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Part II

**Department of
Housing and Urban
Development**

**Final Fair Market Rents for Fiscal Year
2009 for the Housing Choice Voucher
Program and Moderate Rehabilitation
Single Room Occupancy Program; Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-5223-N-02]

**Final Fair Market Rents for Fiscal Year
2009 for the Housing Choice Voucher
Program and Moderate Rehabilitation
Single Room Occupancy Program**

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

ACTION: Notice.

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. The primary uses of FMRs are to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment (HAP) contracts in the Moderate Rehabilitation Single Room Occupancy program (Mod Rehab), and to serve as a rent ceiling in the HOME rental assistance program. Today's notice provides final FY2009 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2009. The FY2009 FMRs are based on 2000 Census data updated with more current survey data. For FY2009, FY2008 FMRs are updated using 2006 American Community Survey (ACS) data, and more recent Consumer Price Index (CPI) rent and utility indexes. HUD continues to use ACS data in different ways according to how many two-bedroom standard-quality and recent-mover sample cases are available in the FMR area or its Core-Based Statistical Area (CBSA). Revised 2006 FMRs based on Census and ACS data have been updated with CPI data through the end of 2007 and then trended to April 2009, the mid-point of FY2009.

DATES: *Effective Date:* The FMRs published in this notice are effective on October 1, 2008.

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 at the following link on the HUD Web site: <http://www.huduser.org/datasets/fmr.html>. FMRs are listed at the 40th or 50th percentile in Schedule B. An asterisk before the FMR area name identifies a 50th percentile area.

Any 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 further methodological explanations may be addressed to Marie L. Lihn or Lynn A. Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone number 202-708-0590. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339. (Other than the HUD USER information line and TTY 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 areas. In the Housing Choice Voucher 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 Housing Choice Voucher program must meet reasonable rent standards. The interim rule published on October 2, 2000, (65 FR 58870), established 50th percentile FMRs for certain areas.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD Web site at <http://www.hudclips.org>. **Federal Register** notices also are available electronically from the U.S. Government Printing Office Web site, <http://www.gpoaccess.gov/fr/index.html>. Complete documentation of the methodology and data used to compute each area's Final FY2009 FMRs is available at <http://www.huduser.org/datasets/fmr/fmrs/index.asp?data=fmr09>.

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.

The Department'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).

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. For FY2009, no new areas became eligible for 50th percentile rents. Current areas are evaluated for progress in deconcentration every three years after becoming 50th percentile areas. Continued eligibility is determined based on HUD administrative data that show levels of poverty concentration. The levels of poverty 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. Twenty-four of the current 28 50th percentile FMR areas had been in the program for a three-year period and were reviewed to determine if deconcentration had occurred. A list of these 24 areas is shown below.

**FY2008 50th Percentile FMR Areas
Reviewed for Eligibility as FY2009 50th
Percentile FMR Areas**

Albuquerque, NM MSA
Austin-Round Rock, TX MSA
Baltimore-Towson, MD MSA
Bradenton-Sarasota-Venice, FL MSA
Chicago-Naperville-Joliet, IL HMFA
Denver-Aurora, CO MSA
Fort Worth-Arlington, TX HMFA
Grand Rapids-Wyoming, MI HMFA
Hartford-West Hartford-East Hartford,
CT HMFA
Honolulu, HI MSA
Houston-Baytown-Sugar Land, TX
HMFA
Kansas City, MO-KS, HMFA
Las Vegas-Paradise, NV MSA
Milwaukee-Waukesha-West Allis, WI
MSA
New Haven-Meriden, CT HMFA
Orange County, CA HMFA
Phoenix-Mesa-Scottsdale, AZ MSA
Providence-Fall River, RI-MA HMFA
Richmond, VA HMFA
Riverside-San Bernardino-Ontario, CA
MSA

Tacoma, WA HMFA
 Tucson, AZ MSA
 Virginia Beach-Norfolk-Newport News,
 VA-NC MSA
 Washington-Arlington-Alexandria, DC-
 VA-MD HMFA

Fourteen of the 24 current 50th percentile areas eligible for review failed to qualify for the 50th percentile FMR program for FY2009. Two of these areas, as shown below, no longer qualify for the 50th-percentile FMR program because they no longer meet the poverty concentration standards set out in the 50th percentile FMR program, at 24 CFR 888.113. Based on current tenant data, less than 25 percent of the tenant-based rental program participants reside in the 5 percent of census tracts in the metropolitan areas with the largest number of program participants. These areas will be reviewed annually to see if this concentration changes to above 25 percent so they can be reinstated as 50th percentile areas. These two areas could re-qualify as 50th percentile FMR areas as early as the FY2010 FMRs.

FY2008 50th Percentile FMR Areas Not Eligible for FY2009 50th Percentile FMRs Because Voucher Tenant Concentrations Have Fallen Below the Eligibility Threshold

Grand Rapids-Wyoming, MI HMFA
 Providence-Fall River, RI-MA HMFA

Three additional areas initially did not meet the minimum reporting criteria of 85 percent of resident records. Based on comments, additional data submitted by these areas was found in a separate database, and subsequent examination of all data found reporting levels above 85 percent. However all three areas also showed a failure to deconcentrate over the three-year period when they were using 50th percentile FMRs. These areas will lose their 50th percentile FMRs for FY2009 but will be eligible for re-evaluation and possible re-instatement of 50th percentile FMRs in FY2010. These areas are not being removed from consideration for the 50th percentile FMR program for a period of three years, for failing the test of deconcentration, because they were not notified of this failure in time for them to provide comments, and it was an error by HUD that led to this failure. These areas are listed below:

FY2008 50th Percentile FMR Areas Not Eligible for FY2009 50th Percentile FMRs Because Proposed FY2009 FMR Publication Found Low Reporting Rates

Baltimore-Towson, MD MSA
 Washington-Arlington-Alexandria, DC-
 VA-MD HMFA
 New Haven-Meriden, CT HMFA

As notified in the publication of proposed FY2009 FMRs, the table below shows nine areas that failed to deconcentrate over the 3-year period. Deconcentration of tenants is the primary objective of the 50th percentile program and failure to make any progress to deconcentrate tenants over a 3-year period disqualifies an otherwise eligible area for 3 years. These areas are not eligible for participation in the 50th percentile FMR program until FY2012. They will be reviewed in time for the proposed FY2012 FMRs to determine if they can meet 50th percentile FMR criteria.

FY2008 50th Percentile FMR Areas Not Eligible for FY2009 50th Percentile FMRs for Failure To Deconcentrate Voucher Tenants

Austin-Round Rock, TX MSA
 Honolulu, HI MSA
 Orange County, CA HMFA
 Riverside-San Bernardino-Ontario, CA
 MSA
 Virginia Beach-Norfolk-Newport News,
 VA-NC MSA
 Fort Worth-Arlington, TX HMFA
 Las Vegas-Paradise, NV MSA
 Phoenix-Mesa-Scottsdale, AZ MSA
 Tucson, AZ MSA

Ten of the 24 areas reviewed will continue to use 50th percentile FMRs for another three-year period. These ten areas will not be re-evaluated until FY2012.

FY2008 50th Percentile FMR Areas Evaluated and Continuing with 50th Percentile FMRs in FY2009

Albuquerque, NM MSA
 Chicago-Naperville-Joliet, IL HMFA
 Hartford-West Hartford-East Hartford,
 CT HMFA
 Kansas City, MO-KS HMFA
 Richmond, VA HMFA
 Bradenton-Sarasota-Venice, FL MSA
 Denver-Aurora, CO MSA
 Houston-Baytown-Sugar Land, TX
 HMFA
 Milwaukee-Waukesha-West Allis, WI
 MSA
 Tacoma, WA HMFA

In addition to these 10 areas, 4 current 50th percentile FMR areas were not evaluated this year because they have not completed 3 years of program participation, so there are 14 areas that will have 50th percentile FMRs in FY2009. These four areas, listed below, will complete their 3-year program period and be evaluated to determine if they remain 50th percentile FMR areas in the proposed FY2010 FMR publication.

FY2008 50th Percentile FMR Areas Not Slated for Eligibility Evaluation and Continuing with 50th Percentile FMRs in FY2009

Dallas, TX HMFA
 San Diego-Carlsbad-San Marcos, CA
 MSA
 Fort Lauderdale, FL HMFA
 West Palm Beach-Boca Raton, FL HMFA

III. Proposed FY2009 FMRs

On June 12, 2008 (73 FR 33530), HUD published proposed FY2009 FMRs. As noted in the preamble to the proposed FMRs, the FMRs for FY2009 reflect the use of the 2006 ACS data to update 2005 rent estimates for metropolitan areas. In addition, the FY2009 FMRs include all changes made to metropolitan area definitions made by the Office of Management and Budget (OMB), as of November 2007.

During the comment period, which ended August 1, 2008, HUD received 26 public comments on the proposed FY2009 FMRs. None of the comments received included the data needed to support FMR changes. Several of the comments expressed concern over recent utility increases and the failure of the FY2009 FMRs to take into account these increases. There were also comments received on the loss of 50th percentile FMRs resulting from low reporting rates. The comments received are discussed in more detail later in this notice.

IV. FMR Methodology

The FY2009 FMRs are based on current OMB metropolitan area definitions that were first used in the FY2006 FMRs. The changes OMB made to the Metropolitan Area Definitions in November 2007 are incorporated. This means that there are six Metropolitan Statistical Area (MSA) name changes that reorder, add, or delete a primary city name.¹ The area definitions based on 2000 Census data have the advantages of providing more relevant commuting interchange standards and more current measures of housing market relationships than those based on 1990 Census data and used prior to the FY2006 FMRs.

At HUD's request, the Census Bureau prepared a special publicly releasable census file that permits almost exact replication of HUD's 2000 Base Rent calculations, except for areas with few rental units. This data set is located on HUD's HUD USER Web site at <http://>

¹ The change from Sarasota-Brandenton-Venice, FL MSA to Bradenton-Sarasota-Venice, FL MSA includes a change in the primary city name and a change in the metropolitan code from 42260 to 14600.

www.huduser.org/datasets/fmr/CensusRentData/.

A. Data Sources—2000 Census and American Community Survey

FY2009 FMRs are based on changes in rents measured by differences in ACS data collected in 2005 and 2006 and updated with CPI data. For FY2008 FMRs, HUD developed 2005 rent estimates based on updating 2000 Census gross rent data with more current survey data from the Census Bureau's 2005 ACS, the first full year of implementation for the ACS. FY2009 FMRs use data from the 2006 ACS to update these 2005 rent estimates. While the Census Bureau intends for the ACS to replace the Decennial Census sample "long form" for collecting detailed socioeconomic data, the ACS has several important distinctions from the decennial long form. These include:

- The ACS is conducted on a continuous "rolling" basis throughout the year, so survey responses do not correspond to a particular date, whereas the long form responses were as of the Census date of April 1. This has implications for the "as-of" date assumed for ACS-based rents. The "as-of" date for ACS-based rents is set at June 30 of the ACS year.

- The ACS has an initial sample size (before non-response attrition) of about one-fifth that of the decennial long form, which surveyed approximately one out of every six households. This means that an adequate sample size for one-year ACS data will be available only for very large population geographic areas, and that data for smaller areas will be accumulated over 3 or 5 years to form the basis of decennial long-form-equivalent estimates.

As detailed in the notices announcing the proposed and final FY2008 FMRs, HUD replaced the accumulated 2001 through 2005 FMR update factors from various sources with 2005 ACS data. The preamble for the final FY2008 FMR Notice (72 FR 55940) provides a description of how the 2005 ACS data, and in some cases Random Digit Dialing surveys (RDDs) conducted in 2001 through 2005, were used in the FY2008 FMRs. Further details regarding the calculation of FY2008 FMRs are available using HUD's online Final FY2008 Documentation System, available at <http://www.huduser.org/datasets/fmr/fmrs/index.asp?data=fmr08>.

B. Updates From 2005 to 2006

State or local 2006 ACS data are used to update a June 2005-calculated gross rent from the FY2008 FMRs to June 2006. The same categories of use,

depending upon the sizes of the available rental unit samples in the FMR areas, were applied to the 2006 ACS data as had been applied to the 2005 data. There are two exceptions to the similarity of processing 2005 ACS data and 2006 ACS data. First, the update factor reflecting changes in rents for the parts of the state not included in FMR areas covered by local ACS data was discontinued for two reasons: (1) The variance in rent change between 2005 and 2006 for these areas was much larger than that for full states and it was not clear whether these changes reflected differences in markets or area composition, or if they reflected survey anomalies; and (2) basing an underlying geography on factors that change annually (such as the identity of FMR areas covered by local ACS data) and which cannot be determined until the survey data have been processed presents a complexity that could not be resolved in a manner that allowed for timely delivery of data. Consequently, for FY2009, all state-based update factors are calculated for the entire state.

Second, HUD-defined "HMFAs" in metropolitan areas (CBSAs) where no subarea uses the CBSA gross rent as the basis of its FMR, are no longer tested to determine which update factor, the state or the CBSA, brings the subarea closer to the CBSA. The state update factor is now used for these cases. This change was made because review of the data and discussions with field economists indicated that forcing these subareas toward CBSA-area values moved the rent in the wrong direction.

C. Updates From 2006 to 2007

The 2006 ACS data brought the 2005 data used in the FY2008 FMRs forward by 12 months to June 2006. The CPI is used to update the June 2006 FMRs to the end of 2007. Local CPI data are used for FMR areas with at least 75 percent of their population within Class A metropolitan areas covered by local CPI data. Census region CPI data are used for FMR areas in Class B and C size metropolitan areas and nonmetropolitan areas without local CPI update factors.

D. Updates From 2007 to 2009

The national 1990 to 2000 average annual rent increase trend of 3 percent (1.03) is applied to end-of-2007 rents for 1.25 years, to derive the final FY2009 FMRs.

E. Additional Rent Surveys and Other Data

In early 2008, surveys were conducted in several areas of Wyoming, Colorado, Utah, and Texas where, as a result of increased oil and gas drilling activity,

housing agencies have experienced significant rental housing market pressure. Most of these areas have experienced several years of problems managing the voucher program. These surveys show that rents in these areas are higher than previously estimated. All of these surveys met HUD standards for statistical significance (i.e., the survey result trended to April 2008 was statistically different from the April 2008 FY2008 FMRs at a 95 percent level of confidence). These RDD survey results became effective in FY2008 with the publication of the proposed FY2009 FMRs.

Three additional RDD surveys are underway. HUD is currently conducting surveys in New Orleans, Hattiesburg, MS and Pearl River County, MS in its ongoing effort to monitor rental housing markets in Katrina and Rita affected areas because of HUD's concern about FMR accuracy in these fluid housing markets and at the request of local PHAs. Results from these surveys will be published as soon as they are available.

The area-specific data and computations used to calculate proposed FY2009 FMRs and FMR area definitions can be found at <http://www.huduser.org/datasets/fmr/fmrs/index.asp?data=fmr09>.

F. Large Bedroom Rents

FMR estimates are calculated for two-bedroom units. This generally is the most common size of rental units, and therefore the most reliable to survey and analyze. After each decennial census, rent relationships between two-bedroom units and other unit sizes are calculated and used to set FMRs for other units. This is done because it is much easier to update two-bedroom estimates and to use pre-established cost relationships with other bedroom sizes than it is to develop independent FMR estimates for each bedroom size. This was last done using 2000 Census data. A publicly releasable version of the data file used that permits derivations of rent ratios is available at <http://www.huduser.org/datasets/fmr/CensusRentData/index.html>. Rent ratio derivations are also shown in the FMR documentation system at <http://www.huduser.org/datasets/fmr/fmrs/index.asp?data=fmr09>.

The rents for three-bedroom and larger units continue to reflect HUD's policy to set higher rents for these units than would result from using normal 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.

A further adjustment was made using 2000 Census data in establishing rent ratios for areas with local bedroom-size intervals above or below what are considered to be reasonable ranges or where sample sizes are inadequate to accurately measure bedroom rent differentials. HUD's 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). Bedroom interval ranges were established based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations. The ranges used were: Efficiency units are constrained to fall between 0.65 and 0.83 of the two-bedroom FMR; one-bedroom units must be between 0.76 and 0.90 of the two-bedroom unit; three-bedroom units must be between 1.10 and 1.34 of the two-bedroom unit; and four-bedroom units must be between 1.14 and 1.63 of the two-bedroom unit. Bedroom rents for a given FMR area were then adjusted if the differentials between bedroom-size FMRs were inconsistent with normally observed patterns (i.e., efficiency rents were not allowed to be higher than one-bedroom rents and four-bedroom rents were not allowed to be lower than three-bedroom rents).

For low-population, nonmetropolitan counties with small census recent-mover rent samples, census-defined county group data were used in determining rents for each bedroom size. This adjustment was made to protect against unrealistically high or low FMRs due to insufficient sample sizes. The areas covered by this estimation method had less than the HUD standard of 200 two-bedroom census-tabulated observations.

V. Public Comments

A total of 26 public comments were received on the proposed FY2009 FMRs.

Over one-half of these comments were from housing agencies in Vermont and Maine and they expressed concern with managing the recent sharp increase in the cost of fuel oil, which is the primary heating fuel in these states. Although the FY2009 FMRs for most areas in Vermont represent an increase of more than 9 percent, the comments stated that this increase was not sufficient. In Maine, there was no effective increase in the FY2009 FMRs and they were also seeking relief from the heating fuel increases. HUD reviewed data on heating fuel increases from the Department of Energy's Energy Information Administration and from the Bureau of Labor Statistics Consumer Price Index. Both data sources show an increase of approximately 70 percent in residential fuel oil costs compared with last winter. Approximately 30 percent of this increase is included in the 2007 CPI that is used in calculating the FY2009 FMRs. The remaining 40 percent increase in fuel oil costs could be incorporated by using the CPI through June of 2008, replacing 6 months of trend. Using the updated rent and utility CPI through June 2008, however, results in less than a 2 percent increase in the FMR for these areas. This is because utility costs are not a significant share of the gross rent; a change in one component of utility costs does not result in a significant change in rent.

Comments concerning Greensboro, NC and New York City included data; however, these data are not acceptable. None of the data were sufficient to determine new FMRs. The Greensboro, NC data included average rents by housing type and bedroom size based on a small amount of survey data. There were three major problems with this submission. First, actual data was not submitted, only average rents. FMRs are based on 40th percentile rents not on average rents. Without actual data, it is not possible to determine the 40th percentile rent for this area. Using a percentile point within a distribution reduces survey problems with unusually high or low rents and allows smaller samples to be used. Second, the sample size was not sufficient to determine the reliability of the estimate. There must be sufficient information to justify any proposed changes to HUD's estimation of FMRs. Third, there was no documentation on how the survey was conducted so there was no way to determine if the sample was random. Recommendations and supporting data must reflect the rent levels that exist within the entire FMR area. The data must be statistically significant, and newspaper ads are specifically

excluded. The qualifications on the acceptance of data and conducting statistically significant surveys were discussed in the preamble to the proposed FMRs and should be followed when providing comments.

New York City submitted its rent stabilization report that was the basis of a 4.5 percent increase for rent stabilized units in FY2009. The 4.5 percent increase is based on ensuring increases in landlords' operating costs are met. The FY2009 FMR for New York City shows no increase from FY2008 to FY2009. However, as submitted in their comment, rent stabilization increases in New York City have been 3.5 percent, 2.75 percent, 4.25 percent, 3 percent and 4.5 percent from 2003 to 2008, for a total of 19.3 percent. Two-bedroom FMRs in New York City have experienced a 22.9 percent increase during the same period. New York's justification for an increase in FMRs is that new voucher holders will have a difficult time finding units at the same amount as last year, when rent stabilization landlords are getting a 4.5 percent increase in rents. However, they do not comment on the level of the FMR, nor do they provide data to support the contention that the final FMR for New York City should be higher than the proposed FMR.

A comment filed by the National Association of Home Builders (NAHB) made three specific requests: (1) Limit all FMR decreases to 5 percent or, conduct RDD surveys in all areas with increases of more than 5 percent; (2) improve the description of the methodology used by HUD to control for the presence of inadequate and subsidized units; and (3) clarify HUD's intentions for 50th percentile re-evaluation and notify areas about success rate payment standards. The NAHB also commended HUD on its continuing FMR bonus for Katrina and Rita impacted areas.

FY2009 proposed FMRs include two areas that experience more than a 5 percent decline in FMRs. One is Providence, RI, whose decline is a result of the loss of the 50th percentile FMR, and the other is Santa Barbara-Santa Maria, CA. HUD is required by law to use the most recent, reliable data available in estimating FMRs. Limiting either increases or decreases would be counter to the law as HUD interprets and implements it. There is no reason to assume that such declines do not occur as rents and utilities change over time. Proposed FMRs for both Providence and Santa Barbara are based on local ACS surveys with significantly larger samples than would be achievable with an RDD. Conducting an RDD

would use scarce resources to produce less reliable data than that available from the ACS. In addition, no comments were filed by any party within either of the two areas.

In response to the NAHB request for a full description of HUD's methodology in establishing its cutoff rent at the 75th percentile of the regional public housing rent, HUD has added the methodology of the cutoff rent as a link in our FY2009 FMR documentation system.

In response to the NAHB request that HUD use firmer language to describe its intentions with respect to 50th percentile areas, firmer language has been added to this preamble. HUD commends the NAHB for being mindful of small PHAs who might not be aware of the success rate payment standard policy and reiterates here that all of the rules and conditions for becoming eligible for and for maintaining eligibility of 50th percentile status are given in 24 CFR 888.113 and 24 CFR 982.503, including the rules applying to the success rate payment standard.

The Council of Large Public Housing Authorities (CLAPHA), the Housing Authority of Baltimore and the Fairfax County Redevelopment and Housing Authority all commented on the loss of the 50th percentile FMR. CLAPHA and Baltimore are primarily concerned that the methodology used to evaluate the reporting rates for Moving-to-Work (MTW) agencies is faulty and should be reviewed. HUD has reviewed its methodology and found that this is the case. There is MTW data available that was not used in the initial FY2009 50th percentile evaluation. The three areas designated as failing to meet an 85 percent reporting rate, do meet this reporting rate with inclusion of MTW data; however, the data also show that all three areas (Baltimore, New Haven, and Washington, DC) failed to deconcentrate over the three-year period from 2005 to 2008. Failure to deconcentrate eliminates an area from eligibility for three years, while failure to report eliminates an area only until they have 85 percent reporting, at which point, the three year deconcentration clock starts over again. This error was found too late to provide an opportunity for the parties to be notified and to comment on, so these three areas will lose their 50th percentile FMR status for the FY2009 FMRs, but will be reviewed for a new three-year 50th percentile FMR program beginning with the FY2010 FMRs. Public housing authorities impacted by the loss of 50th percentile status are referred to 24 CFR 982.503(f), which provides payment standard protection for PHAs that meet deconcentration objectives.

The Mansfield Housing Authority, representing three towns in southern Connecticut that are part of the Hartford-West Hartford-East-Hartford, CT MSA, requested higher FMRs and referred us to its comments filed in the FY2008 FMRs. Last year we suggested that they look into exception rents for these towns and determine if they would qualify. This year we evaluated the towns and determined that Storrs would qualify for an exception at 111 percent and Coventry would qualify for an exception at 116 percent. Mansfield does not qualify for an exception rent. The Housing authority could request that PIH grant exceptions for the other towns, if it can show there is a program need.

The City of San Jose Housing Department and Menola Land, LLC from Billings, Montana both submitted comments that their FMRs were too low but neither comment contained sufficient data that could be used to re-evaluate proposed FMRs and adjust them.

VI. Manufactured Home Space Surveys

The FMR used to establish payment standard amounts for the rental of manufactured home spaces in the Housing Choice Voucher 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. HUD modified manufactured home space FMRs for Seattle-Bellevue, WA, based on 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 FY2008 were updated to FY2009 using the same data used to estimate the Housing Choice Voucher program FMRs if the respective FMR area's definition remained the same. If the result of this computation was higher than 40 percent of the re-benchmarked two-bedroom rent, the exception remains and is listed in Schedule D. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs. Areas with definitional changes that previously had exceptions to their manufactured housing space rental FMRs are requested to submit new surveys to justify higher-than-standard space rental FMRs if they believe higher space rental allowances are needed.

VII. HUD Rental Housing Survey Guides

For the supporting data, HUD recommends the use of professionally conducted RDD telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of approximately \$35,000. Areas with 2,000 or more program units usually meet this cost criterion, and areas with fewer units may meet it if actual rents for two-bedroom units are significantly different from the FMRs proposed by HUD. In addition, HUD has developed a version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of \$5,000 or less.

PHAs in nonmetropolitan areas may, in certain circumstances, conduct surveys of groups of counties. HUD must approve all county-grouped surveys in advance. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed. Each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties where FMRs are based on the combined rents in the cluster of FMR areas will not have their FMRs revised unless the grouped survey results show a revised FMR above the combined rent level.

PHAs that plan to use the RDD survey technique should obtain a copy of the appropriate survey guide. Larger PHAs should request HUD's survey guide entitled "Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments." Smaller PHAs should obtain the guide entitled "Rental Housing Surveys: A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments." These guides, in Microsoft Word format, are available from HUD USER at HUD's Web site at the following address: <http://www.huduser.org/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 by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The decennial census should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock.

Most surveys of FMR areas cover only one- and two-bedroom units. If the survey is statistically acceptable, HUD will estimate FMRs for other bedroom sizes using ratios based on the decennial census. 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.

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR Part 888, are amended as follows:

Dated: September 22, 2008.

Darlene F. Williams,

Assistant Secretary for Policy, Development and Research.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. Metropolitan Areas—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. The FY2009 FMRs reflect a change in metropolitan area definitions. HUD is using the metropolitan Core Based Statistical Areas (CBSA), which are made up of one or more counties, as defined by the 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 FY2009 FMRs incorporates the 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 sub-areas are established, it is HUD's view 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 Metropolitan Statistical Areas or MSAs) may be modified to allow for sub-area 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 FY2005 FMRs. Collectively, they include 1999 definition MSAs/PMSAs, metropolitan 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.) Sub-areas of MSAs are assigned their own FMRs when the sub-area 2000 Census Base Rent differs by at least 5 percent from the MSA 2000 Census Base Rent (i.e., by

at most 95 percent or at least 105 percent), or when the 2000 Census Median Family Income for the sub-area differs by at least 5 percent from the MSA 2000 Census Median Family Income. MSA sub-areas, and the remaining portions of MSAs after sub-areas 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 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 rents for manufactured home spaces FMRs are listed alphabetically in Schedule D.

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 nonmetropolitan county listings.

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