

**UNITED STATES DISTRICT COURT
DISTRICT OF THE DISTRICT OF COLUMBIA**

OPEN COMMUNITIES ALLIANCE, *et al.*,

Plaintiffs,

v.

BEN CARSON, *et al.*,

Defendants.

Civ. Action No. 1:17-cv-02192 (BAH)

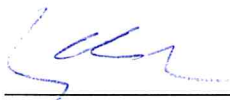
Chief Judge Beryl A. Howell

DECLARATION OF SASHA SAMBERG-CHAMPION, ESQ.

1. I am an attorney at Relman, Dane & Colfax, PLLC. I am counsel for Plaintiffs and admitted to practice in the District of the District of Columbia.
2. I submit this Declaration in support of Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for a Preliminary Injunction.
3. Attached hereto as Exhibit A is a true and correct copy of the Notice for Suspension of Small Area Fair Market Rent (Small Area FMR) Designations and Solicitation of Comment written by Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing at HUD, dated December 1, 2017 and scheduled for publication on December 12, 2017.
4. Attached hereto as Exhibit B is a true and correct copy of the Second Declaration of Erin Boggs, Executive Director of the Open Communities Alliance (OCA), dated December 11, 2017.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 11 December, 2017



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EXHIBIT

A



Billing Code: 4210-67

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6070-N-01]

Notice for Suspension of Small Area Fair Market Rent (Small Area FMR) Designations

Solicitation of Comment

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice; solicitation of comment.

SUMMARY: On August 10, 2017, pursuant to the authority provided in regulation, HUD suspended for two years the designation for the mandatory use of Small Area Fair Market Rents (Small Area FMRs) for certain metropolitan areas that had previously been designated for Small Area FMR use (Suspension). After HUD provided notice of this suspension, interested persons requested an opportunity to review and comment on the Suspension. While HUD is not required to post the Suspension for public comment, this notice solicits comment for a period of 30 days. At the expiration of the 30-day period, HUD will review the comments and consider if any further changes to the Suspension are necessary.

DATES: Comment Due Date: **[INSERT DATE THAT IS 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

ADDRESSES: Interested persons are invited to submit comments regarding this notice, and HUD's temporary suspension of the use of Small Area FMRs, to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 1-800-877-8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Todd M. Richardson, Deputy Assistant Secretary, Office of Policy Development, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 4130, Washington, DC 20410, 202-708-1537, ext. 5706 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Since October 2011, all Public Housing Agencies (PHAs) operating the Housing Choice Voucher (HCV) program in the Dallas, TX HUD Metro FMR Area have been using Small Area Fair Market Rents (Small Area FMRs). The use of Small Area FMRs was intended to give HCV families access to areas of high opportunity and lower poverty by providing a subsidy that is adequate to cover rents in those areas, thereby reducing the number of voucher families that reside in areas of high poverty concentration. The PHAs in Dallas began using Small Area FMRs as the result of a legal settlement.

HUD announced the commencement of the Small Area FMR demonstration in November 2012. Five PHAs participated voluntarily in this demonstration, which sought to assess the effect on families of using FMRs published at the U.S. Postal Service ZIP code level (i.e., Small Area FMRs) in lieu of FMRs published at the metropolitan area level.¹

In 2015, HUD awarded a cooperative agreement to Abt Associates to evaluate the use of Small Area FMRs by the five PHAs that voluntarily participated in the demonstration, as well as two PHAs operating the voucher program in the Dallas, TX HUD Metro FMR Area. Abt was charged with 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

¹ Four of the five demonstration PHAs requested and were permitted by HUD to continue using Small Area FMRs in the operation of their HCV programs after the demonstration ended.

how the transition from metropolitan-wide to Small Area FMRs affected families and landlords, and the impact of Small Area FMRs on HCV subsidy and administrative costs.

On November 16, 2016, HUD published its “Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMR” final rule (81 FR 80567). This final rule required the use of Small Area FMRs in certain metropolitan areas instead of the 50th percentile rent previously used. On the same day, HUD published a notice listing areas in which the use of Small Area FMRs is mandatory beginning on October 1, 2017 (81 FR 80678).

On April 26, 2017, HUD received Abt’s Small Area Fair Market Rent Demonstration Evaluation Interim Report.² The Interim Report examines changes in outcomes from 2010 to 2015 and documents several findings that HUD finds concerning. In addition, it indicates that further research is needed to address several critical questions with respect to the potential harm to HCV families (both participants and applicants) and PHAs in areas transitioning to Small Area FMRs.

On August 10, 2017, pursuant to the authority provided in regulation, HUD suspended the designation for the mandatory use of Small Area FMRs for 23 of the 24 metropolitan areas that would become subject to the requirement on October 1, 2017 (Suspension).³ The Suspension was made pursuant to 24 CFR 888.113(c)(4), which 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. Specifically, § 888.113(c)(4) provides:

HUD will designate Small Area FMR areas at the beginning of a Federal fiscal

² The Small Area Fair Market Rent Demonstration Evaluation Interim Report may be found at <https://www.huduser.gov/portal/sites/default/files/pdf/SAFMR-Interim-Report.pdf>.

³ The Small Area FMR designation remains in effect for the Dallas-Plano-Irving, TX Metro Division (also referred to as the Dallas, TX HUD Metro FMR Area). All PHAs administering the HCV program in the Dallas-Plano-Irving, TX Metro Division have been using Small Area FMRs since 2011 as a result of a legal settlement.

year, such designations will be permanent, and [HUD] 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:

- 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* (emphasis added).

Based on the findings in Abt's Small Area Fair Market Rent Demonstration Evaluation Interim Report, summarized above, HUD has concerns that the mandatory use of Small Area FMRs, without sufficient preparation and mitigation of potential unintended consequences, could put some PHAs at risk of causing an adverse rental housing market condition. Accordingly, after careful consideration, HUD issued the Suspension of the Small Area FMR designation for 23 of the 24 metropolitan areas that had previously been designated for mandatory Small Area FMR use. The Suspension was for two Federal fiscal years (FYs), becoming effective at the beginning of FY 2020 (October 1, 2019) instead of FY 2018. To provide notice to affected PHAs, HUD sent letters to more than 200 PHAs in the 23 metropolitan areas noted in the Suspension. Additionally, HUD posted an article regarding the Suspension on its website.⁴

The delayed implementation of mandatory Small Area FMR adoption will provide HUD with reasonable time to analyze the final findings of the demonstration and determine what measures are necessary to mitigate negative effects, if possible. For example, the delay may allow HUD to develop guidance and technical assistance that is informed by the lessons learned from the demonstration.

Notwithstanding the exercise of this authority, the Small Area FMR Rule permits any

⁴ See HUD, *Giving Public Housing Agencies More Time to Succeed*, PD&R Edge, <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-082817.html>.

PHA that voluntarily seeks to adopt SAFMRs 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 mandatory 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. In light of the findings of Abt's Small Area Fair Market Rent Demonstration Evaluation Interim Report referenced above, should HUD receive a request under this provision, HUD will consider in its approval determination a PHA's ability to provide reasonable assurance that adoption of Small Area FMRs will not result in an adverse housing market condition.

With this notice, HUD seeks public comment on the Suspension. While HUD is not required to post the Suspension for public comment, this notice solicits comment for a period of 30 days. At the expiration of the 30-day period, HUD will review the comments and consider if any further changes to the Suspension are necessary. Interested parties can find the Suspension in the Supporting Documents section of the docket associated with this notice, at www.regulations.gov, and on HUD's website at <https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html>.

Dated: December 1, 2017.

Dominique Blom,

General Deputy Assistant Secretary,

Office of Public and Indian Housing.

[FR-6070-N-01]

[FR Doc. 2017-26695 Filed: 12/11/2017 8:45 am; Publication Date: 12/12/2017]

EXHIBIT

B

SECOND DECLARATION OF ERIN BOGGS

1. My name is Erin Boggs, and I am the Executive Director of the Open Communities Alliance (OCA). OCA's office is located in Hartford, Connecticut. OCA focuses its work throughout the state of Connecticut, including the Hartford metropolitan region.

2. As a result of the decision of the U.S. Department of Housing and Urban Development (HUD) to suspend the mandatory implementation of the Small Area Fair Market Rent (Small Area FMR) rule, OCA will be required to divert resources to convincing each of the individual public housing authorities (PHAs) in the Hartford-West Hartford-East Hartford, CT HUD Metro FMR Area to voluntarily implement small area FMRs in order to advance its mission.

3. I am aware of at least 21 PHAs that operate within the FMR Area: the Bloomfield Housing Authority, Bristol Housing Authority, the Canton Housing Authority, 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.

4. In order to effectively advocate for these PHAs to voluntarily adopt small area FMRs, OCA's staff will first have to schedule meetings with the leadership of each PHA. Each meeting is likely to entail substantial preparation time in order to enable us to brief our counterparts on how small area FMRs would have a positive impact on their community, utilizing data specific to each PHA's service area to make that point. Each meeting will also require round-trip travel,

ranging from ten minutes to one hour. Scheduling, preparing for, traveling to, and holding initial meetings with each PHA will involve a total time investment of 63 hours if just one member of OCA's staff attends. For a second staff member to attend, this would involve an additional 31.5 hours.

5. OCA would need to commission a rental market survey for the Hartford region, at an estimated cost of \$58,000.

6. Where those initial meetings go well and PHA leadership is interested in voluntarily implementing small area FMRs, OCA will experience an additional drain on its resources. Staff will need to have more in-depth follow-up meetings with PHA staff who are responsible for implementing the policy decisions of leadership. I estimate that OCA staff would have to devote three hours for each PHA with leadership that is amenable to voluntary implementation. If ten PHAs are willing to consider voluntary implementation, OCA staff would incur an additional time investment of 30 hours.

7. OCA would also need to submit written comments on each PHA's public housing agency plan if that PHA is a non-qualified PHA and must submit an annual plan or if a qualified PHA has a five-year plan due in 2018 or 2019. Nine of the at least 21 PHAs are non-qualified PHAs and must submit annual plans. Preparing and submitting each comment letter will require four hours of OCA staff time for each PHA, resulting in a minimum additional time investment of 36 hours.

8. Lastly, OCA would need to present oral comments at the required public hearings that the PHAs will hold for their annual plans and five-year plans. Preparing comments, traveling to the hearings, and attending the entire hearings will require an average time investment of two hours for each PHA, resulting in a minimum additional time investment of 18 hours.

9. Altogether, OCA anticipates diverting a minimum of 178.5 hours of staff time into the process of working with individual PHAs to secure voluntary implementation of small area FMRs.

10. OCA has a total of two full-time staff who each work 1,820 hours per year. Expending 178.5 hours on working with individual PHAs to secure voluntary implementation would divert 4.9% of the organization's total capacity or 9.8% of one staff member's time.

11. OCA relies upon restricted grants from foundations in order to fund its work. The hours of individual employees are allocated among those grants. OCA does not have an employee who has 9.8% of their hours unaccounted for by any grant. Thus, in order to carry out this work to secure voluntary implementation of small area FMRs, OCA would have to direct a staff member to divert time from funded, mission-critical projects. This diversion would have a serious effect on OCA's ability to advance its mission.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Executed: 12/11/2017