

# Implementing Small Area Fair Market Rents (SAFMRs): What Advocates Need to Know



January 31, 2018

# Agenda

- Overview and where are we now?
- Implementation timeline and process
- Changes to all voucher tenancies
- Changes to voucher tenancies in SAFMR metro areas
- Case Study
- Questions

# SAFMR Overview

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# Overview of SAFMRs

- Important fair housing policy to address deconcentration of voucher families
- HUD sets one FMR for large geographic regions, resulting in subsidy levels that often do not match the local rental market.
- Small Area FMRs, in contrast, calculate the value of a voucher based on zip codes and therefore capture more granular discrepancies in rents across neighborhoods.
  - See NHLP, *Comparing Methodologies for Calculating FMRs and SAFMRs*
- SAFMRs allow voucher families to move to lower poverty neighborhoods, giving voucher holders access to communities that are more likely to have quality jobs, reliable transportation, and high-performing schools.

# What happened and where are we now?

- January 17, 2017: After notice of proposed rule and comment period, the final SAFMR rule goes into effect (implementation required by January 1, 2018).
- August 10, 2017: HUD suspended for two years the designation for the mandatory use of SAFMRs in 23 metropolitan areas by sending letter to PHAs.
- October 23, 2017: *Open Communities Alliance v Carson* filed.
- December 12, 2017, HUD issues a 30-day notice for solicitation of comment on the suspension .
- December 23, 2017: Preliminary injunction granted by a D.C. Federal District Court, blocking the suspension of SAFMRs.
- January 17, 2018: HUD issues implementation guidance to Housing Authorities.
- April 1, 2018: Deadline to implement SAFMRs, per HUD's implementation guidance.

# Implementation Timeline and Process

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# Timeline and Process

- Housing Authorities must implement as soon as “reasonably feasible” but no later than April 1, 2018
- Must apply to HUD to opt-in
- All PHAs that participate should estimate the effects of SAFMRs and consider the impact on the community
  - Whether mandatory or opt-in, work with your PHA to do a full analysis of the factors that PHAs should consider

# Factors to Consider Prior to Implementation

- Whether adoption of SAFMRs is likely to have an adverse effect on the availability of rental housing that is affordable and available to voucher families.
- Estimate the effect on participating families
- Identify any areas where the difference between the FMR and SAFMR is 10% so will trigger rent reasonableness analysis.
- Consider whether to apply SAFMRs to PBVs.



- Mandatory PHAs can request to opt-out because of “adverse rental housing market conditions.”
- “Adverse rental housing market condition” is broadly defined by HUD.
- Expect to see these requests and be prepared to contest them.

PHA Argument: SAFMRs are too expensive to implement, especially with a shrinking budget.



PHA Argument: We would have to serve less people. We'd rather provide a shallow subsidy to more families.



PHA Argument: SAFMRs will lead to a reduction in housing opportunities.



# Changes that Apply to All Voucher Tenancies

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# New Voucher Policies

- Reductions in FMRs (including SAFMRs) may not exceed 10% (24 C.F.R. § 888.113(b)).
- Rent Reasonableness analysis is required when there is a decrease in the FMR of 10% (24 C.F.R. §§ 982.507(a)(2)(ii), 983.302(a)(2), and 983.303(b)(1)).
- PHAs will have 3 months from the effective date of the change in the FMR to implement new payment standards (24 C.F.R. § 982.503(b)(1)(ii)).
  - HUD recommends notice of both new and old payment standards for families whose search term extends beyond the effective date of the new payment standard schedule.
- New options for Exception Payment Standards (EPS)
- New options for decreases in payment standards during HAP contract.



# New Options for PHAs: EPS

- Exception Payment Standards (EPS) for non-SAFMR PHAs
  - PHAs can still adopt EPS up to 120% FMR with approval from HUD except regulation was revised to represent elimination of 50<sup>th</sup> percentile rents (24 C.F.R. § 503(c)(2)(ii)). Also can go up to 120% without HUD approval if required as a reasonable accommodation.
  - PHAs can establish EPS for a zip code up to 110% SAFMR by simply notifying HUD (24 C.F.R. 504(b)(1)(iii)).
- HUD will issue a separate notice for EPS in SAFMR jurisdictions.

# New Options for PHAs: Decrease in PS

- Whatever option PHA chooses must be in the PHA's Administrative Plan
- The PHA must notify the tenant in writing at least 12 months before the effective date of a reduced payment standard.
- Options
  - **Hold tenants harmless: apply the same payment standard – this is the best option for tenants.**
  - Gradually decrease the subsidy
  - No change and continue with existing policy that applies the lower payment standard at the family's second regular reexamination



# Sample Administrative Plan Language

## PAYMENT STANDARDS FOR THE VOUCHER PROGRAM (24 C.F.R. Part 982.503)

The Payment Standard is used to calculate the housing assistance payment for a family. In accordance with HUD regulations, and at the PHA's discretion, the Voucher Payment Standard amount is set by the PHA between 90% and 110% of the HUD-published FMR. This is considered the basic range. The PHA reviews the appropriateness of the Payment Standard annually when the FMR is published. In determining whether a change is needed, the PHA will ensure that the Payment Standard is always within the range of 90%-110% of the new FMR **or SAFMR**, unless an exception payment standard has been approved by HUD.

**Where the new FMRs are decreasing, the PHA will hold the families harmless who are already living in the area with a HAP contract and the PHA will apply the existing payment standard to the family.**

Where the new FMRs are increasing, the PHA will implement the change at the next annual recertification.

The PHA may approve a higher payment standard within the basic range, if required as a reasonable accommodation for a family that includes a person with disabilities. If the request is for a Payment Standard above 120%, the request must be approved by HUD.



# Changes that Apply to Voucher Tenancies in SAFMR Regions

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# Changes in Mandatory and Opt-in PHAs

- PHAs may use groupings (tiered payment standards)
  - Adopting groupings could minimize the impacts of SAFMRs.
- Project-based vouchers are exempt from the rule although PHAs may use SAFMRs for future projects.
- Portability: PHAs that are administering vouchers outside of a SAFMR area may request HUD approval to apply SAFMRs to those vouchers
  - Find out from PHA where this applies
- Applies to all tenant-based vouchers
- Optional reporting: HUD's mobile application
  - Encourage your PHA to report payment standards!

# Case Study

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# Chicago Metro Area

- Chicago Housing Authority is a Moving to Work jurisdiction
- Voucher families in Chicago metro area are highly segregated in racially and ethnically concentrated areas of poverty
- Outlying suburbs refuse voucher tenants.
- How will SAFMRs be implemented? What can advocates do?



Questions?

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