DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5648-N-02]

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2013

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Final Fiscal Year (FY) 2013 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. This notice publishes the FMRs for the Housing Choice Voucher, the Moderate Rehabilitation, the project-based voucher, and any other programs requiring their use. Today's notice provides final FY 2013 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2013. The FY 2013 FMRs are based on using 5-year, 2006-2010 data collected by the American Community Survey (ACS). These data are updated by one-year recent-mover 2010 ACS data using areas where statistically valid one-year ACS data are available. The Consumer Price Index (CPI) rent and utility indexes are used to further update the data from 2010 to the end of 2011. HUD continues to use ACS data in different ways depending on the availability of two-bedroom standard-quality and recent-mover sample data for its FMR area or a larger geographic area such as the Core-Based Statistical Area (CBSA) or state nonmetropolitan area.

The final FY 2013 FMR areas are based on current Office of Management and Budget (OMB) metropolitan area definitions and include HUD modifications that were first used in the determination of FY 2006 FMR areas. Changes to the OMB metropolitan area definitions

through December 2009 are incorporated; there have been no further changes to metropolitan area definitions. OMB has announced that new metropolitan area definitions will be released in 2013. HUD will incorporate these changes during the process to calculate proposed FMRs following the release of the new definitions.

The final FY 2013 FMRs in this notice reflect two changes in the methodology used to calculate FMRs. First, HUD has updated the bedroom ratios used to calculate 0, 1, 3 and 4 bedroom FMRs based on the two-bedroom FMR. Bedroom ratios were last updated using the decennial 2000 Census. Because the 2010 Census did not collect rents, the new bedroom ratios are constructed using 2006-2010 5 year ACS data. The methodology for calculating the bedroom ratios is very similar to the method used when the bedroom ratios were based on 2000 decennial Census long-form data. Second, a new trend factor calculation methodology has been used for the FY 2013 FMRs, which HUD stated would be implemented in its proposed FY 2012 FMR publication on August 19, 2011 (76 FR 52058). This trend factor is based on national gross rent data and will change annually.

DATES: *Effective Date:* The FMRs published in this notice are effective on October 1, 2012.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800-245-2691 or access the information on the HUD USER website http://www.huduser.org/portal/datasets/fmr.html. FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2013 FMR documentation system at http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13 and 50th percentile rents for all FMR areas will be published at http://www.huduser.org/portal/datasets/50per.html after publication of final FY 2013 FMRs.

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202-708-0590. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339. (Other than the HUD USER information line and TDD numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the HCV program, the FMR is the basis for determining the "payment standard amount" used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet reasonable rent standards. HUD's regulations at 24 CFR 888.113 permit it to establish 50th percentile FMRs for certain areas.

Electronic Data Availability: This Federal Register notice is available electronically from the HUD User page at http://www.huduser.org/datasets/fmr.html. Federal Register notices also are available electronically from http://www.gpoaccess.gov/fr/index.html, the U.S. Government Printing Office website. Complete documentation of the methodology and data used to compute each area's final FY 2013 FMRs is available at http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13. Final FY 2013 FMRs are available in a variety of electronic formats at http://www.huduser.org/portal/datasets/fmr.html. FMRs may be accessed in PDF format as well as in Microsoft Excel. Small Area FMRs based on final FY 2013 Metropolitan Area Rents are available in Microsoft Excel format at the same web address. Please note that these Small Area FMRs are for reference only, except where they are used by PHAs participating in the Small Area FMR demonstration.

II. Procedures for the Development of FMRs

Section 8(c) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. Section 8(c) states, in part, as follows:

> Proposed fair market rentals for an area shall be published in the Federal Register with reasonable time for public comment and shall become effective upon the date of publication in final form in the Federal Register. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in this section.

HUD's regulations at 24 CFR part 888 provide that HUD will develop proposed FMRs, publish them for public comment, provide a public comment period of at least 30 days, analyze the comments, and publish final FMRs. (See 24 CFR 888.115.) For FY 2013 FMRs, HUD has considered all comments submitted in response to its August 3, 2012 (77 FR 46447) proposed FY 2013 FMRs and provides its responses later in this preamble.

In addition, HUD's regulations at 24 CFR 888.113 set out procedures for HUD to assess whether areas are eligible for FMRs at the 50th percentile. Minimally qualified areas[1] are reviewed each year unless not qualified to be reviewed. Areas that currently have 50th percentile FMRs are evaluated for progress in voucher tenant concentration after three years in the program. Continued eligibility is determined using HUD administrative data that show levels of voucher tenant concentration. The levels of voucher tenant concentration must be above 25 percent and show a decrease in concentration since the last evaluation. At least 85 percent of the voucher units in the area must be used to make this determination. Areas are not qualified to be reviewed if they have been made a 50th-percentile area within the last three years or have lost 50th-percentile status for failure to de-concentrate within the last three years.

In FY 2012 there were 21 areas using 50th-percentile FMRs. Of these 21 areas, 19 were allowed to continue as 50th percentile FMR areas. The two areas that are no longer in the 50th percentile program are Grand Rapids, MI and Washington, DC. The evaluation of Grand Rapids, MI showed that the concentration of HCV tenants fell below what is eligiblfor a 50th percentile FMR. This area may be re-evaluated next year. The Washington, DC area failed to

[1] As defined in 24 CFR 888.113(c), a minimally qualified area is an area with at least 100 Census tracts where 70 percent or fewer of the Census tracts with at least 10 two-bedroom rental units are Census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent. This continues to be evaluated with 2000 Decennial Census information. Although the 2006-2010 5-year ACS tract level data is available, HUD's administrative data on tenant locations (used in the calculation of concentration) has not yet been updated to use the 2010 Census Tract area definitions. Once this administrative data is updated, HUD will implement the 5-year ACS data as the basis for determining if areas are minimally qualified for 50th percentile status.

deconcentrate which means that it is not eligible for a 50th percentile FMR program for a three-year period. PHAs in the Washington, DC area may seek payment standard protection under 24 CFR 982.503(f) from the HUD Field Office is the PHA scored the maximum number of points on the deconcentration bonus indicator in the prio year, or in two or the last three years.

Those eligible to continue are listed below:

FY 2013 Continuing 50th-Percentile FMR Areas	
Austin-Round Rock-San Marcos, TX MSA	Baltimore-Towson, MD MSA
Bergen-Passaic, NJ HMFA[2]	Fort Lauderdale, FL HMFA
Fort Worth-Arlington, TX HMFA	Hartford-West Hartford-East Hartford, CT HMFA
Honolulu, HI MSA	Houston-Baytown-Sugar Land, TX HMFA
Las Vegas-Paradise, NV MSA	New Haven-Meriden, CT HMFA
North Port-Bradenton-Sarasota, FL MSA	Orange County, CA HMFA
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	Phoenix-Mesa-Glendale, AZ MSA
Riverside-San Bernardino-Ontario, CA HMFA	Sacramento—Arden-Arcade—Roseville, CA HMFA
Tucson, AZ MSA	Virginia Beach-Norfolk-Newport News, VA-NC MSA
West Palm Beach-Boca Raton, FL HMFA	

In addition, Richmond, VA, an area that graduated from the 50th percentile program in FY 2012, re-enters the program in FY 2013. In summary, there will be 20 50th-percentile FMR areas in FY 2013. These areas are indicated by an asterisk in Schedule B, where all FMRs are listed by state.

[2] HMFA stands for HUD Metropolitan FMR Area.

III. Proposed FY 2013 FMRs

On August 3, 2012 (77 FR 46447), HUD published proposed FY 2013 FMRs with a comment period that ended September 4, 2012. HUD has considered all public comments received and HUD provides responses to these comments later in this preamble. HUD does not specifically identify each commenter, but all comments are available for review on the Federal Government's website for capturing comments on proposed regulations and related documents (Regulations.gov - http://www.regulations.gov/#!docketDetail;dct=N%252BO%252BSR%252BPS;rpp=25;po=0;D=HUD-2012-0090).

IV. FMR Methodology

This section provides a brief overview of how the FY 2013 FMRs are computed. For complete information on how FMR areas are determined, and on how each area's FMRs are derived, see the online documentation at http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13.

The FY 2013 FMRs are based on current OMB metropolitan area definitions and standards that were first used in the FY 2006 FMRs. OMB changes to the metropolitan area definitions through December 2009 are incorporated. There have been no area definition changes published by OMB since the publication of the FY 2012 FMRs; therefore, the FY 2013 area definitions are the same as those used in FY 2012. HUD anticipates that OMB will publish new area definitions in 2013. Depending on the timing of this release, HUD will incorporate the new area definitions into either the FY 2014 or FY 2015 proposed FMRs.

A. Base Year Rents

The U.S. Census Bureau provided special tabulations of 5-year ACS data collected between 2006 through 2010 to HUD in early to mid-2012. For FY 2013 FMRs, HUD used the 2006-2010 5-year ACS data to update the base rents set in FY 2012 using the 2005-2009 5-year ACS data.[3]

FMRs are historically based on gross rents for recent movers (those who have moved into their current residence in the last 24 months). However, due to the way the 5-year ACS data are constructed, HUD developed a new methodology for calculating recent-mover FMRs in FY 2012. As in FY 2012, all areas are assigned as a base rent the estimated two-bedroom standard quality 5-year gross rent from the ACS.[4] Because HUD's regulations mandate that FMRs must be published as recent mover gross rents, HUD continues to apply a recent mover factor to the standard quality base rents assigned from the 5-year ACS data. Calculation of the recent mover factor is described in section B. below.

No local area rent surveys were conducted in 2011 or 2012 by HUD or PHAs, but the surveys conducted in 2010, for Williamsport, PA and Pike County, PA supersede the 2006-2010 ACS data.

B. Recent Mover Factor

Following the assignment of the standard quality two-bedroom rent described above, HUD applies a recent mover factor to these rents. In preparation for calculating the proposed FY 2013 FMRs, the department reviewed the methodology for calculating the recent mover factor from the FY 2012 process and made several improvements. The primary change is that HUD no longer compares the standard quality gross rent to the recent mover gross rent to determine if the

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[3] The only difference in survey data between the 2005–2009 5-year ACS data and the 2006–2010 5-year ACS data is the replacement of 2005 survey responses with survey responses collected in 2010. The 2006, 2007, 2008, and 2009 survey responses remain intact.

[4] For areas with a two-bedroom standard quality gross rent from the ACS that have a margin of error greater than the estimate or no estimate due to inadequate sample in the 2010 5-year ACS, HUD uses the two-bedroom state non-metro rent for non-metro areas.

two statistics are significantly different.[5] For the FY 2012 FMRs, if the two rents were determined to be statistically different the recent mover factor was calculated as the percentage increase of the recent mover gross rent over the standard quality gross rent. In cases where the two gross rents were not statistically different, the recent mover factor was set to one. As described below, HUD calculates a similar percentage increase as the FY 2013 factor using data from the smallest geographic area containing the FMR area where the recent mover gross rent is statistically reliable.[6] The following describes the process determining the appropriate recent mover factor. The revised recent mover factor process results in 91 percent of the FMR areas having a recent mover factor greater than one in FY 2013 compared with only 38 percent in FY 2012.

In general, HUD uses the 1 year ACS based two-bedroom statistically reliable recent mover gross rent estimate from the smallest geographic area encompassing the FMR area to calculate the recent mover factor. Some areas' recent mover factors will be calculated using data collected just for the FMR area. Other areas' recent mover factor will be based on larger geographic areas. For metropolitan areas that are subareas of larger metropolitan areas, the order is subarea, metropolitan area, state metropolitan area, and state. Metropolitan areas that are not divided follow a similar path from FMR area, to state metropolitan areas, to state. In nonmetropolitan areas the recent mover factor is based on the FMR area, the state nonmetropolitan area, or if that is not available, on the basis of the whole state. The recent mover factor is calculated as the percentage change between the 5-year 2006-2010 two-bedroom gross rent and the 1 year 2010 recent mover two-bedroom gross rent for the recent mover factor

[5] The statistical comparison test used, the z-test, assumes that the samples from which the two statistics are calculated are independent. Because recent mover responders are also part of the standard quality responders, the two samples are not independent.

[6] For the purpose of the recent mover factor calculation, statistically reliable is where the recent mover gross rent has a margin of error that is less than the estimate itself. For example, if the estimate was 500 and the margin of error was 501, that estimate would not be used.

area. Recent mover factors are not allowed to lower the standard quality base rent; therefore, if the 5-year standard quality rent is larger than the comparable 1 year recent mover rent, the recent mover factor is set to 1. The process for calculating each area's recent mover factor is detailed in the FY 2013 Final FMR documentation system available at: http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13.

This process produces an "as of" 2010 recent mover two-bedroom base gross rent for the FMR area.[7]

C. Updates from 2010 to 2011

The ACS based "as of" 2010 rent is updated through the end of 2011 using the annual change in CPI from 2010 to 2011. As in previous years, HUD uses Local CPI data for FMR areas with at least 75 percent of their population within Class A metropolitan areas covered by local CPI data. HUD uses Census region CPI data for FMR areas in Class B and C size metropolitan areas and nonmetropolitan areas without local CPI update factors. Following the application of the appropriate CPI update factor, HUD converts the "as of" 2011 CPI adjusted rents to "as of" December 2011 rents by multiplying each rent by the national December 2011 CPI divided by the national annual 2011 CPI value. HUD does this in order to apply an exact amount of the annual trend factor to place the FY 2013 FMRs as of the mid-point of the 2013 fiscal year.

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[7] The Pacific Islands (Guam, Northern Marianas and American Samoa) as well as the US Virgin Islands are not covered by ACS data. As part of the 2010 Decennial Census, these areas were covered by a long-form survey. The results gathered by this long form survey are not expected to be available until later in 2012. Therefore, HUD uses the national change in gross rents, measured between 2009 and 2010 to update last year's FMR for these areas. Puerto Rico is covered by the Puerto Rico Community Survey within the American Community Survey; however, the gross rent data produced by the 2006-2010 ACS are not sufficient to adequately house voucher holders in Puerto Rico. This is due to the limited ability to eliminate units that do not pass the voucher program's housing quality standards. Consequently, HUD is updating last year's FMRs for Puerto Rico using the change in rents measured from all of Puerto Rico measured between the 2009 and 2010. For details behind these calculations, please see HUD's Final FY 2013 FMR documentation system available at: http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13.

D. Trend from 2011 to 2013

On March 9, 2011 (76 FR 12985), HUD published a notice requesting public comment regarding the manner in which it calculates the trend factor used in determining FMR estimates to meet the statutory requirement that FMRs be “trended so the rentals will be current for the year to which they apply”. HUD’s notice provided several proposed alternatives to the current trend factor and requested comments on the alternatives as well as suggestions of other ideas. In its publication of the proposed FY 2012 FMRs on August 19, 2011, (76 FR 52058) HUD discussed these comments and announced that a new trend factor would be used in the FY 2013 FMRs. HUD calculates the trend factor as the annualized change in median gross rents as measured between the 1 year 2005 ACS and the 1 year 2010 ACS. The median gross rent was $728 in 2005 and $855 in 2010. The overall change is 17.45 percent and the annualized change is 3.27%. Over a 15-month time period, the effective trend factor is 4.1 percent

E. Bedroom Rent Adjustments

HUD calculates the primary FMR estimates for two-bedroom units. This is generally the most common sized rental unit and, therefore, the most reliable to survey and analyze. Formerly, after each decennial Census, HUD calculated rent relationships between two-bedroom units and other unit sizes and used them to set FMRs for other units. HUD did this because it is much easier to update two-bedroom estimates annually and to use pre-established cost relationships with other bedroom sizes than it is to develop independent FMR estimates for each bedroom size. For FY 2013 FMRs, HUD has updated the bedroom ratio adjustment factors using 2006-2010 5-year ACS data using similar methodology to what was implemented when calculating bedroom ratios using 2000 Census data to establish rent ratios. HUD again made adjustments to the bedroom ratios using 2006-2010 5-year ACS data for areas with local bedroom-size intervals above or below what are considered reasonable ranges, or where sample sizes are inadequate to accurately measure bedroom rent differentials. Experience has shown that highly unusual bedroom ratios typically reflect inadequate sample sizes or peculiar local circumstances that HUD would not want to utilize in setting FMRs (e.g., luxury efficiency apartments that rent for more than typical one-bedroom units). HUD established bedroom interval ranges based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations. These ranges are: efficiency FMRs are constrained to fall between 0.59 and 0.81 of the two-bedroom FMR; one-bedroom FMRs must be between 0.74 and 0.84 of the two-bedroom FMR; three-bedroom FMRs must be between 1.15 and 1.36 of the two-bedroom FMR; and four-bedroom FMRs must be between 1.24 and 1.64 of the two-bedroom FMR. HUD adjusts bedroom rents for a given FMR area if the differentials between bedroom-size FMRs were inconsistent with normally observed patterns (i.e., efficiency rents are not allowed to be higher than one-bedroom rents and four-bedroom rents are not allowed to be lower than three-bedroom rents).

Following the same methodology as was used when bedroom ratios were calculated using 2000 decennial Census long-form data, HUD continues to adjust the rents for three-bedroom and larger units to reflect HUD's policy to set higher rents for these units than would result from using unadjusted market rents. This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds bonuses of 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is

1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero-bedroom (efficiency) FMR.

For low-population, nonmetropolitan counties with small or statistically insignificant 2006-2010 5-year ACS gross rents, HUD uses state non-metropolitan data to determine bedroom ratios for each bedroom size. HUD made this adjustment to protect against unrealistically high or low FMRs due to insufficient sample sizes.

V. Manufactured Home Space Surveys

The FMR used to establish payment standard amounts for the rental of manufactured home spaces in the HCV program is 40 percent of the FMR for a two-bedroom unit. HUD will consider modification of the manufactured home space FMRs where public comments present statistically valid survey data showing the 40th-percentile manufactured home space rent (including the cost of utilities) for the entire FMR area.

All approved exceptions to these rents that were in effect in FY 2012 were updated to FY 2013 using the same data used to estimate the HCV program FMRs. If the result of this computation was higher than 40 percent of the new two-bedroom rent, the exception remains and is listed in Schedule D. No additional exception requests were received in the comments to the FY 2013 FMRs. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

VI. Small Area Fair Market Rents

Public housing authorities that operate in the Dallas, TX HMFA continue to manage their voucher programs using Small Area Fair Market Rents (SAFMRs). The updated SAFMRs for Dallas are listed in Schedule B Addendum.

SAFMRs are calculated using a rent ratio determined by dividing the median gross rent across all bedrooms for the small area (a ZIP code) by the similar median gross rent for the metropolitan area of the ZIP code. This rent ratio is multiplied by the current two- bedroom rent for the entire metropolitan area containing the small area to generate the current year two-bedroom rent for the small area. In small areas where the median gross rent is not statistically reliable, HUD substitutes the median gross rent for the county containing the ZIP code in the numerator of the rent ratio calculation. All other aspects of the methodology are consistent with the FMR methodology. The recent mover and bedroom ratio changes made to the area-wide FMRs were also made to the SAFMRs. In addition, the new trend factor is applied to the SAFMRs as well. For FY 2013 SAFMRs, HUD has implemented two changes to the rent ratio calculation methodology. First, HUD has updated the 2005-2009 5-year ACS based ZIP code median gross rent data with 2006-2010 5-year ZIP Code Tabulation Area (ZCTA) median gross rent data. The use of the more current ACS data is consistent with the update process in the FMR methodology. However, the change from ZIP code to ZCTA was a change that the Bureau of the Census made for its aggregation process; HUD has no control over the decision by Census to use ZCTA data instead of ZIP code data. Second, HUD expanded the criteria for determining the statistical reliability of the small area rent data in order to ensure that more SAFMRs are based on the data for the small area as opposed to using data from the parent county as a proxy. This change is consistent with the changes in the FMR methodology that eliminated the use of the statistical Z-test. [8]

[8] HUD has provided numerous detailed accounts of the calculation methodology used for Small Area Fair Market Rents. Please see our Federal Register notice of April 20, 2011 (76 FR 22125) for more information regarding the calculation methodology. Also, HUD's Final FY 2013 FMR documentation system available at (http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13) contains detailed calculations for each ZIP code area in the Dallas, TX HMFA.

VII. Public Comments

A. Overview

A total of 75 comments were received and posted on the regulations.gov site (http://www.regulations.gov/#!docketDetail;dct=N%252BO%252BSR%252BPS;rpp=25;po=0;D=HUD-2012-0090 which is also linked on the HUD User FMR page http://www.huduser.org/portal/datasets/fmr.html). Most comments contested FMR reductions compared with the FY 2012 FMR and some contested reductions since the FY 2011 FMRs or earlier. These comments covered areas for all of North Dakota, most of Connecticut and New York, the San Francisco, Oakland and San Jose areas of California, the Bergen-Passaic, Newark and Ocean City areas of New Jersey, Anchorage and several non-metropolitan areas of Alaska, Dallas, TX and Burlington, VT. Other areas, some with modest increases in the two-bedroom FMR, contested decreases in 0-bedroom and 1-bedroom rents. These areas include Middlesex, NJ, Kansas City, MO, Williamsport, PA, Choctaw County, OK and Pender County, NC. Other areas, despite modest increases for the FY 2013 FMRs are still not back to their FY 2011 levels and continue to express a program need for higher FMRs, in areas such as Minneapolis, MN, St. Mary's County, MD, Summit County, UT, Hale County, TX and nonmetropolitan mining counties in Nevada. Some areas could not handle the modest decreases in the FMRs for smaller bedroom sizes coupled with increases for larger bedroom sizes. These areas include Springfield, MO and several nonmetropolitan counties in Missouri and Nebraska. A small town in Maine and a nonmetropolitan county in Texas wanted to receive rents closer to their neighboring metropolitan area. Agencies in Montgomery County, MD and the District of Columbia protested the decline in the FMR resulting from the loss of the 50th percentile FMR.

Several comments requested that HUD hold the FY 2013 FMRs harmless, that is they wanted the FMR to remain at the FY 2012 level, or the FY 2011 level if it would otherwise be lower. In addition to or instead of imposing hold harmless, several comments asked HUD to limit annual increases and decreases of FMRs to five percent. While HUD has been able to use such measures in limiting income limit increases and decreases, HUD is specifically precluded from incorporating these changes into the FMR methodology by the statutory language governing FMRs that requires the use of the most recent data. HUD is required to use the most recent available data and FMRs must increase or decrease based on this data. Ignoring decreases or phasing decreases or increases in over several years would not fully implement FMRs based on the most recent available data. This statutory language also applies to SAFMRs and the incorporation of new area definitions. Area definitions use the most current definitions available which were formulated using the 2000 decennial Census long-form data as their basis. The Department cannot return to area definitions based on 1990 decennial Census long-form data. Adjusted area definitions based on a combination of 2010 decennial Census and 5-year ACS data are expected in late 2013. HUD will review and incorporate these changes at that time.

Many of the comments also identified the lower rents for zero-bedroom and one-bedroom units in many areas. The development of new bedroom ratios means that some areas will have lower relationships to the two-bedroom FMR than they did in the past. Some areas with lower zero-bedroom and one-bedroom ratios had the FY 2013 FMR for these units decline, while the two-bedroom FMR increased. For the voucher program, the only relief from the decrease would be for PHAs to request exception payment standards for these smaller bedroom sizes. HUD is aware that the decreases in the zero-bedroom and one-bedroom FMRs have a disproportionate impact on homeless and elderly programs but there is no action HUD may take under current statute to provide relief for these programs. HUD also received several comments opposed to the large increases in the three-bedroom FMRs. The PHAs making these comments did not suggest that HUD revisit its national policy of including bonuses for large bedroom sized units, but were concerned with serving the same number of families while the FMRs for these bedroom sizes increased more than 10 percent. HUD cannot hold the FY 2013 FMRs harmless at the FY 2012 FMR levels for the bedroom ratio changes or incorporate caps and floors to phase in increases or decreases due to statutory limitations.

Several areas that experienced a decline in the FMR requested that HUD survey its area. HUD was unable to conduct any surveys in 2011 because the Department was studying the methodology used to conduct local area market rent surveys, and has very limited resources to conduct surveys in 2012. Therefore, HUD is choosing to focus its survey resources on areas without statistically significant one-year ACS local data. Areas considered for HUD funded surveys must also have large enough rental markets so that the new mail-based survey methodology is likely to capture significant results (please see section VIII of this notice for further information regarding the survey methodology). Based on the testing performed in 2011 and 2012, markets should typically contain at least 30,000 housing units. County groups can be assembled in non-metropolitan areas for the purposes of surveys, but these counties must have similar economic conditions and no county in a county group can have its published FMR be based on the state minimum FMR. HUD has experience conducting surveys in areas with low or no vacancy rates and this experience has shown that it is extremely difficult to capture gross rent levels that depict such tight markets. For that reason, HUD will provide emergency exception payment standards up to 135 percent of the FMR for the Section 8 voucher program in areas impacted by natural resource exploration. PHAs interested in applying for these emergency payment standards should contact their local HUD field office. Additionally, while FMRs cannot be held harmless, the HOME program does have a hold harmless provision for its rents. Other programs that use FMRs will have to pursue similar strategies such as exception payment standards or hold harmless provisions within the statutory and regulatory framework governing those programs.

B. Issues Raised in Comments and HUD Responses

In accordance with 24 CFR 888.115, HUD has reviewed the public comments that have been submitted by the due date and has determined that there are no comments with "statistically valid rental survey data that justify the requested changes." The following are HUD's responses to all known comments received by the comment due date and a part of the notice record at http://www.regulations.gov/#!docketDetail;dct=N%252BO%252BSR%252BPS;rpp=25;po=0;D=HUD-2012-0090.

FMRs should be held harmless at the FY 2012 levels.

Several comments requested that FMRs not be allowed to decline from their FY 2012 level. Some of these comments asked HUD to delay implementation of FY 2013 FMRs for their area to allow local housing authorities to complete a rent survey, or until HUD completes a survey for them.

HUD Response: HUD cannot ignore the more current 2010 American Community Survey (ACS) data and allow FMRs to stay the same as they were for FY 2012, which were based on gross rents from the 2009 ACS, except for two areas where there was a HUD-sponsored survey. By statute (42 USC 1437f(c)(1)(B)) and regulation (24 CFR 888.113(e)), HUD is required to use the most current data available. While rent surveys conducted either by HUD or a PHA would provide more current data than the ACS, these surveys take about two months to complete and can be quite expensive. HUD does not have the funds to conduct many surveys and HUD cannot delay the implementation of FY2013 FMRs while new surveys are being conducted. Areas with relatively short-term market tightening are not easily measured by rent surveys. Based on past experience, HUD finds that an area must have rent increases or declines for a period of at least two years before changes can be measured by HUD or privately funded surveys. However, HUD will determine how many surveys can be administered based on its ongoing funding levels and will evaluate these survey results as quickly as possible. Should the survey results show market conditions that are statistically different from the published FMRs, HUD will revise the Final FY 2013 FMRs. If HUD is unable to complete a survey in a particular area and a local Housing Authority or other entity decides to undertake such a survey, HUD recommends following the survey guidance available at http://www.huduser.org/portal/datasets/fmr.html. Just as with a HUD funded survey, HUD will review the results of these private surveys and will revise the Final FY 2013 FMRs if warranted.

Market rents did not decrease in the past year and neither should FMRs

Several comments were received that stated that market rents did not decrease over the past year and so FMRs also should not decrease.

HUD Response: FMRs should not be considered a time series of rent data for each market in which FMRs are published. FMR data cannot justify claims that rents in a particular area are increasing, decreasing, or unchanged. The FMR process is designed to develop the best estimate of rents for a particular area using the timeliest available data covering the entire market area; this process does not take into account whether previous FMRs make sense in light of new data, and no attempt is made to revise past FMR estimates. Therefore, year-over-year FMR changes can sometimes seemingly conflict with perceived market trends.

Annual revisions are now possible with the 5-year ACS data. Because of the nature of the ACS 5-year tabulations, however, 80 percent of the survey observations will remain the same from one year to the next.[i] Also, many small FMR areas rely on update factors based on survey results from a larger, encompassing geographic area (for example, state-based update factors used for nonmetropolitan counties). Even if the base rent is not adjusted, therefore, the annual changes do not necessarily reflect the housing market conditions for the smaller area but still represent HUD's best estimate of 40th-percentile gross rents in the FMR area.

FMR decreases do not reflect the annual or recent change in rents for an area

Some comments provided apartment project rent data (many representing less than 30 percent of the rental market) that show that the rents for their area increased in the past year, while the FY 2013 FMRs show a decline from the FY 2012 FMRs.

HUD Response: FMRs are estimated rents, and can change from year-to-year in ways that are different from market rent changes or economic activity. First, as one commenter noted, when economic activity decreases, rents don't necessarily decrease and some increased economic activity that might put pressure on rents cannot be measured in real time. HUD is required to use the most current data available. HUD is also precluded from using sources of data that are not statistically significant. Rent reasonableness studies are not subject to the same constraints on statistical reliability and cannot be used to alter FMRs. Surveys of apartment projects provide indications of where the market is going, but do not account for the roughly one-third of the market made up of single family homes and attached, but small apartment projects (0-5 units). Much of the apartment project data was for larger apartment projects and represented less than 20 percent of the rental market.

The new bedroom ratios for efficiencies and one-bedroom units are too low

Several comments were received that noted that the efficiency and one-bedroom FMRs decreased substantially despite only a modest decrease or even a modest increase in the two-bedroom FMR.

HUD Response: HUD calculates the primary FMR estimates for two-bedroom units, generally the most common rental unit size and, therefore, the most reliable to survey and analyze. Formerly, after each decennial census, HUD calculated rent relationships between two-bedroom units and other unit sizes and used them to set FMRs for other units. HUD bases the calculations this way because it is much easier to update two-bedroom estimates and to use established rent relationships with other unit sizes than it is to develop independent FMR estimates for each unit size. HUD last updated bedroom-rent relationships using 2000 Census data. The 2006-2010 5 Year ACS data were the first publication of ACS data to use the 2010 Decennial census for geographic boundaries. Consequently, HUD implemented new bedroom ratios based on this 5-year ACS data to remove this tie to 2000 decennial Census based results. HUD developed new bedroom ratios based on the 5-year ACS data with the release of the 2010 ACS.

New bedroom ratios were calculated for each area using the same methodology as previously, with the exception that margin of error ratios were evaluated to select the bedroom ratio at the smallest area of encompassing geography with statistically reliable results. For example, a non-metropolitan county without many cases of efficiency rents and with a margin of error ratio of greater than one would use the state non-metro efficiency ratio instead of its own. However, most of the comments received on the decrease in the zero-bedroom and one-bedroom ratios covered areas where the bedroom ratios were based on data for their own area and all had very low margins of error.

HUD should not punish high cost areas by imposing caps on bedroom ratios

HUD Response: HUD has always imposed national caps and floors on bedroom ratios based on the tenth and ninetieth percentile of the distribution of rents by bedroom size. The 2010 ACS data for one-bedroom rents resulted in a reduction in the one-bedroom cap from 0.90 percent of the two-bedroom FMR (based on the 2000 decennial census data) to 0.84 percent based on the 2010 ACS data. HUD cannot hold harmless its caps (and floors) for the reasons discussed above.

The reduction in the zero-bedroom and one-bedroom FMR creates an unfair preference for families over single residents.

HUD Response: HUD revised the bedroom ratios based on more current data; it is not establishing a new policy. These new bedroom ratios create new caps floors for the zero-bedroom and one-bedroom units that are lower than what were created using the 2000 decennial Census data. The methodology used to create the caps and floors is unchanged. The difference in the caps and floors is the use of 2010 ACS data versus the 2000 decennial Census data. HUD cannot go back to using the older data for the reasons discussed above.

The decrease in the FMR for smaller bedroom sizes has a disproportionate impact on elderly, disabled and homeless programs.

HUD Response: HUD recognizes that the reduction in efficiency and one-bedroom FMRs impacts these programs and is working to develop new tools or use existing ones that can alleviate program problems. PHAs may use Exception Payment Standards at 24 CFR 982.503 (c), or Success Rate Payment Standards 24 CFR 982.503(e) for certain bedroom sizes, to the extent allowed.

The 2006 -2010 ACS data is not current enough for small metropolitan and non-metropolitan counties in a fast growing economy

A comment was received that suggested that only HUD surveys would provide the data necessary for an area without its own CPI area data.

HUD Response: The most significant factor driving FMRs changes in the area that provided this comment was the reduction in the recent mover adjustment factor from 1.26 percent in FY 2012 to about 1.10 percent for FY 2013. Both the FY 2012 and FY 2013 recent mover adjustment factors are large compared to other areas across the country. Base rents, however have changed very little and a majority of the FMR areas covered by this comment are areas where the Proposed FMR was increased by the state minimum rent. This means they are receiving a FMR higher than what the ACS would provide based on their own rents. Such areas cannot be surveyed because their own base rent starts out lower than what is used in the FMR. HUD has limited funds to conduct rent surveys and cannot survey an entire state, individually or as a group. Natural resource production issues affect most of the rents in this state and, for operation of the voucher program in these areas

HUD instituted special exception payment standards of up to 135 percent for areas with vacancy rates at or near zero.

The reduction in the recent mover adjustment factor caused a reduction in FMRs

HUD Response: While the recent mover adjustment factor cannot be below one, it can increase or decrease from year to year, just like the base rent for the FMR. This factor cannot be held harmless for the reasons discussed above.

FMR areas are too large and do not reflect the local real estate market

The data and technology is available to determine FMRs by subsets of diverse counties.

HUD Response: For metropolitan areas, HUD has purchased special tabulations of median gross rent data from the Census by ZIP Code Tabulation Area (ZCTA). This data is not available for nonmetropolitan areas. HUD is currently conducting a demonstration program whereby PHAs run their voucher program using the small area FMRs (SAFMRs) the Department developed using this data. Originally HUD requested volunteers for this program, but no additional funds were available to help with the administration of the program. There were few volunteers, and several of these PHAs removed themselves from consideration during the vetting process. With limited funds available to help defray the additional administrative costs of operating the voucher program using SAFMRs, several randomly selected housing agencies have been selected and agreed to participate in a demonstration to use SAFMRs. The Dallas area continues to use SAFMRs as part of a court settlement.

FMRs cannot decrease in economic growth areas; some of these areas cannot manage the voucher program even with modest FMR increases.

Several comments, even pertaining to FMR areas with decreases below 5 percent, or with modest increases, pressed for higher FMRs FY 2013 FMRs. Some of these areas had very tight markets and some of these areas already used payment standards at 110 percent of the FMRs.

HUD Response: For rent data, the ACS provides the most current data, and the 5-year 2006-2010 data is the most current data available for all areas. HUD must use the most current statistically significant data available. None of the areas that found FMRs too low because of economic and population growth provided statistically valid data that could be use to update the FY 2013 FMRs. To help manage the program during times of FMR decreases, PHAs may be able to use Success Rate Payment Standards 24 CFR 982.503(e), or request Exception Payment Standards for subareas within a FMR area (not to exceed 50 percent of the population) at 24 CFR 982.503 (c).

Vacancy rates are low, making it impossible to absorb FMR decreases

Several comments stated that low or no vacancy rates in areas with increased economic activity require higher FMRs so that voucher tenants can compete for housing. In these areas, there is not sufficient rental housing and generally the 2010 rental data from the ACS does not reflect this situation.

HUD Response: When a market tightens rapidly, the FMRs cannot keep pace. The most accurate, statistically significant data available to HUD is lagged by two years. Even if HUD conducts surveys of these areas, capturing the full scope of rent increases is difficult unless the market condition has been going on for more than two years; furthermore, it is challenging to get valid results for surveys of relatively small housing markets (under 1,000). Most of the areas suffering from these market conditions meet one or both of the criteria. Areas with sustained extremely low vacancy rates require construction of additional units. Higher FMR levels will not necessarily encourage additional development. These areas will have to rely on the use of Exception Payment

Standards for subareas within an FMR area (not to exceed 50 percent of the population) as described at 24 CFR 982.503 (c), or through the use of Success Rate Payment Standards available at 24 CFR 982.503(e) to alleviate market pressures. FMRs cannot be used to encourage building, which is what is needed.

FY 2013 FMR decreases reduce the ability of families to find affordable housing

Several comments stated that decreases in FMRs would negatively affect tenants' ability to find affordable housing. The decrease in FMRs from FY 2012 to FY2013 will reduce the availability of affordable housing in the area; landlords will be able to get higher rents from tenants that are not Section 8 voucher holders and so many will opt out of the program.

HUD Response: FMRs must reflect the most current statistically valid data and this means that FMRs cannot be held harmless when this data shows a decline. Most of the declines in the FMRs are based on lower 2010 rents, in a few cases the 2010 to 2011 CPI adjustment reflects a decline.

FMR reductions will lead to poverty concentration.

Decreases in the FMR, whether by loss of a 50^{th} percentile FMR status or by reductions in Small Area FMRs (SAFMRs) lead to poverty concentration and prevent tenants from moving to areas of opportunity.

HUD Response: HUD is required to increase or decrease FMRs (and SAFMRs are the FMR for Dallas) based on the most currently available data that meets the statistical significance tests. PHAs may use the Exception Payment Standard to increase payment standards for higher rent areas and reduce poverty concentration. PHAs may use the Exception Payment Standards above to reduce poverty concentration in portions of the FMR. Areas that lost their 50th percentile FMR, because they graduated from the program or failed to show measurable poverty deconcentration can use higher payment standards as shown at 24 CFR 982.503 (f) to mitigate FMR decreases.

A reduction in the FMRs puts HUD-financed projects and low-income housing tax credit projects at risk

If a current HUD Section 8 project uses rents at 110 percent of the FMR, a reduction in the FMR puts this project at risk. An FMR reduction could mean that LIHTC landlords will no longer accept Section 8 voucher tenants.

HUD Response: HUD is required to increase or decrease FMRs based on the most currently available data that meets the statistical reliability tests. PHAs may use the Exception Payment Standard to increase payment standards for higher rent areas and reduce poverty concentration. While there are no project-based exception areas, an area already at 110 percent of the FMR may be eligible for Success Rate Payment Standards or a portion of the FMR area may be granted exceptions above 110 percent, if warranted. PHAs interested in exploring this option are encouraged to review the FY 2013 Small Area FMRs published at http://www.huduser.org/portal/datasets/fmr.html in the section labeled "Small Area FMRs." The manner in which SAFMRs are calculated makes them ideal to be used as in the "median rent method" section of the exception payment standard regulations found at 24 CFR 982.503(c)(2)(A).

FY 2013 FMR decreases will require existing tenants to pay a greater share of their income on rents

Several comments stated that their current tenants will have to pay a greater share of their income on rents, with FMR decreases.

HUD Response: New tenants are not allowed to pay more than 40 percent of their income on rent. Existing tenants will not have to pay rent based on reduced FMRs until the second anniversary of their Housing Assistance Payment (HAP) contract. If tenant rent burden increases for an area, PHAs may use this as a justification for higher payment standards.

Disabled and difficult to place residents suffer a disproportionately greater impact from FMR decreases because they have fewer housing choice options.

Disabled residents already have fewer units available to them, and reducing the FMR will further reduce their options. Difficult to place residents, because of history of late payments or other options, will have fewer landlords willing to rent to them if the FMR is lower.

HUD Response: If an FMR decreases there may be fewer units available at or below the FMR. However, HUD must use the most current data available and rents may increase and decrease. The data used as the basis for FY 2013 FMRs is more current than what was available in the estimation of the 40th percentile FMRs for FY 2012, so while more units were available, those rents are being replaced with rents based on more current information. If a family has a member with a disability, a PHA may establish a higher payment standard for that family as a reasonable accommodation as discussed in 24 CFR 982.505(d).

Construction or preservation of affordable housing is threatened by FMR decreases

In areas where affordable housing construction is increasing, a reduction in the FMR will reduce the benefit of existing affordable housing projects and may prevent additional affordable housing construction.

HUD Response: Maximum allowable rents in Low-Income Housing Tax Credit properties are set based upon 50- or 60-percent income limit levels, or if the FMR is higher, this amount can be used for voucher holders. If the FMR is below the rent determined by the income limit levels, then generally the income limit rent is used. So if FMRs fall below the income limit rents, voucher holders would either pay more out of pocket for units or would be unable to use their voucher for these units. However, PHAs could use their authority to adjust payment standards where warranted, to increase FMRs so voucher holders can have access to these existing units. FMRs are used in the determination of High and Low Rent levels for HOME funded projects. However, when the income limit hold harmless policy was removed for the FY 2010 Income Limits, HUD instituted a specific hold harmless provision for HOME rents. A decrease in the FY 2013 FMR will not necessarily affect HOME rents or home project funding.

HUD should institute 5 percent caps and floors when incorporating new area definitions in 2013

HUD Response: HUD recently received a decision by program counsel that HUD does not have the authority to institute floors or caps when evaluating the new area definitions. A statutory or regulatory change is necessary before HUD may impose caps and floors.

HUD's 'new methodology' for larger bedroom sizes is inflationary and usurps the PHA roles of rent reasonableness determinations

For bedroom sizes greater than four-bedroom units, HUD provides a formula equal to 15 percent greater for each bedroom size, such that a six-bedroom unit is 1.3 times a four-bedroom unit. The difference in costs is actually ten percent.

HUD Response: While the new bedroom ratios were calculated based on 2010 ACS data and replace the bedroom ratios based on 2000 decennial Census long form data, the adjustment of 15 percent per bedroom for bedrooms greater than four-bedroom units is not new and does not supplant the need to conduct rent reasonable studies for units with more the four-bedrooms. The adjustment allows for the calculation of a five-bedroom or larger FMR, which is not shown on the tables in schedule B. It does not reflect a payment standard.

Rents should be more like neighboring metropolitan areas

Two nonmetropolitan areas requested higher rents based on neighboring metropolitan areas.

HUD Response: HUD will not make changes to metropolitan area composition until OMB publishes new metropolitan area definitions, which are expected sometime during 2013 (please see OMB's 2010 Federal Register notices on this matter available at http://www.whitehouse.gov/sites/default/files/omb/assets/fedreg_2010/06282010_metro_standards-Complete.pdf). HUD has never incorporated new nonmetropolitan areas into metropolitan areas and relies on OMB guidance for determining metropolitan areas. HUD has taken counties out of metropolitan definitions based on rent and income differences and may revisit this methodology when the new metropolitan area definitions are incorporated.

Small Area FMRs should not be used; HUD has not adequately addressed the potential for disinvestment in reinvestment and/or low-income areas

HUD's floor of 10 percent for the SAFMR demonstration program represents a substantial drop in rents. SAFMRs should not be used for Difficult to Develop Areas. In general, the use of ZIP codes as areas does not represent housing markets and should not be used for SAFMRs.

HUD Response: HUD published a Federal Register notice requesting comments on the use of SAFMRs in the designation of DDAs. HUD continues to use SAFMRs in Dallas, as part of a settlement agreement which did not include the implementation of caps and floors. The operation of SAFMRs in Dallas varies from the invitational demonstration program and so information collected from Dallas will initially need to be analyzed independently from data collected from other participating PHAs SAFMRs must reflect a level of geography smaller than a county, and while tract level data is available, it is not feasible to consider as the basis for SAFMRs. A typical single Census Tract is too small to be used for setting SAFMRs. Any methodology used by the Department to aggregate Census Tracts places the Department in the unenviable position of having to constantly defend the aggregation methodology. Although ZIP codes are created for the efficient delivery of mail, they have the distinct advantage that they are large enough to provide a suitable number of housing units, small enough to depict variation in rental across metropolitan areas and, most importantly, through Census Bureau ACS ZCTA data aggregations, have sufficient gross rent data to use in the calculation of SAFMRs.

HUD's use of a 'public housing rent' threshold is too low

The public housing cutoff rent should include rents for housing serving low income residents (at 80 percent of the area median income (AMI)). HUD underestimates its public housing rent cutoff by basing it on the 75th percentile of the public housing rents; it should be at the 95th percentile, or greater. Public housing rents do not include debt service and HUD provides PHAs with assistance in covering operating expenses and capital maintenance such that public housing rents are much lower than what is required for a housing quality adjustment.

HUD Response: The public housing cutoff rent is used as a proxy to remove substandard units and those renting in non-market transactions from the standard quality distribution of rents. Removing all rents below what would be affordable for low-income families from the distribution would not reflect entire rental markets as contemplated by the FMR Statute and regulations. Not all affordable housing should be included in this cutoff amount. Some affordable rental housing, especially for families at 80 percent of the AMI could have rents that are well above the 40th percentile rent. The use of the 40th percentile distribution coupled with the elimination of the bottom of the distribution below the public cutoff rent on top of rents that were already adjusted for standard quality by the Bureau of the Census in our special tabulations, provides enough of an adjustment.

HUD should use a local trend factor, rather than a national trend factor

A different commenter supported the new national trend factor as appropriate in minimizing year-to-year volatility.

HUD Response: HUD published a Federal Register notice on March 9, 2011, requesting comments on a revised trend factor (76 FR 12985). Few comments were received on this notice and a clear consensus could not be reached based on these comments for the new trend factor. A few comments suggested the use of more local data, but there were also a few comments opposing a more local factor. HUD believes that enough uncertainty has been added by changing the previously 10-year national trend factor into an annual national trend factor and does not want to increase the volatility in the FMR based solely on changes in the trend factor.

HUD should change its methodology such that units built in the past two years are not excluded from the data used to calculate FMRs

Many of the units built in the past two year are affordable housing units.

HUD Response: The methodology to calculate FMRs has always excluded those units built in the past two years. This was done as a proxy for eliminating luxury units. If these units are not at the upper end of the distribution, and are in fact, mainly affordable housing units, then the distribution of rents is not reduced and the 40th percentile rent is higher than what it would be if these units were truly at the high end of the distribution of rents.

Large FMR increases do not reflect market conditions and will hurt housing choice voucher families.

HUD should not increase FMRs at a time when federal agencies should be freezing or reducing costs. One comment stated that the FMR increases will result in fewer families being served. The change in the three-bedroom ratio results in a large increase in this unit size FMR.

HUD Response: Just as HUD must use current data that results in FMR decreases, so HUD must use current data that results in increases. HUD determines FMRs based on the most current statistically reliable data. While the three-bedroom cap only increased modestly, from 1.34 using the

2000 decennial Census to 1.36 using the 2010 ACS data, there are more significant changes by FMR area. Neither base rent increases nor increases resulting from a change in the bedroom ratio may be held harmless. Rent reasonableness studies can be used to set the payment standard below the FMR if the FMR is in fact too high for particular units of acceptable quality chosen by voucher tenants. It should be noted that a comment filed in response to FY 2012 Proposed FMRs made a similar claim, yet apparently did not reduce its payment standards, and, in fact, has applied for exception payment standard based on the higher FY 2012 FMRs.

Homelessness will increase in areas where the FY 2013 FMRs decreased

Several comments suggest that FMR decreases, even those under five percent, will reduce the ability of tenants to find units that meet housing quality standards and will increase homelessness, as fewer units are available at the lower FMR.

HUD Response: Where market conditions warrant, HUD encourages PHAs to use Exception Payment Standards and Success Rate Payment Standards to increase voucher holder's success in finding housing.

Decreases in FMRs will undo PHAs efforts to maintain a high success rate; program utilization will be reduced with lower FMRs.

HUD Response: Where market conditions warrant, HUD encourages PHAs to use Exception Payment Standards and Success Rate Payment Standards to increase voucher holder's success in finding housing.

HUD should institute caps and floors to limit annual FMR changes to five percent

A five percent change in the FMR triggers a rent reasonableness study, which is costly for cash-strapped PHAs. HUD should have instituted the same cap and floor of five percent that it instituted for Income Limits with the FY 2010 Income Limits.

HUD Response: HUD is constrained by legal and regulatory language for its calculation of FMRs, and therefore cannot ignore the requirement to use the most current data by only implementing FMR changes in five percent increments. Statutory and regulatory changes are required before HUD would be able to implement any methodology changes to not fully use the most current rent data in setting FMRs. No such regulation or legislative requirement governs the calculation of income limits and prior to FY 2010, income limits were held harmless, that is, not allowed to ever decline. The change to incorporate caps and floors of up to five percent was a way to remove this hold harmless policy and create parity with increases and decreases.

The loss of 50th percentile FMRs puts voucher families at risk for rent increases, rejection and moving to areas of greater poverty.

HUD should not take away 50th percentile FMRs for PHAs meeting deconcentration objectives under SEMAP; HUD should use its regulatory authority to reinstate 50th percentile FMRs for these areas. HUD’s evaluation of 50th percentile areas included FY 2009, a year of voucher funding shortfalls that limited the 50th percentile FMRs. HUD should change it requalification analysis.

HUD Response: Of the seven areas evaluated for requalification, only one area did not deconcentrate and is not eligible for evaluation until FY 2016. This area was one of the original 50th percentile FMR areas in FY 2002 and has had 50th percentile FMRs continuously. The decrease in the FMR as a result of the loss of the 50th percentile is difficult for all PHAs that operate in that area, but HUD has the authority to grant payment standard protection for PHAs that meet deconcentration objectives under 24 CFR 982.503(f). This request must be made to the HUD Field Office, and not through the comment process.

The FY 2013 Small Area FMRs for Dallas do not affirmatively further fair housing

Where FY 2013 SAFMRs in the Dallas, TX FMR Area are below what they were in FY 2011, the first year SAFMRs were used, the comment states that HUD is violating its duty to affirmatively further fair housing.

HUD Response: HUD must follow its statutory and regulatory requirements to update FMRs using the most current data available. This means that both increases and decreases must be applied to the Dallas SAFMRs. A decrease that reflects more current data does not prevent HUD from affirmatively further fair housing. The data HUD uses in the calculation of FMRs (both metropolitan-wide and small area FMRs) are compiled across all survey respondents in a given area and are not segmented in any way by demographic traits.

The FMRs are too low and do not reflect market rents; HUD must conduct a survey of rents

HUD Response: While rent surveys conducted either by HUD or a PHA would provide more current data, these surveys take about two months to complete and are quite expensive. HUD does not have the funds to conduct many surveys and HUD cannot delay the implementation while new surveys are being conducted. Areas with relatively short-term market tightening are not easily measured by rent surveys. Based on past experience, HUD finds that an area must have rent increases or declines for a period of at least two years before it can be measured.

HUD should replace the use of the 2010 ACS data for one area with a 2011 Census survey of a subarea

HUD Response: The use of the more current 2011 Census survey to set base rents is a problem because the survey covers only a portion of the FMR area; excluded from this survey are several counties that are part of the FMR area. For the 2011 data to be used the survey results have to be from the entire FMR area, not just a subarea. Further, one of these excluded counties is required, by statute be included in that area's FMR calculation.

HUD should provide information on the utility costs included in FMRs

HUD Response: HUD uses gross rents from the ACS to establish base rents and to determine recent mover factor adjustments.

HUD should publish 2000 decennial Census data to help PHAs determine exception payment standards

HUD Response: HUD has decennial Census tract level data that its Field Economists or Headquarters Economists use to determine exception payment standards for PHAs. However, lately HUD has relied on the SAFMRs, published by ZIP Code, which are based on the 2010 ACS data. This data for metropolitan areas only is already available to PHAs at http://www.huduser.org/portal/datasets/fmr/fmrs/index_sa.html&data=fy2013.

For areas without their own CPI, AAFs should be provided for the 10 HUD regions instead of the four Census regions

HUD Response: The 10 HUD regional AAFs, for both metropolitan and non-metropolitan areas were calculated based on a very expensive survey that HUD conducted. This data was used to adjust the FMR for areas without local CPI data. When the 2000 decennial Census data was released, HUD analyzed the FMR using the survey data and found that the survey data did not improve the FMR estimation over what it would have been using the CPI. The cost of that data collection effort was not worthwhile. HUD did not stop the survey because of budgetary problems; HUD stopped the survey because it did not significantly improve the estimation of the FMR.

VIII. Rental Housing Surveys

In 2011, HUD solicited bidders to study the methodology used to conduct local area surveys of gross rents to determine if the Random Digit Dialing (RDD) methodology could be improved upon. The Department undertook this study due to the increasing costs and declining response rates associated with telephone surveys. Furthermore, the advent of the 1-year ACS limits the need for surveys in large metropolitan areas. Based on this research, the Department decided that its survey methodology should be changed with mail surveys being the preferred method for conducting surveys, because of the lower cost and greater likelihood of survey responses. These surveys, however, take almost twice as long to conduct as prior survey methods took, and when response times are most critical, the Department may choose to conduct random digit dialing surveys as well, as the budget permits. The methodology for both types of surveys along with the survey instruments is posted on the HUD USER website, at the bottom of the FMR page in a section labeled Fair Market Rent Surveys at: http://www.huduser.org/portal/datasets/fmr.html

Other survey methodologies are acceptable in providing data to support comments if the survey methodology can provide statistically reliable, unbiased estimates of the gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative of structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The 2006-2010 5-year ACS data should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock.

Most surveys cover only one- and two-bedroom units, which has statistical advantages. If the survey is statistically acceptable, HUD will estimate FMRs for other bedroom sizes using ratios based on the 2006-2010 5-year ACS data. A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size requirements.

HUD will consider increasing manufactured home space FMRs where public comment demonstrates that 40 percent of the two-bedroom FMR is not adequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must include a pad rental survey of the mobile home parks in the area, identify the utilities included in each park's rental fee, and provide a copy of the applicable public housing authority's utility schedule.

As stated earlier in this Notice, HUD is required to use the most recent data available when calculating FMRs. Therefore, in order to re-evaluate an area's FMR, HUD requires more current rental market data than the 2010 ACS.

VIII. Environmental Impact

This Notice involves the establishment of fair market rent schedules, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are proposed to be amended as shown in the Appendix to this notice:

Dated: ________________________

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Erika C. Poethig
Acting Assistant Secretary
for Policy Development and Research

[FR-5648-N-02]

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D--General Explanatory Notes

1. Geographic Coverage

a**. Metropolitan Areas --** Most FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. HUD is using the metropolitan CBSAs, which are made up of one or more counties, as defined by the Office of Management and Budget (OMB), with some modifications. HUD is generally assigning separate FMRs to the component counties of CBSA Micropolitan Areas.

b**. Modifications to OMB Definitions --** Following OMB guidance, the estimation procedure for the FY 2013 Final FMRs incorporates the most current OMB definitions of metropolitan areas based on the CBSA standards as implemented with 2000 Census data, but makes adjustments to the definitions to separate subparts of these areas where FMRs or median incomes would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view for programmatic purposes that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so in the future as the social and economic integration of the CBSA component areas increases. Modifications to metropolitan CBSA definitions are made according to a formula as described below.

Metropolitan area CBSAs (referred to as MSAs) may be modified to allow for subarea FMRs within MSAs based on the boundaries of old FMR areas (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY 2005 FMRs. Collectively they include 1999-definition MSAs/Primary Metropolitan Statistical Areas (PMSAs), metro counties deleted from 1999-definition MSAs/PMSAs by HUD for FMR purposes, and counties and county parts outside of 1999-definition MSAs/PMSAs referred to as nonmetropolitan counties.) Subareas of MSAs are assigned their own FMRs when the subarea 2000 Census Base Rent differs by at least 5 percent from (i.e., is at most 95 percent or at least 105 percent of) the MSA 2000 Census Base Rent, or when the 2000 Census Median Family Income for the subarea differs by at least 5 percent from the MSA 2000 Census Median Family Income. MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as HUD Metro FMR Areas (HMFAs) to distinguish these areas from OMB's official definition of MSAs.

The specific counties and New England towns and cities within each state in MSAs and HMFAs are listed in Schedule B.

2. Bedroom Size Adjustments

Schedule B shows the FMRs for zero-bedroom through four-bedroom units. The Schedule B addendum shows Small Area FMRs for PHAs operating using Small Area FMRs within the Dallas, TX HMFA. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by state.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the non-metropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan county are listed immediately following the county name.