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Regulations Division
Office of the General Council
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: Docket No. FR–6070–N–01 Notice for Suspension of Small Area Fair Market Rent (Small Area FMR) Designations; Solicitation of Comment

To Whom It May Concern:

I am a professor of public policy at New York University's Wagner Graduate School of Public Service, and appreciate the opportunity to submit comments on HUD's two-year suspension of Small Area FMR designations (SAFMR) in this role.[1]

I have conducted considerable research on federal housing programs, residential segregation, and the efficacy of housing programs in supporting residential choice for recipients, a key goal of HUD's SAFMR final rule. I also served as Assistant Secretary for HUD's Office of Policy Development and Research during the creation of the SAFMR final rule. Based on careful review of HUD's SAFMR demonstration interim report and the final rule, and an analysis of the 24 housing markets to be selected for SAFMRs conducted by the NYU Furman Center, I find little justification for delaying SAFMR designations. Key differences between the areas in the demonstration and those selected in the final rule, along with numerous features of the final rule specifically adopted to mitigate potential negative effects, call into question the relevance of the interim report findings for delaying the rule. The Furman Center's analysis of the 24 SAFMR metropolitan areas finds that overall, a delay would limit housing options for voucher recipients in the affected areas.

HUD's Justification of the Suspension

HUD's final SAFMR rule provides that the agency may "suspend a Small Area FMR designation for a metropolitan area . . . where HUD determines such action is warranted based on a documented finding of adverse rental housing market conditions that will be set out by notice."[2]

In its memo suspending the mandatory implementation of SAFMRs, HUD provided three justifications for the suspension:

1. HUD's review of the SAFMR demonstration's interim report findings, and potential negative impacts.
2. HUD's review of public comments in response to the Reducing Regulatory Burden Federal Register Notice.

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[1] These comments do not represent the institutional views (if any) of NYU, NYU Furman Center, or the Wagner Graduate School of Public Service.
[2] *Final Rule,* 81 Fed. Reg. 80,569.

3. HUD's determination that its guidance and technical assistance must be fully informed by the final demonstration findings to be effective.

As noted in the December 23rd D.C. court decision granting an injunction against HUD's suspension of SAFMRs,[3] HUD's second and third rationale bear no connection to local rental housing market conditions of the affected Public Housing Agencies (PHAs), so are not relevant. These comments focus primarily on why the first rationale, HUD's concern with some of the findings in the interim report, also fails to justify across-the-board suspension of SAFMRs.

In brief, the issues raised in the interim report were already carefully considered by HUD in shaping its final rule, including the level of geography at which to implement the rule, and the selection of particular metropolitan areas to be included. First, the rule mandated that every housing authority in a metropolitan area adopt SAFMRs. Second, the 24 metropolitan areas named in the Final Rule were chosen based on criteria HUD developed to identify housing markets where the rule would likely be most effective. Third, HUD included a new set of tools in its final rule to mediate potential negative effects, which the demonstration sites studied in the interim report were not able to use. As such, the report can shed little light on how the rule actually promulgated by HUD will operate in the 24 affected metropolitan areas. The interim report, and HUD's justification, provides essentially no information or data specific to the rental housing markets of the metropolitan areas implicated in the final rule.

Issues Raised in the Interim Report

While the main finding of the interim report is that SAFMRs 'worked as intended,' including increasing access to higher-rent and higher-opportunity neighborhoods, the report also documented the potential loss of units affordable in terms of SAFMR payment standards. Across the five demonstration sites (and two Dallas PHAs), there was a 3.4 percent *decline* in rental units deemed affordable in moving from the metropolitan-wide FMRs to SAFMRs. Moving to SAFMRs may also have caused an increase in rent burdens for voucher households in some locations. Though the report provides no evidence on whether SAFMRs directly affect the ability of voucher households to successfully lease up, HUD's public rationale also includes speculation that this too may be an issue.

How HUD Addressed these Issues in its Final Rule

Concerns about possible decreases in units affordable under payment caps, potential increases in rent burden, and even utilization rates are not new to the interim report. These issues were raised during both public comment periods and discussed at length by HUD staff developing the rule. Indeed, HUD took great care to shape a final rule to address these issues. The relevant features of the rule are:

1. <u>Applying SAFMRs to entire metropolitan areas.</u> The one demonstration site in the interim report that experienced a decline in units affordable under SAFMRs larger than 4% (Long Beach), was a PHA whose service area disproportionately contained low-rent ZIP codes. In essence, the PHA area didn't encompass enough higher-rent areas where SAFMRs would contribute to increasing availability of units.

[3] Open Communities Alliance, et al. v. Ben S. Carson, Sr., Civ. 17-2192 (BAH), Dec. 23, 2017.

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To avoid exactly this, HUD's final rule requires all PHAs in a metropolitan area to use SAFMRs. HUD noted in its proposed rule that "in order for Small Area FMRs to work in expanding choice for voucher holders within designated metropolitan areas **all** (emphasis added) PHAs operating in the FMR area would be required to use Small Area FMRs." 81 FR 39244. Only one of the seven PHAs in the report covered the entire metropolitan area, Laredo, TX, the scale of geography required in the final rule. Laredo experienced only a very small decline in the overall number of affordable units, 1.4 percent (interim report, Table 4.5).

2. Targeting areas where SAFMRs are most likely to work. In replacing the 50th percentile interim rule, the SAFMR rule also aimed to better target metropolitan areas where voucher use is most highly concentrated in high poverty neighborhoods, and where SAFMRs are most likely to be effective. On the latter, one criteria for an area to qualify for mandatory SAFMRs is that an above-average share of its rental stock is located in ZIP codes that appear out of reach with metropolitan FMRs—so are in ZIP codes where the SAFMR is more than 110% of the FMR. Specifically, the rule only applies to metropolitan areas in which at least 20 percent of the rental stock is in such high-rent ZIP codes. Notably, the one demonstration PHA experiencing large declines in affordable units only had eleven percent of its rental stock in high rent ZIP codes (interim report, Exhibit 4-1), making it a very poor candidate for using SAFMRs. The one PHA covering a full metropolitan area (Laredo) does not meet HUDs minimal threshold.

   In addition, in recognition that tight housing markets may create their own challenges for voucher programs, including for success rates, the final rule also exempts metropolitan areas with very low vacancy rates. The limited discussion of success rates contained in the interim report notes that five of the sites experienced declines in vacancy rates during the study period.

   These two features -- metropolitan scope and targeting areas where SAFMRs might be most effective -- should greatly lower the risk that shifting to SAFMRs would decrease the number of units affordable as measured by the interim report. Ultimately, this is an empirical question to which there is an answer. Using the same methodology as the interim report, but applied to the 24 SAFMR metropolitan areas, the NYU Furman Center found that affordable units would actually *increase* across the 24 metropolitan areas, by 9 percent. Only four of 24 areas would experience any decline in affordable units, and all declines are fairly small (less than 5 percent). Indeed, only 2 areas would (potentially) experience declines exceeding 3 percent.

   HUD's concern over the 3.4 percent decline in affordable units under SAFMRs as reported for the 7 interim report sites appeared to play a pivotal role in the agency's decision to delay designations. For the actual housing markets implicated in the final rule, HUD's decision to delay would, in fact, block an increase in affordable units of more than double that size. Put another way, rather than protecting voucher holders, delaying SAFMR designations would actually reduce the number of homes affordable to them.

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Of course, these estimates of units affordable under SAFMRs ignore several other key features of the final rule designed to further moderate any loss of affordable units or other negative impacts – added flexibility, tenant protections and limits in the annual decline in payment standards..

3. Flexibility to address local housing conditions through changes to the Exception Payment Standards process. As an additional feature to address local housing market conditions, and changes in those conditions, HUD committed to establishing a process by which a PHA may request and receive approval to establish an exception payment standard promptly for a ZIP code area if necessary to react to: "rapidly changing market conditions or to ensure sufficient rental units are available for voucher families." (Final Rule, 80573).

4. Tenant protections and tools for retaining existing units in the program. The final rule implements the 'hold harmless' feature of the Housing Opportunity Through Modernization Act of 2016, permitting PHAs to maintain Housing Assistance Payments for voucher households remaining in their units. In addition, the rule permits PHAs to set payment standards for such continuing voucher recipients along a continuum, between the old payment standard and the new SAFMR. This would permit a PHA to move existing tenants more slowly to SAFMRs, and to have greater control over its budget. These features directly address the rent burden issue, and retention of those units currently occupied by voucher holders in low-rent ZIP codes.

5. Limiting the annual decline in payment standards to no more than 10% of the previous year's SAFMR/FMR. Finally, this provision was specifically added to help ensure an adequate stock of affordable units during early implementation of the rule. While this protection goes away over time, it provides more time for PHAs, landlords and voucher households to adjust.

Conclusion

In sum, given the significant differences between the housing market conditions and policies on the ground in the 7 PHAs studied in the interim report and the 24 metropolitan areas selected in HUD's final rule, the specific concerns raised by HUD based on the interim report findings are not applicable to the agency's final rule. Data that are available for the 24 housing markets affected by the rule do not provide evidence of adverse conditions for the implementation of SAFMRs. Indeed, the data highlight the very large differences between the sites in the interim report and those targeted by HUD's final rule and suggest that the number of homes affordable to voucher holders would increase after the switch from FMRs to SAFMRs.

It is worth noting that the SAFMR final rule provides PHAs with up to three months after SAFMRs go into effect to establish new payment standards. Should HUD move forward with SAFMR area designations, the Agency should ensure that PHAs are provided with the time the rule intended for implementation of new payment standards.

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