



January 11, 2018

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-6070-N-01: "Notice for Suspension of Small Area Fair Market Rent (Small Area FMR) Designations"

To Whom It May Concern:

The Open Communities Alliance submits the following comments in response to the Notice published on December 12, 2017, "Notice of Suspension of Small Area Fair Market Rent (Small Area FMR) Designations.

The Open Communities Alliance (OCA) is a non-profit fair housing organization based in Hartford, Connecticut, one of the metropolitan areas affected by the Small Area FMR Rule. We are also a plaintiff in the pending case, *Open Communities Alliance et al v. Carson*. Our mission is to provide greater opportunities and more choices for people living in low-opportunity areas in Connecticut, including families who receive government housing assistance. For too long, low income families of color have been steered into high poverty, segregated communities, by government policy and practice. One key policy that has restricted the ability of families to move to lower poverty areas is HUD's regionally-based "Fair Market Rent" calculation for the Housing Choice Voucher (HCV) program. Year after year, we have seen HCV rents set too low to give families meaningful access to rental units in higher opportunity communities surrounding the city of Hartford. The Small Area FMR rule finally gave our HCV families a meaningful choice of where to live, and we were devastated when HUD announced its suspension in August.

We strongly oppose any continuing suspension of the Small Area FMR rule, and we concur with the federal court in D.C., which recently concluded that the original suspension was unlawful. We also consider the present notice to be moot, and an extension of HUD's unlawful actions. By submitting these comments, we are not waiving, and expressly reserve, any and all future claims regarding this notice.

Suspension of the mandatory Small Area FMR rule will have a discriminatory impact on African American and Latino families, and will perpetuate racial segregation in our region, in violation of the Fair Housing Act. The impact of the former regionally-determined Fair Market Rent

system has had a powerful discriminatory impact on African American and Latino voucher families in our region, not unlike the discrimination that prompted the Inclusive Communities Project's 2007 lawsuit against HUD in Dallas. Roughly 80% of HCV families in the Hartford FMR region are African American or Latino and 77% of these families are residing in neighborhoods that are predominantly "non-white" (compared to 44% of renter households overall),¹ and many of these families live in completely racially isolated neighborhoods saturated with Section 8 eligible units. The discriminatory impact of voucher concentration in our region is further illustrated by the over-concentration of Black and Latino HCV families in high poverty neighborhoods – fully 40% of African American voucher families and 54% of Latino voucher families live in high poverty neighborhoods (with > 30% poverty rate), compared with 23% of total rental units located in those neighborhoods.² Statewide, almost half of voucher holders in Connecticut live in the 2% of the state assessed as "very low opportunity," by the CT Department of Housing, based on location of under-resourced schools, higher rates of crime and other characteristics decreasing the likelihood of later success in life for children. HUD is required to avoid these types of discriminatory impacts pursuant to the Fair Housing Act's non-discrimination requirements, 42 U.S.C. §3604, and the Act's requirement that HUD Affirmatively Further Fair Housing, 42 U.S.C. §3608.

The new Small Area FMRs will give families with children access to some of the highest performing school districts in our region. School districts in our region are coterminous with local town boundaries. Thus, there are over 25 separate school districts in our FMR region. In 1996, the Connecticut Supreme Court declared in *Sheff v. O'Neill* that that "de facto" segregation of Hartford schoolchildren in high poverty, racially isolated schools violates the Connecticut Constitution. The HUD regional FMR system has exacerbated this pattern of segregation, and suspension of the Small Area FMRs will continue this harmful trend.

"Voluntary adoption" of Small Area FMRs would be extremely difficult in the greater Hartford region. There are at least 22 PHAs that operate within our FMR Area: the Bloomfield Housing Authority, Bristol Housing Authority, the Canton Housing Authority, the City of Hartford, the Connecticut Department of Housing, the East Hartford Housing Authority, the Enfield Housing Authority, the Farmington Housing Authority, the Glastonbury Housing Authority, the Hartford Housing Authority, the Manchester Housing Authority, the Mansfield Housing Authority, the Middletown Housing Authority, the New Britain Housing Authority, the Newington Housing Authority, the Portland Housing Authority, the South Windsor Housing Authority, the Vernon Housing Authority, the West Hartford Housing Authority, the Wethersfield Housing Authority, the Windsor Housing Authority, and the Windsor Locks Housing Authority. There is no history of these PHAs working together across racial lines, and no incentive for the suburban PHAs in higher income towns to increase their payment standards to attract more low income families to their communities.

¹ For reference, the Greater Hartford FMR region has a 69% white population.

² Using another current definition of "high poverty." 58% and 66% of Black and Latino HCV families in our region live in neighborhoods exceeding 20% poverty rate

Suspension of the mandatory Small Area FMR rule would contribute to continued disinvestment in the City of Hartford. The continuous, and extreme concentration of low income housing in the geographically tiny city of Hartford has been driven, in part, by the inflated Section 8 rents available to for-profit and non-profit developers that have created artificial incentives to concentrate assisted housing in our city. This excessive concentration of poverty in our city has been one of the primary barriers to reinvestment and neighborhood revitalization. Once these artificial rent incentives are removed, we expect to see a more balanced pattern of assisted housing development across the region, and our city neighborhoods will have a better chance to become economically thriving, mixed income communities.

The Small Area FMR rule will increase the choices available to families with vouchers, with little or no loss of available units region-wide. According to research provided to us by the NYU Furman Center, the Small Area FMR rule would make more than 2,100 additional units available to HCV families in towns outside the City of Hartford. In several of our highest poverty census tracts within the city, there would be a net loss of units available to HCV families (corresponding to units in Section 8 submarkets that were receiving inflated rents under the old rule). However, if the Hartford Housing Authority is concerned about “losing” these high poverty neighborhood units from its potential inventory of available rentals, it would be simple to restore these units to the inventory by applying the 110% payment standard flexibility to these zip codes, resulting in a net increase in the overall number of units available region-wide.

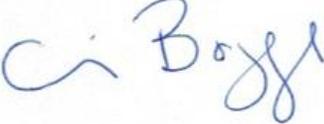
Suspension of Small Area FMRs would hinder development of affordable housing in low-poverty, high opportunity areas. Our organization also engages with non-profit and for-profit developers to encourage the acquisition and construction of housing that is affordable to voucher holders in non-concentrated, high-opportunity areas in the Hartford metropolitan area. These transactions are made much more challenging, and are often impossible, where voucher rent levels do not reflect the local market rents. The anticipated income from voucher holders will not support financing of such development while these rents are being calculated on a metropolitan-wide basis, rather than with a small-area calculation. This dynamic further reduces the units available to voucher holders in these areas, even where mission-driven developers endeavor to create them, and thwarts moves to opportunity. We are currently partnering with the National Housing Trust (NHT), a nonprofit developer, on our “Opportunity Link” project. This project involves the acquisition of market-rate rental properties in high-opportunity Hartford suburbs and conversion of these properties to rent to voucher families. OCA is providing data analysis and facilitating NHT’s connections with local investment and management partners on this project. Our analysis has shown that without small-area fair market rents, at least one of these proposed projects would not be possible to implement.

Existing HCV families would not face increased rent burdens under Small Area FMRs. The Small Area FMR rule has numerous built in protections to protect existing HCV families from increased rent burdens. First, the rule gives PHAs the option of preserving the existing payment standard for all families in their current units who reside in zip codes where the payment standards would decrease. Second, if the PHA decided not to hold existing families harmless

from a subsidy decrease, any reduction in the payment standard is limited to 10% per year, and would be delayed for any individual family until after the second regular recertification for the unit, and with a minimum of 12 months advance notice, which would give families ample opportunity to either find a less expensive unit in the same neighborhood or find a unit in a higher-FMR zip code.

We strongly concur with the U.S. District Court's preliminary injunction ruling in *Open Communities Alliance et al v. Carson*, that HUD's attempted suspension of the mandatory Small Area FMR rule was arbitrary and capricious, and not justified by any findings of the Interim SAFMR demonstration report on which it was purportedly based. Any further suspension of the rule would irreparably harm HCV clients in our region, and violate their rights under the Fair Housing Act.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erin Boggs". The signature is fluid and cursive, with the first name "Erin" written in a smaller, more compact script and the last name "Boggs" in a larger, more prominent script.

Erin Boggs
Executive Director