U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, DC 20410-0001

Suspension of Small Area Fair Market Rent (FMR) Designations

Small Area FMR Final Rule and 24 CFR 888.113(c)(4)

The Small Area FMR Final Rule was published on November 16, 2016 (81 FR 80567) and became effective on January 17, 2017. Under the final rule, the use of Small Area FMRs is required in the administration of the HCV program for certain metropolitan areas beginning on October 1, 2017.

The final rule provides that HUD may suspend the Small Area FMR designation for a metropolitan area when HUD by notice makes a documented determination that such action is warranted. The regulation at 24 CFR 888.113(c)(4) provides:

> HUD will designate Small Area FMR areas at the beginning of a Federal fiscal year, such designations will be permanent, and will make new area designations thereafter as new data becomes available. HUD may suspend a Small Area FMR designation from a metropolitan area, or may temporarily exempt a PHA in a Small Area FMR metropolitan area from use of the Small Area FMRs, when HUD by notice makes a documented determination that such action is warranted. Actions that may serve as the basis of a suspension of Small Area FMRs are:
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> (i) A Presidentially declared disaster area that results in the loss of a substantial number of housing units;
> (ii) A sudden influx of displaced households needing permanent housing; or
> (iii) Other events as determined by the Secretary.

Secretary's Determination

HUD is exercising its authority under 24 CFR 888.113(c)(4)(iii) to suspend the Small Area FMR designation for 23 of the 24 metropolitan areas that were previously selected for mandatory use of the Small Area FMRs. The Small Area FMR designation for those areas is suspended for two Federal fiscal years (FY) and will become effective at the beginning of FY 2020 instead of FY 2018. After careful consideration, I have determined that the following events necessitate this action:

- HUD's review of the Small Area FMR demonstration's interim findings and concerns regarding the potential negative impact on HCV families;
- HUD's review of the public comments received in response to the Reducing

Regulatory Burden Federal Register Notice; and

- HUD's determination that the HUD guidance and technical assistance for public housing agencies (PHAs) must be fully informed by the final findings and lessons learned from the Small Area FMR Demonstration Evaluation to be effective, which is expected to be completed in July 2018.

These events are described in greater detail later in this document.

Metropolitan Areas Covered by This Action

The Small Area FMR designation is suspended until October 1, 2019, for the following metropolitan areas:

Atlanta-Sandy Springs-Marietta, GA HUD Metro FMR Area
Bergen-Passaic, NJ HUD Metro FMR Area
Charlotte-Gastonia-Rock Hill, NC-SC HUD Metro FMR Area
Chicago-Joliet-Naperville, IL HUD Metro FMR Area
Colorado Springs, CO HUD Metro FMR Area
Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Metro Division
Fort Worth-Arlington, TX HUD Metro FMR Area
Gary, IN HUD Metro FMR Area
Hartford-West Hartford-East Hartford, CT HUD Metro FMR Area
Jackson, MS HUD Metro FMR Area
Jacksonville, FL HUD Metro FMR Area
Monmouth-Ocean, NJ HUD Metro FMR Area
North Port-Bradenton-Sarasota, FL MSA
Palm Bay-Melbourne-Titusville, FL MSA
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA
Pittsburgh, PA HUD Metro FMR Area
Sacramento--Arden-Arcade--Roseville, CA HUD Metro FMR Area
San Antonio-New Braunfels, TX HUD Metro FMR Area
San Diego-Carlsbad-San Marcos, CA MSA
Tampa-St. Petersburg-Clearwater, FL MSA
Urban Honolulu, HI MSA
Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR Area
West Palm Beach-Boca Raton-Delray Beach, FL Metro Division

Small Area FMR Designation Remains in Effect Dallas-Plano-Irving, Texas Metro Division

The Small Area FMR designation remains in effect for the Dallas-Plano-Irving, TX Metro Division[1]. All PHAs administering the HCV program in the Dallas-Plano-Irving TX Metro

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[1] HUD also uses the term Dallas, TX HUD Metro FMR Area (HMFA) in reference to the Dallas-Plano-Irving, TX Metropolitan Division. The area is comprised of Collin County, TX, Dallas County, TX, Denton County, TX, Ellis County, TX, Hunt County, TX, Kaufman County, TX and Rockwall County, TX.

Division have been using Small Area FMRs since 2011 as a result of a legal settlement. The Dallas-Plano-Irving, TX Metro Division is not covered by HUD's decision to exercise its authority under 24 CFR 888.113(c)(4) to suspend the Small Area FMR designation for the other metropolitan areas. Consequently, the Dallas-Plano-Irving TX Metro Division remains a Small Area FMR designated metropolitan area in FY 2018 and FY 2019.

Voluntary Use of Small Area FMRs by PHAs

HUD's action does not prevent any PHA operating in the covered metropolitan areas from voluntarily implementing the use of Small Area FMRs prior to October 1, 2019, should they wish to do so. The program regulations at 24 CFR 888.113(c)(3) provide that a PHA administering an HCV program in a metropolitan area not subject to the application of Small Area FMRs may opt to use Small Area FMRs by seeking approval from HUD's Office of Public and Indian Housing (PIH) through written request to PIH. PIH will expedite the approval process for PHAs that are impacted by this decision to suspend the Small Area FMR designation for their metropolitan areas.

Under 24 CFR 982.503(b)(iii), a PHA that is not in a designated Small Area FMR area or has not opted to voluntarily implement Small Area FMRs may establish exception payment standards for a ZIP code area above the basic range for the metropolitan FMR based on the HUD published Small Area FMRs. The PHA may establish an exception payment standard up to 110 percent of the HUD published Small Area FMR for the ZIP code area. The PHA must simply notify HUD if it establishes an exception payment standard based on the Small Area FMR. PHAs may utilize the Small Area FMRs in the designated metropolitan areas to establish exception payment standards under this regulatory provision until the Small Area FMRs go into effect on October 1, 2019.

Basis for Suspension – Other Events as Determined by the Secretary

The other events as determined by the Secretary that are the basis for the suspension of the Small Area FMR designation for the 23 metropolitan areas until FY 2020 are as follows:

1) **HUD's review of the Small Area FMR demonstration's interim findings and the potential negative impact on HCV families.**

   Background: In the HCV program, the FMR is the basis for establishing the payment standard that is used to determine the maximum monthly subsidy that may be paid on behalf of an HCV family. The PHA may establish the payment standard between 90 and 110 percent of the HUD-published FMR. The housing assistance payment (HAP) that is paid on behalf of a family is calculated by subtracting the family's total tenant payment (TTP), which is generally 30 percent of adjusted monthly income, from the lower of the gross rent of the unit or the PHA payment standard. Families may choose to rent units with gross rents that are higher than the payment standard but in those cases, must pay the difference between the gross rent and the payment standard in addition to their TTP.

HUD establishes FMRs for different geographical areas. In general, the FMR for an area is the amount that would be needed to pay the gross rent (defined as shelter plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. HUD calculates FMRs for all nonmetropolitan counties and metropolitan areas (which generally are comprised of several metropolitan counties). FMRs in a metropolitan area represent the 40th percentile (or in limited circumstances the 50th percentile) gross rent for typical non-luxury, non-substandard rental units occupied by recent movers in a local housing market.

Since 2010, when the United States Census Bureau made available data collected over the first 5 years of the American Community Survey (ACS), HUD has considered various methodologies that would set FMRs at a more granular level. To that end, through a Federal Register notice published on May 18, 2010 (75 FR 27808), HUD announced that in FY 2011 it would seek to conduct a Small Area FMR demonstration project to determine the effectiveness of FMRs which are published using U.S. Postal Service ZIP codes as FMR areas within metropolitan areas. On November 2012, HUD announced the commencement of the Small Area FMR demonstration and the participation of five PHAs: the Housing Authority of the County of Cook (IL), the City of Long Beach (CA) Housing Authority, the Chattanooga (TN) Housing Authority, the Town of Mamaroneck (NY) Housing Authority, and the Housing Authority of Laredo (TX).

In 2015, HUD contracted with Abt Associates to conduct an evaluation of the Small Area FMR demonstration, examining whether and to what extent providing higher subsidies in ZIP code areas where rents are higher, and lower subsidies in ZIP code areas where rents are lower, helps HCV families to better access areas of opportunity. HUD also requested that the evaluation examine how the transition affected families and landlords, and the impact of the use of Small Area FMRs on HCV subsidy and administrative costs. In addition to the five PHAs selected for the demonstration, the study included two of the twelve PHAs from the Dallas Texas metropolitan area – the Housing Authority of the City of Dallas and the Housing Authority of Plano – that have been using Small Areas FMRs since 2011 as the result of a legal settlement.

Notwithstanding the on-going demonstration to test the impact and effectiveness of the Small Area FMR approach, HUD published a proposed rule on June 16, 2016 (81 FR 39218) to require the use of Small Area FMRs as a replacement for the 50th percentile FMR interim rule that was then used to address high levels of voucher concentration. HUD had been setting FMRs at the 50th percentile rents rather than 40th percentile rents for metropolitan areas with high levels of voucher concentration since 2000. The purpose of the 50th percentile FMRs was to provide a broader range of housing opportunities throughout the metropolitan area, which would hopefully lead to better locational outcomes for HCV families.

HUD published the Small Area FMR Final Rule on November 16, 2016. HUD's rationale for proceeding with implementation before the results of the demonstration were known was that the 50th percentile FMRs had not been very effective at improving locational outcomes and that Small Area FMRs in theory appeared to be a much more promising approach. HUD did add a new provision to the final rule that allowed HUD to suspend a Small Area FMR designation when HUD makes a documented determination that such action is warranted, including due to events as determined by the Secretary.

The Small Area FMR demonstration ended on September 30, 2016. On April 26, 2017, HUD's contractor, Abt Associates, submitted the Small Area Fair Market Rent Demonstration Evaluation Interim Report to HUD (Exhibit A). The interim report examines changes in outcomes over time between 2010 and 2015. Abt is now working on the second phase of the evaluation. Abt will conduct a second round of site visits to the PHAs to update the information on administrative processes and costs and to interview tenants and landlords. The interviews will build upon the interim findings and are designed to complement and enhance the quantitative analyses. Abt will also update its analysis with 2016 and 2017 data. The Phase 1 and Phase 2 findings will be combined and synthesized in the final report, which is expected to be submitted to HUD in mid-2018.

The Interim Report found that following the implementation of Small Areas FMRs, voucher families in the demonstration sites were slightly more likely to live in high rent ZIP code areas (defined by the report as an area where the median rent exceeds 110 percent of the metropolitan wide FMR) than they were prior to the demonstration (Interim Report, page 48). The Interim Report further determined that between 2010 and 2015 the HAP costs for the study PHAs decreased more than the HAP costs for the comparison PHAs (Interim Report, page 95). But the Interim Report also included several findings that are worrisome and where further research is needed to address a number of critical questions with respect to the potential harm to HCV families (both participants and applicants) in areas transitioning to Small Area FMRs. The findings of the interim report that are of most concern to HUD relate to the availability of units and the impact of Small Area FMRs on voucher success rates and utilization, and to rent burdens among assisted households.

Availability of units and impact on success rates and utilization. The use of Small Area FMRs should result in a redistribution of the units that may be rented under the voucher program throughout the market area. Units in lower-rent ZIP codes that have relatively modest rents for the metropolitan area may now be too expensive for voucher families to rent when compared to the FMR for their ZIP code area, while units that were previously unaffordable in higher cost ZIP code areas may now be affordable to voucher families. In other words, Small Area FMRs should increase the pool of units potentially available that rent below the applicable FMR in high-rent FMRs, while reducing the pool of units that are located in the lower-rent ZIP codes.

One of the findings of concern from the interim report is that the gain in units with rents below the applicable FMR in high-rent ZIP codes did not offset the decrease in the number of units in the low-rent and moderate-rent ZIP codes, resulting in a net loss of units that are potentially available to voucher families. The net effect across the 7 study PHAs is a loss of over 22,000 units (3.4 percent) that might otherwise have been affordable to voucher families (Interim Report, pg. vi). While HUD sought to limit this effect in the final rule by capping the decrease in the FMR by no more than 10 percent per year, that policy may only slow the pace of the loss of units, as opposed to preventing the overall decline in the number of units available to HCV families in the metropolitan area.

Adding to this concern is that affordability is only one component of determining if a unit is actually available for rent by HCV families. In general, landlords are not required to participate in the HCV program. A few Federal programs include such a requirement (e.g., Low Income Housing Tax Credit (LIHTC) and HOME projects may not refuse to accept vouchers) and some localities have passed legislation that prohibit landlords from discriminating based on source of income (local legislation of this sort applied to two of the seven study PHAs). But for most landlords, participation in the HCV program remains completely voluntary. A major question regarding the Small Area FMR approach is the willingness of owners with rental units in the higher cost areas to participate in the program. If owners in higher-cost areas have enough demand for their units from higher income unassisted families, they may have little interest or incentive to participate in the HCV program. If owners are not willing to participate in the program, units in higher-rent areas will not materialize in sufficient numbers to off-set the loss of the rental units in the lower-rent zip codes.

Two key program measures are impacted by the availability of rental units and the willingness of owners to participate in the program – the PHA's success rate and utilization. The success rate is the percentage of families issued a voucher who lease a unit before their voucher expires. Utilization is the percentage of the PHA's authorized vouchers that are under lease and the percentage of its available HAP funds that are being utilized.

The interim report was unable to reach any definitive conclusions with respect to the impact of Small Area FMRs on the success rates and utilization of the study PHAs, though the research team intends to further examine these issues in Phase 2 of the research (Interim Report, pages 82-83). In the meantime, preliminary analysis of HUD administrative data shows that, as of April 2017, five of the seven study PHAs were under-utilized, one PHA was over-leased, and one PHA was in the optimal zone for utilization. It is possible that the sub-optimal utilization of the six study PHAs is only temporary, and that these PHAs will reach optimal utilization by the end of the calendar year. It is also possible that something other than the use of Small Area FMRs is causing the sub-optimal utilization. However, this analysis does suggest that the effect of Small Area FMRs on utilization is a potential concern that warrants further exploration during Phase 2 of the Demonstration Evaluation. Depending on final findings of the report, HUD and the PHAs operating in the Small Area FMR metropolitan areas may need to make adjustments to mitigate the risk that the effort to increase opportunities in higher-rent areas does not unintentionally harm families by significantly reducing the overall number of rental units that are available for leasing to HCV participants.

Rent Burdens. Another interim finding of concern is the potential for the Small Area FMR demonstration to increase the family's rent burden (the percentage of income the family contributes as their share of the gross rent under the HCV program). The Interim Report found that for the study PHAs, the HCV family contributions to rent increased an average of 16 percent (in real terms) between 2010 and 2015, compared to average increase of only 9 percent for the same period of time for the comparison PHAs. The interim report did not draw any definitive conclusions but speculated that the increase in rent burden for households in low-rent ZIP codes (22 percent) for the study PHAs was perhaps due to the increase in tenant contributions by families who did not wish to move despite a drop in the payment standard stemming from the implementation of Small Area FMRs (Interim report, page 99).

The final rule allows PHAs to hold families under HAP contract harmless from payment standard reductions. However, there is no protection for families that must move to a new unit or for applicant families off the waiting list who are trying to lease a unit on the program for the first time. With the exception of the two PHAs operating in jurisdictions with source of income discrimination legislation, the study PHAs have higher percentages of HCV families paying more than 30 percent of adjusted monthly income for rent, as well as higher percentages of families who are paying more the than 40 percent for adjusted monthly income for rent. Again, there may be other contributing factors besides the use of Small Area FMRs, but further analysis and research is needed on this aspect of the Small Area FMR Demonstration during Phase 2 of the evaluation.

Conclusion. After reviewing the Interim Report and considering the potential negative consequences for approximately 200,000 HCV families, HUD has determined that a policy change of this magnitude should be fully informed by the forthcoming Small Area Fair Market Rent Evaluation Final Report before HUD *requires* the use of Small Area FMRs. The Final Report is expected to be submitted to HUD in July of 2018. Suspending the Small Area FMR designation for the 23 metropolitan areas until fiscal year 2020 under 24 CFR 888.813(c)(4) provides HUD with reasonable time to analyze the final findings of the demonstration. Furthermore, the delay will allow HUD to develop guidance and technical assistance that is informed by the lessons learned from the demonstration before PHAs are required to revise their payment standards and accomplish all the other administrative changes to their operations necessitated by the mandatory use of Small Area FMRs. In the interim, PHAs may choose to voluntarily implement Small Area FMRs for their HCV programs if they believe such action will help address the needs and priorities of their local communities.

2) **HUD's review of the public comments in response to the Reducing Regulatory Burden Federal Register Notice.**

On May 15, 2017, HUD published a Federal Register notice on "Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777" (82 FR 22344). The notice invited public comments to assist in identifying existing regulations that may be outdated, ineffective, or excessively burdensome. Comments were due on June 14, 2017. HUD has not yet completed its analysis of these public comments but is aware that several PHA industry groups have concerns about the Small Area FMR final rule and the timeline for implementation. Temporarily suspending the Small Area FMR designation until FY 2020 will allow HUD to be informed by the public comments on reducing regulatory burden for the HCV program as well as the Final Report on the Small Area FMR Demonstration before the use of Small Area FMRs is required. Furthermore, should HUD implement changes to reduce the regulatory burden on the HCV program over the course of the next two years, HUD will be able to take those programmatic changes into account when developing the guidance and technical assistance for PHAs required to use Small Area FMRs beginning in FY 2020.

3) **HUD's determination that the guidance and technical assistance must be fully informed by the final findings and lessons learned from the Small Area FMR demonstration to be effective.**

HUD has been developing guidance and planning to provide technical assistance to assist PHAs that must implement the use of the Small Area FMRs as a result of the final rule. This effort has been complicated by several factors. As noted above, during the first few months of the new Administration, HUD has been focused on soliciting input and feedback from PHAs and other stakeholders on a variety of regulations and policies, including the Small Area FMR Final Rule. In addition, HUD received the Interim Report on the Small Area Demonstration on April 26, 2017, which contained several items that warrant further analysis as part of Phase II of the evaluation. HUD is concerned that developing and issuing the guidance and technical assistance without fully understanding and incorporating the lessons learned from the Demonstration will result in a product that does not adequately assist those PHAs that must make this the transition. Implementing comprehensive guidance that may become quickly outdated as the result of related regulatory burden reduction and reform efforts is likewise problematic. Suspending the Small Area Designation until Fiscal Year 2020 will allow HUD's guidance and technical assistance to reflect the lessons learned from the demonstration, as well as to incorporate any related regulatory changes impacting the HCV program that may be forthcoming in the next two years.

ISSUED:

Dr. Ben Carson, Secretary

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