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Part II

Department of Housing and Urban Development

**Fair Market Rents for Fiscal Year 2006
for Housing Choice Voucher, Moderate
Rehabilitation Single Room Occupancy
and Certain Other HUD Programs;
Supplemental Notice on 50th Percentile
Designation; Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4995-N-04]

**Fair Market Rents for Fiscal Year 2006
for Housing Choice Voucher, Moderate
Rehabilitation Single Room Occupancy
and Certain Other HUD Programs;
Supplemental Notice on 50th
Percentile Designation**

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish fair market rents (FMRs) periodically, but not less than annually, to be effective on October 1 of each year. On October 3, 2005, HUD published final FMRs for Fiscal Year (FY) 2006. This notice identified 58 areas at 50th percentile FMRs, which consists of 48 areas previously eligible for 50th percentile FMRs plus 10 areas that are newly eligible. The 48 existing 50th percentile FMR areas were evaluated in a notice published August 25, 2005 (70 FR 50138) and it was determined that only 14 of these areas would remain eligible to participate in the 50th percentile FMR program. This notice confirms the eligibility of the 24 areas identified as having continuing or new eligibility for 50th percentile FMRs. Following a review of public comments, this notice confirms and implements elimination of 50th percentile FMRs for the 34 areas identified as no longer eligible in the August 25, 2005, notice.

HUD has special exception procedures to adjust voucher payment standards in areas affected by natural disasters. Areas directly or indirectly impacted by Hurricanes Katrina or Rita are either already qualified to use exception payment standards or can submit a documented request to do so. In areas directly affected by the two recent hurricanes, public housing agencies are authorized to use voucher payment standards of up to 120 percent of published FMRs, which is significantly higher than the standards permitted for 50th percentile areas. In addition, public housing agencies in these areas may request higher exception payment standards if justified by local rent increases.

DATES: *Effective Date:* The FMRs published in this notice are effective March 1, 2006.

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 Web site at <http://www.huduser.org/datasets/fmr.html>. FMRs are listed at the 40th or 50th percentile in Schedule B of this notice. For informational purposes, a table of 40th percentile recent mover rents for the areas with 50th percentile FMRs will be provided on the same Web site noted above. 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 (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.) *Electronic Data Availability:* This **Federal Register** notice is available electronically from the HUD news page: <http://www.hudclips.org>. **Federal Register** notices also are available electronically from the U.S. Government Printing Office Web site at <http://www.gpoaccess.gov/fr/index.html>.

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.

Section 8(c) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. HUD's regulations implementing section 8(c), codified 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.) HUD published its notice on proposed FY2006 FMRs on June 2, 2005 (70 FR 32402), and provided a 60-day public comment period. In the June 2, 2005, notice, HUD advised that it would publish a separate notice to identify any areas that may be newly eligible for 50th percentile FMRs as well as any areas that remain eligible or no longer remain eligible for 50th percentile FMRs, as provided in HUD's regulations. A supplemental notice on 50th percentile designations was published on August 25, 2005 (70 FR 50138), with comments due by September 26, 2005.

Fiftieth percentile FMRs were established by a rule published on October 2, 2000, that also established the eligibility criteria used to select areas that would be assigned 50th rather than the normal 40th percentile FMRs. The objective was to give PHAs a tool to assist them in de-concentrating voucher program use patterns. The three FMR area eligibility criteria were:

1. *FMR Area Size:* the FMR area had to have at least 100 census tracts.
2. *Concentration of Affordable Units:* 70 percent or fewer of the tracts with at least 10 two-bedroom units had at least 30 percent of these units with gross rents at or below the 40th percentile two-bedroom FMR; and,
3. *Concentration of Participants:* 25 percent or more of the tenant-based rental program participants in the FMR area resided in the 5 percent of census tracts with the largest number of program participants.

The rule also specified that areas assigned 50th percentile FMRs were to be re-evaluated after three years, and that the 50th percentile rents would be rescinded unless an area has made at least a fraction of a percent progress in reducing concentration and otherwise remains eligible. (*See* 24 CFR 888.113.) The three-year period has now passed. As noted in the June 2, 2005, notice, the three-year period for the first areas determined eligible to receive the 50th percentile FMRs, following promulgation of the regulation in § 888.113, has come to a close. The notice issued on August 25, 2005 identified 24 areas that will be eligible to use 50th percentile FMRs.

II. 50th Percentile FMR Areas for FY2006

In making FY2006 FMRs effective on October 1, 2005, HUD did not terminate 50th percentile eligibility for areas designated to lose this status in the

August 25, 2005, notice. Instead, it implemented 50th percentile FMRs for newly identified areas and postponed implementation of all terminations until it had had the opportunity to review all related public comments. Based on its review, HUD has not found sufficient reason to change any of its initial determinations and is rescinding 50th percentile FMRs for the 34 areas identified in Table 1.

TABLE 1.—AREAS LOSING 50TH PERCENTILE FMRs

Allegan County, MI
Ashtabula County, OH
Atlanta-Sandy Springs-Marietta, GA HMFA
Baton Rouge, LA HMFA*
Bergen-Passaic, NJ HMFA
Buffalo-Niagara Falls, NY MSA
Cleveland-Elyria-Mentor, OH MSA
Dallas, TX HMFA
Detroit-Warren-Livonia, MI HMFA
Holland-Grand Haven, MI MSA
Hood County, TX
Miami-Fort Lauderdale-Miami Beach, FL
Minneapolis-St. Paul-Bloomington, MN-WI
Mohave County, AZ
Monroe, MI MSA
Muskegon-Norton Shores, MI MSA
Newark, NJ HMFA
Nye County, NV
Oakland-Fremont, CA HMFA
Ogden-Clearfield, UT MSA
Oklahoma City, OK HMFA
Oxnard-Thousand Oaks-Ventura, CA MSA
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
Pottawatomie County, OK
Sacramento—Arden-Arcade—Roseville, CA
Salt Lake City, UT HMFA
San Antonio, TX HMFA
San Diego-Carlsbad-San Marcos, CA MSA
San Jose-Sunnyvale-Santa Clara, CA HMFA
St. Louis, MO-IL HMFA
Tampa-St. Petersburg-Clearwater, FL MSA
Tulsa, OK HMFA
Warren County, NJ HMFA
Wichita, KS HMFA

*Under the general waiver notice published on October 3, 2005 (70 FR 57716), PHAs in FEMA-designated Hurricane Katrina disaster areas may establish separate payment standards as high as 120 percent of the published 40th percentile rent to expand the supply of housing available to families displaced by Hurricane Katrina. This means that Baton Rouge is permitted to use payment standards much higher than its 50th percentile rents. In addition, it may request payment standards above 120 percent of published FMRs, but such requests must be justified by data.

III. Procedures for Determining 50th Percentile FMRs

This section describes the procedure HUD followed in evaluating which new and currently designated areas are eligible for 50th percentile FMRs under HUD's regulations in 24 CFR part 888. Additionally, in accordance with HUD's Information Quality Guidelines

(published at 67 FR 69642), certain FMR areas were deemed ineligible for 50th percentile FMRs because the information on concentration of voucher program participants needed to make the eligibility determination was of inadequate quality as described in this section. Table 2 lists the 48 FMR areas that were assigned proposed FY2006 FMRs set at the 50th percentile based on new FMR area definitions. Table 2 includes the 39 areas originally determined eligible for 50th percentile FMRs (following the October 2000 final rule that allowed 50th percentile FMRs) plus subparts of these areas that were separated from the original areas in accordance with the new Office of Management and Budget (OMB) metropolitan area definitions. Those areas marked by an asterisk (*) in Table 2 failed to meet one or more eligibility criteria as described below, including measurable deconcentration. Those areas marked by a plus sign (+) in Table 2 had insufficient information, as described below, upon which to determine concentration of voucher program participants and are deemed ineligible for 50th percentile FMRs. Only 14 of these areas met all of the eligibility criteria including information quality requirements and had measurable deconcentration.

TABLE 2.—PROPOSED FY2006 50TH PERCENTILE FMR AREAS LISTED IN JUNE 2, 2005, NOTICE

Albuquerque, NM MSA
*Allegan County, MI
*Ashtabula County, OH
*Atlanta-Sandy Springs-Marietta, GA HMFA
Austin-Round Rock, TX MSA
*Baton Rouge, LA HMFA
*Bergen-Passaic, NJ HMFA
*Buffalo-Niagara Falls, NY MSA
Chicago-Naperville-Joliet, IL HMFA
*Cleveland-Elyria-Mentor, OH MSA
+Dallas, TX HMFA
Denver-Aurora, CO MSA
*Detroit-Warren-Livonia, MI HMFA
Fort Worth-Arlington, TX HMFA
Grand Rapids-Wyoming, MI HMFA
*Holland-Grand Haven, MI MSA
*Hood County, TX
Houston-Baytown-Sugar Land, TX HMFA
Kansas City, MO-KS HMFA
Las Vegas-Paradise, NV MSA
+Miami-Fort Lauderdale-Miami Beach, FL MSA
*Minneapolis-St. Paul-Bloomington, MN-WI MSA
*Mohave County, AZ
*Monroe, MI MSA
*Muskegon-Norton Shores, MI MSA
+Newark, NJ HMFA
*Nye County, NV
*Oakland-Fremont, CA HMFA
*Ogden-Clearfield, UT MSA
*Oklahoma City, OK HMFA

TABLE 2.—PROPOSED FY2006 50TH PERCENTILE FMR AREAS LISTED IN JUNE 2, 2005, NOTICE—Continued

Orange County, CA HMFA
*Oxnard-Thousand Oaks-Ventura, CA MSA
+Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA
Phoenix-Mesa-Scottsdale, AZ MSA
*Pottawatomie County, OK
Richmond, VA HMFA
*Sacramento—Arden-Arcade—Roseville, CA HMFA
*Salt Lake City, UT HMFA
*San Antonio, TX HMFA
*San Diego-Carlsbad-San Marcos, CA MSA
*San Jose-Sunnyvale-Santa Clara, CA HMFA
*St. Louis, MO-IL HMFA
*Tampa-St. Petersburg-Clearwater, FL MSA
*Tulsa, OK HMFA
Virginia Beach-Norfolk-Newport News, VA-NC MSA
*Warren County, NJ HMFA
Washington-Arlington-Alexandria, DC-VA-MD HMFA
*Wichita, KS HMFA

The following subsections describe HUD's application of the eligibility criteria for 50th percentile FMRs, set forth in 24 CFR 888.113, to the proposed FY2006 50th percentile FMR areas, and explain which areas lost eligibility for the 50th percentile FMR based on each criterion. The application of HUD's Information Quality Guidelines and findings of ineligibility of FMR areas on the basis of inadequate information on concentration of participants are described in the "concentration of participants" subsection. The final section identifies 10 additional FY2006 FMR areas assigned proposed 40th percentile FMRs in the June 2, 2005, notice, that are eligible, under the regulatory criteria and information quality guidelines, for 50th percentile FMRs.

Continued Eligibility: FMR Area Size Criterion

Application of the modified new OMB metropolitan area definitions results in several peripheral counties of FY2005 50th percentile FMR areas being separated from their core areas. The separated areas become either non-metropolitan counties, parts of different metropolitan areas, or form entirely new metropolitan areas. Table 3 shows proposed FY2006 FMR areas that are ineligible to receive 50th percentile FMRs because, as a result of the new metropolitan area definitions, they each have fewer than 100 census tracts and therefore fail to meet the FMR area size criterion.

TABLE 3.—PROPOSED FY2006 50TH PERCENTILE FMR AREAS WITH FEWER THAN 100 CENSUS TRACTS

	Tracts
Allegan County, MI	21
Ashtabula County, OH	22
Holland-Grand Haven, MI MSA	36
Hood County, TX	5
Mohave County, AZ	30
Monroe, MI MSA	39
Muskegon-Norton Shores, MI MSA	45
Nye County, NV	10
Ogden-Clearfield, UT MSA	93
Pottawatomie County, OK	15
Warren County, NJ HMFA	23

Continued Eligibility: Concentration of Affordable Units

The original 50th percentile FMR determination in 2000 measured the Concentration of Affordable Units criterion with data from the 1990 Census because 2000 Census data were not available. According to 2000 Census data, the FMR areas, shown in Table 4, and assigned proposed FY2006 50th percentile FMRs have more than 70 percent of their tracts containing 10 or more rental units where at least 30 percent of rental units rent for the 40th percentile two-bedroom FMR or less. These areas therefore fail to meet the

Concentration of Affordable Units criterion and are not eligible for 50th percentile FMRs (FMR areas that are listed above as too small and also fail to meet this criterion are not listed here). In Table 4, the percentages following each FMR area name are, respectively, the 1990 Census and 2000 Census percent of tracts containing 10 or more rental units where at least 30 percent of rental units rent for the 40th percentile two-bedroom FMR or less. This number must be no greater than 70 percent for an FMR area to qualify for 50th percentile FMRs.

TABLE 4.—PROPOSED FY2006 50TH PERCENTILE FMR AREAS WHERE AFFORDABLE UNITS ARE NOT CONCENTRATED

FMR area	1990 ¹ (percent)	2000 (percent)
Atlanta-Sandy Springs-Marietta, GA HMFA	69.5	72.8
Baton Rouge, LA HMFA	69.2	80.3
Buffalo-Niagra Falls, NY MSA	67.7	75.4
Cleveland-Elyria-Mentor, OH MSA	62.3	70.3
Detroit-Warren-Livonia, MI HMFA	65.7	72.7
Minneapolis-St. Paul, MN-WI MSA	65.0	73.1
Oakland-Fremont, CA HMFA	67.8	74.4
Oklahoma City, OK HMFA	63.1	71.5
Oxnard-Ventura, CA MSA	68.1	71.8
St. Louis, MO-IL HMFA	69.9	71.1
Salt Lake City, UT HMFA	66.3	70.6
San Antonio, TX HMFA	66.0	70.7
San Jose-Santa Clara, CA HMFA	67.5	74.8
Tampa-St. Petersburg, FL MSA	63.9	74.1
Tulsa, OK HMFA	67.5	70.4
Wichita, KS HMFA	68.4	70.2

Continued Eligibility: Concentration of Participants

The¹ Concentration of Participants criterion requires that 25 percent or more of voucher program participants be located in the five percent of census tracts with the highest number of voucher participants. Otherwise, an area is not eligible for 50th percentile FMRs. The data for evaluating the Concentration of Participants criterion comes from HUD's Public Housing Information Center (PIC). All public housing authorities (PHAs) that administer Housing Choice Voucher (HCV) programs must submit, on a timely basis, family records to HUD's PIC as set forth by 24 CFR part 908 and the consolidated annual contributions contract (CACC). PIC is the Department's official system to track

and account for HCV family characteristics, income, rent, and other occupancy factors. PHAs must submit their form HUD-50058 records electronically to HUD for all current HCV families. Under HUD Notice PIH 2000-13 (HA), PHAs were required to successfully submit a minimum of 85 percent of their resident records to PIC during the measurement period covered by this notice (this requirement was raised to 95 percent by HUD Notice PIH 2005-17 (HA), but this higher reporting rate requirement is not used for purposes of this notice because it did not become effective until December 31, 2005, data submissions by PHAs).

Under HUD's Information Quality Guidelines,² the data used to determine

eligibility for 50th percentile FMRs qualifies as "influential" and is therefore subject to a higher "level of scrutiny and pre-dissemination review" including "robustness checks" because "public access to data and methods will not occur" due to HUD's statutory duty to protect private information.³ HUD cannot reasonably base the eligibility decision on inadequate data.

The information used to determine which FMR areas are assigned 50th percentile FMRs is "influential"

meets the standards of quality, objectivity, utility, and integrity. The mechanism also must allow affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines. OMB issued its final guidelines on September 28, 2001 (66 FR 49718), but requested additional comment on one component of the OMB guidelines. The OMB guidelines addressing additional public comment were published on January 3, 2002 (67 FR 369), and republished on February 22, 2002 (67 FR 6452). HUD issued its Final Information Quality Guidelines on November 18, 2002 (67 FR 69642), which follow public comment on proposed guidelines published on May 30, 2002 (67 FR 37851).

³ Note that 13 U.S.C. 9 governs the confidentiality of census data. The Privacy Act (5 U.S.C. 552) governs confidentiality of the data used to evaluate the Concentration of Participants criterion.

¹ The 1990 percent of tracts containing 10 or more rental units where at least 30 percent of rental units rent for the 40th percentile 2-bedroom FMR or less is the figure computed for the original old-definition FMR area that was assigned the 50th percentile FMR in 2000. The 2000 figure may differ both because of change between the two decennial censuses as well as change in the geographic definition of the FMR areas.

² Section 515 of the Treasury and General Government Appropriations Act for FY2001 (Pub. L. 106-554) directed the OMB to issue government-wide guidelines that "provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies." Within one year after OMB issued its guidelines, agencies were directed to issue their own guidelines that described internal mechanisms by which agencies ensure that their information

because it has “a clear and substantial impact,” namely because it can potentially affect how voucher subsidy levels will be set in up to 108 large FMR areas containing about 59 percent of voucher tenants, thereby affecting “a broad range of parties.” PHA voucher payment standards are set according to a percentage of the FMR, so the setting of 50th percentile FMRs “has a high probability” of affecting subsidy levels for tenants in the affected FMR areas. An “important” public policy is affected by the decisions rendered from the information, namely the goal of deconcentrating voucher tenants and improving their access to jobs and improved quality of life.

Under HUD’s Final Information Quality Guidelines, influential information that is developed using data that cannot be released to the public under Title XIII or for “other compelling interests” is subject to “robustness checks” to address, among other things, “sources of bias or other error” and “programmatic and policy implications.” The typical reason for a low overall reporting rate in an FMR area is very low reporting rates by the largest PHAs in the FMR area. Unless it could be shown that underreporting is essentially random (which would be difficult and impose a major administrative burden on HUD), low reporting rates render any results derived from the data inaccurate, unreliable, and biased.

The setting of a reporting rate threshold for consideration of eligibility for 50th percentile FMRs is, therefore, justified because it constitutes a “robustness check” on “influential information” as defined in HUD’s Final Information Quality Guidelines. HUD sets the overall FMR area minimum reporting rate standard at 85 percent based on the minimum requirements established for PHA reporting rates.

Of the 21 areas passing the FMR Area Size and Concentration of Affordable Units criteria, the four listed below in Table 5 have data quality issues in measuring Concentration of Participants in 2005 because of low reporting by PHAs in the FMR area.

TABLE 5.—PROPOSED FY2006 50TH PERCENTILE FMR AREAS MEETING FMR AREA SIZE AND CONCENTRATION OF AFFORDABLE UNITS CRITERIA, BUT HAVING REPORTING RATES BELOW 85 PERCENT AS DERIVED FROM THE MAY 31, 2005, DELINQUENCY REPORT ⁴

	Percent
Dallas, TX HMFA	83.2
Miami-Fort Lauderdale-Miami Beach, FL MSA	83.5
Newark, NJ HMFA	79.9
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	54.0

There ⁴ are two areas with a proposed FY2006 50th percentile FMR that met the first two eligibility criteria, had adequate data to measure Concentration of Participants, but failed to meet 25 percent concentration criterion. These two areas are the Sacramento-Arden-Arcade-Roseville, CA HMFA and the San Diego-Carlsbad-San Marcos, CA MSA.

Continued Eligibility: Deconcentration of Participants

HUD’s regulations in 24 CFR 888.113 specify that areas assigned 50th percentile rents are to be reviewed at the end of three years, and that the 50th percentile rents will be rescinded if no progress has been made in deconcentrating voucher tenants. FMR Areas that failed this test are ineligible for 50th percentile FMRs for the subsequent three years. One FMR area with proposed FY2006 50th percentile FMRs that passed the other 50th percentile eligibility tests, had sufficient data to accurately evaluate tenant concentration and measure deconcentration progress between 2000 and 2005, and failed to show deconcentration—the Bergen-Passaic, NJ HMFA.

The Newark, NJ HMFA and the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA are ineligible for 50th percentile FMRs because neither concentration nor deconcentration

progress can be measured accurately based on data provided by PHA reporting. In addition, as discussed in the review of public comments, the Philadelphia PHA is exempt from FMR constraints in setting voucher payment standards, and it was this part of the metropolitan area that had the high levels of concentration that resulted in the initial 50th percentile FMR status. If reporting in any of these FMR areas has increased sufficiently when future evaluations of deconcentration are made, and eligibility can be established with increased reporting rates, the 50th percentile FMRs could be reinstated before the end of a three-year hiatus in these two areas.

Since the Bergen-Passaic, NJ HMFA has not demonstrated progress in deconcentrating voucher participants and this measurement is made with data of adequate quality (85.7 percent reporting rate), the Bergen-Passaic, NJ HMFA is ineligible for FY2006 50th percentile FMRs and shall remain so for 3 years. Bergen-Passaic’s 40th percentile rents are within 5 percent of those of the New York City metropolitan area to which it is assigned under current OMB metropolitan area definitions, so under HUD’s policies for establishing the FY2006 FMR areas it would become part of the New York City FMR area. However, as outlined in **Federal Register** Notice of Proposed Metropolitan Area Definitions for FY2006 Income Limits, published on December 16, 2005 (70 FR 74988), HUD has proposed creating four new FMR areas, including Bergen-Passaic, by splitting larger FY2006 FMR areas along the lines of FY2005 FMR areas. These new FMR areas were proposed because they have very large differences in median incomes and income limits from those of the larger areas of which they were originally part. Public comments on these proposed changes are pending, but comments to date have supported this proposal, so this notice maintains Bergen-Passaic as an independent FMR area on an interim basis pending completion of the comment process.

Table 6 lists the areas, originally assigned 50th percentile FMRs, and also assigned proposed FY2006 50th percentile FMRs, that have sufficient Reporting Rates as derived from the May 31, 2005, Delinquency Report to make an accurate assessment of participant concentration, that meet all eligibility criteria, and have shown evidence of participant deconcentration. These areas continue to be eligible for 50th percentile FMRs.

⁴ For most PHAs the reporting rate comes directly from the Delinquency Report and is the ratio of form 50058 received to required units. In some cases, the number of 50058 required units was inconsistent with other figures on the number of HCV participants served by the PHA and was replaced with either the December 2004 leased units (if available) or Annual Contribution Contracts (ACC) units. The two significant instances where this procedure was used and negatively affected FMR area reporting rates in this table because the resulting PHA rates were below 85 percent are as follows: Dallas, TX HA (15,975 ACC units, PHA Report Rate 78.3%) and Philadelphia, PA HA (15,641 leased units, PHA Report Rate 0.0%).

TABLE 6.—PROPOSED FY2006 50TH PERCENTILE FMR AREAS THAT CONTINUE AS 50TH PERCENTILE AREAS

Albuquerque, NM MSA
Austin-Round Rock, TX MSA
Chicago-Naperville-Joliet, IL HMFA
Denver-Aurora, CO MSA
Fort Worth-Arlington, TX HMFA
Grand Rapids-Wyoming, MI HMFA
Houston-Baytown-Sugar Land, TX HMFA
Kansas City, MO-KS HMFA
Las Vegas-Paradise, NV MSA
Orange County, CA HMFA
Phoenix-Mesa-Scottsdale, AZ MSA
Richmond, VA HMFA
Virginia Beach-Norfolk-Newport News, VA-NC MSA
Washington-Arlington-Alexandria, DC-VA-MD HMFA

Newly Eligible Areas

Table 7 lists the FY2006 FMR areas not originally assigned proposed 50th percentile FMRs that have sufficient Reporting Rates as derived from the May 31, 2005, Delinquency Report (more than 85 percent overall for the FMR area) to evaluate the Concentration of Participants and meet the eligibility requirements for 50th percentile FMRs. There were no FY2006 FMR areas originally assigned proposed 40th percentile FMRs that otherwise met the eligibility requirements for 50th percentile FMRs, but were deemed ineligible by having insufficient Reporting Rates as derived from the May 31, 2005, Delinquency Report.

TABLE 7.—NEW ASSIGNED 50TH PERCENTILE FMR AREAS

Baltimore-Towson, MD MSA
Hartford-West Hartford-East Hartford, CT HMFA
Honolulu, HI MSA
Milwaukee-Waukesha-West Allis, WI MSA
New Haven-Meriden, CT HMFA
Providence-Fall River, RI-MA HMFA
Riverside-San Bernardino-Ontario, CA MSA
Sarasota-Bradenton-Venice, FL MSA
Tacoma, WA HMFA
Tucson, AZ MSA

IV. Public Comments

A total of 32 comments were received and reviewed by HUD. Many of the comments submitted raised FMR issues that are not directly related to this notice and therefore are not discussed in detail. Several comments, for instance, gave rationales for 50th percentile FMRs that were unrelated to implementation of the regulatory criteria. The decision as to the percentile level at which FMRs should be set involves a complex trade-off between serving more households versus providing a higher level of

assistance to those in the program, and is one that has been an on-going source of discussion and change over the life of the program but which, ultimately, is a wider Congressional and Administration policy decision.

Comments received from the Sacramento PHA and the San Diego Housing Commission questioned the accuracy of the PIC system tenant data used in the determinations. An error in the PIC data was discovered for Sacramento that resulted in double-counting of vouchers for one housing authority. Although Sacramento is no longer ineligible for the 50th percentile FMR program based on a low reporting rate, it still remains ineligible for continued use of 50th percentile FMRs because it fails to meet the concentration of participants criteria (25 percent or more of voucher program participants must be located in the five percent of census tracts with the highest number of voucher participants). No errors were found in the tenant reporting data used for San Diego. The San Diego Housing Commission comment had based its conclusions on data from the city and not included or considered data for the balance of the metropolitan area.

The Philadelphia Housing Authority, Mayor of Cherry Hill Township, the Wisler Pearlstine law firm (on behalf of the Montgomery County Housing Authority), Legal Services of New Jersey and the Council of Large Public Housing Authorities (CLPHA) oppose the removal of the Philadelphia metropolitan area from the 50th percentile FMR program based on its low reporting rate. They cite the designation of the Philadelphia HA as a Moving-to-Work (MTW) demonstration site as a waiver of HUD reporting requirements and note that other PHAs in the metropolitan area met or exceeded the 85 percent reporting rate. The Philadelphia metropolitan area's 50th percentile designation was based on the heavy concentration of program participants in a small number of census tracts within the city of Philadelphia. Under its MTW agreement, the Philadelphia PHA is not subject to FMRs and has the discretion to set its own payment standards, so FMRs are no longer relevant to its voucher program management. The MTW contract with the Philadelphia HA specifically states that it must report to the PIC system, and the lack of data prevents HUD from evaluating for purposes of the 50th percentile program in the same way that every other area is evaluated. Several comments stated that HUD should evaluate the area based on the data from the areas that did report but, aside from

being inconsistent with the relevant regulations, this grouping of areas would not meet the regulatory eligibility criteria. It would be both inequitable and inconsistent with the regulations to permit PHAs outside the city limits to use 50th percentile FMRs when other areas that fail to meet the regulatory criteria are not allowed to do so.

Newark and Miami also protest the loss of the 50th percentile FMR based on insufficient data. The Miami-Dade Housing Agency and Florida Legal Services, Inc. note that there is no reporting requirement in the 50th percentile regulation. The Miami-Dade Housing Agency also noted that HUD used May 2005 data for its 50th percentile determination. They believed that use of September 30, 2004, data would have allowed the PHA to meet the reporting requirement. The Rahway Housing Authority, part of the Newark metropolitan area, points out that the new HUD requirement in Notice PIH 2005-17(HA) will sanction PHAs that do not submit data and that reporting is therefore likely to improve. Rahway asks HUD to defer determinations of 50th percentile eligibility for one year, at which time more data may be available. HUD's response to the above comments is based on the Final Information Quality Guidelines published in the **Federal Register** on November 18, 2002 (67 FR 69642), which are previously discussed in the section on "Continued Eligibility." The reporting requirement is covered in each PHA's Annual Contribution Contract with HUD, and has been a requirement for over two decades. This submission requirement and the 85 percent standard have also been part of the Section 8 Management Assessment Program (SEMAP) regulatory standards under which PHA voucher program performance is evaluated. HUD's compliance with the Information Quality Guidelines is required by a statute passed subsequent to the issuance of the 50th percentile rule, and reporting compliance is required under PHAs' contractual agreements with HUD. Allowing PHAs to select when or how compliance should be measured is inconsistent with the letter and intent of these information quality guidelines.

The Public Housing Authorities Directors Association (PHADA) assumes that under-reporting is random and requests a further investigation by HUD. HUD does not accept this as a basis for over-ruling its information quality guidelines. Aside from violating the provisions of the guidelines, HUD has no basis for assuming that under-reporting is random. Under-reporting tends to be concentrated in one or a few

PHAs within a metropolitan area, and it is known that levels of program concentration vary significantly from PHA to PHA.

Several metropolitan areas and public interest groups cite the need for higher FMRs in their areas. The National Association of Home Builders (NAHB) and the National Association of Affordable Housing Lenders (NAAHL) propose increasing all FMRs to the 50th percentile level, or, at the very least restoring the 11 areas that lost designation simply as a result of adopting the new OMB metropolitan definitions. Those 11 areas were assigned 50th percentile FMR solely because they were previously grouped with central cities that had concentration problems. There is no basis for favoring these areas over other areas with similar characteristics solely because they were previously allowed to use higher FMRs.

The Housing Authority of Bergen County (NJ) and the city of Berkeley (CA) discuss the high cost of rental housing in their areas and the difficulty they will find in making the program work with lower FMRs. The Department of Community Affairs for the State of New Jersey notes that a reduction in the FMRs will make it more difficult for families to find decent affordable housing in neighborhoods of their choice and that the requirement to deconcentrate will be impossible to satisfy. The Decatur Housing Authority (GA) states that it can ill-afford a decrease resulting from the loss of the 50th percentile as its rental housing market begins to tighten, and argues that Atlanta metropolitan area needs higher rather than lower FMRs. HUD agrees that higher FMRs would permit more units to be accessed in all of the above areas, but past studies have shown that 40th percentile FMRs are high enough to permit a wide range of neighborhoods to be accessed. In addition, the above arguments do not address the regulatory criteria that govern 50th percentile FMR determinations.

Bergen County and Berkeley also argue that they need higher FMRs because they have higher rents than the metropolitan areas of which they are a part. To the extent that this condition can be documented, as can be done with 2000 Census data, this need should be addressed by requests for exception payment standards as permitted under voucher program regulations. In instances where PHAs believe FMRs are

inaccurate, they should submit public comments to that effect in response to proposed FMRs, and may provide survey data to support such requests or ask HUD to conduct a survey (which HUD will seek to do within its funding constraints).

The Cuyahoga Metropolitan Housing Authority, Florida Legal Services, Inc., the Housing Authority of the County of Santa Clara and the Minnesota Housing Finance Agency state that PHAs that have been successful in meeting the HUD deconcentration measure should continue to have the necessary tools available to them and specifically request exception from the reduction to the 40th percentile FMR based on the provision set out in 24 CFR 982.503(f). They request that HUD immediately implement that provision of the 50th percentile regulation so that exceptions can be granted. Nothing in this or the August 25, 2005 notice rescinded this provision, and requests for implementation should be made to the Office of Public and Indian Housing. The Livonia Housing Commission and the Fair Housing Center of Metropolitan Detroit claim that the reduction in the FMR will have a disparate impact on minority and disabled families and that it raises fair housing concerns for low-income minority and disabled citizens in Wayne County. They argue that the reduction will reduce housing choices, increase rent burdens and negatively impact quality of life issues. The Detroit area lost its 50th percentile status because 2000 Census data showed that it did not meet the concentration of affordable units standard. The evaluative standards used were objective, race-neutral, and applied uniformly to all metropolitan areas.

The National Association of Housing and Redevelopment Officials (NAHRO) noted that, in its August 25th notice proposing rescission of some 50th percentile FMRs, HUD failed to mention the provision in HUD regulations (24 CFR 982.503(e)) that permits PHAs the opportunity to qualify for a success rate payment standard. Under the implementing notice for the 50th percentile notice, HUD clearly stated that PHAs may request these exceptions from their HUD office. Neither this notice nor the August 25, 2005, notice abrogate this right.

The Housing Authority of St. Louis County protests the elimination of St. Louis from the 50th percentile FMR program based on its percentage of

affordable units because it feels the percentage, at 71.1 percent, does not represent a statistically significant difference from 70.0 percent. The National Low Income Housing Coalition stated that the precision used by HUD in its analysis was inappropriate and it requested that standard rounding practices be employed for areas such as Cleveland (70.3 percent), Tulsa (70.4 percent) and Wichita, KS (70.2 percent). These comments were considered, but rejected because the criteria used had been pre-specified and subject to public comment.

All of the public interest groups urged HUD to grant a moratorium on any reduction of 50th percentile areas for any area impacted by Hurricane Katrina (and Rita). NAHRO suggested that any federally declared disaster area, or any of the surrounding communities providing housing assistance to evacuees, be eligible to receive up to 150 percent of the existing FMR without prior HUD approval. The HUD Office of Public and Indian Housing (PIH) has issued a notice that provides exception payment standards for FEMA designated disaster areas and allows other areas impacted by displacement to request exception payment standards.

Revised final FY2006 FMRs for the areas affected by this notice are listed in Schedule B.⁵ Consistent with current regulations, PHAs must obtain the approval of their governing board to implement use of 50th percentile FMRs or payment standards based on those FMRs.

Note 1 in the footnotes on Schedule B of the FMR tables as published on October 3, 2005, is incorrect. It should state the following: *The FMRs for unit sizes larger than 4 Bedrooms are calculated by adding 15% to the 4 Bedroom FMR for each extra bedroom.* Other information pertaining to the final FY2006 FMRs is unchanged from the October 3, 2005 notice.

Dated: February 7, 2006.

Darlene Williams,

Assistant Secretary for Policy, Development and Research.

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⁵ FR-4995-N-02 listed five additional metropolitan counties as being affected by this policy. However, all five counties were also affected by the implementation of the state minimum policy in the final FY2006 FMRs published as FR-4995-N-03, which increased their FMRs above the levels proposed in FR-4995-N-02 and, therefore, this notice does not change published final FMRs for these areas.