Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2015

Addendum to Address Comments Received to Proposed FY 2015 FMRs

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 new public housing requirement that Flat Rent minimums be set at 80 percent of the Fair Market Rent (FMR) is too high a rent for many rural markets.

The new flat rent policy sets the flat rents at too high of an amount, especially in rural areas. The new flat rent policy punishes those individuals that try to work and improve their situation and senior citizens. Existing tenants are moving out and being replaced with tenants with much lower income, thus increasing the need for greater subsidies at a time when Public Housing Authorities (PHAs) are already receiving historically large cuts in funding. PHAs are losing revenue under this new requirement; they request re-instituting the use of annual comparability studies. One commenter also requested that HUD permit PHAs to calculate the rent based on the Fair Market Rent (FMR) as unadjusted by the State Minimum.

HUD Response: Congress found that flat rents were set too low in many cases, so it enacted a new requirement of setting flat rents at no lower than 80 percent of the FMR in §210 of Title II of P.L 113-76, the Consolidated Appropriations Act of 2014. HUD partially implemented §210 with Notice 2014-12 (HA) on May 19, 2014. HUD is required to commence rulemaking on this new flat rent requirement no later than six months from the date of the notice under §243 of the same Act, so HUD will commence rulemaking, on or about November 13, 2014. The program staff that must implement the new flat rent requirement is aware of the issues and of the comments filed in response to the Proposed FY 2015 FMR Federal Register Notice. The Department will consider the comments concerning flat rents submitted in response to the Proposed FY 2015 FMR Notice during this November rulemaking.

While HUD understands that state minimums increase the FMR above what it would otherwise be, HUD cannot wholly or selectively eliminate state minimum FMRs. HUD did try to eliminate the use of state minimums in the FY 2005 FMRs, but there were many nonmetropolitan counties that opposed this change for the Section 8 Voucher program. HUD may not selectively apply state minimums to some rural counties and not to others; a change in the methodology for calculating FMRs, including the use of state minimums, would require prior notice for all affected parties.

FMRs should be held harmless at the FY 2014 levels.

Several comments requested that FMRs not be allowed to decline from their FY 2014 level. Some of these comments provided market data that showed current rents in apartment projects that were higher than the FMR.

HUD Response: HUD cannot ignore the more current 2012 American Community Survey (ACS) data and allow FMRs to stay the same as they were for FY 2014, which were based on gross rents from the 2011 ACS, except for areas where there was a HUD-sponsored or PHA-sponsored survey produced more recently than the 2012 ACS. 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.

Apartment buildings of 5 units or more are only one segment of the rental market in a FMR area. All of the data submitted in comments to this notice provided only this segment of the rental market, which accounted for less than one-fourth of the rental market for those areas.

Single family homes, both attached and detached (including townhomes and duplexes), small rental apartments, and mobile homes make up the rest of the rental market.

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 any surveys in 2015 and HUD cannot delay the implementation of FY2015 FMRs while new surveys are being conducted. Rents in 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 accurately measured by surveys. Should the survey results show market conditions that are statistically different from the published FMRs, HUD will revise the Final FY 2015 FMRs. HUD recommends following the survey guidance available at the bottom of the web page http://www.huduser.org/portal/datasets/fmr.html for small metropolitan areas without consistent one-year ACS data and nonmetropolitan areas. For large areas with significant one-year ACS data, the requirement for completed recent mover surveys are greater; there must be about 200 two-bedroom (or two-bedroom and equivalent one- bedroom and possibly equivalent three-bedroom recent mover surveys) where the FMR is not within the confidence interval of the survey. HUD will review the results of private surveys and will revise the Final FY 2015 FMRs if warranted.

For small nonmetropolitan counties, HUD will work with the PHA to simplify the requirements for obtaining valid survey results, but the selection of the units surveyed must be random and the distribution of the structures surveyed must be representative of the distribution of structure types from the 2012 ACS; that is, HUD will not accept a survey that is comprised only of apartment project rentals, any more than it would accept private project rental data for major metropolitan areas as a means of revising FMRs. This data typically excludes single family rentals, which are generally about one-third of the rental market for an area, and this percentage can be greater in small metropolitan areas and nonmetropolitan counties.

Reductions in FMRs are discouraging the development of affordable multifamily housing projects.

Low Income Housing Tax Credit (LIHTC) projects that are limited to Section 8 voucher holders cannot be financially sustained with decreased FMRs.

HUD Response: For years, HUD held income limits harmless to eliminate the effect of lower rents on LIHTC units, assuming rents were based on incomes. But the effect of this policy was to create areas where there were no changes in income limits for years, which also did not provide adequate rents for LIHTC projects. When Congress decided to provide statutory hold harmless income limits for LIHTC projects and special income limits for projects in service by December 31, 2008 and subject to HUD’s Hold Harmless policy in either 2007 or 2008, HUD determined that other income limits would no longer be held harmless, but would limit annual changes in income limits to plus or minus five percent (or greater if on average there was an annual increase in the national median family income of more than five percent). Since the FY 2010 HUD Income Limits were published without imposition of hold harmless incomes, LIHTC developers had to plan for decreases in income-based rents between the time projects are proposed and placed in service.

FMRs have always increased and decreased with the change in the data. 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.

The standard for setting manufactured home rents (40 percent of the FMR to include pad rent and utilities) is insufficient.

The commenter said the formula for determining the manufactured home space rent (which is the pad rent plus tenant-paid utilities) at 40 percent of the FMR provides too low of an amount. The commenter provided average manufactured home rents by FMR area based on sales data from 2011 through 2014.

HUD Response: HUD is not going to change the use of 40 percent of the FMR as its normal rent for manufactured home spaces. As evidenced by the small number of areas in Schedule D, this formula works in most areas. The methodology for providing exceptions to 40 percent of the FMR for the manufactured home space rent is not well-defined in HUD's notices. What is required is a listing of all pad rents for each FMR area, the utilities included in this pad rent, plus the applicable utility schedule. To collect the first two pieces of data, all manufactured home parks in the FMR area are surveyed to collect pad rents and the utilities that are included in the pad rent, which provides contract rents (by the number of pads in the park). Contract rents plus tenant-paid utilities (using the current utility schedule for the area) provides gross rents. The 40th percentile of the gross rents for an area determines the exception manufactured home space rent. The PHA requesting the exception rent provides all of the data used to determine this 40th percentile manufactured home space rent, including the utility schedules, to HUD.

A representative sample is not the goal of this data, but, rather, a thorough collection of the pad rents in an area, covering all manufactured home parks. HUD will publish this explanation of how to request manufactured home rents exceptions in all future publications and will work with the commenter to collect the proper data.

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 the 40th (or 50th) percentile gross rent 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 to all of the underlying data used to estimate FMRs 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, but are re-weighted to match the population and housing unit estimates of the final year of the 5-year range. Also, many rural 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 in FMRs do not necessarily reflect very recent changes in 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.

To seek changes in FMRs, some comments provided rent reasonableness findings, or rent data from large apartment projects that show that the rents in their area increased in the past year, while the FY 2015 FMRs show a decline from the FY 2014 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 reliable. Rent reasonableness studies are not subject to the same constraints on statistical reliability and cannot be used to alter FMRs.

The law mandating sequestration affected the ability of PHAs to manage their program in a way to promote deconcentration.

For the FY 2015 FMRs, a significant number of metropolitan areas lost 50th percentile FMRs and this is the result of implementing the Cost Savings Measures in accordance with Public and Indian Housing guidance to comply with the law mandating sequestration. The formula in the current regulations should be adjusted to reflect program impacts due to sequestration.

HUD Response: The 50th percentile FMR program is the Department’s current tool for addressing high concentrations of voucher holders in relatively small portions of large metropolitan areas. Research indicates that increasing the level of the FMRs across an entire metropolitan area is not an effective deconcentration tool. The Department is investigating new methods for assessing areas with large concentrations of voucher holders in high poverty areas and determining the tools that are best suited to alleviate this issue. HUD will seek comments on this new program in a January 2015 publication.

For the areas affected by Superstorm Sandy, the FY 2015 FMRs increases are not high enough; the affordable rental market suffered disproportionately and FMRs should be raise to levels in neighboring areas.

A commenter stated that lower income renters were disproportionately victims of the storm. Lower income renters are already disadvantaged and they need FMRs set at rents comparable to neighboring FMR areas.

HUD Response: In the absence of statistically reliable data, HUD cannot further increase the FMRs for areas affected by Superstorm Sandy. HUD can continue to allow for the successful operation of the Housing Choice Voucher (HCV) program through regulatory waivers provided in disaster areas, and through its emergency exception payment standard process. The modest increases in the FMRs can be augmented by emergency payment standards up to 135 percent, depending on current rental vacancy data and storm damage data. HUD developed the emergency payment standards as an alternative to conducting surveys which do not work well in areas where there has been substantial loss of rental housing. Also, for FY 2015, there are no funds available for HUD-conducted surveys.

HUD should validate its FMR estimation methodology by comparing one-year ACS data with fiscal year FMRs for the same year, beginning with a comparison of 2006 one-year ACS rent data to the FY 2006 FMRs.

This analysis would determine which aspects of HUD’s discretionary methodology is less accurate and could help HUD modify its methodology to improve accuracy while adhering to the requirement to use the most recent data available. The up and down changes that occur with the final fair market rents cause a lot of problems and stress for the landlords, tenants and the PHAs.

HUD Response: Because the integration of ACS data into the FMR estimation process has been gradual and evolving, and will continue to evolve to address issues like volatility in estimates arising from large sampling variation in smaller markets, there is not yet a basis for making the suggested comparison. FMR methodology and the underlying data have been relatively stable only between FY2013 and FY2015 FMRs. ACS data on recent-mover rents are not yet available for these years. Further, because the ACS only produces highly reliable estimates of the 40th percentile recent mover two-bedroom rent in the largest metropolitan areas, the comparison would only be valid for large markets, and FMRs have not been particularly volatile in these markets. Finally, the logic of this comment suggests that HUD should change the FMR estimation process to a model-based forecast system derived from time-series-panel data on rents. Again, this methodology would only be valid for the largest metropolitan FMR areas where a highly reliable recent mover rent can be derived from ACS data. It is not clear that the model would be feasible and accurate for smaller FMR areas, nor how a model-based FMR estimate would accord with statutory language regarding FMR estimates.

The public housing adjustment used to limit the distribution of FMRs is too low.

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. 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.

The year-to-year volatility in FMRs has significant adverse impacts.

A reduction of more than five percent in the published FMRs triggers a rent reasonableness analysis on the part of the PHA with jurisdiction over the area (Housing Choice Voucher Guidebook, directive 7420.10G). If the PHA's analysis finds that the rent being charged by a property owner is no longer reasonable, the owner will be required to reduce the rent. If the owner determines that this reduction will adversely affect the financial stability of the property, the owner will likely choose to leave the program, and the tenant will then have to move. Another consequence of a large reduction in FMRs is that owners may have to defer maintenance items because cash flows are no longer adequate to cover operating expenses.

Alternatively, higher FMRs force the PHA with jurisdiction over the area to increase their payment standards and serve far fewer families within the community. This is detrimental at a time when PHAs are already stretching the limited amount of funding received from HUD to help as many families as they can. Increased FMRs will increase the waiting list for the HCV program and will increase the homeless population for an area.

One commenter with a large increase compared with FY 2014 FMRs had a high margin of error. It has been suggested that HUD reduce its margin of error ratio for acceptable data from the current 100 percent (equal to the ACS base rent) to 10 percent.

HUD Response: In estimating FMRs, HUD must carefully balance the use of the most local data available with possible volatility of FMRs from year to year. Most of the large changes in FMRs for smaller metropolitan and nonmetropolitan counties come from changes in the one-year ACS data used to set the recent mover factor. It is not clear how much of the variation is due to actual market movement and how much is variability in the ACS sample. HUD will examine possibly limiting the application of one-year ACS data based on the size of the margin of error of the estimate of recent mover rent. Members of the public should be aware, however, that changes in methodology designed to limit FMR volatility in future years may result in substantial volatility of FMRs in the year of implementation.

HUD has reviewed reducing the acceptable margin of error, but any change brings up issues that would require comment on such a method change. The biggest issue associated with this change is what happens if the previous year’s estimate (and so on) would not meet the requirements of the new standard. Even reducing the acceptable margin of error to 50 percent of the estimate creates this problem. Any such change would require a full comment procedure, so HUD will evaluate alternatives with a goal to making changes in FY 2016.

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 FY 2015 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 2008-2012 data is the most current data available for FMR areas of all sizes. HUD must use the most current statistically reliable data available. None of the areas that found FMRs too low because of economic and population growth provided statistically valid data that could be used to update the proposed FY 2015 FMRs. To help manage the program during times of FMR decreases, PHAs operating the Housing Choice Voucher program 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), or in severely disrupted rental markets, emergency payment standards.

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 2012 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 reliable 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 if the market condition has been occurring for less than two years; furthermore, it is challenging to get valid results for surveys of relatively small housing markets (with population under 1,000 persons). Most of the areas suffering from very rapidly tightening market conditions meet one or both of these 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, or in severely disrupted rental markets, emergency payment standards.

FY 2015 FMR decreases reduce the ability of families to find affordable housing.

Several comments stated that FMR decreases make it harder for tenants to find affordable housing, so these decreases should not be implemented. The decrease in FMRs from FY 2014 to FY2015 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 2012 rents, in a few cases the 2012 to 2013 CPI adjustment reflects a decline.

FMR reductions will lead to poverty concentration.

Decreases in the FMR, whether by loss of a 50th 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 FMRs for Dallas) based on the most currently available data that meets the statistical reliability tests. PHAs may use Exception Payment Standards to increase payment standards for higher rent parts of their FMR areas as a means to reduce poverty concentration. Areas that lost their 50th percentile FMR because they graduated from the program or failed to show measurable tenant voucher deconcentration can use higher payment standards as shown at 24 CFR 982.503 (f) to mitigate FMR decreases.

A significant increase in the FMR is detrimental to managing the HCV program.

PHAs must already stretch the limited amount of funding received from HUD to help as many families as possible. A proposed increase will increase the waiting list for the HCV program and also increase the homeless population. The commenter assumes that new luxury apartments in the area may be responsible for the increase in the FMR.

HUD Response: HUD is required to increase or decrease FMRs based on the most currently available data that meets the statistical reliability tests. While the commenter had a high margin of error for its estimate, and this could be resolved by lowering the error percentage of the estimate, other areas with both significant increases and significant decreases would also be impacted and not necessarily in a favorable way. HUD would have to go through a comment period for such a change, as noted in an earlier question.

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 2015 Small Area FMRs published at http://www.huduser.org/portal/datasets/fmr/smallarea/index.html. 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). While certain HUD and non-HUD programs are limited to the use of the FMR and not the potentially higher payment standard, we are working to resolve this issue with HUD programs and would suggest that non-HUD programs also make rule changes to allow for flexibility during times of decreases in FMRs.

FY 2015 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 issues, 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 2015 FMRs is more current than what was available in the estimation of the FMRs for FY 2014, so while more units may be available at or below the FY 2014 FMR than under the FY 2015 FMR, the FY 2015 FMRs are based on more current information and are a better representation of the position in the rent distribution required by the FMR regulations. 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 and/or preservation of affordable housing are 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. Several areas claim that there has been an increase in affordable housing production and that HUD’s failure to include units built in the past two years ignores new affordable housing production, which in turn artificially reduces the FMR.

HUD Response: HUD has long eliminated rents from units built in the last two years from its calculation of the 40th percentile FMR. This is because new units typically receive a premium over other units of the same size in the same area, and may skew the distribution of market rent.

Maximum allowable rents in Low-Income Housing Tax Credit properties are set based upon 50- or 60-percent income limit levels, or if the payment standard 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 either would 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 2015 FMR will not necessarily affect HOME rents or home project funding unless the FMR is lower than the held harmless income limit rent.

FMRs in nonmetropolitan counties adjacent to metropolitan areas should be more like those in the neighboring metropolitan areas.

A nonmetropolitan county did not have as much of an increase in its FMR as a neighboring county that is part of a metropolitan area. Smaller counties that are more rural are reducing the FMRs for a metropolitan area; HUD should sever these rural areas so that the FMRs reflect the metropolitan area. The new Office of Management and Budget (OMB) metropolitan area definitions removed a county from the metropolitan area making it a nonmetropolitan county; shouldn't HUD also remove this county from the metropolitan definition for its FMR area?

HUD Response: A metropolitan area receives the same FMR throughout the designated area. While changes were made in FY 2006 during the implementation of the OMB metropolitan area definitions based on the 2000 decennial Census, these changes excluded the addition of formerly nonmetropolitan areas into metropolitan areas only where there was sufficient data that showed income or rent differences between the rural county and the metropolitan area of more than five percent. If a county has never been part of a metropolitan area and has always been adjacent to a metropolitan area, its FMRs will not be impacted by the metropolitan area. There is no correlation in the annual FMR change between a nonmetropolitan county and an adjacent metropolitan county. Low rent, less populous counties that are part of a metropolitan area were evaluated in FY 2006 and did not meet the standard for making these separate FMR areas.

HUD will not make changes to metropolitan area composition until it incorporates the February 28, 2013 OMB new metropolitan area definitions and it will begin its analysis of these areas with the FY 2016 FMRs. HUD relies on OMB guidance for determining metropolitan areas and plans to continue market area definitions based on income and rent differences of more than 5 percent.

Homelessness will increase in areas where the FY 2015 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. HUD cannot ignore the requirement that it use the most current data by implementing FMR changes in five percent increments. Statutory and regulatory changes are required before HUD would be able to implement any methodology changes that would limit the use of 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.

Small Area FMRs fail to address the fundamental issue that FMRs are too low to allow the voucher program to work as intended within a market area and is likely to have adverse consequences.

By encouraging Section 8 tenants to move out of ZIP code areas that have low rents relative to other locations within an FMR area, small area FMRs reduce the available pools of tenants for rental properties developed and operated under federal and state housing programs. Before HUD offers additional uses of SAFMRs, it should conduct and complete an evaluation of the demonstration program.

HUD Response: The Department explores ways to improve the operations of its programs. This includes research into ways to use Small Area FMRs. The public will be provided with opportunities to comment before HUD implements any additional uses of Small Area FMRs.

The FY 2015 Small Area FMRs for Dallas do not affirmatively further fair housing. HUD's 2015 proposed SAFMRs for Dallas is unaccompanied by any facts or the fair housing related analysis required by HUD's obligation to affirmatively further fair housing under 42 U.S.C 3608(d). There is no documentation that HUD used racial and socioeconomic data to establish the FY 2015 Small Area FMRs. The FY 2015 FMRs differ little from the current FY 2014 FMRs that perpetuate racial segregation by increasing SAFMRs in the Black and other predominantly minority ZIP Codes while decreasing SAFMRs in many majority White ZIP Codes.

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 data that are more current does not prevent HUD from affirmatively further fair housing. By construction, the Housing Choice Voucher program affirmatively furthers fair housing by providing voucher holders with the ability to choose their housing unit. SAFMRs are an additional tool provided to tenants to enhance their choices. 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 racial, ethnic, or other demographic traits.

HUD is not changing the methodology in its FMR or Small Area FMRs to include the demographic data requested by the commenter. HUD answers all other aspects of this comment, which included a copy of the complaint filed in the district court, in its response filed in the court.

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

HUD Response: While rent surveys conducted by either HUD or a PHA would provide more current data, it takes more than two months to complete these surveys and they can be expensive. HUD does not anticipate having the funds to conduct any surveys in FY 2015 and HUD cannot delay the implementation of FY 2015 Final FMRs while any surveys are being conducted. Rent levels and changes in 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 decreases ongoing for a period of at least two years before it is measurable.

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

HUD Response: Data from the 2012 ACS is much more current than the 2000 Decennial Census long form data. Moreover, with the calculation of Small Area FMRs for metropolitan areas, HUD is relying on the Small Area FMRs, published by ZIP Code, to help determine what portions of a metropolitan area may qualify for exception payment standards. This data for metropolitan areas only is already available to PHAs at http://www.huduser.org/portal/datasets/fmr/smallarea/index.html