

July 12, 2010

Office of General Counsel
Attention: Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street, SW
Room 10276
Washington, DC 20410-0001

Re: Comments on Docket No. FR-5413-N-01, Section 8 Housing Choice Voucher Program—Demonstration Project of Small Area Fair Market Rents in Certain Metropolitan Areas for Fiscal Year 2011

Dear colleagues,

The undersigned fair housing and civil rights organizations support the proposal by HUD to implement a demonstration project using small area fair market rents (FMRs), set out at 75 Fed. Reg. 27808 (May 18, 2010). The current system for setting FMRs has long been criticized for limiting voucher holders' ability to move into higher opportunity neighborhoods and for its tendency to steer families into higher poverty areas.¹ We support HUD's efforts to create a more accurate and fair system for setting FMRs that has the potential to enhance voucher holders' mobility and choice. We encourage HUD to use this demonstration project as an opportunity to refine its methodology so that it may soon be implemented nationwide. In responding to HUD's request for comments, we will first offer five general comments before responding to specific questions in the notice.

General Comments

1) Enhanced Resident Choice

The use of small area FMRs could increase the range of neighborhoods available to voucher holders, thereby enhancing their ability to move to opportunity areas with higher quality schools, access to transportation, and healthier living environments. In this sense, the Small Area FMR proposal is a partial implementation of HUD's duty under the Fair Housing Act to "affirmatively further fair housing," which requires both avoidance of segregation-promoting policies and promotion of integrated housing patterns. The

¹ See, e.g., Florence Wagman Roisman, *End Residential Racial Segregation: Build Communities That Look Like America*, 2 HARV. L. & POL'Y REV. 1, 3 (2008) (arguing that HUD should increase FMRs for vouchers to be used in communities with "excellent resources and concomitantly high rents" to encourage integration); Barbara Sard, *Housing Vouchers Should Be a Major Component of Future Housing Policy for the Lowest Income Families*, 5 CITYSCAPE 89, 95 (2001) (citing lack of housing affordable under FMR guidelines as implemented by local housing authorities as a barrier for some families seeking to use vouchers in low-poverty areas); MARGERY AUSTIN TURNER, SUSAN POPKIN, & MARY CUNNINGHAM, SECTION 8 MOBILITY & NEIGHBORHOOD HEALTH 31-33 (2000) (presenting concerns about FMR levels as barriers to integration and deconcentration of voucher holders, as well as Section 8 "submarkets"); Philip D. Tegeler, Michael L. Hanley, & Judith Liben, *Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation*, 30 HARV. C.R.-C.L. L. REV. 451, 477 (1995) (citing inadequate fair market rents as an impediment to the regional use of vouchers).

current system for setting FMRs creates barriers to voucher holders from moving into neighborhoods where most (or all) of the rental units exceed the 40th or 50th percentile of rents in the region. The proposal to set local FMRs at the zip code level in metropolitan areas is an important first step in improving voucher holders' access to a broader range of housing choices and can help facilitate residential integration and voluntary deconcentration of poverty.

2) Prevention of Overpayment

The use of small area FMRs has the potential over time to reduce the cost of the Section 8 program and prevent overpayment in lower-rent neighborhoods. Although rent reasonableness policies are intended to help local housing authorities control rent levels, such policies are not uniformly implemented and sometimes lead to rent inflation in high-poverty neighborhoods. Families are also inevitably steered into neighborhoods with lower rents and higher rates of poverty, thereby contributing to poverty concentration and racial segregation in these areas.² Small area FMRs will more accurately reflect local conditions and, over time, achieve more appropriate rent levels in many neighborhoods, thereby improving the cost efficiency of the Housing Choice Voucher Program and protecting voucher holders from overconcentration in Section 8 "submarkets."

3) Prevention of Hardship to Tenants When FMRs Decrease

At the same time, the new policy should be implemented carefully to protect existing tenants in areas where rent inflation has occurred. Current tenants may be protected from hardship by proposed provisions under the proposed Section Eight Voucher Reform Act (that would cap annual methodology-based changes in FMRs by 10%), as well as by language in the notice allowing PHAs in the demonstration project to make exceptions when renewing pre-existing HAP contracts. However, it is important that HUD include more specific protections for current tenants in this demonstration project.³ We recommend that HUD "grandfather" in current tenancies or hold tenants harmless by delaying any rent increases due to the change in FMR methodology for a reasonable transition period (e.g. two years).

4) Administrative Feasibility

We believe that small area FMRs will not impose a significant administrative burden on public housing authorities (PHAs). We are not aware of particular burdens where PHAs

² See, e.g., Xavier de Souza Briggs, Jennifer Comey, & Gretchen Weismann, *Struggling To Stay Out of High-Poverty Neighborhoods: Housing Choice and Locations in Moving to Opportunity's First Decade*, 20 HOUSING POL'Y DEBATE 3 (2010) (discussing steering of voucher holders into neighborhoods with landlords known to accept vouchers).

³ "PHAs in small area FMR demonstration sites will be empowered to renew pre-existing HAP contracts based on payment standards outside the new basic range (90 to 110 percent of the small area FMR) for tenants who wish to remain in their existing units and whose existing payment standards would otherwise fall outside the new basic range due to the implementation of the small area FMR demonstration project." 75 Fed. Reg. at 27810-11.

have set different rents across metropolitan areas. For example, in the Baltimore metropolitan area, there has long been one FMR for Columbia, Maryland and another for the rest of Howard County and the balance of the metropolitan area. More recently, the Metropolitan Baltimore Quadel (MBQ)⁴ mobility program has utilized the regulatory flexibility provided under the Moving to Work program to develop its own system for calculating payment standards based on even smaller areas—census tracts. Initially, MBQ found that the standard FMR-setting process failed to account for wide disparities in rents across the metropolitan area. The large number of low cost units in high poverty areas of Baltimore City and certain parts of Baltimore County, skewed FMRs too low, placing many units in Anne Arundel and Howard counties, which are influenced by the Washington, D.C. housing market, out of reach for voucher holders. Pursuant to HUD’s exception rent methodology, MBQ used 2000 census data and compared the ratio of median rent (by census tract) to the metro area median rents. After removing all of the tracts that it determined to be “impacted,” MBQ sorted the ratios and added 110%, 120% or 130% to the HUD published FMR. Now, under MBQ’s calculations, voucher holders are able to rent units at up to 130% of the FMR and thus have access to a broader range of units.

Similarly, in Connecticut, the statewide voucher program administered by the Department of Social Services (DSS) has used tiered rents for central city areas, first ring suburbs, and outer suburbs. There are maps available for tenants, landlords, and administrators. Many other areas have experience with the use of sub-FMR areas for setting payment standards, and for administering those standards, This has not led to any undue administrative burden.

5) Eligibility Criteria

We encourage HUD to use this project as an opportunity to “affirmatively further fair housing” in areas that currently suffer from high levels of segregation, by investigating the effects of small area FMRs on improving access to previously exclusionary jurisdictions. Additionally, we encourage HUD to select metro areas that have high variability in rents to best be able to evaluate the methodology that has been selected.

While the small area FMR proposal does not require formal consolidation of local housing authorities, we support the aspects of this proposal which encourage basic cooperation among housing authorities in a region to implement small area FMRs. Along this line, we believe that the 80 percent-of-voucher-tenants standard is acceptable for the demonstration, but in no way should be repeated at the full implementation stage. There should not be an ability to opt-out of the policy when it is fully implemented nation-wide. Any such provision could enable PHAs to restrict access to certain neighborhoods and towns.

6) Assessment of the Demonstration

We do not believe that a demonstration is strictly necessary, and that HUD could immediately roll out such a program nation-wide. We recognize, however, that there is

⁴ Metropolitan Baltimore Quadel, <http://www.mbquadel.com/>.

value in taking 6-12 months to refine the mechanics of the proposed methodology. However, the demonstration should be limited to these mechanics—in a 12 month period, we should not expect any dramatic changes in locations of voucher holders. These changes will come over time. The demonstration’s assessment should focus on the implementation of the methodology—does the mathematical formula work in practice to give voucher holders access to higher opportunity communities?

In particular, we would like to see the assessment re-evaluate the choice of the 1000 cash renter occupied units as the general standard to ensure that this numerical standard is not excluding a disproportionate number of higher opportunity neighborhoods from the program. Additionally, the assessment should review whether or not the program is able to clearly publish and communicate rents to clients, and whether access to a substantial range of units in higher opportunity areas is provided.

Responses to Specific Questions Posed in the May 18, 2010 Notice

In addition to the above comments, we would like to respond to a few of the specific questions posed by HUD in its request for comments:

1. Should HUD institute caps and floors on small area FMRs?

We believe that there are high quality family residential areas in some metropolitan regions with a significant number of rental units that would be off-limits to families with vouchers under the 150% cap. Flexibility is needed to allow access to these areas. This belief should be tested in the demonstration to justify exceeding the cap in the final rule.

2. Are there any instances where an exception payment standard policy might still be useful?

We support a continued use of an exception payment standard policy in certain circumstances. We recognize that certain zip codes straddle school districts, which can lead to disparate rental costs within a zip code where school quality differs. It is important that poor children have access to these higher quality schools. Furthermore, we recognize that exception payment standards can also be useful in low-rent areas that are rapidly gentrifying in a portion of a zip code. An exception rent policy is an important tool to ensure that local housing authorities have enough flexibility to meet local needs and changing conditions.

The use of smaller geographies such as census tracts to provide exception payment standards continues to be essential. Indeed, these smaller geographies often offer a more accurate and fine grained measure of rent levels than zip codes, especially in high density urban areas where zip codes cut across a number of neighborhoods with varying market conditions, socio-economic characteristics, availability of rental units, etc.

3. Do small area FMRs increase the administrative burden of PHAs?

We do not believe that adopting the small area FMR program will increase the administrative burden of PHAs. As noted above, both the city of Baltimore and the state of Connecticut have successfully implemented programs which use different payment standards for different areas covered by the same PHA. If HUD supplies PHAs with regional maps showing the FMRs of each zip code (which can also be made available to tenants for ease of access and understanding of the new program), we expect the administrative burden on local PHAs to be minimal.

4. Is the proposed rounding protocol of \$25 appropriate?

The rounding protocol provides tenants with a level of certainty from year to year. A family's ability to anticipate rent levels that will be accessible, as well as their annual costs is very important. This protocol will also help in reducing administrative burdens for PHAs.

5. Should HUD revise the 50th-percentile FMR policy or eliminate it, and why?

The 50th-percentile FMR policy was adopted in certain metros for the purpose of expanding housing opportunities and ensuring that voucher holders are successful in finding suitable rental housing in areas "where a PHA has increased its voucher payment standard to 110 percent of the FMR, but still finds that fewer than 75 percent of all families issued rental vouchers over the course of six months have become participants in the voucher program."⁵ In metros where the 50th percentile FMR has previously been found to be appropriate to ensure voucher success, there is no reason not to use the 50th-percentile FMR policy as the foundation for calculating the new small area FMRs in those metros.

Thank you for the opportunity to comment on the proposed demonstration project.

Sincerely,

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⁵ 65 Fed. Reg. 191, at 58870 (Oct. 2, 2000).