Section 8 rents in high-poverty areas could result in reduced services in existing housing, primarily targeted to formerly homeless households to ensure housing stability.

If SAFMRs apply to the project-based program, lower rents could also discourage the development of new projects that could uplift neighborhoods. Investment in affordable housing has transformed areas of Brooklyn, the Bronx, Harlem and the Lower East Side of Manhattan. With significant local commitment to affordable housing, New York City's 10 year housing plan is anticipated to invest $41 billion in neighborhoods. Due to high land costs, many of these new affordable apartment buildings will be located in low-income communities. Our organizations support continued investment in low-income neighborhoods to provide more housing options for local residents and to spur investment and community revitalization.

Recommendation Five: Delay implementation Until Program Changes Are Accompanied By A Significant Budget Increase And SAFMR Policy Is Better Calibrated For Low-vacancy Areas

We strongly support the goals of improving outcomes and housing options for low-income families in high opportunity areas and deconcentrating voucher use in low-income areas. However, New York City's voucher programs make up 21% of the vouchers in this demonstration project, and based on our deep knowledge of the New York City housing market, we strongly recommend that HUD delay implementation of this rule in any low-vacancy areas until there is a greater understanding of housing market conditions in localities such as New York City and a significant budget increase is made so that program benefits for some low-income families are not at the expense of other low-income families. These recommended changes, and the others set forth above, will help HUD to be more successful in reaching the goals behind the rule changes.

Joint Comments Submitted By:

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The Community Service Society of New York (CSS) is an informed, independent, and unwavering voice for positive action on behalf of more than 3 million low-income New Yorkers. CSS draws on a 170-year history of excellence in addressing the root causes of economic disparity through research, advocacy, litigation, and innovative program models that strengthen and benefit all New Yorkers.

- **The Legal Aid Society**, 199 Water Street, New York, NY 10038
  Contact: Judith Goldiner, Attorney in Charge, Civil Law Reform, JGoldiner@legal-aid.org, 212.577.3332

Founded in 1876, the Legal Aid Society's Civil Practice is the oldest and largest program in the nation providing direct legal services to the indigent. Annually, the Society's Civil Practice provides free direct legal assistance in more than 44,000 individual cases involving immigration, domestic violence, family law, and employment, in addition to housing, public benefits and health law matters, through a network of 16 neighborhood and courthouse-based offices in all five boroughs and 22 specialized units and projects for under-served client groups. The Society is counsel in numerous class action law suits involving the rights of Section 8 voucher holders including Williams v. NYCHA and McNeil v. NYCHA. Additionally the Society was instrumental in passing Local Law 10 which bans discrimination based on source of income which explicitly benefits Section 8 voucher holders.

- **New York Housing Conference Inc.**, 237 W. 37th Street, New York, NY 10018
  Contact: Rachel Fee, *Executive Director*, Rachel.Fee@thenyhc.org, 646.923.8542

NYHC is a broad-based coalition that advocates for decent affordable housing for *all* New Yorkers. Working with community development organizations, affordable housing developers, financial lenders and other industry professionals, we promote strong housing policies, adequate funding, practical regulations, and increased public awareness of the need for and benefits of affordable housing in New York State.

ENDORSERS

Associated Builders and Owners of Greater New York
Association for Neighborhood & Housing Development (ANHD)
Barrier Free Living
Benchmark Title Agency
Brooklyn Defender Services
Center for Independence of the Disabled (CIDNY)
Coalition for the Homeless
Community Action for Safe Apartments (CASA)
Community Voices Heard
Cooper's Square Committee
Diego Beekman Mutual Housing Association, HDFC
Dunn Development Corp.
Fifth Avenue Committee
Flatbush Tenants Coalition
Fund for Public Housing
Goddard Riverside Law Project
HAP Investments
HOMECONNECT
Homeless Services United
Housing Conservation Coordinators (HCC)
Housing Court Answers
JASA/Legal Services for the Elderly in Queens
Legal Services NYC
Lenox Hill Neighborhood House
Make the Road NY

MFY Legal Services
Mutual Housing Association of New York (MHANY)
Nazareth Housing Inc.
Neighborhood Restore HDFC
Neighbors Helping Neighbors
New Destiny Housing Corporation
New York Affordable Housing Management Association (NYAHMA)
New York Communities for Change
New York Legal Assistance Group (NYLAG)
Northern Manhattan Improvement Corporation (NMIC)
NYC Housing Partnership
NYSAFAH
Shinda Management Corporation
Tenants & Neighbors
The Bronx Defenders
United Cerebral Palsy of NYC
Urban Homesteading Assistance Board
Urban Justice Center—Community Development Project
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