

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](http://www.regulations.gov)*

Re: Docket No. FR-6070-N-01: "Notice for Suspension of Small Area Fair Market Rent (Small Area FMR) Designations," 82 Fed. Reg. 58439 (December 12, 2017)

To Whom It May Concern:

The Poverty & Race Research Action Council (PRRAC) and the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) submit these comments in response to the above captioned notice requesting comments from interested parties regarding HUD's August 10, 2017 action that purported to suspend for two years certain Public Housing Agencies' (PHAs') obligations under the Small Area Fair Market Rent (SAFMR) Rule, 81 Fed. Reg. 80,567 (Nov. 16, 2017).

PRRAC and the Lawyers Committee are serving as co-counsel for the plaintiffs in a pending federal court action challenging the August 2017 suspension of the SAFMR Rule (*Open Communities Alliance et al v. Carson*). On December 23, 2017, the U.S. District Court entered a preliminary injunction in that case, and the court held unlawful and set aside the Secretary's memorandum by which HUD delayed the effective date of the SAFMR designations. The action on which HUD solicited comment thus has been invalidated. Nonetheless, we are submitting these comments for the record, without waiving any future legal claims.

1. The grounds for suspension of the mandatory Small Area FMR rule as applied to the 23 metropolitan areas were specious and not supported by the record.

As discussed in detail in plaintiffs' briefs<sup>1</sup> and in the court's preliminary injunction ruling<sup>2</sup> in *Open Communities Alliance et al v. Carson*, which are incorporated in these comments by reference, HUD's stated bases for suspending the rule – concerns about tenant rent burden and declines in available units based on data in the interim report of the SAFMR demonstration – do not have factual support, are contradicted by the report, do not apply to the very different contexts of the final rule and the 23 selected metro areas, and do not consider the many benefits of the rule. Also, the very concerns that HUD relies on were considered and explicitly rejected when HUD issued the final rule.

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<sup>1</sup> [http://prrac.org/pdf/Filed\\_PI\\_Memo\\_of\\_Law.pdf](http://prrac.org/pdf/Filed_PI_Memo_of_Law.pdf); [http://prrac.org/pdf/Reply\\_brief.pdf](http://prrac.org/pdf/Reply_brief.pdf).

<sup>2</sup> [http://prrac.org/pdf/OCA\\_v\\_Carson\\_Ruling\\_on\\_PI\\_Motion\\_12-23-17.pdf](http://prrac.org/pdf/OCA_v_Carson_Ruling_on_PI_Motion_12-23-17.pdf);  
[http://prrac.org/pdf/OCA\\_v\\_Carson\\_Order\\_12-23-17.pdf](http://prrac.org/pdf/OCA_v_Carson_Order_12-23-17.pdf).

#### a. HUD's misapplication of rent burden findings in the Interim Report

As the court noted in the preliminary injunction ruling, the final Small Area FMR ruling has multiple protections to help avoid adverse rent burdens – none of which were present in the PHAs selected for the SAFMR demonstration. These protections cover both existing tenants and new tenants coming in to the program. Specifically, the final rule “provides PHAs with the option to establish an administrative policy that would hold harmless those families remaining in place from payment standard reductions . . . if the family’s payment standard falls as a result of a decrease in FMRs,” and “limits the annual decrease in Small Area FMRs to no more than 10 percent of the area’s FMR in the prior fiscal year.”<sup>3</sup> The rule also protects tenants during the term of the HAP contract by providing that “the earliest that the PHA may apply the initial reduction to the payment standard amount is the second regular reexamination following the effective date of the change in the payment standard amount” and “permits a PHA that is administering its HCV program under the Small Area FMRs to request and HUD to approve exception payment standards for a Zip Code.”<sup>4</sup> Thus, under the final rule, a PHA may increase the payment standard in a zip code where the FMR has decreased by applying a 110% payment standard increase as of right, or a higher payment standard percentage by application to HUD.<sup>5</sup>

#### b. HUD's misapplication of unit reduction findings in the Interim Report

Like its inappropriate conflation of the Interim Report’s rent burden findings with the Small Area FMR system set out in the final rule, HUD similarly misapplied the Interim Report’s analysis of the numbers of units available to voucher families to the very different context of the final rule. As the court noted in its preliminary injunction opinion, this was largely due to the completely different selection criteria used for the 23 metros selected in the final rule. Selection criteria focused on entire metro areas, not individual PHAs, metro areas with higher vacancy rates, metro areas with significant voucher concentration, and metro areas with a substantial number of rental units available outside of voucher-concentrated areas. In other words, the selection criteria for the Small Area FMR mandatory sites was intended to select areas where the rule would have the most positive effect and be most successful.

The final rule also has features that can protect against loss of units. These features include the tenant protections referred to above – all of which have the secondary benefit of preserving HCV-affordable units as well (the ability to hold existing tenants fully or partially harmless in their current units, and the delay in implementation of reductions until the second recertification). Most importantly, the Small Area FMR demonstration did not include the 10% cap on annual FMR reductions in specific zip codes, or an expedited process for PHAs to increase payment standards to 110% of the FMR or higher in zip codes where FMRs decreased to ensure sufficient rental units are available for voucher families.

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<sup>3</sup> “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 FMRs,” 81 Fed. Reg. 80567, 80571 (November 16, 2016) (hereinafter “SAFMR Final Rule”).

<sup>4</sup> *Id.* at 80568.

<sup>5</sup> *Id.* at 80573.

The inapplicability of HUD's concerns over unit loss is reinforced by the Furman Center's recent report,<sup>6</sup> which applied the same methodology as the Interim SAFMR Demonstration Report to data in the 24 mandatory metropolitan areas, and found, overall, a 9.1% increase in the total number of available units with the Small Area FMRs in place as compared to under metropolitan area-wide FMRs, with many metro areas experiences even sharper increases in unit availability. In the four metro areas that showed slight declines in total available units, the Furman Center report demonstrated that these reductions could be essentially eliminated by applying a slight payment standard increase in the lower rent zip codes. This is precisely the process contemplated by the final rule in such circumstances. These data do not indicate any adverse market conditions in the 24 metro areas that would justify suspension – in fact, the data show just the opposite.

## 2. 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 violation of the Fair Housing Act.

Each of the metropolitan areas selected for the mandatory Small Area FMR designation has its own unique racial history and development context, but they all are characterized by high levels of HCV concentration, and high representation of African American and Latino families among voucher recipients. Most of these metro areas also face high levels of racial and economic segregation. Both the existing segregated patterns in these metropolitan areas, and the disproportionate representation of African American and Latino families in the HCV program flow from historical actions for which HUD and a number of other predecessor federal agencies are largely responsible.<sup>7</sup> But it is not necessary to explore the federal government's historical complicity in segregation in order to assess the discriminatory and segregative impact of HUD's attempted suspension of the mandatory Small Area FMR rule.

For example, in 16 of the 23 metro areas, African American and Latino families constitute over 70% of all voucher families. In these metro areas, the Small Area FMR suspension would have had a particularly harsh racial impact. Ten of the selected metro areas have "racial dissimilarity index" values higher than 60, indicating very high levels of residential segregation using the most widely used measure of regional segregation.<sup>8</sup> In these metropolitan areas, the suspension of the mandatory Small Area FMR rule will have an especially powerful racial segregation impact; in the other metro areas, continuing voucher concentration will perpetuate and intensify existing patterns of segregation. In 18 of the 23 metro areas, according to data from the Center on Budget and Policy Priorities, over 60% of non-white HCV families are living in

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<sup>6</sup> NYU Furman Center, "How Do Small Area Fair Market Rents Affect the Location and Number of Units Affordable to Voucher Holders" (Data Brief, January 5, 2018), available at [http://furmancenter.org/files/NYUFurmanCenter\\_SAFMRbrief\\_5JAN2018\\_1.pdf](http://furmancenter.org/files/NYUFurmanCenter_SAFMRbrief_5JAN2018_1.pdf).

<sup>7</sup> See generally, Richard Rothstein, *The Color of Law* (2017)

<sup>8</sup> See John R. Logan and Brian J. Stults, "The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census", <https://s4.ad.brown.edu/projects/diversity/Data/Report/report2.pdf>. The authors note that the dissimilarity index represents "the percentage of one group who would have to move to achieve an even residential pattern - one where every tract replicates the group composition of the city." Index values are computed for Metropolitan Statistical Areas using 2010 Census data. The other 13 selected metro areas have index values between 30 and 60, indicating moderate levels of racial segregation.

neighborhoods with greater than 50% “nonwhite” population. The high levels of geographic concentration of the voucher program in the 23 metro areas, which were an explicit selection criteria for the program, are further evidence that the suspension of the rule will have a continuing discriminatory and segregative effect.<sup>9</sup>

HUD has been aware of the concentration impacts of the Fair Market Rent system for decades,<sup>10</sup> and its recent actions to attempt to continue this system by suspending the new rule in these 23 highly concentrated metropolitan areas violate 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.

### 3. Suspension of the mandatory Small Area FMR rule would impose continuing harms on low income families and children, and deprive these families and children of the benefits of living in lower poverty, higher opportunity communities.

The Small Area FMR rule would also help to ameliorate the continued exposure to high poverty neighborhoods experienced disproportionately by families and children in the Housing Choice Voucher program, as demonstrated by the data compiled by the Center on Budget and Policy Priorities.<sup>11</sup> A large share of these families are African American and Latino, compounding the harmful racial impacts of the prior FMR system.

Over the past several decades, increasingly compelling social science research has documented the harms faced by low income families, particularly children, who grow up in high poverty neighborhoods.<sup>12</sup> These include health impacts such as heightened risk of severe asthma, increased exposure to lead and airborne toxic chemicals, increased exposure to neighborhood

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<sup>9</sup> Summary data on HCV location by neighborhood racial concentration and poverty rates in the metro areas affected by the mandatory Small Area FMR rule can be accessed at <https://www.cbpp.org/research/housing/housing-voucher-policy-designed-to-expand-opportunity-targets-areas-that-need-it>.

<sup>10</sup> See Comptroller Gen. of the U.S., CED-77-19, Major Changes Are Needed in the New Leased-Housing Program, at 16, 21 (1977), <http://www.gao.gov/assets/120/113728.pdf>.

<sup>11</sup> See <https://www.cbpp.org/research/housing/housing-voucher-policy-designed-to-expand-opportunity-targets-areas-that-need-it>.

<sup>12</sup> For reviews of these studies, see Duncan, Greg J. and Stephen W. Raudenbush. 1999. “Assessing the Effects of Context in Studies of Child and Youth Development.” *Educational Psychologist* 34(1):29–41; Durlauf, Steven N. 2004. “Neighborhood Effects.” *Handbook of Regional and Urban Economics* 4:2173–2242; Ellen, Ingrid Gould and Margery Austin Turner. 1997. “Does Neighborhood Matter? Assessing Recent Evidence.” *Housing Policy Debate* 8(4):833–66; Jencks, Christopher and Susan E. Mayer. 1990. “The Social Consequences of Growing Up in a Poor Neighborhood.” Pp. 111–86 in *Inner-City Poverty in the United States*, edited by L. E. Lynne and M. G. H. McCreary. Washington, DC: National Academy Press; Leventhal, Tama and Jeanne Brooks-Gunn. 2000. “The Neighborhoods They Live in: The Effects of Neighborhood Residence on Child and Adolescent Outcomes.” *Psychological Bulletin* 126:309–37; Mayer, Susan E. and Christopher Jencks. 1989. “Growing up in Poor Neighborhoods: How Much Does It Matter?” *Science* 143:1441–45; Pebley, Anne R. and Narayan Sastry. 2004. “Neighborhoods, Poverty, and Children’s Well-Being.” Pp. 119–45 in *Social Inequality*, edited by K. M. Neckerman. New York: Russell Sage Foundation; Sampson, Robert J., Jeffrey D. Morenoff, and Thomas Gannon-Rowley. 2002. “Assessing ‘Neighborhood Effects’: Social Processes and New Directions in Research.” *Annual Review of Sociology* 28:443–78; Sharkey, Patrick and Jacob W. Faber. 2014. “Where, When, Why, and for Whom Do Residential Contexts Matter? Moving Away from the Dichotomous Understanding of Neighborhood Effects.” *Annual Review of Sociology* 40:559–79; Hahn, Robert A., “Racial and Ethnic Residential Segregation as a Root Social Determinant of Public Health and Health Inequity: A Persistent Public Health Challenge in the United States,” *Poverty & Race* (April-June 2017), available at <http://www.prrac.org/newsletters/aprmayjun2017.pdf>.

violence, fears for personal safety, and other triggers of toxic stress.<sup>13</sup> Children in high poverty neighborhoods are more likely to attend an under-resourced and under-performing school that also has a disproportionate concentration of low income children, which further hampers learning.<sup>14</sup> Economic segregation is also related to income and wealth inequality, and constraints on upward social mobility.<sup>15</sup> The cumulative effects of exposure to high poverty environments are intergenerational, passing on inherited disadvantage from parent to child.<sup>16</sup>

Conversely, the evidence is now very strong that individuals and children given the opportunity to move from high poverty neighborhoods into low poverty neighborhoods experience a range of highly positive outcomes, including improvement of mental health symptoms for women and girls,<sup>17</sup> reduced rates of diabetes and obesity for adults,<sup>18</sup> and, for children who move at a young age, improved college attendance rates, lower rates of teenage pregnancy, higher marriage rates, and increased income levels as young adults.<sup>19</sup> Exposure to less economically and racially

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<sup>13</sup> Sampson, Robert J. and Alix S. Winter. 2016. “The Racial Ecology of Lead Poisoning: Toxic Inequality in Chicago Neighborhoods, 1995-2013.” *Du Bois Review* 13(2):261-283; Winter, Alix S. and Robert J. Sampson. 2017. “From Lead Exposure in Early Childhood to Adolescent Health: A Chicago Birth Cohort.” *American Journal of Public Health* 107(9):1496-1501; Sharkey, Patrick. 2010. “The Acute Effect of Local Homicides on Children’s Cognitive Performance.” *Proceedings of the National Academy of Sciences of the United States of America* 107(26):11733–38; See generally David R. Williams & Chiquita Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*, 116 Pub. Health Reps. 404, 409 (2001), available at [www.ncbi.nlm.nih.gov/pmc/articles/PMC1497358/pdf/12042604.pdf](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1497358/pdf/12042604.pdf); see also Hahn, Robert A., *Ibid.*

<sup>14</sup> Mickelson, R. A. (2008). Twenty-first century social science research on school diversity and educational outcomes. *Ohio State Law Journal*, 69, 1173–1228; Schwartz, Heather (2010), “Housing Policy is School Policy,” The Century Foundation, [www.tcf.org/assets/downloads/tcf-Schwartz](http://www.tcf.org/assets/downloads/tcf-Schwartz); Deng, Lan. 2007. “Comparing the Effects of Housing Vouchers and Low-Income Housing Tax Credits on Neighborhood Integration and School Quality.” *Journal of Planning Education and Research* 27:20–35; Horn, Keren Mertens, Ingrid Gould Ellen, and Amy Ellen Schwartz. 2014. “Do Housing Choice Voucher Holders Live Near Good Schools?” *Journal of Housing Economics* 23:28–40; DeLuca, Stefanie and Peter Rosenblatt. 2011. “Increasing Access to High Performing Schools in an Assisted Housing Voucher Program.” Pp. 35–43 in *Finding Common Ground: Coordinating Housing and Education Policy to Promote Integration*, edited by P. Tegeler. Washington, DC: Poverty & Race Research Action Council (2011).

<sup>15</sup> Reardon, Sean F. and Kendra Bischoff. 2011. “Income Inequality and Income Segregation.” *American Journal of Sociology* 116(4):1092-1153; Chetty, Raj, Nathaniel Hendren, Patrick Kline, and Emmanuel Saez. 2014. “Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States.” *The Quarterly Journal of Economics* 129(4):1553-1623.

<sup>16</sup> Sharkey, Patrick and Felix Elwert. 2011. “The Legacy of Disadvantage: Multigenerational Neighborhood Effects on Cognitive Ability” *American Journal of Sociology* 116(6):1934-1981; Sharkey, Patrick, *Stuck in Place* (2013).

<sup>17</sup> Lisa Sanbonmatsu, Jens Ludwig, Lawrence F. Katz, Lisa A. Gennetian, Greg J. Duncan, Ronald C. Kessler, Emma Adam, Thomas W. McDade, and Stacy Tessler Lindau. 2011. *Moving to Opportunity for Fair Housing Demonstration Program – Final Impacts Evaluation*. Washington, DC: U.S. Department of Housing & Urban Development, Office of Policy Development and Research; Jens Ludwig et al, *Moving to More Affluent Neighborhoods Improves Health and Happiness over the Long Term Among the Poor*, MacArthur Foundation Policy Research Brief (2014), available at [https://www.macfound.org/media/files/HHM\\_-\\_Moving\\_to\\_More\\_Affluent\\_Neighborhoods\\_Improves\\_Health\\_and\\_Happiness.pdf](https://www.macfound.org/media/files/HHM_-_Moving_to_More_Affluent_Neighborhoods_Improves_Health_and_Happiness.pdf).

<sup>18</sup> Jens Ludwig et al., “Neighborhoods, Obesity, and Diabetes—A Randomized Social Experiment,” *The New England Journal of Medicine* 365 (2011): 1509–19.

<sup>19</sup> Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, “The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment,” The Equality of Opportunity Project (2014), [www.equality-of-opportunity.org/images/mto\\_paper.pdf](http://www.equality-of-opportunity.org/images/mto_paper.pdf).

isolated schools also has significant educational benefits.<sup>20</sup> Thus, the preamble to the final Small Area FMR rule concluded:

“The main benefit of the final rule is that, through setting rental subsidy amounts at a more local level, assisted households will be more able to afford homes in areas of high opportunity than under current policy. Such moves are expected to benefit both individual households, for example, through access to better schools or safer neighborhoods, and areas as a whole through reducing concentrated neighborhood poverty.”<sup>21</sup>

#### 4. PHA administrative costs do not justify delay of the final rule

The added administrative costs for PHAs to switch over from a single FMR system a multiple FMR system were weighed and considered by HUD when it adopted the final SAFMR rule. There are no new facts that have come to light about the alleged “administrative burden” of implementing the rule that would justify a second reconsideration of these earlier findings. The administrative costs associated with inputting new data into software systems, revising printed materials for staff and clients and landlords, and training staff are not insignificant, but neither are they especially burdensome, and in any event PHAs will have to undergo these changes whenever the program goes into effect – delay would have little or no impact.

We recommend that HUD promptly release the guidance it has already drafted for Small Area FMR implementation, and that HUD begin offering webinars and other training opportunities as soon as possible for PHAs charged with implementing the rule. Our organizations are available to assist HUD in these trainings, if that would be helpful.

For all of the foregoing reasons, and the reasons discussed in the Court’s December 23 opinion, we urge HUD to implement the mandatory Small Area FMR rule forthwith.

Sincerely,

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Joseph Rich  
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<sup>20</sup> See Heather Schwartz, “Housing Policy is School Policy,” The Century Foundation (2010), [www.tcf.org/assets/downloads/tcf-Schwartz](http://www.tcf.org/assets/downloads/tcf-Schwartz); Roslyn Arlin Mickelson, “School Integration and K-12 Educational Outcomes: A Quick Synthesis of Social Science Evidence,” The National Coalition on School Diversity, Research Brief No. 5 (2016), [www.school-diversity.org/pdf/DiversityResearchBriefNo5.pdf](http://www.school-diversity.org/pdf/DiversityResearchBriefNo5.pdf).

<sup>21</sup> SAFMR Final Rule at 80569.