

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

The Inclusive Communities Project, Inc.,	*	
Plaintiff,	*	
v.	*	
The United States Department of	*	No. 3:07-CV-945-O
Housing and Urban Development,	*	
Defendant.	*	

FIRST AMENDED COMPLAINT

Introduction

1. HUD is the federal administrator of the Section 8 program. HUD sets the maximum ceiling rent for the Section 8 program without regard for market rents in rental housing markets in the Dallas area but instead uses the rents in predominantly minority and low income concentrated areas to set the maximum rents for use in predominantly White and non-low income concentrated areas. HUD uses this manipulated maximum ceiling rent to steer Black DHA Section 8 participants away from dwellings that should be available for use by Section 8 families in modest but decent units in predominantly White Dallas metropolitan area rental housing markets. HUD's steering puts many Black Section 8 families into racially segregated areas marked by conditions of slum and blight. HUD's action selecting the areas for use in setting maximum rents affects the operation of the entire Section 8 program. The suit seeks an end to the HUD action.

2. ICP, the Inclusive Communities Project, Inc., helps Black Section 8 participants obtain and keep dwelling units in predominantly White areas. HUD's actions choosing non-market areas as the basis for setting Section 8 maximum rents directly interferes with ICP's function by reducing the number of units in White areas available for use by Section 8 participants. Section 8

participants already residing in predominantly White areas may have to pay more rent or move from their current dwelling. Section 8 participants seeking units in predominantly White areas may have to pay more rent and will have fewer units available to them. This suit seeks injunctive relief against the HUD rent setting policies and practices that are perpetuating racial segregation in the Dallas metropolitan area.

Jurisdiction

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(4), and 42 U.S.C. § 3613(a).

Plaintiff

4. The plaintiff is ICP. ICP is a Texas non-profit corporation which works for the creation and maintenance of racially and economically inclusive communities, the expansion of fair and affordable housing opportunities for low income families, and redress for policies and practices that perpetuate the harmful effects of discrimination and segregation. Specifically, in furtherance of this mission, ICP seeks to create and obtain affordable housing opportunities in non-minority concentrated areas for persons eligible for low rent public housing and to provide the counseling and other forms of assistance to Black families seeking to use their DHA Section 8 voucher to move into low-poverty, non-minority concentrated areas throughout the Dallas metropolitan area. ICP's office is located in the City of Dallas, Dallas County, Texas.

Defendant

6. The defendant is the United States Department of Housing and Urban Development [HUD]. HUD is an executive agency of the United States of America.

The Section 8 program

7. The Section 8 program is the federal government's major program for assisting very

low-income families to find and pay for decent, safe, and sanitary housing in the private housing market. The Section 8 families pay at least 30% of their income for the gross rent for a unit. Gross rent includes both the contract rent and the cost of the utilities for the unit. The Section 8 subsidy for the portion of the rent not paid by the Section 8 family is paid directly to the landlord. HUD is the federal agency responsible for administering the Section 8 program using federal funds. DHA is a local agency responsible for administering the Section 8 voucher program.

8. The Section 8 program legislation requires HUD to establish the fair market rents for existing or newly constructed rental dwelling units of various sizes and types in the market area suitable for occupancy by persons assisted under the program. 42 U.S.C. § 1437f(o)(1)(B) incorporating 42 U.S.C. § 1437f(c)(1). The units suitable for occupancy by persons assisted by Section 8 are referred to as “standard quality, non-luxury housing.” The fair market rental for standard quality, non-luxury housing is used to determine:

- A. whether or not a unit is eligible for any subsidy assistance, and
- B. if the unit is eligible for subsidy, the amount of the rent paid by the participant and the amount of federal subsidy that can be paid on behalf of a Section 8 participant. 42 U.S.C. § 1437f(o)(2), (3).

9. Rather than actually determine fair market rents using rental housing markets, HUD sets a maximum or ceiling rent for the Section 8 voucher subsidy. HUD sets a different maximum or ceiling rent for specific geographic regions. HUD calls the maximum rent for a geographic area the Fair Market Rent or FMR even if it was set without regard to market areas. HUD sets a different FMR for 0, 1, 2, 3, 4, 5, and 6 bedroom units.

10. In metropolitan areas that include multiple counties such as Dallas, HUD will set a single FMR that applies to the entire group of counties. In metropolitan areas that include only

one county, HUD may set a single FMR for that county. In non-metropolitan areas, HUD generally sets FMRs for each separate county. But in some metropolitan areas HUD has subdivided a number of predominantly White counties into more than one FMR areas with different FMRs for each portion of the county.

11. The amount of subsidy as determined by the FMR level that is available for the lease of a unit determines the areas within which dwelling units will be made available to Section 8 Housing Choice Voucher tenants.

12. DHA's September 24, 2009 CrystalReportViewerWS(1) 092409.xls report contains information showing that its Section 8 population is 88% Black and approximately 6% White.

13. The Section 8 families participating in DHA's Section 8 program are not legally restricted to units in either the City of Dallas or Dallas County. DHA is required to administer the Section 8 program for any eligible unit located by a DHA Section 8 participant in Dallas or any of the six adjoining counties - Collin, Denton, Kaufman, Rockwall, Ellis, or Tarrant County. But the FMR for the Dallas area has an effect equivalent to a legal restriction. Out of 16,848 DHA Section 8 households, there were only 540 DHA Section 8 households in Collin County and only 319 DHA Section 8 households in Denton County according to DHA's September 24, 2009 CrystalReportViewerWS(1) 092409.xls report.

HUD calculates the Dallas FMRs using a 12 county region instead of housing markets.

14. HUD uses the data for rental dwelling units in a 12 county region to set the FMR levels for the eight county HUD Dallas FMR area. For example, the two-bedroom Dallas area FMR is based on a set of 2000 U.S. Census rents for two bedroom units in Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall, Johnson, Parker, Tarrant, and Wise counties. There are

approximately 114,000 two bedroom rental units in these 12 counties. The HUD 2000 Census base two-bedroom FMR, \$731, is the least amount of rent that makes 57,000 of the 114,000, 50%, of the units available. The rents for these units range from \$204 to \$731. HUD then updates this 2000 Census Base FMR by various factors to arrive at the current Fiscal Year FMR. The two-bedroom FMR is also used to set the rents for 0, 1, 3, 4, 5, and 6 bedroom units. The two-bedroom FMR is multiplied by various ratios to arrive at the FMR for the other bedroom sizes.

16. HUD claims that the use of the 12 county region and the use of the eight count region to set Dallas area FMRs are justified because those regions are the metropolitan statistical areas set by the Federal Office of Management and Budget for use in administering the Section 8 program. HUD's claim that the use of the multi-county FMR for Dallas area Section 8 FMRs is justified by or required by the federal Office of Management and Budget (OMB) requirements is false and is a pretext for discrimination. OMB specifically warns against the use of the metropolitan statistical areas in the administration of programs.

17. OMB BULLETIN NO. 04-03, February 18, 2004 states:

Nonstatistical Program Uses of the Statistical Area Definitions. In periodically reviewing and revising the definitions of these areas, OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions, nor will OMB modify the definitions to meet the requirements of any nonstatistical program. Thus, OMB cautions that Metropolitan Statistical Area and Micropolitan Statistical Area definitions should not be used to develop and implement Federal, state, and local nonstatistical programs and policies without full consideration of the effects of using these definitions for such purposes. These areas are not intended to serve as a general-purpose geographic framework for nonstatistical activities, and they may or may not be suitable for use in program funding formulas.

OMB recognizes that some legislation specifies the use of Metropolitan Statistical Areas for program purposes, including the allocation of Federal funds, and will continue to work with the Congress to clarify the foundations of these definitions and the resultant, often unintended consequences of their use for nonstatistical purposes.

In cases where there is no statutory requirement and an agency elects to use the Metropolitan, Micropolitan, or Combined Statistical Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. When an agency is publishing for comment a proposed regulation that would use the definitions for a nonstatistical purpose, the agency should seek public comment on the proposed use.

18. The 12 county area is not a single rental housing market area. The 12 county area consists of 8,990 square miles of land with 5,161,544 people. In fact, HUD sets three separate FMRs for use in different parts of the 12 county area. But only the FMR for the Dallas area is set using the data for all 12 counties. HUD sets separate FMR levels in the four counties of Johnson, Parker, Tarrant, and Wise because of its determination that those counties are two separate FMR areas. Johnson, Parker, and Tarrant counties are in one HUD FMR area and that FMR is set using data only for those three counties. Wise County is in a separate FMR area and that FMR is set using data only for Wise County. Despite HUD's determination that these four counties are separate FMR areas, forty percent (40%) of the units that HUD uses to calculate its FMR levels for the Dallas area FMR are in those four counties - Johnson, Parker, Tarrant, and Wise.

19. HUD publishes quarterly housing market studies that do not rely on either the 12 county or the eight county region for HUD's rental housing market analysis. HUD's quarterly housing market reports analyze the Dallas area and the Fort Worth area as separate housing market areas. U.S. Department of Housing and Urban Development Office of Policy Development and Research, "U.S. Housing Market Conditions." HUD's 2007 report focusing on the housing market conditions in the Dallas area states that the Dallas Housing Market Area includes only Collin, Dallas, and Denton Counties. The report treats each individual county as a separate market. U.S. Department of Housing and Urban Development Office of Policy Development and Research, "Comprehensive Housing Market Analysis Dallas, Texas As of

April 1, 2006.”

20. The use of the multicounty region to determine Section 8 FMRs for the Dallas area violates HUD’s own guidance for determining market areas within metropolitan areas with a central city and a suburban area. Administrative Record pages 5090 - 5091.

The eight county HUD Dallas FMR Area is not a single rental housing market.

21. HUD applies the FMRs calculated using the 12 county region to the eight county HUD Dallas FMR Area. The eight county HUD Dallas FMR Area has 5,589 square miles of land with a population of 3,451,226. It is larger in land area than Rhode Island, Connecticut, or Delaware. It has more people than New Hampshire, Rhode Island, Connecticut, Delaware, or Vermont. The eight county area includes five counties that are not included in the HUD “Dallas Housing Market Area” - Delta, Ellis, Hunt, Kaufman, and Rockwall counties. The eight county area includes three counties that are treated as separate housing markets in HUD’s housing market analysis - Collin, Dallas, and Denton. U.S. Department of Housing and Urban Development Office of Policy Development and Research, “Comprehensive Housing Market Analysis Dallas, Texas As of April 1, 2006,” 2007.

22. HUD’s own criteria for inclusion or exclusion of an area from a broader geographical area for FMR determinations show that the eight counties in the HUD Dallas FMR Area (Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall) are not a single rental housing market. HUD states that the criteria for inclusion of a county or other area within a given FMR Area is based on similarities of rent levels and median family income. A deviation of more than five percent (5%) for either of these characteristics is the HUD criterion for the exclusion of an area from a broader geographical region for FMR determinations.

23. Under HUD’s criteria, the median family incomes for seven of the eight counties

deviate widely from the median family income for the HUD Dallas FMR Area. The median family income for the Dallas FMR Area is \$56,325. The median family income for each of the eight counties except for Ellis deviates more than five percentage points from the FMR Area median family income. The Collin County \$81,856 median family income deviates by + 45 percentage points. The Dallas County \$49,062 median family income deviates by - 13 percentage points. The Delta County \$37,925 median family income deviates by - 33 percentage points. The Denton County \$69,292 median family income deviates by + 23 percentage points. The Hunt County \$44,388 median family income deviates by - 21 percentage points. The Kaufman County \$50,354 median family income deviates by - 11 percentage points. The Rockwall County \$71,448 median family income deviates by + 27 percentage points. Only the Ellis County \$55,358 median family income which deviates by - 2 percentage points falls within the 5 percentage point HUD criterion for inclusion in the HUD Dallas FMR Area.

24. The widely disparate two-bedroom recent mover rents for each of the eight counties also contradict HUD's claim that the counties are a single rental housing market. The 2000 U.S. Census median rent for two-bedroom recent movers for each of the counties is: Collin County \$880, Denton County \$799, Rockwall County \$763, Dallas County \$738, Ellis County \$616, Kaufman County \$526, Hunt County \$493, and Delta County \$443. HUD's 2000 U.S. Census Base Rent for the Dallas ,FMR Area is \$731. Only the \$763 Rockwall County median rent and the \$738 Dallas County median rent fall within 5% of HUD's \$731 Base FMR rent for the Dallas FMR Area. The \$880 Collin County median rent deviates by + 20%. The \$799 Denton County median rent deviates by + 9%. The median rents in Ellis, Kaufman, Hunt, and Delta counties deviate between - 16% and - 39%.

HUD's FMR area determination policy and decisions are made because of race in violation of the laws and Constitution.

25. HUD's use of the multi-county region to set Dallas area FMRs instead of using market areas to set the fair market rents for Section 8 is done with a racially discriminatory purpose. There are rental units in predominantly White areas that are standard quality, non-luxury housing suitable for occupancy by persons assisted under Section 8. HUD's use of the multi-county region to set FMRs either makes many of these dwellings in the predominantly White areas unavailable to Black DHA Section 8 participants or makes those units available only at a higher cost to those participants.

26. HUD's stated policy is that the FMR levels for the Dallas area should make either 40% or 50% of the rental dwelling units in the Dallas area housing markets available for Section 8 use. HUD has used the 50th percentile for some FMRs in the Dallas area and the 40th percentile for some FMRs in the Dallas area.

27. HUD's FMR setting policy and decisions do not make 40 % or 50% of the rental dwelling units in the Dallas area housing markets available but instead make a disproportionate number of units available in predominantly minority areas. But the same HUD FMR setting policy and decisions make a disproportionate number of units in predominantly White areas unavailable. HUD's policy and decisions make approximately 70% of the rental units in predominantly minority areas available for occupancy by persons assisted under Section 8. The same HUD policy and decisions make only 30% of the rental units in predominantly White areas available for occupancy by persons assisted under Section 8. The disparity is greater for specific market areas. In the City of Plano, which is 73% White, only 13% of the two bedroom units are available. In contrast, 56% of the two-bedroom units in the City of Dallas, which is 35% White,

are available for Section 8 based on HUD's FMR calculations using the 2000 U.S. Census data for the HUD base FMRs.

28. Twenty nine percent (29%) of the two-bedroom units in the 70% to 100% White population census tracts in the Dallas FMR Area have rents equal to or less than the HUD base FMR. Seventy percent (70%) of the two-bedroom units in 700% to 100% minority census tracts have such rents.

29. HUD had many opportunities to revise its FMR setting policy and decisions to eliminate the disparities between the number and percent of units available in White compared to the number and percent of units available in minority areas. HUD continuously chose not to make the revision but continued to set FMR levels that made a disproportionate number of units in White areas unavailable for use in the Section 8 program. HUD chose to continue to set FMR levels that made a disproportionate number of units in minority areas available for use in the Section 8 program.

30. HUD received a July 31, 2006 comment filed by the attorneys for the plaintiff class in *Walker v HUD*, Civil Action No. 85-1210-H (N.D. Tex.) on the use of the 12 county region as the basis for setting the FY 2006 Section 8 maximum rents in the Dallas area that pointed out the racially discriminatory effects of HUD's policy. HUD's Fort Worth Office of General Counsel responded to a request for information on the comment by stating they did not question the calculations upon which the allegations of racially discriminatory effects were based and that HUD would have to justify its willingness to modify its definitions of metro areas in other urban districts but not in Dallas. Administrative Record pages 5047 - 5048.

31. Despite the statements of the Office of General Counsel representatives giving credibility to the allegation of racial discrimination in the setting of the Dallas area Section 8

FMRs, HUD's administrative record for this cases shows that it took no action to investigate whether or not its methods caused either a disproportionate adverse effect on non-Whites or contributed to the perpetuation of racial segregation in the Dallas area by making dwelling units in predominantly White areas unavailable to Section 8 Housing Choice Voucher program participants.

32. In 1977, the U.S. Comptroller General notified HUD that HUD's decision to use metropolitan areas and other multi-county regions to set FMR levels for the Section 8 program was questionable because it ignored important distinctions between metropolitan central cities and suburban areas as well as among suburban areas. The Comptroller General recommended the development of "separate FMR schedules for individual housing submarket areas instead of one FMR schedule for an entire SMSA or county group." "Major Changes are Needed in the New Leased Housing Program," U.S. Comptroller General Report to Congress, January 28, 1977, pp. 21, 29. Nevertheless, HUD has continued to use multi-county regions to set FMR levels.

33. In 1994, the U.S. Government Accounting Office found that the use of fair market rents based on smaller geographic areas rather than the multi-county region FMRs would better reflect the rent levels typically prevailing within those smaller areas. U.S. GAO, "Rental Housing Use of Smaller Market areas to Set Rent Subsidy Levels Has Drawbacks" June 1994, p.5. Nevertheless, HUD has continued to use multi-county regions to set FMR levels.

34. HUD's calculation of FMRs using multi-county regions instead of housing markets perpetuates racial segregation of Black DHA Section 8 participants and perpetuates racial segregation in the Dallas area.

35. HUD has, in effect, tagged the Section 8 participants with the ghetto rents found in the minority areas in the cities of Dallas and Fort Worth. Those ghetto rents apply to Black

Section 8 participants no matter where they look for housing. HUD uses units with low rents that are in high poverty, high minority concentrated areas to set FMRs for units in the entire eight county Dallas FMR Area. Almost half of the units HUD used to set the FMRs for the Dallas FMR area are in the predominantly minority cities of Dallas and Fort Worth. Fifty percent (50%) of the units within the FMR levels in the Dallas FMR area are in 60% to 100% minority Dallas County census tracts.

36. The HUD FMRs limit Black DHA Section 8 participants' access to the higher rent, lower poverty, predominantly White areas in Dallas, Collin and Denton counties. These areas have newer housing and superior public and private services. These predominantly White areas include suburban cities such as Plano, McKinney, Frisco, Allen, Coppell, Denton, and Lewisville.

37. The racial disparity in units made available for Section 8 is shown by census tract data. Only 31% of the two-bedroom units in 90% to 100% White population tracts located in the Dallas FMR Area have rents equal to or less than the HUD base FMR for two bedroom units. Seventy five percent (75%) of the two-bedroom units in 0% to 9% White tracts have such rents. The base HUD FMR is the amount calculated by HUD using 2000 U.S. Census data. The base FMR is then updated for the current year FMR.

38. Forty four percent (44%) of the Dallas area two-bedroom units are in 60% to 100% White census tracts. But only 30% of the two-bedroom units available using HUD's FMR levels are in those predominantly White census tracts.

39. Only 37% of the Dallas area two-bedroom units are in 100% to 60% minority census tracts. But 52% of all two-bedroom units with rents equal to or less than the HUD 2000 Census base FMR are in those 100% to 60% minority tracts.

40. The units available for the Section 8 program in predominantly minority areas are located in areas with neighborhoods with public and private services and facilities that are not equal to the services and facilities provided to predominantly White neighborhoods. The unequal services and facilities subject the Section 8 families renting in these neighborhoods to a higher probability of exposure to criminal victimization, adverse environmental conditions, industrial nuisance conditions, and lower performing schools than exists in predominantly White areas.

41. HUD's calculation of the FMR level for the Dallas FMR Area uses the existence of the racially separate rental housing markets to perpetuate racial segregation. In these segregated markets, standard quality, non-luxury housing in White areas costs more than standard quality, non-luxury rental housing in minority areas. HUD's Dallas Area FMRs are below the median rent for standard quality, non-luxury rental housing in White areas and above the median rent for standard quality, non-luxury rental housing in minority areas.

42. The smaller number of units in White market areas resulting from HUD's FMR policies and decisions steers Black DHA Section 8 participants away from units in White areas because of the likelihood that:

A. they will have to spend more time and more money attempting to obtain modest rental housing in predominantly White areas;

B. the housing in predominantly White areas will cost more requiring them to pay a premium to live in those areas, and

C. despite their search efforts, they will not find housing in the predominantly White areas within the limited time available for the housing search.

43. HUD's Dallas FMRs make more units available in minority market areas. The larger number of units in minority areas encourages racial segregation by steering Black DHA Section 8

participants to find rental housing in the minority market areas or to remain in minority market areas. Black DHA Section 8 participants are steered into minority market areas by the higher probability of finding a unit at an affordable rent.

44. HUD's conduct restricts and attempts to restrict the choices of Black Section 8 program participants in connection with seeking, negotiating for, and renting dwellings so as to perpetuate, or tend to perpetuate, segregated housing patterns, and to discourage or obstruct choices in predominantly White communities, neighborhoods, and developments. HUD's conduct is because of the race or color of the Black Section 8 program participants and because of the race or color of the persons residing in the racially and ethnically segregated communities, neighborhoods, and developments in the Dallas area.

45. HUD uses single county or smaller areas to determine FMRs in non-metropolitan areas and in metropolitan areas with only one county in other parts of the country. These single county areas are disproportionately White and contain a disproportionate percent of the nation's White population compared to the metropolitan FMR areas that contain more than one county. The Section 8 participants in the single county FMR areas are disproportionately White compared to the total Section 8 population.

46. HUD sets two or more FMRs based on parts of 19 counties. All of these counties are more than 73% White. Eight are 80% to 89% White and nine are more than 90% White. The combined population of these 19 counties is 85% White, 4% Black, and 6% Hispanic. The Section 8 participants in these counties are disproportionately White compared to the total Section 8 population.

47. HUD uses multi-county regions to determine FMRs only in metropolitan areas that

contain more than one county. These multi-county regions are disproportionately occupied by Black residents, 15% compared to 12% of the Nation. A disproportionate percentage of the Black population resides in these multi-county FMR areas - 72% of the Black population compared to approximately 58% of the Nation's population. The Section 8 participants in these multi-county FMR areas are disproportionately Black compared to the total Section 8 population.

The discriminatory effects of HUD's FMR setting policy can be avoided by using a less discriminatory alternative that would accomplish the legitimate interests of a fair market rent setting policy.

48. HUD's FMR policy has a disproportionate and discriminatory effect on the predominantly Black DHA Section 8 participant population. The discriminatory effects are those set out above. These effects and the use of the multi-county regions to set FMRs are not necessary elements of a legitimate fair market rent setting policy.

49. HUD's actions in other parts of the United States demonstrate the existence of a less discriminatory alternative to HUD's use of the multi-county FMR regions. For one example, HUD has created three separate Fair Market Rent areas in Fairfield County, Connecticut. Each of the HUD Fairfield County FMR areas consists of a larger city surrounded by a core of smaller towns. The FY 2007 two bedroom FMRs for the three separate FMR areas in Fairfield County are \$1,024 in the Bridgeport, Connecticut HUD FMR Area, \$1,267 in the Danbury, Connecticut HUD FMR Area, and \$1,592 in the Stamford-Norwalk HUD FMR Area. Rather than being restricted by a single FMR set using a multicounty region, the Section 8 households in Fairfield County, Connecticut have access to units in the three separate FMR areas for each of the larger cities in the county.

50. A similar use of market areas would provide desegregated and non-discriminatory

access to locations in all three of the larger, urban counties in the Dallas area, Dallas, Denton, and Collin counties. For example, HUD's own rental data shows that the approximate 50th percentile 2000 Census Base Rent FMR for the smaller White areas is 10% to 30% higher than HUD Dallas area 2000 Census Base Rent FMR of \$731. The 2000 Census Base Rent FMR for Plano is \$924, for Richardson is \$839, and for Coppell is \$952. Similarly, the 2000 Census Base Rent FMR for Collin County is \$879 and \$800 for Denton County.

51. The use of market areas would not increase HUD's administrative costs for setting the FMRs. The data is already available and the calculations are simply done on a spreadsheet.

52. The use of market areas would not increase the total amount of federal funds used for the Section 8 program in the Dallas area. That funding is determined without regard to current FMR levels.

53. The use of market areas does not decrease the total number of Section 8 units available in the Dallas area. The higher subsidies that could be paid in the higher FMR White areas will be offset by the lower subsidies in the lower FMR minority areas.

54. There is no legitimate, bona fide, good faith governmental justification for the use of the multi-county region to set fair market rents for the Section 8 program in the Dallas area.

The discriminatory effects of the FMR decreases resulting from HUD's FMR setting policy can be avoided by using a less discriminatory alternative that would accomplish the legitimate interests of a fair market rent setting policy.

55. HUD uses multi-county regions instead of rental housing markets to set the FMR levels for the Dallas area. The discriminatory effects of the FMR policy are set out above. These effects and the use of the multi-county regions to set FMRs are not necessary elements of a legitimate fair market rent setting policy.

56. The less discriminatory alternative using rental housing markets to determine fair market rents for the use of Section 8 vouchers in the Dallas area achieves the legitimate objectives of a Fair Market Rent policy without increasing HUD's administrative costs for setting the FMRs. The data is already available and the calculations are simply done on a spreadsheet.

57. The use of market areas would not increase the total amount of federal funds used for the Section 8 program in the Dallas area. That funding is determined without regard to FMR levels.

58. The use of market areas would not decrease the total number of Section 8 units available in the Dallas area. The higher subsidies that could be paid in the higher FMR, White, areas will be offset by the lower subsidies in the lower FMR, minority, areas leaving approximately the same total number of Section 8 vouchers in use.

59. There is no legitimate, bona fide, good faith governmental justification for the FMR decreases or the use of the multi-county region to set fair market rents for the Section 8 program in the Dallas area.

The HUD FMR decision making record contains no facts to show that HUD considered the effects of its decisions in light of its obligations to affirmatively further fair housing and to avoid racial discrimination.

60. HUD's public administrative record for its choice of the geographic areas to be used in its FMR decisions is available through the HUD Policy Development and Research internet site. That record shows that HUD did nothing to consider the effects of its choice of the geographic areas to be used in its FMR policy and decisions on the racial composition of the areas covered by the FMRs or on the housing choices of minority Section 8 Housing Choice Voucher participants. That record shows that HUD did nothing to consider the effects of its

choice of the geographic areas to be used in its FMR decisions on the availability of dwellings in predominantly White areas for the Black DHA Section 8 voucher program participants. The FMR administrative record shows that HUD did not consider the effect of its choice of the geographic areas to be used in its FMR policies and decisions on fair housing opportunities in the Dallas area nor did HUD use its FMR policies and decisions to further fair housing opportunities for DHA's Black Section 8 voucher program participants in the Dallas area.

61. HUD has also produced another administrative record that consists of 5,108 pages that was served on August 19, 2009. This record shows that HUD did nothing to consider the effects of its choice of the geographic areas to be used in its FMR policy and decisions on the racial composition of the areas covered by the FMRs or on the housing choices of minority Section 8 Housing Choice Voucher participants. This record shows that HUD did nothing to consider the effects of its choice of the geographic areas to be used in its FMR decisions on the availability of dwellings in predominantly White areas for the Black DHA Section 8 voucher program participants. This FMR administrative record shows that HUD did not consider the effect of its choice of the geographic areas to be used in its FMR policies and decisions on fair housing opportunities in the Dallas area nor did HUD use its FMR policies and decisions to further fair housing opportunities for DHA's Black Section 8 voucher program participants in the Dallas area.

ICP standing.

62. The Inclusive Communities Project, Inc. is a Texas non-profit corporation which works for the creation and maintenance of thriving racially and economically inclusive communities, expansion of fair and affordable housing opportunities for low income families,

and redress for policies and practices that perpetuate the harmful effects of discrimination and segregation.

63. ICP seeks to create and obtain affordable housing opportunities in non-minority concentrated areas for persons eligible for low rent public housing and to provide the counseling and other forms of assistance to Black families seeking to use their DHA Section 8 voucher to move into low-poverty, non-minority concentrated areas throughout the Dallas metropolitan area. ICP provides mobility counseling and mobility assistance to Black Section 8 families seeking housing opportunities in non-minority concentrated and non-poverty concentrated parts of the Dallas Metropolitan area, the eligible areas.

64. The counseling assistance provided by ICP to Black DHA Section 8 participants includes pre-move family counseling and related financial assistance to assist the families who want to make and sustain a desegregative housing move. The mobility assistance includes negotiating with landlords as necessary to obtain units in the eligible areas at rents that are affordable by the Section 8 families and eligible for the Section 8 subsidy. The financial assistance provided to these families includes the payment of application fees, security deposits and utility deposits to assist families moving into housing that provides desegregative housing opportunities in non-minority, non-poverty concentrated areas, where such assistance is necessary to make the desegregative move possible. ICP also makes landlord incentive bonus payments to landlords in areas that provide desegregative housing opportunities in non-minority, non-poverty concentrated areas who agree to participate in DHA's Section 8 program when such incentives are necessary to secure housing for the Section 8 families. Section 8 families may also receive ICP assistance in the form of a contribution to their reasonable moving expenses in order

to make a move in an eligible area.

65. ICP's clients are Black or African American families participating in the DHA's Section 8 Housing Choice Voucher Program.

Direct effects of the HUD FMR policy on ICP

66. By making standard quality, non-luxury rental housing unavailable in non-minority market areas, HUD's FMR policy directly and adversely affects ICP by:

A. reducing the number of units that ICP can use to help its clients find housing in non-minority concentrated market areas,

B. increasing the amount of time per client that ICP must spend in order to help its clients find and retain modest rental housing in non-minority concentrated areas,

C. increasing the amount of financial assistance that ICP must spend in order to help its clients find and retain modest rental housing in non-minority concentrated market areas,

67. ICP bases its standing on its own injuries incurred as a result of HUD's decisions selecting the areas to use in HUD's rent setting policy.

Claims for Relief

68. HUD's actions choosing the geographic area to use in setting the Fair Market Rent amounts for the Section 8 Housing Choice Program in the Dallas, TX area are agency actions. These agency action are not in accordance with the following laws: the equal protection principle incorporated in the Fifth Amendment to the U.S. Constitution; 42 U.S.C. § 3604(a); and 42 U.S.C. § 3608(e)(5). HUD's agency actions choosing the geographic area to use in setting the Fair Market Rent amounts are not in accordance with these laws because the actions make dwelling units unavailable in predominantly White areas because of race and color and

perpetuate racial segregation in the Dallas area.

69. 42 U.S.C. § 3608(e)(5) requires HUD to administer the FMR setting activity in a manner affirmatively to further the fair housing policies of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* HUD's failure to consider the effects of its decisions on the racial composition of the areas affected and on the integrated housing choices available to Black DHA Section 8 program participants violates 42 U.S.C. § 3608(e)(5).

70. Plaintiff has a claim for relief for HUD's actions that were not and are not in accordance with the specified laws pursuant to 5 U.S.C. § § 702, 706. Sovereign immunity for the injunctive relief requested in this complaint as the remedy for ICP's claims is waived by 5 U.S.C. § 702 .

Prayer for relief

71. Plaintiff requests the following relief:

A. an injunction prohibiting HUD from using multi-county regions as the basis for setting FMR levels for the separate rental housing markets in the Dallas metropolitan area;

B. an injunction compelling HUD to consider and further fair housing opportunities for DHA's Black Section 8 voucher program participants when it chooses the geographic areas to use in setting FMRs in the Dallas area;

C. an award of attorney fees, litigation expenses, and court costs, and

D. any other appropriate injunctive relief.

Respectfully Submitted,

s/ Michael M. Daniel
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Certificate of Service

I hereby certify that on October 15, 2009 I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case files system of the court. The electronic case files system sent a "Notice of Electronic Filing" to the following individual who has consented in writing to accept this Notice as service of this document by electronic means: James D. Todd Jr.

s/ Michael M. Daniel