

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

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

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.



Opt-Outs

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

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 50th 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

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

NATIONAL
HOUSING LAW
PROJECT

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?

NATIONAL
HOUSING LAW
PROJECT



Deborah Thrope
Supervising Attorney
dthrope@nhlp.org
415-432-5724



Kate Walz
Interim Vice President of Advocacy
katewalz@povertylaw.org
[\(312\) 368-2679](tel:(312)368-2679)