Berkeley Housing Authority

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Office of the Executive Director

Item 7C
NEW BUSINESS
September 8, 2016

TO: Honorable Chairperson and
Members of the Berkeley Housing Authority Board

FROM: William E. Wilkins, Executive Director

DATE: September 8, 2016

SUBJECT: Monthly Report

1. **HOTMA/HR 3700-** the Housing Opportunity through Modernization Act of 2016 (HOTMA) was passed by the House of Representatives in February 2016, and the Senate in July 2016 and signed by the President on July 29th. The language must be codified before it becomes implementable. As of yet, there is no indication of when that will occur.

HOTMA impacts on the Berkeley Housing Authority:

- Makes significant changes to the Section 8 Project-Based Voucher (PBV) program, to include authorization for housing authorities to project-base up to 20 percent of their authorized voucher allocation (BHA would increase to 387). An additional 10 percent could be used for targeted populations (an additional increase of 193);
- Allows housing authorities to continue managing waiting lists for PBV units or to permit site-specific waiting lists managed by owners of developments;
- Allows housing authorities to provide PBV assistance to improve, develop or replace a property that it owns or controls without having to use a competitive process;
- Permits housing authorities, in areas where vouchers are difficult to use, or in census tracts with a poverty rate of 20 percent or lower, to Project-base assistance to up to 40 percent of the units in a project;
- Allows terms for PBV contracts and extensions from 15 to 20 years;
- Establishes an asset cap of $100,000 for families participating in the S8 program;
- Makes changes to rules governing interim re-examinations:
    - Housing authorities only required to perform interim decreases if rent decrease amounts to 10 percent or more;
    - Interim increases only required if rent increased by 10 percent or more.
- Allows greater flexibility to temporarily accept and pay for Section 8 units that are determined to be non-compliant with Housing Quality Standards (inspections), so long as the conditions are corrected within 30 days. Any

disbursed funds may be retroactively reclaimed if the noncompliant conditions are not corrected.

2. **NOTICE OF TERMINATION TO VOUCHER HOLDERS:**
   - A notice of termination was sent to all 87 Voucher Holders who were given a "Briefing" and issued a Housing Choice Voucher 12-18 months ago, and are not under lease.
   - Staff sent notices in July 2016 with a 30 day period for individuals/families to appeal the decision for termination. As of this date, 2 families have appealed the decision and are being given consideration based on valid reason (s) for not being under a lease.
   - Staff has begun the process of notifying up to 100 families on the waiting list for preparations to process documents required for final "Briefing" and issuing of Housing Choice Vouchers.
   - Third party income verifications will be required for all new individuals/ families coming off the waiting list.
   - Staff expects to begin the issuance of vouchers sometime in late September or early October.

3. **FAMILY SELF SUFFICIENCY (FSS)**

BHA had a waiver from HUD that expired in May 2016, allowing us to forgo an FSS program until such a time that operations were stabilized. BHA is now required to administer an FSS program, assisting 37 households on the path to financial independence, by linking participants with educational and job training opportunities. Those who obtain employment, will have an escrow account opened, where the increase in rent will be matched by BHA, to be provided at graduation from the FSS program (generally 5 years from admission to FSS).

Staff submitted the FSS Action Plan on February 10, 2016 for HUD approval. On June 24, 2016 we received confirmation from HUD that the Action Plan has been approved. Because the Action Plan was approved so late in the fiscal year, we also received confirmation from HUD that we will not be scored on FSS for the FY 2015-2016 SEMAP certification [Indicator 14]. Next year's SEMAP will require us to be scored on both the number of FSS enrollees and the number of those who have established escrow accounts.

The FSS Coordinator and Management Analyst attended the quarterly Bay Area Family Self Sufficiency Coordinators' meeting on August 9th. The next scheduled Bay Area FSS Coordinators' meeting will be Oct. 12.

Remote training in the FSS software module with our software provider (Emphasys) for Finance and case management services is being planned. A clean up of current data must be implemented before training can take place. The FSS Elite module clean-up occurred on August 29th and we are awaiting confirmation of the dates for training.

Later this month (September), notice advising an opportunity to apply for participation in the program will be mailed to all current program participants residing in Berkeley (will not include moderate rehab SRO participants nor households that have ported to other jurisdictions). Preference will be given to former BHA FSS program participants; if more than 37 applications are received, a random lottery will be conducted to determine (1) those that are admitted, and (2) establish a FSS wait list.

4. PROJECT BASED VOUCHERS:

As you may recall, staff submitted a second request to the San Francisco HUD Field Office several months ago requesting increased authority to provide more Project Based Vouchers (PBVs) beyond the 20 percent budget authority (the original request made in Nov. 2015 was denied by HUD in Feb. 2016, citing the fact that the 20% rule is statutory and therefore not able to be waived by HUD). While the Berkeley Housing Authority never received an official notification, I did have a discussion with the newly appointed Field Office Director, who reiterated the requirement of limiting the issuance of PBVs to 20 percent of budget authority currently (see above for HOTMA changes coming at an undetermined time).

SAHA has requested an extension on the master Project-based HAP contract for Sacramento Senior Homes for the 39 PBVs scheduled to expire this month (September 2016). According to our most recent financial projections, BHA would be able to extend the master HAP contract for all 39 PBV's for a period of 1 year.

According to the information received from SAHA, a denial of extension would cause the rents for Sacramento Senior Homes to be reduced to those currently approved by the HOME program, rather than Tenant Based Section 8 Voucher rents, so we are pleased to be able to continue partnering with SAHA on this senior facility.

5. LANDLORD RECRUITMENT PROGRAM:

In an effort to strengthen relationships with landlords with units under the Section 8 Program in the City of Berkeley, I will begin to host monthly meetings starting in October 2016. The idea of the meeting is to provide a forum for small and medium sized landlords to voice their concerns about the Housing Choice Voucher Program and educate them on the various benefits and restrictions. We are currently working on logistics and will hopefully finalize this by mid-September.

6. SMALL AREA FAIR MARKET RENTS (SAFMRs):

As you may know, HUD issued a solicitation of comments on June 16, 2016 regarding the Proposed Rule on Small Area Fair Market Rents. Eight housing authorities in the East Bay Area came together and issued a joint response. Attached is a copy of the final document forwarded to HUD (Attachment 1).

7. MEETINGS WITH CITY OFFICIALS:

- Met with City Manager and Planning Director – discuss possible options for land acquisition; nothing available at this time because the Redevelopment Successor Agency has already disposed of all assets. However, they are discussing the possibility of eminent domain proposal for units off line that could be used for housing low income individuals and families.
- Meeting with Assistant to City Manager, Code Enforcement Supervisor and Beat Coordinator – regarding property housing a number of housing choice voucher families who are causing serious problems in the neighborhood. Follow up will include meeting with landlord, tenants and evidentially the neighborhood organization.
- Meeting with Executive Director, Berkeley Rental Housing Coalition – discuss meeting with landlords and possible collaboration to include monthly meetings to discuss challenges and possible solutions.

- Meeting with Berkeley Rent Board Executive Director – discuss operational issues and future work together.
- Meeting with Director of Health, Housing & Community Services and his staff – establish a better understanding of possible collaborative opportunities that may be available in the future.

8. BERKELY HOUSING AUTHORITY HEARING OFFICER:

- In June 2016 the "contract" hearing officer notified BHA that he would no longer be serving as the hearing officer.
- The executive director has begun the process of serving as the hearing officer for BHA as a matter of cost savings, and ensuring a consistent message of fairness to our clients (participants and landlords).
- There have been a total of seven (7) Informal Hearings to date, decisions for all have been finalized with 1 overturning the BHA recommendation.

9. CITY OF BERKELEY APPROPRIATION OF FUNDS FOR LANDLORD DAMAGE CLAIMS:

During a meeting with the Mayor and his Chief of Staff, the BHA Board Chair and staff were informed that a proposal for City funding of the Landlord Damage Claim Program will not be funded until Fiscal Year 2017-2018. This Program would allow the BHA to provide up to $1,000 for approved damage claims as submitted by Housing Choice Voucher Program Landlords, if they agree to continue renting/leasing the unit to another HCV participant.

Attachments

1. August 2016 Comments on HUD's proposal for Small Area Fair Market Rent plan submitted by Bay Area housing authorities

Alameda City Housing Authority

Alameda County Housing Authority

Berkeley Housing Authority

Contra Costa County Housing Authority

Livermore Housing Authority

Oakland Housing Authority

Pittsburg Housing Authority

Richmond Housing Authority

Attachment 1

August 15, 2016

Regulations Division, Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW., Room 10276
Washington, DC 20410-0500

Re: Docket No. FR-5855-P-02 (Title: Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs)

To Whom It May Concern:
These comments are being submitted by the following eight housing authorities, which together comprise the Oakland-Hayward-Berkeley California Metro Division:

Alameda County
Alameda City Housing Authority
Alameda County Housing Authority
Berkeley Housing Authority
Livermore Housing Authority
Oakland Housing Authority

Contra Costa County
Contra Costa County Housing Authority
Pittsburg Housing Authority
Richmond Housing Authority

Our area is one of the areas for which HUD proposes to require the use of Small Area FMRs (SAFMR).

Our comments in response to HUD's solicitation of comments on the June 16, 2016 Proposed Rule are organized first by overall issues with the SAFMR approach and then by comments on the 13 topics for which HUD is specifically seeking comments.

OVERALL ISSUES:

Flawed FMR Methodology; Outdated Data

The proposal carries over one of the primary flaws in the current system of determining FMRs: that of first using obsolete data in the calculation and then adjusting that data using national rather than local escalators.

In order to allow Housing Choice Voucher (HCV) participants to successfully compete in increasingly competitive rental markets HUD should use timely data that reflects current market values to set FMRs, including SAFMRs.

In response to previously proposed FMRs, we have commented that HUD's FMRs are the product of dated data and a flawed methodology that do not take into account current rents and rent trends. Calculation of the proposed 2017 SAFMRs relies on 2010-2014 data trended forward by a **national** (rather than market area) inflation factor. In 2013 and 2015 the eight PHAs in the Metro Division paid for and conducted a statistically valid rental survey in order to refute proposed FMRs that either were drastically low given our rental market or reduced from the previous year. In both 2013 and 2015 the FMRs were significantly increased as a result of the study data (approximately 16% in 2013 and approximately 34% in 2015), thus demonstrating the inadequacy of HUD's FMR methodology. It is burdensome that PHAs, with limited financial resources, have to pay for a study every couple of years ($65,000 in 2013 and $100,000 in 2015) in order to obtain accurate FMRs. The proposed SAFMR calculation disregards the 2015 data provided through the rental study that led to a 34 percent increase in FMRs for the area.

The SAFMRs Published for the Oakland-Hayward-Berkeley Metro Area Appear Not to be Based on Our Current Local Survey Data

Does the Oakland-Hayward-Berkeley Metro area qualify for inclusion in the mandatory SAFMR system if our current data is used? In December 2015, we transmitted to HUD the study results (described above) and HUD published revised FMRs on February 8, 2016. Yet, the SAFMRs published for the Oakland-Hayward-Berkeley Metro area appear not to be based on our current local survey data but instead on dated American Community Survey (ACS) data that HUD published prior to our study. Using our current local survey data, does the Oakland-Hayward-Berkeley Metro area still meet criterion #2 for inclusion in the SAFMR program? We ask that HUD recalculate criterion #2 for our area to confirm if we meet the criteria for inclusion. In addition, we ask that HUD describe to us how SAFMRs are set when a census area conducts a local survey as we did in 2013 and 2015. Our data collection was blind to ZIP codes.

SAFMRs Don't Work in Low Vacancy, High Rent Areas

According to a number of analyses conducted by HUD's Office of Policy Development & Research (PD&R), the Oakland-Fremont HMFA is "among the most expensive rental markets in the country, with average rents…more than twice the national average…" The vacancy rate for rental units in our area is *extremely* low, generally around 2 percent. This has a significant impact on the use and potential success/failure of SAFMRs and, as a result, on the lease-up of our HCV program. Landlords in ALL areas in which we operate have a choice of tenants—tenants with cash in hand, excellent credit and no evictions-- and who can move in immediately without waiting for us to complete an inspection and possibly require the landlord to make repairs. These landlords will always take a non-HCV tenant over an HCV tenant and will be able to charge higher rents than the reduced FMRs, even in the so-called poverty areas.

Although the Proposed Rule states that HUD's intention is to use SAFMRs in place of the current 50th Percentile FMRs, HUD is, in fact, applying it more broadly as the Rule would require adoption of SAFMRs by Metropolitan Fair Market Rent Area regardless of whether a PHA in such area currently uses 50th Percentile FMRs. In the Proposed Rule HUD states that "[t]here is encouraging evidence from Dallas which finds that under Small Area FMRs voucher households in Dallas who chose to move are moving to significantly safer and lower poverty neighborhoods, with about the same average cost for vouchers overall." This is likely due to Dallas having mobility counseling funds from HUD, a normal to high rental vacancy rate, available land and few development restrictions, all of which results in there being plenty of available housing to which the families can move. Moreover, Dallas does not exist in the shadow of Silicon Valley, where high salaries drive dramatic rent increases and the cost of living, thus increasing economic disparity and limiting opportunities for low income renters and forcing low income households into costly and burdensome commutes from outside the Metropolitan Area.

A preliminary assessment of one mid-western suburban city seems insufficient to embark on a nationwide mandatory rule, particularly one that has far reaching implications for landlord and tenant participants and which adds substantial PHA administrative complexity and burden to an already taxed and underfunded HCV Admin Fee system. Further, we are aware that HUD is conducting a Small Area FMR Demonstration in other geographic areas as well (Cook County (IL), Long Beach (CA), Chattanooga (TN), Mamaroneck (NY) and Laredo (TX)) and understand that the results of that Demonstration are not available either. Although HUD previously rejected a comment to defer implementation of SAFMRs in response to its July 2, 2015 ANPR, we **strongly** suggest that HUD should wait until the final Dallas and Small Area FMR Demonstration evaluations have been published and vetted before embarking on this major new initiative.

Negative Consequences of SAFMRs

We expect a number of serious negative impacts due to the imposition of SAFMRS in our area, including:

- Higher cost burdens for families unable or unwilling to move
- Displacement of families unable to pay a higher cost burden
- Homelessness
- Loss of landlord participation
- Lower lease-up rates, ironically in a time of increased affordable housing need
- Reduction of tenant choice
- Limited voucher use in high rental markets, forcing participants into lower rental markets but now with less buying power
- Smaller HCV programs (In the Proposed Rule HUD states that "if the long-term impacts of the proposed rule cause per-voucher costs to rise, fewer households would receive assistance without an overall increase in program funds.")

We have reviewed the outline of the ZIP code areas superimposed over our two counties. The ZIP code areas range from very small to very large, and in no way represent 'neighborhoods' as we or anyone who lives here recognizes.

THIRTEEN SPECIFIC TOPICS FOR WHICH HUD SEEKS COMMENTS

1. SAFMRs and PBVs

We recommend that HUD not require the use of SAFMRs for PBV projects, including newly proposed PBV pipeline projects.

Many of us are currently working with developers to create housing in high opportunity areas and rapidly gentrifying rental markets. Many of our deals have capped the initial PBV rents to these projects at the current payment standards and developers have agreed to those rent levels. Forced implementation of SAFMRs in hard-to-development markets could derail projects that have been in development for years, negatively impacting the proformas and current lending/funding scenarios, and jeopardize the entire project. Further, required changes on existing projects could place the financial feasibility of the projects in jeopardy by underfunding PBV units, with the project unable to sustain its debt service and operations.

We have a small number of opportunity areas where the SAFMRs are higher than the current payment standards but he developer has agreed to the payment standard level. If we were to be required to use the SAFMRs we would be needlessly giving away scarce HCV dollars for no purpose or gain. We realize that the PHA and developer can agree on a PBV rent lower than the SAFMR, but why would a developer do so if we must offer the higher SAFMR? The result would be an overfunding of the PBV units, enriching the project to the extent that excess funds 'waterfall' into accelerated debt payment to the lending institutions without any particular benefit to the project.

2. **Regulation vs Annual FMR Notice**

As we understand it, HUD is seeking comment as to whether the SAFMR selection parameters should be codified in regulation or incorporated into the annual FMR notice. Incorporating the parameters into the annual notice would allow for comments and perhaps changes before final SAFMRs are issued for that year.

The Proposed Rule indicates HUD will designate SAFMR areas every 5 years as new data becomes available. We recommend that HUD designate SAFMR areas annually, and that all SAFMRs be optional to all PHAs, not mandatory.

3. **Tenant Rent Protections**

If the payment standard is decreased during the term of the HAP contract, voucher holders should be grandfathered until they move rather than being subjected to the lower payment standard at the effective date of the family's second (or any other) regular reexamination following the effective date of the decrease in the payment standard.

Displacement of HCV families is at a crises point in the East Bay and, in fact, throughout the entire San Francisco Bay Area. It is virtually impossible for an HCV family to relocate and is cost prohibitive even if the family is able to locate a less-desirable, lower rent unit in a disenfranchised neighborhood. The Proposed Rule will create displacement for families who cannot afford, even with a Housing Choice Voucher, the excessive household rent burden that implementation will create if they try to stay in their current units. We strongly urge HUD not to support the continued displacement of our families out of neighborhoods of their choice, and gentrifying communities that are rapidly becoming neighborhoods of choice, through implementation of a SAFMR rule that is mandatory.

4. **Limiting Potential Decline in FMRs**

In our Metro area *any* decline will be problematic, and is unacceptable. The SAFMR approach on a theoretical level makes sense and may work in a normal market with a range of reasonable rents and standard 5-6 percent vacancy rate or above. However, in a market such as ours, reducing our payment standards to the SAFMR range will only result in displacement of tenants and/or tenant households paying a very high percentage of their income for rent. In Item #10 below, we recommend that HUD exempt rental markets with vacancy rates lower than 5 percent from SAFMR designation.

5. Transition of 50th Percentile PHAs to SAFMRs

No comment.

6. Reduction of Administrative Burden

If HUD does not grandfather affected tenants as recommended in Item #3 above, we recommend that HUD change the percentage decrease in FMRs that triggers rent reasonableness determinations from 5 percent to 35 percent for SAFMR PHAs, but we believe this change should be able to be made by the PHA, should they choose, through their Annual Plan process.

To relieve the administrative burden, HUD should publish new FMRs, including SAFMRs, far enough in advance of their effective date to not require PHAs to redo already completed redeterminations. HUD often publishes FMRs within days of (and, on at least one occasion, **after**) their effective date. In order to comply with notice requirements to participants and landlords, PHAs typically work on mandatory annual redeterminations 90 to 120 days before their effective date. HUD's publication of FMRs within days of their effective date requires PHAs to redo up to a quarter of redeterminations each year. The additional work and expense imposed on PHAs is costly and burdensome.

HUD is aware of the *Nozzi v. HACLA* decision issued by the U.S. Court of Appeals for the Ninth Circuit. How does HUD plan to implement the *Nozzi* requirements in the SAFMR system? HUD regulations require that when the payment standards decrease and the tenant's rent share goes up as a result, PHAs can't implement the change until the second re-exam after the decrease, which can be up to 24 months in the future, depending on timing. The administrative burden for doing such calculations among what is probably thousands of ZIP codes nationwide defies understanding.

Additionally, HR 3700 may make administration of the Proposed Rule even more complex and burdensome for PHAs. If payment standards for existing HAP contracts are held harmless in the face of reduced FMRs, as contemplated by HR 3700, there is the potential to have multiple payment standards in the same building.

7. Expand the Use of Small Area FMRs within the HCV Program

We recommend that HUD wait until the Dallas and Small Area FMR Demonstrations are vetted and published before expanding the SAFMRs to other HCV programs.

8. Situations or Groups Where an Alternate Policy Should Apply

If the payment standard schedule is decreased during the term of the HAP contract, voucher holders should be grandfathered until they move. Moreover, while displacement would be difficult for all affected families, it poses an added burden on elderly and disabled families who cannot physically endure the burden of frequent moves.

Prior to implementation, HUD should propose and seek comments for a Hardship Policy to mitigate the negative impacts that mandatory implementation of SAFMRs will have on tenant and landlord participants. By imposing mandatory SAFMRs, HUD will create financial hardships on both the resident participants and property owners. In order to avoid any potential disparate impact on those families that would not qualify for a Reasonable Accommodation, HUD must establish a Hardship Policy providing families and property owners with exemptions from the additional rent burden or loss of rental income as a result of implementation of this policy. In the case where implementation is not mandatory, the PHA should develop an individualized Hardship Policy tailored to and based on an assessment of local market conditions, and the potential impacts of this rent reform policy.

9. **Specific Groups within the General Population of Voucher Holders for Whom This Policy Change Would be Particularly Burdensome**

See #8 above.

10. **Criteria for Determining Which Metropolitan Areas Should be Included in the Rule Change**

HUD should exempt rental markets with vacancy rates lower than 5 percent from SAFMR designation for as long as those markets are below 5 percent. Landlords in tight rental markets often choose not to accept vouchers seeing them as needless friction for units they can otherwise fill faster with more problem-free tenants with better credit ratings. At our 2 percent or less vacancy rate, our inability to gain and preserve units in neighborhoods of choice is greatly exacerbated by any FMR reductions in any area, regardless of neighborhood amenities and opportunity for families.

We reiterate that SAFMR participation should be voluntary, not mandatory.

11. **Manufactured Home Space Rental for Voucher Tenants That Own Manufactured Housing Units**

We recommend that HUD exempt manufactured home space rental from the SAFMR system as long as the voucher holder remains at its current address. Not only is it expensive to move a manufactured home but in California there are fewer and fewer manufactured home communities available as the land is converted to more profitable uses.

12. **Other Amendments to the Exception Payment Standard Regulations to Better Facilitate the Approval Process of Exception Payment Standards**

The current exception payment standard regulations requiring that an exception payment standard may not include more than 50 percent of the population of the FMR area is, indeed, impractical in a SAFMR system and should be eliminated.

13. **Additional Data or Dissemination Strategies**

No comment.

We are happy to answer any questions about our comments. If you have any questions please contact Eric Johnson at the Oakland Housing Authority at 510-874-1510 or ejohnson@oakha.org.

Respectfully submitted:

Alameda City Housing Authority

Livermore Housing Authority

Alameda County Housing Authority

Oakland Housing Authority

Berkeley Housing Authority

Pittsburg Housing Authority

Contra Costa County Housing Authority

Richmond Housing Authority

CC: Senator Dianne Feinstein
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Katherine O'Regan, Assistant Secretary for Policy Development and Research