August 26, 2016

Julián Castro, Secretary
United States Department of Housing
and Urban Development
451 7th Street SW
Washington, DC 20410

Dear Secretary Castro:

As state and local elected representatives from New York City, we write to voice our serious concerns about the effect that the Small Area Fair Market Rent (SAFMR) rule proposed by the Department of Housing and Urban Development (HUD) for the Housing Choice Voucher program will have on cities with low vacancy rates, such as ours.

We hope that you will consider excluding New York City and perhaps other cities with very low vacancy rates from the SAFMR rule unless the rule can be significantly altered to address our concerns, which we list below.

We support HUD's goal of improving the Housing Choice Voucher program by addressing the problem of high concentrations of poverty that current rules may exacerbate in particular neighborhoods of some cities. But we fear that the proposed SAFMR rule will not achieve HUD's goal in cities like New York, where low vacancy rates, particularly for affordable housing, will continue to prevent tenants from moving into high-opportunity neighborhoods. We think the proposed rule is especially unlikely to serve its intended purpose if implementation is not accompanied by a significant increase in funding, and we note that no such increase is being contemplated at present. As discussed below, we are also concerned that the proposed SAFMR rule does not accurately reflect market conditions in New York City and perhaps other cities that are densely populated and have a large number of economically diverse neighborhoods that are rapidly changing. Until these concerns are addressed, implementation of the proposed rule should be delayed in New York City, and any other similarly situated city.

As you know, the proposed SAFMR rule is intended to address issues created by the current method used to calculate the payment standards for the Housing Choice Voucher program. Under the current rules, payment standards are determined annually for individual metropolitan areas. Having a single payment standard for an entire metropolitan area may increase the likelihood that voucher holders will be concentrated in low-rent neighborhoods within a metropolitan area, because that is where the vouchers have the most value; this may, in turn, increase concentrations of low-income households in areas with low rents. The proposed SAFMR rule seeks to address this problem by calculating different payment standards for each zip code within a metropolitan area, increasing the payment standard in those identified as "high-opportunity" neighborhoods and decreasing the payment standard in those identified as "low-opportunity" neighborhoods. The desired outcome is that voucher holders will be enabled and encouraged to move out of low-opportunity neighborhoods, where the amount of rent covered by their vouchers will decrease, and into areas of greater opportunity, where they would receive larger vouchers. While we are supportive of HUD's ends, we do not believe that the proposed SAFMR rule, as applied to New York City, would achieve them. Further, we are concerned that the proposed SAFMR rule would, in practice, have an extremely negative impact on those of our constituents participating in the Housing Choice Voucher program who would see the value of their voucher decline because they currently reside in areas that would be designated as low-opportunity neighborhoods.

We understand that in developing the proposed SAFMR rule, HUD relied heavily on research based on the Dallas-Fort Worth Metropolitan Area (DFW). While the DFW study does show positive results, there are several key differences between the New York City and DFW housing markets that we believe would prevent the new rule from having such a favorable effect in our city, and others that are similarly situated.

For the purposes of the proposed SAFMR rule, the most significant difference between cities' housing markets that we believe HUD has failed to take into account is the large variation in vacancy rates for rental units among different cities. In cities with low vacancy rates, tenants have greater barriers to mobility than they do in cities with high vacancy rates. Because there is a lack of available units in high-opportunity neighborhoods in cities with low vacancy rates, rents in these areas are extremely high, especially for new renters. Due to the particularly high rents and low availability of apartments in cities with low vacancy rates, increasing the payment standard will not create the same level of opportunity for voucher holders to move into high-opportunity neighborhoods as it did in Dallas, a city that does not have a low vacancy rate.

Moreover, in New York and other cities with low vacancy rates, decreases in the payment standard in low-opportunity neighborhoods will not necessarily lead to the lowering of rents in these neighborhoods, because the demand for housing is so high that landlords will be able to find a new tenant willing to pay the current rent, without a voucher if necessary, far more often than they would in a city with a higher vacancy rate. This would leave many voucher holders in cities with low vacancy rates in a far worse situation than they are currently in, as they would no longer be able to continue paying the rent in their current neighborhood because of the decreased payment standard, but would be unable to find housing in neighborhoods where the payment standard has increased due to the lack of availability. This could lead to involuntary displacement of tenants currently residing in low-opportunity neighborhoods, and perhaps homelessness.

New York, in conjunction with the United States Census Bureau, completes a survey of New York City's housing market every three years. The most recent survey, conducted in 2014, found that New York had a vacancy rate of only 3.5%, less than half the national average of 7.6% identified by the Census Bureau in the same year. This low level of vacancy leads to a situation where affordable housing is extremely difficult to find. Even under the current rules for calculating the payment standard, which, under the rationale for the proposed SAFMR rule, should be creating over-subsidized housing in New York City's low-opportunity neighborhoods, 25% of voucher holders who move lose their voucher due to an inability to find an available apartment. If the payment standards are lowered in low-rent neighborhoods, there will likely be even fewer options available for movers and, contemporaneously, a larger number of movers, as voucher holders can no longer afford to maintain their current housing situation due to the decrease in the value of their voucher.

The June 16, 2016 Notice in the Federal Register on the proposed SAFMR rule states: "The proposed rule provides for Small Area FMR area selection parameters to be codified in regulatory text. HUD is seeking comment on whether these parameters should be codified or should be incorporated into each annual proposed FMR notice to provide HUD, PHAs [Public Housing Authorities], and other stakeholders with flexibility, in any given fiscal year, to offer changes to these selection parameters and have the opportunity to comment before any changes to the parameters are made."

Given that a low vacancy rate in a metropolitan area is likely to impinge on the proposed SAFMR rule's stated goal of promoting mobility, we urge HUD to adopt vacancy rate as a codified parameter and to exclude any area with a sustained, extremely low vacancy rate, such as New York City, from SAFMR.

In addition to the low vacancy rate, there are other differences in New York City's housing market that would need to be addressed in order for HUD to achieve the goal of the proposed SAFMR rule. New York City is densely populated and many of its neighborhoods are very economically diverse and constantly changing as a result of gentrification. Based on HUD's hypothetical SAFMRs for 2016, which demonstrate what the payment standards would have been this year in New York City zip codes if the proposed SAFMR rule had been in effect, the methodology for calculating the payment standards fails to adequately account for these changes. For example, the hypothetical SAFMRs in zip codes located in the Manhattan neighborhoods of Harlem (10027, 10030, 10037, and 10039) and the Lower East Side (10002) decreased, despite the fact that these neighborhoods have undergone significant transformations in recent years and are widely considered desirable—and relatively expensive—neighborhoods to move to. Given the rapid rate at which things change in New York City's housing market, HUD's calculations would need to reflect the current situation in any given neighborhood for the plan to have its desired outcome.

We strongly request that HUD exclude New York City from the SAFMR rule until a rule can be devised that adequately addresses the issues we have raised. To move forward with the proposed SAFMR rule in New York City without alterations to account for the differences in our housing market, particularly those created by our low vacancy rate, would potentially have an enormous adverse impact on our constituents who are voucher holders.

Finally, the HUD Notice asks: "Should HUD provide for PBVs [project based vouchers] that are in the pipeline to continue using metropolitan FMRs even if the area is designated as a Small

Area FMR area? Additionally, should HUD require newly proposed PBVs post Small Area FMR designation to use Small Area FMRs?"

Project-Based Section 8 is a vital tool employed by the two key New York City Public Housing Agencies—the NYC Housing Authority (NYCHA) and NYC Department of Housing Preservation and Development (HPD). If the proposed SAFMR rule were applied to PBVs, the value of many project-based contracts used to finance construction projects would fall in areas where the payment standard would be reduced, in turn reducing the amount of financing these agencies could secure for development and rehabilitation of affordable housing. On the other hand, in areas where the payment standard would increase, opportunities for development tend to be scarce. As articulated more fully in these agencies' formal comments, they believe the net effect of the proposed SAFMR rule would be to hinder their ability to build and preserve existing affordable housing. We therefore join NYCHA and HPD in calling for current and future PBV developments in New York City to be allowed to use the metropolitan FMR going forward even if the proposed SAFMR rule is otherwise adopted in New York City.

While we are critical of this particular initiative, we thank you and your colleagues in President Obama's administration, as always, for all that you do to promote strong, sustainable, affordable communities in New York City and throughout the country, and we appreciate your consideration of our perspective. We look forward to discussing these issues further with you and your staff. To follow up, please contact any of us directly or via Andrew Hendrickson in Assemblymember Brian Kavanagh's office at 212-979-9696 or Hendrickson.AD74@gmail.com, or via Hally Chu in Manhattan Borough President Gale Brewer's office at 212-669-8300 or hchu@manhattanbp.nyc.gov.

Sincerely,

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Manhattan Borough President

Brian Kavanagh
New York State Assemblymember

Letitia James
Public Advocate for the City of New York

Eric L. Adams
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Melinda Katz
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cc: Holly M. Leicht, Regional Administrator, U.S. Department of Housing and Urban Development